

# **POLICY: 3.1.12.** (II. A. 2. f. iv.) **Cooperative Nonprofit Organizations**

**Revised:** March 7, 2013

**Last Reviewed:** March 7, 2013

**Adopted:** June 7, 1990



## **POLICY:**

Technical colleges may associate with non-profit foundations or cooperative organizations that are established for the exclusive purpose of supporting the technical college. Financial and operational arrangements between technical colleges and their non-profit foundations must be consistent with state requirements for use of public resources. Such arrangements must be documented and follow the format of the written **System-Approved Memorandum of Understanding template**.

## **RELATED AUTHORITY:**

O.C.G.A. § 20-4-11 – Powers of the Board

O.C.G.A. § 20-4-14 – TCSG Powers and Duties

Attachment: 3.1.12.a1. Memorandum of Understanding Template

# Attachment: 3.1.12.a1. (II.A.2.f.iv.)

## Memorandum of Understanding (Insert Technical College Name) and (Insert Name of College Foundation)

This agreement, entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ is by and between the (Insert Technical College Name) Technical College (“College”) and the (Insert Name of Foundation) Technical College Foundation (“Foundation”).

The purpose of this Memorandum of Understanding is to guide and direct the parties respecting their affiliation, cooperation, working relationship and respective authorities, inclusive of anticipated future arrangements in furtherance thereof.

The Foundation was organized and incorporated in (enter year) under the laws of the state of Georgia and Section 501(c)(3) of the Internal Revenue Code for the purpose of stimulating voluntary private support from individuals, corporations, foundations, and others for the benefit of the College in carrying out its programs and activities.

The Foundation exists (The Foundation has the option to include the following statement or add the purpose statement from their Articles of Incorporation) to raise and manage private resources that support the mission and priorities of the College, provide educational opportunities for students, and enhance institutional excellence in ways that would not be possible with state funds.

The Foundation is dedicated to assisting the College in the building of an endowment and in addressing, through financial support, the long-term academic and strategic priorities of the College. The Foundation shall not engage in any activities, programs and services that are in conflict with or inconsistent with the policies, mission and goals of the TCSG State Board, the TCSG System Office, the College or the Foundation.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

### **I. Foundation Name, Seal and Logotype**

Consistent with its mission to advance the plans and objectives of the College, the Foundation shall be entitled to use the name, symbols and trademarks of the College in the promotion of its business and activities. The Foundation Board may also select and approve a logo as its own identifying mark.

### **II. Governance**

A. The Technical College System of Georgia (TCSG) is governed by the State Board of the Technical College System of Georgia which is empowered by O.C.G.A. § 20-4-11 to

establish and promulgate standards, rules, regulations, and policies for the orderly and efficient operation of the Technical College System of Georgia and of postsecondary technical colleges and programs to ensure that the needs of the citizenry, business, and industry are met to the highest possible degree.

- B. The President of the College exercises the overall supervision and management of the College under the direction of the Commissioner of the TCSG. The State Board of the Technical College System and Commissioner have delegated to technical college Presidents the authority to solicit and receive funds from the general public, corporate underwriters, and foundations and to contract with local entities for the provision of programmatic or administrative services or activities within parameters established by State Board Policy and TCSG Procedures.

### **III. The Foundation Governance**

- A. The Foundation is a separately incorporated 501(c)(3) organization created to solicit, manage, distribute, and steward private resources to support the mission of the College
- B. The Foundation Board of Trustees is responsible for the control and management of all assets of the Foundation including the prudent management of all gifts consistent with donor intent. The Foundation Board is further responsible for the performance and oversight of all aspects of its operations based upon a comprehensive set of bylaws addressing fiduciary responsibilities and ethical expectations for individual Board of Trustee members.
- C. The Foundation may not abdicate to the College personnel its fiduciary responsibility for the management of its funds.

