



Patricia Maguire Meservey, *President*

MEMORANDUM OF AGREEMENT

Between Salem State University and Salem State University Foundation, Inc.

This Memorandum of Agreement is made as of the 11th day of February, 2015, by and between Salem State University (the "University"), an agency of the Commonwealth of Massachusetts, and the Salem State University Foundation, Inc. (the "Foundation"), a not-for-profit charitable corporation organized and operating as such pursuant to chapters 15A, §37, and 180 of the General Laws of said Commonwealth.

WHEREAS the Foundation is organized and operated exclusively for the benefit of the University and consistently with the policies and goals of the University;

WHEREAS the Foundation plays a significant role in securing, holding, managing and disbursing moneys and other assets dedicated to the support of the University; and,

WHEREAS the University and the Foundation are desirous of recording certain understandings concerning the manner in which the Foundation and the University will coordinate, and otherwise cooperate in, efforts to raise moneys and secure other assets from private donors for the support and benefit of the University;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants herein contained, the University and the Foundation hereby agree as follows.

1. Use of Name. The University and the Foundation acknowledge and agree that the University, in accordance with and subject to the provisions of chapter 15A, section 37, of the General Laws of Massachusetts, has accorded to the Foundation the right and authority to use the name of the University both in the Foundation's own name and for the purpose of its fund-raising activities.
2. Foundation's Mission and Purpose. The Foundation's mission and purpose are to raise and manage private resources in support of the mission and priorities of the University as the University may determine those to be from time to time. It is the University's and the Foundation's expectation, therefore, that the Foundation will, consistently with the terms of this Memorandum of Agreement, support the University's fund-raising activities and, in accordance with University policy and applicable provisions of law, play an active and prominent role in in the management of privately raised moneys and other assets.

3. University's Support and Assistance.

- a) At the Foundation's request, the University may, at no cost to the Foundation, provide the Foundation with such space and facilities of the University, including suitably equipped office and meeting space, as, in University's judgment, are reasonably necessary to permit the Foundation to fulfill its obligations under this Memorandum of Agreement. The University may also provide the Foundation with appropriate telephone and computer connectivity through the University's own telephone and computer networks.
- b) The University's chief development officer (or such other employee of the University as the University may designate) may serve as the executive director of the Foundation. At the request of the Foundation, the University may assign to the Foundation such additional personal services, including clerical services. Every such employee (including the chief development officer) may be and remain an employee of the University for all purposes. The rendering of all such personal services (including those of the chief development officer) to the Foundation shall be subject to applicable provisions of law, including those contained in chapter 15A, section 37, of the General Laws of Massachusetts.
- c) The University shall communicate to the Foundation the University's priorities and long-term plans together with such other information as the University thinks necessary or appropriate to assist the Foundation in the fulfillment of its obligations hereunder.
- d) The University shall work with the Foundation to identify, cultivate and solicit prospective donors of private gifts. All data pertaining to donors shall be and remain the property of the Foundation.
- e) The University shall give to the Foundation such additional support and assistance as the University deems necessary or appropriate to facilitate the Foundation's activities and to assist it in the accomplishment of its purposes and the fulfillment of its mission.
- f) Any and all support and assistance provided by the University to the Foundation shall at all times remain subordinate and subject to appropriation, University policy, University budget and applicable provisions of law.

4. Foundation's Responsibilities.

- a) The University reserves to itself the right, at any time, to play any such role and assume any such responsibility, whether to the exclusion of the Foundation or otherwise, as it may think appropriate in connection with any fund-raising activity or any donor relationship. In consultation with the University and consistently with its policies and prescriptions as they are from time to time, the Foundation shall assume principal responsibility for managing such assets entrusted to it for the support of the University.

- b) In its solicitation and receipt of gifts, the Foundation shall adhere to the provisions of chapter 15A, section 37(e), of the Massachusetts General Laws and to all other applicable provisions of law.
- c) The Foundation shall receive, hold, manage, invest, and disburse contributions of cash, securities, patents, copyrights and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments. The Foundation shall consult and communicate with the University regarding the acceptance of gifts of tangible property.
- d) The Foundation will consult with and receive approval from the University before the Foundation acquires real estate, accepts any gift of real estate or accepts any gift that in any way binds the University to a particular investment, expense or action.
- e) The Foundation shall establish, adhere to and periodically assess policies governing its acceptance and management of gifts. All such policies, including policies pertaining to restrictions placed on gifts, shall conform to any applicable policies of the University and shall make provision for protecting the anonymity of donors who choose to make gifts anonymously. No such policy shall permit the Foundation to obligate the University to confer any benefit or honorific on any donor or prospective donor without in each case the prior approval of the University and any and all naming rights of any kind whatever shall be exercisable solely by the University and at its sole discretion.
- f) The Foundation shall adhere to the University's Procedures for Implementing the Public Higher Education Endowment Incentive Program.
- g) The Foundation shall not accept grants from state or federal agencies without in each case the prior approval of the University.
- h) The Foundation shall establish asset-allocation, disbursement and spending policies that conform to applicable provisions of law, including the Uniform Prudent Management of Funds Act (c. 180A of the General Laws of Massachusetts) as the same is in force for the time being. In connection therewith, the Foundation shall develop an annual budget and spending plan and (but subject to applicable restrictions) may annually expend a reasonable percentage of its funds for the support of its programs, services and operations.
- i) In consultation with the University, the Foundation shall, no later than March 30 of each year, establish a plan of disbursements to the University for the University's fiscal year next ensuing. When disbursing funds or other assets to the University, the Foundation shall disclose to the University any terms, conditions or limitations to which any such funds or assets are subject.
- j) The Foundation shall annually cause a complete audited financial statement of its accounts to be prepared in sufficient time to permit the University to complete, and its

