

THE UNIVERSITY OF WEST FLORIDA
and
UWF BUSINESS ENTERPRISES, INC.
MEMORANDUM FOR OPERATIONS

This MEMORANDUM FOR OPERATIONS is made by and between UWF Business Enterprises, Inc. (“BEI”), acting on behalf of the UWF Business Enterprises, Inc. Board of Directors (“Board of Directors”) and the University of West Florida (“the University”), acting for and on behalf of the University of West Florida Board of Trustees (the “Board of Trustees”).

WHEREAS, BEI has been organized and incorporated as a direct support organization of the University of West Florida under Section 1004.28, Florida Statutes; Florida Board of Governors’ Regulation 9.011; University Regulation 5.016; and other applicable provisions of law (collectively, the “Act”); and

WHEREAS, pursuant to the Act, the Board of Trustees is authorized to permit the use of property, facilities, and personal services by any university direct-support organization, subject to regulations to limit the services, activities, and expenses of its direct support organization; and

WHEREAS, the Act authorizes direct support organizations, such as BEI, to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the University, in accordance with the system wide strategic plan, provided that such agreements are subject to the applicable provisions of Sections. 1010.62 and 1013.17, Florida Statutes; and

WHEREAS, the University and BEI have a Master Management Agreement (the “Master Agreement”) which granted the University President authority, under the circumstances set forth therein, to authorize the assignment of the management and

operation of certain University facilities and programs, referred to as “Assigned Functions,” to BEI; and

WHEREAS, because the Master Agreement contemplates many transactions between the University and BEI, and because there is substantial overlap between the personnel and Boards of the University and BEI, the parties hereto wish to set forth their understandings of the manner of operation of BEI in order to document BEI’s practices of professional and ethical management of the assets of the University and BEI and to thereby avoid the appearance of conflict in its dealings with the University; and

WHEREAS, the University and BEI desire to enter into this Memorandum of Understanding to memorialize the roles and responsibilities of each party to the other party, in an effort to further contribute to the coordination of their mutual activities.

NOW THEREFORE, for and in consideration of the mutual obligations and benefits hereby undertaken and conferred and for other good and valuable consideration, the Parties agree as follows:

University Governance and Relationship Between the University and BEI

1. The Board of Trustees is legally responsible for overseeing the mission, leadership and oversight of all aspects of the University’s operations, including pursuant to section 1004.28, Florida Statutes, the University’s direct support organizations.
2. Pursuant to section 1004.28, Florida Statutes, BEI exists exclusively to support the best interests and mission of the University. BEI will operate in accordance with the provisions of Section 1004.28, Florida Statutes; BOG Reg. 9.011; and UWF Reg. 5.016, including providing annual and quarterly budgets and reports as required therein.
3. The Chair of the Board of Trustees shall appoint at least one representative to the Board of Directors and the executive committee of the Board of Directors in

accordance with s. 1004.28, Florida Statutes. The President of the University or designee shall serve on the Board of Directors and executive committee, in accordance with s. 1004.28, Florida Statutes. The Board of Trustees shall approve all other appointments, including elected directors, to the Board of Directors.

4. If amendments to the Articles of Incorporation or Bylaws of BEI occur by operation of law they are effective upon the date of implementation of the new law. Other amendments to the Articles of Incorporation or Bylaws of BEI shall be submitted by the UWF President to the Board of Trustees for approval prior to becoming effective.
5. Consistent with the regulations of the Board of Trustees, in the event BEI is decertified as a direct support organization of the University or ceases to exist, BEI shall, after paying or making provision for payment of all the liabilities of BEI, distribute all of the remaining assets of BEI to the University.
6. BEI and the University acknowledge that each is an independent entity and that neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, employees or agents. Each party's liability to the other party shall be limited to the extent defined by agreement duly approved by the University and BEI, or any other appropriate regulatory body, such as the Florida Board of Governors. BEI is a separately incorporated 501(c)(3) non-profit organization that is responsible for its own acts or omissions. BEI's Board of Directors is responsible for the control and management of all BEI's assets.
7. The University owns the computer servers used by BEI. However, BEI is responsible for and will manage the records maintained on those servers. BEI shall be responsible for and shall manage and maintain all records included within the University's database it uses to maintain confidential records.

- 8.** The University is responsible for the employment, compensation, and evaluation of all its employees, including any employees assigned to perform any work or functions on behalf of BEI. Any University employee performing work on BEI's behalf shall be considered an agent of BEI for that limited purpose. In the event BEI employs personnel directly, it shall be responsible for the employment, compensation, and evaluation of its employees.
- 9.** The University may provide BEI with fair and reasonable compensation or payment for goods or services procured by the University from BEI. The University may also provide in-kind support to BEI, including but not limited to use of University premises, technology resources, professional or other staff such as accounting/finance staff, procurement, legal counsel as appropriate, facilities maintenance, and the like, in the same manner as made available to University departments/units.
- 10.** BEI will operate in a manner that will minimize the University's exposure to legal and financial issues.
- 11.** The University President will designate a University employee outside the BEI CEO's line of command for the purposes of consultation and review (the "President's Appointee"). The University's Chief Financial Officer has been so designated as the President's Appointee at this time. At the time of presentation of its quarterly expenditure plan delineating planned actions that would cause a significant commitment of University resources or represent a significant commitment of the resources of the DSO, BEI will consult with the President's Appointee to determine whether any planned activities should be presented to the University Cabinet for information and advice.
- 12.** BEI will provide for notice and approval of the President's Appointee prior to making verbal or written agreements with respect to joint ventures with outside entities.

