This agreement is entered into this __ day of January, 2012, by and between University of West Georgia, hereinafter referred to as the “University” or the “Institution” and the UWG Real Estate Foundation, Inc, hereinafter referred to as the “UWG Real Estate Foundation,” a non-profit tax-exempt corporation organized under the laws of the State of Georgia and Section 501(c)(3) of the Internal Revenue Code, as amended.

WITNESSETH:

WHEREAS, the purpose of the Memorandum of Understanding is to guide and direct the parties respecting their affiliation, cooperation and working relationship, inclusive of anticipated future agreements in furtherance thereof; and

WHEREAS, University of West Georgia is a unit of higher learning of the University System of Georgia; and

WHEREAS, the UWG Real Estate Foundation is a legal entity separate from the Institution that was formally designated as a UWG Real Estate Foundation by the president of the Institution who has determined it to be in the best interest of the Institution to do so; and

WHEREAS, the UWG Real Estate Foundation was created for the express purpose of serving the interest of the Institution in carrying out its programs, activities and services and is authorized by the Institution to engage in activities, programs and services which include the construction and operation of facilities as they relate to the needs of the University and may include soliciting gifts, donations and grants for the purpose of supporting and enhancing Institution programs and the UWG Real Estate Foundation shall not engage in activities, programs and services that are in conflict with or inconsistent with the policies, missions and goals for the Board of Regents, the Institution or the UWG Real Estate Foundation.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for the good and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the UWG Real Estate Foundation and the Institution do hereby agree as follows.

The UWG Real Estate Foundation agrees to abide by the Board of Regents Policy Section 12.5 and the Institution System of Georgia Guiding Principles for Cooperative Organization, which are attached hereto as Exhibit A and Exhibit B and incorporated herein.

Neither the UWG Real Estate Foundation nor the Institution shall have any liability for the obligations, acts or omissions of the other party. The UWG Real Estate Foundation shall not accept any gift, donation, grant or enter into any transaction that creates liability for the Institution without advance written approval of the President.

The Institution shall make available to the UWG Real Estate Foundation its facilities, programs and services, subject to any established policies or procedures applicable to such facilities, programs, activities and services. There shall be separate agreements between the Institution and the UWG Real Estate Foundation concerning use of each party’s respective facilities by the other, and the programs, activities and services to be provided by each party to the other.

The UWG Real Estate Foundation may receive administrative services from the Institution which may enable it to provide a greater level of support to the Institution. If the Institution incurs expenses as a result of the UWG Real Estate Foundation’s operations, then the UWG Real Estate Foundation shall reimburse the Institution for those expenses. This reimbursement shall not be required if the Institution would be conducting these operations and bearing the expense in the absence of the UWG Real Estate Foundation.

The UWG Real Estate Foundation shall use generally accepted accounting principles in its financial record keeping and reporting. The UWG Real Estate Foundation will provide, or cause to be provided, audited financial data in conformance with the reporting requirements of the State of Georgia. This data will be provided in a timely manner so that the reporting requirements of the State are to be met. The UWG Real Estate Foundation shall present annually to the President the annual independent audit report of the UWG Real Estate Foundation. The audit report shall include financial statements, a management letter and an audit opinion, which addresses the conformance of the operating procedures of the UWG Real Estate Foundation to the provisions of this Agreement and the Board of Regents Policy.

The UWG Real Estate Foundation shall be entitled to use the name, symbols and trademarks of the Institution during the term of this Agreement. Upon termination of this Agreement, the UWG Real Estate Foundation shall be prohibited from using the name, symbols or trademarks of the Institution.

The UWG Real Estate Foundation shall clearly disclose and conspicuously disclose that funds or other value donated are to be provided to the UWG Real Estate Foundation as distinct from the Institution and shall establish a procedure to ensure that funds and other items of value donation to the Institution are properly deposited in Institution accounts or transferred properly.

Members of the UWG Real Estate Foundation should avoid actual or apparent conflict of interest between their foundation obligations and outside interest and activities.

This Agreement has a term of five (5) years. It may be terminated by either party upon 90 days written notice. If terminated, paragraph 11 of the Guiding Principles shall survive such termination. This Agreement may be amended by mutual consent from time to time at the request of either party. All amendments must be in writing and executed by the parties. The UWG Real Estate Foundation agrees to and shall transfer requested records to the Institution and assist, as needed with any transition requirements, in the event of the Memorandum of Understanding is terminated.

WITNESS WHEREOF, the President of the Institution and the Chairperson of the Board of Directors of the UWG Real Estate Foundation by their signatures do hereby put this agreement in force.

President
University of West Georgia
Date

Chairman
UWG Real Estate Foundation, Inc.
Date
12.5 Cooperative Organizations

Refer to Section 15.0, Affiliated Organizations, of the Business Procedures Manual for more information on cooperative organizations.

12.5.1 Definition

An organization is a cooperative organization if it:

1. Is organized or operated primarily

   • for the purpose of soliciting gifts or assisting a USG institution in soliciting gifts from third persons in the name of the USG institution or any of the institution’s programs; or,
   • for soliciting grants and contracts or accepting grants or entering into contracts for research or services to be performed by or in conjunction with a USG institution or using the institution’s facilities; or,

2. Bills or collects professional fees in the name of or in behalf of faculty members of a USG institution who provide professional services within the scope of their employment by the institution; or,

3. Includes officials, faculty, staff, or employees of a USG institution as ex officio members of the organization’s board of directors or other governing structure; or,

4. Is formally designated as a cooperative organization by the Board of Regents or by the president of the relevant USG Institution, and of those formally designated, certain cooperative organizations will be required to follow the Regents’ Guiding Principles for Cooperative Organizations. The Board of Regents and the president will determine the cooperative organizations that must follow the Guiding Principles.

