

2/14/35

CGK FOUNDATION GRANT AGREEMENT
to help support the
West Virginia University College of Business and Economics

THIS GRANT AGREEMENT (hereinafter the "Agreement") is made effective this 21st day of October, 2009 (the "Effective Date") by and among the CHARLES G. KOCH CHARITABLE FOUNDATION, a Kansas non-profit corporation (hereinafter the "CGK Foundation"), THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS ON BEHALF OF WEST VIRGINIA UNIVERSITY (hereinafter the "University") and the WEST VIRGINIA UNIVERSITY FOUNDATION, INC. (hereinafter the "Donee"). CGK Foundation, Donee, and the University are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

The funds provided by CGK Foundation and CGK Foundation's commitment to provide such funds pursuant to this Agreement are subject to the following terms and conditions.

I. Objectives and Purposes

(a) The University and its Department of Economics, within the College of Business and Economics ("College"), have established a focused research effort among select faculty members with the purpose of advancing the philosophical and interdisciplinary understanding of human freedom in the political, economic, social and personal domains and to explore the nature of free market economics and its impact on our society (hereinafter referred to as the "Program"). The Parties desire to further support the Program's mission by supplementing the academic talent (hereinafter referred to as the "Donor Supported Professorship Positions") currently within the University and the Department of Economics to create a strong program that will focus on building upon and expanding the research and teaching efforts related to the University and the Program as described herein.

(b) It is understood that effective achievement of the Objectives and Purposes stated in Section 1(a) above requires a concentration of complementary and cooperative talents and skills, and it is accepted that University will make every reasonable effort to recruit and maintain faculty in the Donor Supported Professorship Positions who support the Objectives and Purpose stated in Section 1(a) above.

II. Donor Supported Professorship Positions.

(a) Donor Supported Professorship Positions. The Donor Supported Professorship Positions will be supported by a grant from CGK Foundation as described herein. One of the Donor Supported Professorship Positions shall be a tenure-track professor in the College of Business and Economics in the Department of Economics

(sometimes referred to as the "College Professorship Position"). This professor will be part of the free markets studies program led by Professor Russell Sobel, holder of the James Clark Coffman Distinguished Chair in Entrepreneurial Studies, or his successor as head of the free-market studies program at the University, and will be responsible for, among other things, teaching undergraduate and graduate students and conducting independent and collaborative research to achieve the Objectives and Purposes set forth in Section 1(a). The second of the Donor Supported Professorship Positions will be a shared hire tenure-track faculty position involving the College of Business and Economics, the Davis College of Agriculture, Forestry, and Consumer Sciences, and the WVU Regional Research Institute (sometimes referred to as the "Shared Hire Professorship Position").

(b) The University agrees to recruit individuals to hold the Donor Supported Professorship Positions who support the Objectives and Purposes set forth in Section 1(a) above and who demonstrate the ability to work effectively in collaborative efforts to advance those Objectives and Purposes. An individual who is a "disqualified person" in relation to CGK Foundation as that term is defined under Section 4946(a)(1) of the Internal Revenue Code (the "Code") is not eligible to hold the Donor Supported Professorship Positions, without CGK Foundation's prior written consent.

(c) The Donor Supported Professorship Positions will be recruited and hired in a manner consistent with the search and selection procedures of the University, which may include the University's Faculty Handbook, and CGK Foundation's intent to support the Objectives and Purpose.

(d) The Shared Hire Professorship Position shall be publicly referred to by the University as the "Charles G. Koch Scholar."

(e) University Commitment. CGK Foundation understands that it is the University's intention to extend offers to Dr. Andrew Young ("Young") for the College Professorship Position, as a tenure-track Assistant Professor in the College of Business and Economics, and Dr. Donald J. Lacombe ("Lacombe") for the Shared Hire Professorship Position, as a tenure-track Assistant Professor in the Davis College of Agriculture, Forestry, and Consumer Sciences, with a joint appointment with the College of Business and Economics and the WVU Regional Research Institute. The Parties acknowledge that CGK Foundation was not involved in selecting Young or Lacombe for the positions stated above. These decisions were made in accordance with established University procedures for selecting faculty.

In the event that (a) the University does not offer Young or Lacombe the faculty positions; (b) Young or Lacombe do not accept the faculty positions; or (c) Young or Lacombe accept the positions but later cease to serve in the faculty positions, CGK Foundation may discontinue all applicable obligations hereunder, including the payment of any Contribution Amounts described in Section III. Thereafter, CGK Foundation may agree in its sole discretion to resume payment of any Contribution Amounts associated with the positions if the University presents a satisfactory replacement selected in

accordance with Section II (f) immediately below who will achieve the Objective and Purposes set forth in Section I(a).

(f) **Selection Process for Donor Supported Faculty Positions.** The selection of the Donor Supported Professorship Positions will be made in accordance with the following procedure:

(i) All searches for the Donor Supported Professorship Positions shall be conducted in accordance with the University's established procedure for selecting faculty.