- 13.** BEI will at all times operate in a manner that is consistent with the goals of the University and the interests of the University and the State of Florida. BEI has been formed exclusively to serve the best interests and mission of the University pursuant to Section 1004.28 of the Florida Statutes, and in this respect, BEI agrees that the University oversees its financial decisions, including, in the event of litigation, settlements. BEI will submit all contractual agreements to the University's Office of General Counsel for approval prior to execution. Both BEI and the University waive any actual or perceived conflict of interest on the part of the Office of General Counsel with respect to its representation of both the University and BEI. BEI and the University agree that the Office of General Counsel may freely share BEI information with the University and University information with BEI and waive their right to assert the attorney client privilege against the other with respect to such shared information.
- 14.** BEI will not undertake Assigned Functions without complying with the requirements of the Master Management Agreement. In accordance with the Master Management Agreement, BEI is responsible and has full authority for all current and future administrative and fiscal activities relating to Assigned Functions. Authority is construed to include, but not be limited to, contracts, memoranda of understanding, memoranda of agreement, forms, letters of agreement, applications, and extensions and renewals thereof, relating to the evaluation, acceptance, disposition, transfer, assignment and conversion of budgets, revenues and expenditures, and to the normal business and financial operations of the Assigned Function. Notwithstanding the foregoing, if a contract or agreement obligates or materially affects the interests of the University in addition to BEI, or if both the University and BEI are parties to the contract or agreement, the document may be approved by the CEO of BEI on behalf of BEI, but the document shall require review, approval and execution on behalf of the University by the President's Appointee.

15. BEI will recognize the public relations impact of its practices and will establish in dialogue with the University protocols for responding to media, queries in public forums, and the university community, including adoption of a BEI Board Spokesperson Policy.
16. BEI agrees to comply with all applicable laws governing University direct support organizations in Florida including, but not limited to Florida Statutes, Florida Board of Governors' regulations, policies, rules, guidelines and applicable University regulations, policies, rules and guidelines.
17. The CEO of BEI is responsible for ensuring compliance with all provisions and requirements set forth herein.

Financial Matters and Reports

18. The Board of Trustees, in accordance with regulations and guidelines of the Board of Governors, shall prescribe by regulation conditions with which BEI must comply in order to use property, facilities, or personal services at the University.
19. BEI will report its anticipated use of University resources to the Board of Trustees on an annual basis for approval. The report will identify the number and position of employees who will provide personal services to BEI, as well as the square footage of the areas in the University buildings which will be utilized as office space by the Foundation. The University may then ascribe the value of such property use in accordance with its internal valuation formula. BEI shall also seek approval from the Board of Trustees for transactions requiring approval in the applicable regulations of the Florida Board of Governors and the University governing direct support organizations. The University will annually obtain confirmations and other documentation from BEI Management affirming that University resources were used only for purposes approved by the Trustees.

- 20.** BEI is responsible for establishing a financial plan and annual operating budget. The annual operating budget of BEI shall be approved by the Board of Directors and Board of Trustees. Significant changes in planned expenditures in the approved budget must be reported to the Board of Trustees as soon as practicable, but no later than the deadline established by the Board of Trustees.
- 21.** To the extent payments are made to BEI from the University or from BEI to the University, all payments shall be limited by the applicable Florida Board of Governors regulation and University regulation governing direct support organizations. Any allowable transfers shall be formalized in a written agreement or electronically in a form that has a retrievable transaction trail establishing the basis for any such payments.
- 22.** BEI shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the State of Florida Auditor General pursuant to s. 11.45, Florida Statutes and by the Board of Trustees. The Board of Trustees will receive a copy of the audit of BEI's financial and operational records and the annual audited financial statements, including management letter, and will certify the compliance of BEI with applicable statutes and rules with regard to direct support organizations of the University.
- 23.** BEI will, on a quarterly basis, present to the President's Appointee an unaudited financial statement or cash flow report reflecting expenditures and revenues for the preceding quarter.
- 24.** BEI will carefully track its income and expenditures to ensure that any unrelated business income activities and revenues are controlled, to ensure that any unrelated business income taxes are paid, and to ensure that any State of Florida taxes (e.g., sales tax, real and personal property tax) that may accrue are paid when due.

