

# **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.)

## Cooperative Nonprofit Organizations Memorandum of Understanding Template

(Local college supporting foundations)

This agreement, entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is by and between \_\_\_\_\_ Technical College and the \_\_\_\_\_ Technical College Foundation, hereafter referred to in this document as “the College” and “the Cooperative Organization” as it has been formally designated by the president of the technical college.

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 Cooperative Organization was organized and incorporated in \_\_\_\_\_ 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 Cooperative Organization exists 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 Cooperative Organization is dedicated to assisting the College in the building of the endowment and in addressing through financial support, the long-term academic and other priorities of the College. The Cooperative Organization shall not engage in any activities, programs and services that are in conflict with or inconsistent with the policies, mission and goals of the Technical College System of Georgia State Board, the TCSG System Office, the college or the cooperative organization.

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. Cooperative Organization Name, Seal and Logotype**

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

### **II. College Governance**

- A. The State Board of the Technical College System of Georgia is responsible for establishing standards, regulations and policies for the operation of the Technical

College System of Georgia in accordance with the established objectives and the trusteeship to the public.

The Board shall provide overall policies for the management of public postsecondary technical and adult education to ensure that the needs of the citizenry, business, and industry are met to the highest possible degree and in the most cost-effective and efficient manner. As relates to the relationship between its colleges and cooperative organizations, the state board is responsible for the provision of a template for all TCSG Memorandums of Understanding and the establishment of the TCSG Best Practices for Local Foundation Operations.

### **III. The Cooperative Organization's Relationship to the College**

- A. The Cooperative Organization is a separately incorporated 501(c)(3) organization created to solicit, manage, distribute, and steward private resources to support the various missions of the College including its various campuses and centers.
- B. The Cooperative Organization Board of Trustees is responsible for the control and management of all assets of the Cooperative Organization including the prudent management of all gifts consistent with donor intent. The Cooperative Organization may not abdicate its fiduciary responsibility for the management of its funds to college personnel.
- C. The Cooperative Organization is responsible for the performance and oversight of all aspects of its operations based upon a comprehensive set of bylaws that clearly address the Board's fiduciary responsibilities, including expectations of individual Board members based upon ethical guidelines and policies.

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

- A. The College shall create an environment that encourages the appropriate independence of the Cooperative Organization consistent with its standing as an independent public trust, IRS guidelines for non-profits and TCSG Best Practices for Local Foundation Operations.
- B. The president of the College is responsible for communicating the College's strategic plans and funding priorities and, as approved by the State Board and TCSG Commissioner, to the Cooperative Organization.
- C. The College and the Cooperative Organization shall not enter into any property lease agreement nor shall the College encourage the Cooperative Organization to purchase property in anticipation of future financial gain facilitated by the college or the state of Georgia without advance written approval of the TCSG State Board and the TCSG Commissioner.

- D. The College recognizes that the Cooperative Organization is a private corporation with the responsibility to protect the confidentiality of its donors to the fullest extent of the law.
- E. The president of the College and the chief advancement officer shall serve as non-voting ex-officio members of the Cooperative Organization board and shall assume prominent roles in fund-raising activities.
- F. The College shall provide in-kind support for the general operation of the Cooperative Organization 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 of the significant fiscal support and services provided by the Cooperative Organization to the College and its students. This support will be recognized as an in-kind contribution in the Cooperative Organization's annual audit.
- G. The College shall assign the necessary leadership, support duties and functions of the Cooperative Organization to appropriate staff members in connection with this agreement, including but not limited to the Institutional Advancement Officer/College Development Director, and others who will have authority to support the Foundation and its activities, while representing the authority and interests of the college. As such the office of Institutional Advancement/Development shall serve as the principal office and support for the Cooperative Organization.
- H. The College shall establish and enforce policies and procedures that support the Cooperative Organization's ability to protect the confidentiality of donor records. All information about donors, prospective donors, gift data, campaign assignments and notes, donor correspondence, and related information is the confidential property of the Cooperative Organization, whether maintained in paper or electronic form, or maintained on servers and equipment owned by the College, in accordance with the laws of the State of Georgia. (*Reference Official Code of Georgia annotated Code Section 50-18-72*)

**V. The Cooperative Organization's Responsibilities to the College**

- A. The Cooperative Organization shall create an environment conducive to increasing levels of private support for the mission and priorities of the College.
- B. The Cooperative Organization, in consultation with the president of the College and supported by the Advancement Officer/Director of Development, is responsible for planning and executing a comprehensive fund-raising and donor-acquisition program in support of the College mission.
- C. The Cooperative Organization will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Cooperative Organization and the College and provide appropriate recognition and stewardship of such gifts.

