

**Memorandum of Agreement between
Gadsden State Cardinal Foundation
and
Gadsden State Community College**

This agreement, entered into as of this 11th day of July, 2012, by and between Gadsden State Community College, 1001 East Broad Street, Gadsden, Alabama 35902 and the Gadsden State Cardinal Foundation, 1001 East Broad Street, Gadsden, Alabama 35902.

The Foundation was organized and incorporated in 2012 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of Gadsden State Community College.

The Gadsden State Cardinal Foundation exists to raise and manage private resources supporting the mission and priorities of Gadsden State Community College, and provide opportunities for students and a margin of institutional excellence not achievable with institutional funds alone.

The Foundation 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.

As stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and friends of Gadsden State Community College; soliciting cash, securities, real and intellectual property, and other private resources to support Gadsden State Community College; and acknowledging and stewarding gifts in accordance with donor intent and its fiduciary responsibilities.

The Foundation plans for and manages private contributions and works with the College to assist and advise in such activities.

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:

Term of the Agreement

Subject to earlier termination by law or as provided elsewhere below, this Agreement shall have a term of ten (10) years, starting with the day it has been signed by both parties.

Foundation Name, Seal and Logotype

Consistent with its mission to help to advance the plans and objectives of the College, the College may grant the Foundation license to use the name, Gadsden State Community College, and its seal and logotype, in association with activities in support of the College. The College reserves the right to withdraw or condition such license in its sole discretion. Nevertheless, the Foundation's publications and representatives shall prominently display and utilize the Foundation's corporate name, and the Foundation shall operate under its own seal and logotype.

The Foundation's Relationship to the Institution

- The Gadsden State Cardinal Foundation is a separately incorporated 501(c)(3) nonprofit "supporting organization," created to raise, manage, distribute, and steward private resources to support the mission of the College.
- The Gadsden State Cardinal Foundation board of directors 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 Gadsden State Cardinal Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly addresses the board's fiduciary responsibilities and avoidance of conflicts of interest and promotion of ethical behavior on the part of its board members, officers and employees. The Foundation shall also comply with the policies of the State Board of Education and Chancellor's Guidelines regarding foundations.
- Where Foundation funds are to be expended on College property, the prior written approval of the College president shall be secured, and the Foundation shall not financially obligate or encumber the College in any way without the President's prior written consent. Capital construction activities on College property supported in whole or in part by Foundation funds shall follow all College, State Board of Education and State procedures and requirements governing such projects.
- The Gadsden State Cardinal Foundation is responsible for the employment, compensation, and evaluation of all its employees.
- The Gadsden State Cardinal Foundation may provide restricted or unrestricted funds to the president of the College in compliance with state law and institutional policies, guidelines of the College, and the Foundation's mission. All such expenditures must comply with applicable provisions of the Internal Revenue Code pertaining to the Foundation's status as a §501(c)(3) supporting organization and be consistent with the Foundation's mission. Such funds will be audited as part of Foundation audits.

The Institution's Relationship to the Foundation

- The College president is responsible for communicating Gadsden State Community College priorities and long-term plans to the Foundation.
- The Gadsden State Community College recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential, consistent with the law and this Agreement.
- The Gadsden State Community College may include the Foundation as an active and prominent participant in the strategic planning for the College.
- The College's president shall serve as an ex-officio, non-voting member of the Foundation board and shall assume a prominent role in fund-raising activities. No College employee may serve on the board of the Foundation except in an ex officio, non-voting capacity without the prior written consent of the College president. Ex-officio members of the board shall not serve as board chair or president of the Foundation.
- In consideration of the Foundation's services to the College in furtherance of its public mission, Gadsden State Community College may contract with the Foundation to provide the Foundation with in-kind support, including: Support staff, office space, office equipment, and technology support.

Foundation Responsibilities

1. Fund-Raising

- The Gadsden State Cardinal Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of Gadsden State Community College.
- The Gadsden State Cardinal Foundation, in consultation with the College president, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- The Gadsden State Cardinal Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. Such policies shall not be inconsistent with the policies and guidelines of the State Board of Education and the Alabama Community College System. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the College and provide appropriate recognition and stewardship of such gifts.
- Gadsden State Community College recognizes that the Foundation bears major responsibility for fund-raising. College representatives will coordinate fund-raising initiatives including major gifts solicitations with the Foundation.
- The College president will work with the leadership of the Foundation board and the Foundation chief executive to identify, cultivate, and solicit prospects for private gifts.
- The Gadsden State Cardinal Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation board of directors and the College.
- The Gadsden State Cardinal Foundation shall establish and enforce policies to protect donor confidentiality and rights.