25. BEI, as a regular practice will handle its own procurement activities in accordance with its Procurement Policy. BEI may request that the University handle a particular procurement activity if BEI believes that efficiencies will result.
26. BEI will establish appropriate financial practices and procedures for financial accounting, that, at a minimum will:
 - (a) Provide for internal controls designed to prevent misstatement and appearance of conflict, such as insuring proper segregation of duties between the employee(s) requesting, approving, receiving and reconciling funds.
 - (b) Provide for internal controls to ensure all expenditures of BEI funds are preapproved by the CEO of BEI or a person authorized by the CEO, as well as, by any necessary secondary approver(s).
 - (c) Ensure a clear audit trail exists and is fully documented.
 - (d) Ensure that financial transactions meet an arms-length standard and do not inure to the benefit of any private party.
 - (e) Discretely show each operation of BEI and that operation's net profit or loss.
 - (f) Preparation of the annual financial statement (in governmental accounting format) and audit to be completed by September 1st of each year to enable the University to timely comply with its obligation to present a completed financial report to the Board of Governors on or before the 15th day of September of each year.
 - (g) Ensure that the annual audit will be presented to the BEI Board, or a sub-committee of the Board appointed for that purpose, for approval

prior to submission to the University. (Presentation to BEI staff alone is not adequate).

- (h) Include the University's Office of Internal Auditing in the selection of BEI's outside auditor.
- (i) Consistently follow an accrual basis for accounting and reporting.
- (j) Follow appropriate GASB financial guidelines.
- (k) Ensure expenditures of BEI funds are executed in accordance with the terms and conditions of BEI's policies and procedures, including BEI's Procurement Policy, and consistent with good judgment, reasonableness, prudence and a high sense of ethics.
- (l) Ensure separation of duties exists for procurement sufficient at a minimum to ensure that different persons will control (i) requisition/solicitations; (ii) contractual provisions; and (iii) documentation of payment of invoices.
- (m) Ensure all disbursement requests submitted are originals and include original signatures and original itemized invoices and that whenever possible, barring any unforeseen circumstances, BEI will follow the Florida Prompt Payment Act (F.S. 218.735).
- (n) Ensure requests for reimbursement are submitted in a timely manner (i.e., within ninety days of the transaction).
- (o) Ensure that if University PCard or separate DSO business credit cards are used for small purchases, adequate documentation is maintained, timely approval occurs, reconciliation of the monthly charge card statement is accomplished by someone other than the cardholder, and reconciliation is reviewed by BEI's CEO.

- (p) Ensure PCI DSS compliance for any credit card payments accepted by BEI.
- (q) Documented general accounting procedures to include: amortization and depreciation, routine processes, any policies and procedures of the University which appropriately extend to BEI and have been formally adopted by the BEI Board of Directors, reviews and approvals (including contracts and agreements requiring signatures of the University and BEI), flow of funds, reconciliations, financial reporting, tax reporting, and the presentation of financial, tax, and audit reports to the BEI Board of Directors and the University Board of Trustees or designee for informational / approval purposes.

Personnel

27. BEI will establish procedures with respect to personnel that will:

- (a) Reflect whether payroll processing will be performed in-house or out-sourced.
- (b) Provide appropriate contractual arrangements with any outsourced provider.
- (c) Provide that any transition or acquisition of employees of BEI will be carefully planned and executed.
- (d) Provide appropriate methodology, consistent with the other University DSOs, to estimate the costs for time spent by University employees assigned to perform duties for BEI and other University resources utilized for BEI activities for the purpose of recording in-kind contributions in accordance with generally accepted accounting principles and state law; provide for any required or appropriate

reimbursement of the University for employee wages and fringe benefits.

- (e) Provide appropriate safeguards for nepotism.
- (f) Provide thorough job descriptions for BEI personnel and for those with split assignments, and ensure internal control duties are reflected in the job descriptions.
- (g) If BEI begins compensating employees, ensure that compensation is reasonable in view of the services rendered, and appropriately reflect how such compensation will affect the employees University status.

Real Property

28. BEI will develop policies or procedures on the use of real property that will:

- (a) Ensure that any subleases of University property will comply with any requirements under law, University policy, or BEI articles and bylaws for approval of UBOT and/or BOG.
- (b) Ensure that privatized development projects with which BEI is involved located on University property are consistent with University practices for the application of UWF Building Design and Construction Standards, are acceptable to the University, and are consistent with the approved Campus Master Plan.
- (c) Set forth practices for obtaining appraisals and ensuring arms-length bargaining for real property acquisitions and dispositions.
- (d) Ensure compliance with the University's Real Property Policy.
- (e) Specify that contractors and/or consultants hired by BEI work for BEI and will be made available to advise the University as appropriate.

Review

29. This MOU will be reviewed from time to time by the parties and appropriate updates and revisions will be timely accomplished in writing.

UWF BUSINESS ENTERPRISES, INC.

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Date: 07/06/2021

C. Ray Jones, Chair

UWF Business Enterprises, Inc.

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Dr. Ed Ranelli, Chief Executive Officer

UWF Business Enterprises, Inc.

UNIVERSITY OF WEST FLORIDA

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University of West Florida Board of Trustees

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Dr. Martha Saunders President

Approved as to Form and Legal Sufficiency

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