Board of Trustees to accept, the University's and Foundation's audit and transmit it to the state comptroller. The audit will be prepared in accordance with such generally accepted accounting principles and reporting practices as may be prescribed from time to time by the American Institute of Certified Public Accountants (or any successor organization), and the same shall be examined by an independent certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon. A copy of such statement shall be transmitted to the University upon its completion. The Foundation and the University may arrange to have such audit conducted in conjunction with the annual audit the University causes to be conducted of its own accounts.

- k) The Foundation shall maintain accurate records of all gifts received by it, including any restrictions or other terms that are of application to each, together with accurate records of all other matters that are relevant to the fulfillment of its obligations under this Memorandum of Agreement.
5. Direct Assistance to the University. In order to provide direct assistance to the University in its development activities, the Foundation shall, subject to sections 4(h) and 5(c) of this Agreement, reimburse the University for certain costs and expenses it incurs.
- a) The Foundation may reimburse to the University the costs and expenses that the University incurs in connection with its efforts to raise moneys and secure other assets from private donors, and it may do so whether such efforts of the University are made for or in the name of the University itself or for or in the name of the Foundation. Costs and expenses that the University incurs in connection with such efforts shall, for the purposes of this Memorandum of Agreement, be deemed to include any of the following costs and expenses when incurred in connection with the University's efforts to raise moneys and secure other assets from private donors: the costs that any of the University's employees (including any employee described in section 3(b) of this Agreement) reasonably incur for travel, lodging and related expenses (but not including the cost of any such employee's compensation), the costs of entertainment, meals, receptions and like events, the costs of publications, exhibits and other forms of publicity, the costs of software and other development tools, and the costs of any like items, events and activities (but not including any component of the University's general overhead) that support or relate to such efforts.
 - b) No more frequently than monthly, the University shall submit to the Foundation, in the form of an invoice or like statement, a request for reimbursement of any costs and expenses (within the meaning of the preceding clause (a)) that it has incurred (whether paid or payable) and that the Foundation has not theretofore reimbursed to it. Every such request shall include a description of all such costs and expenses (or the categories thereof) and the purposes therefor as they relate to the above-described efforts to raise moneys and secure other assets from private donors. The University shall provide to the Foundation any more particular information that the Foundation may reasonably require with respect to any such request. As promptly as is practicable following its receipt of

any such request from the University (but in no event more than thirty (30) days thereafter), the Foundation shall pay to the University the amount so requested.

Nothing in this clause (b) shall be deemed to obligate the Foundation to reimburse to the University in any fiscal year any sum or sums that in the aggregate exceed the maximum sum the Foundation shall have fixed for such purpose in accordance with the following clause (c).

- c) In accordance with section 4(h) of this Agreement, the Foundation and the University shall confer concerning the maximum sum the Foundation will commit, for the fiscal year next ensuing, for the purposes described in the preceding clause (b). In doing so they will have regard both to the Foundation's then available financial resources and the University's anticipated expenditures for development. Thereafter, but no later than at the commencement of such fiscal year, the Foundation shall fix and encumber the sum aforesaid.

6. Interpretation. This Memorandum of Agreement shall be liberally construed to the end that the Foundation might broadly and effectively promote and support the University's efforts to raise moneys and secure other assets from private donors.

7. Authorities of the University; Authorities of the Foundation. Nothing in this Memorandum of Agreement shall impair or limit the authority of the University to determine, in its sole discretion, by whom and by what activities it shall or may pursue its efforts to raise moneys and secure other assets from private donors, and no such authority shall be deemed to be vested hereby in the Foundation.

In the exercise of its authorities and the discharge of its obligations under this Agreement, the University shall act by its Board of Trustees or by any such person or body (whether one or more or in combination) as the Board of Trustees may from time to time appoint or designate for the purpose of exercising any such authority or discharging any such obligation.

In the exercise of its authorities and the discharge of its obligations under this Agreement, the Foundation shall act by its Board of Directors or by any such person or body (whether one or more or in combination) as the Board of Directors may from time to time appoint or designate for the purpose of exercising any such authority or discharging any such obligation.

8. Amendment; Termination. The parties may at any time amend this Memorandum of Agreement by an instrument in writing executed with the same formalities as those that attended the making of this instrument. Either party may terminate this MOA at any time by giving to the Chairperson of the other party not less than ninety (90) days advance written notice of its election to do so. The party initiating termination of the agreement must act in good faith to provide an opportunity for a meeting to include the board chairs (or their designees) and all appropriate executives within thirty (30) days of initial written notice to terminate the agreement.

WHEREFORE the University and the Foundation, acting by persons duly authorized therein,
hereunder set their signs and seals on the dates subscribed below.

SALEM STATE UNIVERSITY

SALEM STATE UNIVERSITY FOUNDATION,
INC.