(ii) Prior to the extension of any offer for the Donor Supported Professorship Positions, the Dean of the College of Business and Economics, in consultation with Professor Russell Sobel or his successor, shall present the candidate's credentials to CGK Foundation.

(iii) No funding for a Donor Supported Professorship Positions will be released without the approval of the Dean of the College of Business and Economics, in consultation with Professor Russell Sobel or his successor.

(iv) The selection and funding process outlined above for the Donor Supported Professorship Positions will exist for a term of six years (the "Term"). In the event that any of the Donor Supported Professorship Positions become vacant for any reason during the Term, a new candidate will be selected for the vacant position in accordance with the procedure set forth in this Agreement.

III. Contribution and Purpose

CGK Foundation agrees to contribute funds for the support of the Donor Supported Professorship Positions to be funded in the amounts set forth in Section IV.

<u>Purpose</u>	<u>Maximum Amount to be Contributed by CGK Foundation in Accordance with Section IV</u>
Donor Supported Professorship Positions	\$600,000

The amounts to be contributed by CGK Foundation (the "Contribution Amounts") shall be made in such amounts and at such times as set forth in Section IV below, and will be used solely for the purpose of paying the salary and benefit expenses for three years for the College Professorship Position and twenty-five percent (25%) of the salary and benefit expenses for three years for the Shared Hire Professorship Position. In no event shall the aggregate amount to be paid by CGK Foundation exceed \$600,000.

Donee agrees to establish a segregated and restricted fund on its books and records called "Charles G. Koch Charitable Foundation Study of Free Market Economics Fund" to which all contributions made pursuant to this Agreement will be made.

IV. Schedule and Form of Contribution

CGK Foundation agrees to contribute to the Donee, and the Donee agrees to accept the amounts contributed on behalf of the University solely for the purpose of supporting the Donor Supported Professorship Positions in accordance with this Agreement and the following schedule, subject to the procedures set forth below:

Up to \$200,000 on or before October 31, 2009
Up to \$200,000 on or before June 30, 2010
Up to \$200,000 on or before June 30, 2011

Except with respect to the first proposed contribution, on or before April 1st of each year set forth above, Donee shall submit a written proposal to CGK Foundation for CGK Foundation's approval (referred to as the "Donee Proposal") of the projected annual expenses for the Donor Supported Professorship Positions expected to be hired (or projected annual expenses for the existing individuals holding the Donor Supported Professorship Positions) by the University. For the amount to be contributed on or before October 31, 2009, University shall submit acceptance letters for each faculty position on or before October 25, 2009. In the event that the Donor Supported Professorship Positions are not filled by October 25, 2009, the above schedule will shift by one additional year so that the first date listed will be June 30, 2010 and the last date listed will be June 30, 2012. (A similar process will govern the contribution schedule if Donor Supported Professorship Positions are not filled for any subsequent year in accordance with the Donee Proposal and CGK Foundation, in its sole and absolute discretion, shall not be obligated to contribute any amount if the Donor Supported Professorship Positions are not filled by July 1, 2010). CGK Foundation may in its discretion accelerate payments of any installment of the contribution.

V. Publicity

Donee and the University will allow CGK Foundation to review and approve the text of any proposed publicity which includes or mentions CGK Foundation or the amount to be contributed pursuant to this Agreement. The University agrees to allow CGK Foundation to include information regarding the Donor Supported Professorship Positions and any information or materials about the Donee or University and their activities in CGK Foundation's reports, newsletters, and news releases. Any use by CGK Foundation of trademarks or indicia owned or managed by the University must be approved by University's Trademark Licensing unit prior to any appearance in the marketplace.

VI. Administration and Miscellaneous

A. Without limiting each Party's obligations hereunder, the Donee, through its Investment Committee, shall deposit and invest the contribution in accordance with the Donee's investment policy subject to the terms herein.

B. Modifications, alternations or amendments to this Agreement may be requested by the Parties, as needed, to meet the expressed intent of the contribution. Any proposed modifications, alternations or amendments must be in writing and agreed to by all Parties to this Agreement.

C. Donee agrees to provide CGK Foundation with immediate written notification of (a) any changes in the Donee's tax-exempt status; (b) Donee's inability to expend any amount contributed hereunder for the Objectives and Purposes set forth in Section 1(a) above; or (c) any expenditure from the "Charles G. Koch Charitable Foundation Study of Free Market Economics Fund" made for any purpose other than those set forth in this Agreement.

D. Upon CGK Foundation's written request, University and Donee shall, within thirty (30) business days of said request, provide CGK Foundation with an annual accounting of the expenditure of funds received from the Foundation.

E. The University agrees to provide permanent funding for Donor Supported Professorship Positions upon receipt of six years of externally provided funding in support of such positions, including receipt of CGK Foundation grants provided herein.