2. Asset Management

- The Gadsden State Cardinal Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, such as the Uniform Management of Institutional Funds Act (UMIFA) (Alabama Code §16-61A-1, *et seq.*)
- The Gadsden State Cardinal Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

3. Institutional Flexibility

- The Gadsden State Cardinal Foundation will explore current opportunities, including acquisition and management of real estate on behalf of Gadsden State Community College for future allocation, transfer, or use.
- The Gadsden State Cardinal Foundation may serve as an instrument for ancillary activities for the College and engage in such activities as purchasing, developing, or managing real estate for College expansion, student housing, or retirement communities. It also may hold licensing agreements and other forms of intellectual property.
- When distributing gift funds to the College, the Gadsden State Cardinal Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. Gadsden State Community College will abide by such restrictions and provide appropriate documentation.

4. Transfer of Funds

- The Gadsden State Cardinal Foundation is the primary depository of private gifts and will transfer funds to the designated entity within the institution in compliance with applicable laws, College policies, and gift agreements. Nevertheless, no provision of this agreement shall be construed to prohibit or require the diversion of gifts which donors may wish to make directly to a College.
- The Gadsden State Cardinal Foundation's disbursements on behalf of the College must be reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with the law.

5. Accountability and Reporting

- The Gadsden State Cardinal Foundation must prepare annual financial statements in conformity with generally accepted accounting principles and have them audited by an independent certified public accountant (independent auditor) in accordance with generally accepted auditing standards, no less than annually or no less than once every three years for Foundations having gross assets of \$250,000 or less. To enable the College and the Department of Postsecondary Education to include pertinent information in their annual financial reports and statements, the audit must be completed in time to be reflected on a timely basis in the College's financial reporting cycle.
- The books, records, financial condition, operating results, and program activities of Gadsden State Cardinal Foundation are subject to inspection and periodic audit by the Chancellor and his/her designees. The Foundation and any affiliate(s) may also be subject to audits by external bodies or officers to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letters of the Foundation (and any subsidiaries), must be reviewed by the College President and the Chancellor of the Department of Postsecondary Education.
- The Gadsden State Cardinal Foundation shall be subject to the financial reporting requirements set by the Governmental Accounting Standards Board (GASB). The Foundation shall provide the College with such information as the College may require to comply with such requirements.

Student and Alumni Records

- Gadsden State Community College shall make available to the Gadsden State Cardinal Foundation records and information concerning alumni in accordance with requirements of the Family Educational Rights and Privacy Act of 1974 and any amendments and regulations under the Act. Any such records and information shall not be released to other organizations without the written permission of the College.
- In performing this contract, the Gadsden State Cardinal Foundation will receive, maintain, process or otherwise will have access to confidential information on students and/or customers of Gadsden State Community College. With respect to these records, the Foundation will comply with the Gramm-Leach-Bliley Act (P.L. 106-102), as amended, and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314). As part of doing so, the Foundation agrees that it will: 1) protect the security and confidentiality of student and/or College customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or College customer.

- If the Gadsden State Cardinal Foundation sub-contracts with a third party for any services required in the furtherance of this contract, the Foundation must ensure that such third parties implement practices to protect nonpublic personal information of students and/or College customers that they receive, maintain, process or are permitted to access.

Foundation Funding and Administration

- The Gadsden State Cardinal Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.
- The Gadsden State Cardinal Foundation has the right to use a reasonable percentage of the annual unrestricted funds, or assess fees for services to support its operations.
- The Gadsden State Cardinal Foundation, at its own expense, will provide adequate personnel (beyond personnel which may be provided by the College), office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.
- The Gadsden State Cardinal Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

Miscellaneous Terms

- To ensure effective achievement of the items of the agreement, the College and Foundation officers and board representatives shall hold meetings not less than quarterly, to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.
- Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the forgoing, either party may terminate this agreement at any time 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 notice of such default.
- Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation (or any subsidiary) cease to exist, or cease to be a supporting organization of the College, or cease to be a qualified organization under Internal Revenue Code §501(c)(3), the Foundation (or such subsidiary) shall transfer its assets and property to the College or a College-approved incorporated successor foundation in accordance with law and donor intent.


Agreement Clause

This Memorandum of Agreement is contingent upon the Gadsden State Cardinal Foundation applying for and successfully achieving 501(c)(3) Tax-Exempt Status with the Internal Revenue Service within the current IRS regulated timeframe of 15 months from the day the Foundation was legally formed. The Foundation must adhere to all of the current 501(c)(3) Tax-Exempt regulations while operating under the pending application status. In the event the Foundation fails to successfully achieve 501(c)(3) Tax-Exempt Status, this agreement will be terminated.

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

Gadsden State Community College

By:

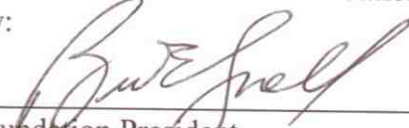


College President

Date: 7/11/12

Gadsden State Cardinal Foundation

By:



Foundation President

Date: 11 JULY 12