### **IV. The College's Relationship and Responsibilities to the Foundation**

- A. The College shall create an environment that encourages the appropriate independence of the Foundation consistent with its standing as an independent public trust and with IRS guidelines for non-profit organizations.
- B. The President is responsible for communicating the College's strategic plans and funding priorities to the Foundation.
- C. The College and the Foundation shall not enter into any property lease agreement without advance written approval of the Technical College System of Georgia State Board. The College will not encourage the Foundation to purchase property in anticipation of future financial gain facilitated by TCSG or the state of Georgia
- D. The College recognizes that the Foundation is a non-profit corporation with the responsibility to protect the confidentiality of its donors to the fullest extent of the law.
- E. The President and Chief Advancement Officer of the College shall serve as non-voting ex-officio members of the Foundation Board of Trustees and shall assume prominent roles in fund-raising activities.

- F. The College shall provide in-kind support for the general operation of the Foundation including the services of a development officer, administrative support, office and meeting space, office furniture, technology equipment and support, utilities and telephone service, and other support and services as the College may deem appropriate. This support shall be provided by the College in consideration for the significant fiscal support and services provided by the Foundation to the College and its students. The College's support will be recognized as an in-kind contribution in the Foundation's annual audit.
- G. The College shall assign the appropriate staff members, including the Chief Advancement Officer, to serve as liaisons between the College and the Foundation and to support the activities associated with this Memorandum of Understanding. College personnel serving in these roles are subject to the policies and procedures of the State Board of the Technical College System of Georgia and the Technical College System of Georgia.
- H. The College is subject to the Georgia Open Records Act (O.C.G.A. § 50-18-70 *et seq.*) and, as such, any information or records received and maintained by the College will be subject to public disclosure unless specifically exempted by law. The College shall maintain the confidentiality of any records containing the personal information of donors or potential donors to the Foundation to the extent provided for in O.C.G.A. § 50-18-72 (a)(29), which states that records maintained by public postsecondary educational institutions in Georgia and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations are exempt from disclosure; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor, or any entity in which such donor has a substantial interest, transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000.00 in the aggregate in a calendar year; and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity.

## **V. The Foundation's Responsibilities to the College**

- A. The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College.
- B. The Foundation, in consultation with the college President and supported by the Chief Advancement Officer, is responsible for planning and executing a comprehensive fund-raising and donor-acquisition program in support of the College's mission.
- C. The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts and provide appropriate recognition and stewardship of such gifts.
- D. The Foundation shall lead and bear major responsibility for fund-raising. The College representatives will support fund-raising initiatives in conjunction with the Foundation including annual fund, major gifts and planned giving.

- E. The President and Chief Advancement Officer will work in conjunction with the leadership of the Foundation and will participate in public awareness activities and advocacy efforts to assist with the identification, cultivation, and solicitation of prospects for private gifts.
- F. The Foundation shall operate as an entity separate and independent from the College in accordance with the IRS regulations and institute all policies and procedures required for a 501(c) (3) organization. The Foundation shall operate in accordance with state laws that apply to non-profits, including annual registration with the Office of the Secretary of State. The Foundation shall adhere to the Donor Bill of Rights adopted by the Council for Advancement and Support of Education (CASE) and the Association of Fundraising Professionals (AFP).
- G. The Foundation, in partnership with the President and Chief Advancement Officer, shall identify support needs of the Foundation which shall in no way conflict with the rules, regulations and guidelines of the State Board, TCSG, the College or the Foundation.
- H. The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President. Those funds may be used for reimbursement for approved expenses in accordance with the Foundation's Expense Reimbursement Policy and in accordance with the Foundation's approved annual budget. The Foundation may not provide to the President or any other personnel employed by the College any bonuses, pay supplements or any other items of value that could be construed as imputed income under the regulations of the Internal Revenue Service. All College employees are subject to State Board policies and TCSG procedures governing standards of conduct and ethics relating to acceptance of gifts and payment of expenses by third-parties.
- I. The Foundation and the College shall avoid any potential conflict of interest or appearance of impropriety in the operations and transactions between the Foundation and the College.