F. Donee represents and warrants that it is a public charity within the meaning of Section 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code ("Code") and agrees to immediately notify CGK Foundation if such tax status changes. If Donee's tax status changes, CGK Foundation shall not be obligated to make any additional contributions unless it obtains an opinion from legal counsel that making such additional contributions does not adversely affect CGK Foundation's 501(c)(3) status or result in an excise tax under Chapter 42 of the Code.

G. CGK Foundation acknowledges that any interest of and benefit to CGK Foundation is limited to the benefit to the public at large of the research, scholarship, teaching and service to be conducted in accordance with any grant funds provided for herein. CGK Foundation acknowledges that it will have no right to direct such research, scholarship, teaching and service, or to receive the benefits thereof, separate from what is set forth in this Agreement.

H. The Parties agree and acknowledge that the funding commitment made by CGK Foundation under this Agreement is subject to the satisfaction of the terms and conditions set forth in this Agreement and that a breach, whether caused by Donee or University, of any commitment, agreement, obligation, covenant, representation or

warranty, made or required under this Agreement shall give CGK Foundation the ability to terminate this Agreement. Such termination shall be deemed effective upon the expiration of said fifteen (15) business days from the date notice was provided by CGK Foundation to Donee and University, if Donee and/or University have not therefore corrected the events of default or performed the acts described in the notice. During the pendency of this 15-day period, CGK Foundation will not be obligated to contribute any funds pursuant to this Agreement and Donee will suspend any further payments pending the corrective action by the Donee and/or University. In the event of termination of this Agreement, notwithstanding any contrary provision herein, CGK Foundation shall have the right to require that all unexpended Contribution Amounts contributed be returned to CGK Foundation.

I. **Expenditure Limitation of Funding Amount.** The Contribution Amounts are to be used solely for the purposes set forth in this Agreement and may not be expended for any other purpose without CGK Foundation's prior written approval. Notwithstanding any contrary provision herein, any portion of the of amount contributed hereunder unexpended two years after the date contributed will be returned immediately to CGK Foundation.

J. **Right to Modify or Revoke.** CGK Foundation reserves the right to discontinue or withhold any amount to be contributed under this Agreement if, in CGK Foundation's reasonable discretion, (a) the University or the Donee have not fully complied with the terms and conditions of this Agreement; (b) the College, Donor Supported Professorship Positions, and College's operations are not advancing the Purposes and Objectives set forth in Section 1(a) above; or (c) such action is necessary to comply with any law or regulation applicable to the University or to CGK Foundation.

K. **Required Notification.** In the event that any amount contributed hereunder cannot be used as provided for in this Agreement or the circumstances have changed sufficiently to make it impractical to continue using the amounts contributed for the purposes described herein, the unexpended Contribution Amounts may be used for another purpose consistent with and subject to this Agreement, provided CGK Foundation approves such other use(s) in writing. If CGK Foundation fails to approve such other use, Donee and the University agree to return the unexpended amounts contributed to CGK Foundation and CGK Foundation shall have no further obligations under this Agreement.

L. **Miscellaneous.** Donee and the University may not transfer their interest in the Agreement or any amount to be contributed pursuant to this Agreement without the prior written consent of CGK Foundation. Any attempt by the Donee or the University to transfer or assign the Agreement or any amount to be contributed other than pursuant to the Agreement will cause the Agreement to terminate immediately.

M. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement or direction. Copies of signatures (whether facsimile or other electronic

transmission) to this Agreement shall be deemed to be originals and may be relied upon to the same extent as the originals.

N. This Agreement sets forth the entire understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings among or between any of the Parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

**CHARLES G. KOCH CHARITABLE
FOUNDATION**

By: 

Name: Richard H. Fink

Title: President

Date: 10/20/09

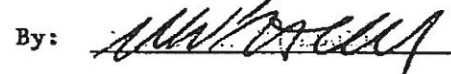
**THE WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS ON
BEHALF OF WEST VIRGINIA
UNIVERSITY**

By: 

Name: E. Jane Martin Ph.D.

Title: Interim Provost and Vice
President for Academic Affairs

Date: 10/22/09

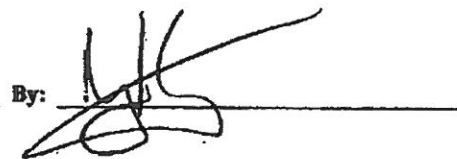
By: 

Name: William N. Trumbull

Title: Interim Dean
College of Business & Econ

Date: 10/22/09

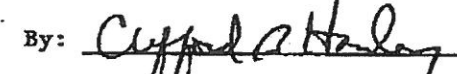
**WEST VIRGINIA UNIVERSITY
FOUNDATION**

By: 

Name: R. Wayne King

Title: President and CEO

Date: 10-28-09

By: 

Name: Clifford Hawley

Title: Acting Division Director
Department of Economics

Date: _____