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12.5.2 Relationship Between Cooperative Organizations and USG Institutions

A relationship, whether formal or informal, between a USG Institution and a cooperative organization may be maintained only if:

1. The relationship between the cooperative organization and the USG institution is in the best interest of the USG Institution as determined by the Board of Regents and the president of the institution in consultation with the Chancellor (BoR Minutes, June 2004); and,

2. The financial records of the cooperative organization, including any audits, are available for inspection by the president of the USG institution or the president’s designee; and,

3. Any use by the cooperative organization of the name of the USG institution, or of a symbol or trademark of the USG institution, is approved in advance by the president of the USG institution or the president’s designee; and,

4. The cooperative organization annually presents evidence satisfactory to the president of the USG Institution or the president’s designee that the cooperative organization is adequately capitalized for any activities undertaken in the name of, for the benefit of, or in conjunction with the USG Institution; and,

5. The cooperative organization annually presents evidence satisfactory to the president of the USG Institution or the president’s designee of insurance or self-insurance adequate in form and amounts to cover foreseeable liability arising from activities undertaken in the name of, for the benefit of, or in conjunction with the USG Institution; and,

6. There is a written general agreement or memorandum of understanding between the USG Institution and the cooperative organization describing each party’s responsibilities so that it is clear to third parties dealing with the cooperative organization that the organization is acting as a legal entity separate from the USG Institution; and,

7. Actions of the USG Institution’s officials, faculty, staff, or employees pursuant to the relationship are consistent with policies established by the Board of Regents and the USG Institution regarding conflicts of interest, outside activities, and other matters (BoR Minutes 1988-89, pp. 150-151).
Cooperative Organizations have been extraordinarily beneficial in supporting the institutions of the University System of Georgia in a variety of ways such as providing scholarships for students, endowments for faculty, acquiring real estate for the institution, and enhancing funds for research programs and athletics. The following guiding principles are proposed to clarify the roles and responsibilities of the institution and the Cooperative Organizations as they seek to enhance the reputation and quality of the University System of Georgia.

1. The mission of the Cooperative Organization shall be closely aligned with the mission, functions and activities of the institution it supports.

2. It is the responsibility of the Board of Regents of the University System of Georgia to provide guidance for and approval of the strategic direction of each institution. It is the responsibility of each institution to carry out its mission as articulated by the Board of Regents. It is the responsibility of the Cooperative Organization to support the institution at all times in a cooperative, ethical and collaborative manner, engage in activities in support of the institution and its president, and, where appropriate, assist in securing resources, administer assets and property in accordance with donor intent, manage its assets and resources so that the property, resources and funds hold their purchasing power into the future.

3. The priorities of the institution, as set by the President, shall be integrated into the operation, activities, efforts, and priorities of the Cooperative Organization. Institutional priorities shall be set by the President and it is assumed the president will develop these in consultation with all appropriate constituencies.

4. The Cooperative Organization's Board and Executive Committee shall include the institution's president or the president's designee, as a voting member. Institutional officers designated by the president also should be included on the Cooperative Organization's Board and its committees as either members or ex-officio members (voting and/or non-voting) to foster and maintain productive relationships, to ensure an open and ongoing dialogue between the institution and the Cooperative Organization and to ensure the alignment of priorities. Of equal importance, the volunteer chair/president of the Cooperative Organization shall have direct access to the institutional president.

5. Cooperative Organizations shall have a comprehensive strategic plan to guide them in their mission to support the institution. It is expected that the President of the institution shall have input and shall be consulted in this process.

6. Cooperative Organizations have a responsibility to remain current with accounting and investment practices and ensure that they follow sound financial policies, practices and procedures.

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7. The Cooperative Organization shall develop policies to ensure that its business, governance and programming activities are conducted in an open and responsible manner, consistent with the laws of the State of Georgia.

8. The Cooperative Organization shall be accountable, its financial transactions transparent, and it shall disclose the following to the institution: the financial audit by outside firms, the annual report of activities and results (not donor information), list or report of the Cooperative Organization's priorities, operating budget, policies on disbursements (including expenditure policies), investment policies, operational costs, and policies regarding the establishment of all priorities, in accordance with all applicable laws.

9. The Cooperative Organization shall develop policies and procedures to establish ethical standards to ensure that no conflict of interest occurs between its members and employees and the activities of the cooperative organization and the institution.

10. Since the Board of Regents owns the intellectual property of the institutions, all usage by the Cooperative Organization of the institution's name, symbols, or trademarks is subject to approval by the institution or Board of Regents.

11. The Cooperative Organization should always operate in a manner that is consistent with the best interest of the institution. The Board of Regents of the University System of Georgia and the president of the institution in consultation with the Chancellor may determine that the Cooperative Organization's operations and activities are not in the best interest of the institution and/or Board.

12. Notice to and concurrence of the Board of Regents or institution is required for change of name, change of mission, or change of governance documents or structure of the Cooperative Organization.

13. Should a cooperative organization cease to exist, all obligations regarding existing resources must be fulfilled in accordance with donor's intent, and any remaining assets and property of the cooperative organization must be transferred to another entity in support of the mission of the institution.

14. No employee of the institution, or member of their immediate family, may receive remuneration (salary, stipend or gifts for service) from the Cooperative Organization without the approval of the institutional president or, in the case of the president or the president's immediate family, the Chancellor, or in the case of the Chancellor or the Chancellor's immediate family, the Board.

15. All Cooperative Organizations must execute a Memorandum of Understanding that meets the letter and spirit of the Board of Regents Official proposed Memorandum of Understanding with Cooperative Organizations.

16. Cooperative Organizations must agree to comply with all Board of Regents' policies that pertain to Cooperative Organizations.

Revised, August 4, 2004