## **VI. Asset Management and Risk Management**

- A. The Foundation will establish asset allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).
- B. The Foundation shall solicit, receive, hold and invest funds, administer property, and make expenditures to support the programs, activities, vision and mission of the College. The Foundation may not engage in activities contrary to this objective. In addition, the acts, deeds, functions, and activities of the Foundation shall in no way conflict with the authority of the College. Nor shall the Foundation solicit or accept gifts for any use specified by a donor that is inconsistent with the mission, goals, and objectives of the College.
- C. The Foundation will receive, hold, manage, invest, and disburse contributions, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.
- D. The Foundation shall not accept any gift, donation, or grant which creates a future liability for the Technical College System of Georgia or the College without the advance and written approval of the TCSG Commissioner and the College President.

- E. The Foundation shall use generally-accepted accounting principles in its financial record-keeping/reporting and will engage an independent accounting firm to conduct an audit of the Foundation's financial statements, including a management letter and an audit opinion, every three years with a financial review conducted the other two years. Foundations that have more than \$500,000 in annual revenue are strongly encouraged to have annual audits of the Foundation's financial statements, including management letter and an audit opinion. The final report of the audit, financials reviews and the annual IRS Form I-990 shall be delivered to the Foundation's Board of Trustees and the College each year by the date as specified by the College in order to meet its audit requirements. The final report of the audit or financial review and the annual IRS Form I-990 shall also be delivered to the Office of Resource Development in the TCSG office in order to comply with GASB requirements.
- F. The Foundation will engage the services of legal counsel for the review of contracts and other legal issues as necessary.
- G. The Foundation will maintain general liability insurance, directors' and officers' insurance and such other insurance coverage as may be necessary or appropriate for liabilities which may arise in connection with its operations.
- H. When distributing funds to the College, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal determination of the gift. The College will abide by such restrictions and provide appropriate documentation to the Foundation when required.
- I. The Foundation is the primary depository of private gifts and will transfer funds to the College in compliance with donor intent, TCSG and College procedures as well as policies established by the State Board of the Technical College System of Georgia and applicable state and federal laws.
- J. The Foundation's disbursements on behalf of the College must be reasonable expenses that support the College and its mission, are consistent with donor intent, and do not conflict with the law.
- K. Neither the Foundation nor the College shall have any liability for the obligations, acts or omissions of the other party. The Foundation shall indemnify and hold harmless the Technical College System of Georgia and the College from and against any third-party liability, losses, claims, demands, costs, and expenses, including without limitation attorneys' fees and litigation expenses, arising out of any personal injury or property damage arising in connection with the activities of the Foundation. None of the foregoing indemnities shall apply if the damage, loss, etc. resulted solely from the College's own negligence. If the College's negligence was partially responsible for the damage or other loss, the indemnities above from the Foundation shall be reduced proportionally.

## **VII. Foundation Funding and Administration**

- A. The Foundation is responsible for establishing a financial plan to underwrite a portion of its programs and activities.
- B. The Foundation has the right to use a reasonable percentage of annual contributions, earnings on endowments (by donor agreement), and earned interest on investments to support its operations and programs.

- C. The Foundation will provide access to data and records to the College as needed and in accordance with applicable laws, policies and guidelines.
- D. The Foundation will issue to the College, donors, and the community an annual report of its revenue, expenditures, programs, and activities. Donors to the Foundation shall be acknowledged and recognized in the same manner and afforded the same privileges as donors to the College.

**VIII. Terms of the Memorandum of Understanding**

- A. This Memorandum of Understanding has a term of one year and is renewable for successive one year terms upon written consent of the authorized representatives of both parties. The MOU shall be submitted together with the audit or financial review and the annual IRS Form I-990 to the TCSG Office of Resource Development in the TCSG system office prior to start of each fiscal year. Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the foregoing, either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice. The College’s ability to perform its responsibilities under the MOU is subject to annual appropriations from the General Assembly and revenues from student tuition. Should funds be insufficient to fulfill its responsibilities, the College may terminate the MOU immediately and shall have no further obligations thereunder.
- B. In the event that the Foundation is dissolved or ceases to exist, in accordance with federal and state laws, all monies and items of value received by or held by the Foundation must be transferred to another non-profit that is similar in mission. Assets may be transferred to a merger partner that fits the same description.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

FOR THE (Insert Foundation Name)

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(President/Chair)

FOR THE (Insert Technical College Name)

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President