- D. The Cooperative Organization shall lead and bear major responsibility for fund-raising. College representatives will coordinate fund-raising initiatives as directed by the Cooperative Organization including annual fund, major gifts and planned giving.
- E. The President will work in conjunction with the leadership of the Cooperative Organization and the Advancement Officer/Director of Development, participating in public awareness activities and advocacy efforts to assist with the identification, cultivation, and solicitation of prospects for private gifts.
- F. The Cooperative Organization 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 Cooperative Organization shall operate in accordance with state laws that apply to non-profits, including annual registration with the Office of the Secretary of State. The Cooperative Organizations shall adhere to the Donor Bill of Rights adopted by Council for Advancement and Support of Education (CASE) and the Association of Fundraising Professionals (AFP).
- G. The Cooperative Organization, in partnership with the President, shall delineate the duties of the Advancement Officer/Director of Development as relates specifically to the support needs of the Cooperative Organization and provide feedback to the president on the evaluation of those duties. Those specified duties are intended to be in support of the Cooperative Organization and are in no way intended to conflict with the rules, regulations and guidelines of the College or the Cooperative Organization.
- H. The Cooperative Organization may earmark a portion of its unrestricted funds to a discretionary fund for the college president. Those funds may be used for reimbursement for approved expenses in accordance with the Cooperative Organization's Expense Reimbursement Policy and in accordance with the Cooperative Organization's approved annual budget.
- I. The Cooperative Organization and the College shall make every reasonable effort to eliminate any potential conflict of interest in the operations and transactions between the Cooperative Organization and the College. Specifically, the president of the college may not accept any bonuses or any other pay supplements from the Cooperative Organization.

## **VI. Asset Management**

- A. The Cooperative Organization 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 Management of Institutional Funds Act (UMIFA).
- B. The Cooperative Organization shall solicit, receive, hold and invest funds, administer property, and make expenditures to support the programs, activities, vision and mission of the College. The Cooperative Organization may not engage in activities contrary to this objective. In addition, the acts, deeds,

functions, and activities of the Cooperative Organization shall in no way conflict with the authority of the College. Nor shall the Cooperative Organization 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 Cooperative Organization 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 Cooperative Organization shall not accept any gift, donation, or grant which creates a future liability for the College without the advance and written approval of the president of the College.
- E. The Cooperative Organization 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 Cooperative Organization's financial statements, including a management letter and an audit opinion, every three years with a financial review conducted the other two years. The final report of the audit, financials reviews and the annual IRS Form I-990 shall be delivered to its 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 system office in order to comply with GASB requirements.
- F. The Cooperative Organization will engage the services of legal counsel for the review of contracts and other legal issues as necessary.
- G. The Cooperative Organization 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 Cooperative Organization 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 when required.
- I. The Cooperative Organization is the primary depository of private gifts and will transfer funds to the designated entity within the institution in compliance with donor intent, college policy, and applicable laws.
- J. The Cooperative Organization's disbursements on behalf of the College must be reasonable expenses that support the institution and its mission, are consistent with donor intent, and do not conflict with the law.
- K. Neither the Cooperative Organization nor the College shall have any liability for the obligations, acts or omissions of the other party. The Cooperative Organization shall indemnify and hold harmless the College from and against any 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 Cooperative Organization.

**VII. Cooperative Organization Funding and Administration**

- A. The Cooperative Organization is responsible for establishing a financial plan to underwrite a portion of its programs, and activities.
- B. The Cooperative Organization has the right to use a reasonable percentage of annual unrestricted funds, interest on endowments (by donor agreement), and earned interest on unrestricted investments to support its operations and programs.
- C. The Cooperative Organization will provide access to data and records to the college as needed and in accordance with applicable laws, policies and guidelines.
- D. The Cooperative Organization will issue to the College, donors, and the community an annual report of its revenue, expenditures, programs, and activities. Donors to the Cooperative Organization 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 agreement has a term of one year. This Memorandum of Understanding shall be renewed by both parties and submitted together with the audit or financial review and the annual IRS Form I-990 to the Office of Resource Development in the TCSG system office. 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.
- B. In the event that the Cooperative Organization 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 Cooperative Organization 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 FOUNDATION:

FOR THE TECHNICAL COLLEGE:

\_\_\_\_\_  
Chair  
Technical College Foundation

\_\_\_\_\_  
President  
\_\_\_\_\_  
Technical College