BOARD OF REGENTS OF
THE UNIVERSITY SYSTEM OF GEORGIA

OFFICE OF INTERNAL AUDIT AND COMPLIANCE
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September 14, 2011

Dr. Steve Wrigley
Executive Vice Chancellor for Administration
University System of Georgia
270 Washington St., SW
Atlanta, GA 30334

Dear Dr. Wrigley:

The Board of Regents' audit staff has concluded its system-wide consulting engagement pertaining to the Public Private Venture Program. The purpose of this engagement was to assist in analyzing current trends and emerging issues with objective benchmarks to identify gaps and develop recommendations. Our system-wide review included both survey methodology and on-site campus visits. Attached is the final report. The engagement was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.

We enjoyed working with the University System of Georgia in this collaborative effort and encourage the implementation of our joint recommendations. Please feel free to contact us if we can be of further assistance.

Sincerely,

John M. Fuchko, III

John M. Fuchko, III
Chief Audit Officer and Associate Vice Chancellor

JMF/jfw

Enclosure

cc: Henry M. Huckaby, Chancellor
Regent Kenneth R. Bernard, Jr., Chair, Committee on Internal Audit, Risk, and Compliance
Members, Committee on Internal Audit, Risk, and Compliance
John E. Brown, Vice Chancellor for Fiscal Affairs and Treasurer, BOR
Linda Daniels, Vice Chancellor for Facilities, BOR
Peter Hickey, Associate Vice Chancellor for Development and Administration, BOR
Claire Arnold, Deputy Director, Education Audit Division, DOAA
James F. Winters, III, CPA, Public Private Venture Auditor, USG
Chief Business Officers
Controllers
Chief Advancement Officers
Affiliated Foundation Chair/Presidents

BOARD OF REGENTS OF
THE UNIVERSITY SYSTEM OF GEORGIA

Public Private Venture Consulting Engagement

Internal Audit Report

Office of Internal Audit and Compliance(OIAC)
#10-120
09/14/2011

OIAC's mission is to support the University System of Georgia management in meeting its governance, risk management, compliance, and internal control responsibilities while helping to improve organizational and operational effectiveness and efficiency. The OIAC is a core activity that provides management with timely information, advice and guidance that is objective, accurate, balanced and useful. The OIAC promotes an organizational culture that encourages ethical conduct.

The information in this document is intended solely for the use of Public Private Venture Program Management and is not intended to be used as investment advice in the purchase, sale, or holding of bonds that support the public private venture program.

Public Private Venture Consulting Engagement

Table of Contents

Purpose of the Report

The report's purpose is to provide a document for use by University System of Georgia (USG) institutions and for related foundations in identifying, implementing, and evaluating, Public Private Venture (PPV) Program practices. This report is not written for other entities or 501(c)(3) not related to the institutions that have a PPV project with a USG institution. An example of these not related entities is The University Financing Foundation (TUFF). Although, sections of this report are applicable. This report should contribute to enhanced USG PPV Program accountability. The report describes the PPV Program and recommends major activities to be performed and monitored.

Report Methodology

The OIAC conducted this consulting engagement by interviewing staff members at the USG System Office and on-site visits at seven different USG institutions. The engagement also included reviewing legal documents, analyzing current and historical financial information, and researching procedures used by university systems in other states. The engagement began December 1, 2009 and the report was finalized in September 2010. A draft report was presented to management team members for their review and recommendations including USG Fiscal Affairs team and certain members of the leadership teams at the USG institutions.

The OIAC adheres to the USG Core Values of Integrity, Excellence, Accountability and Respect. Additionally, OIAC promotes Competence and maintains Confidentiality while striving to meet all Professional Standards. The engagement was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.

This consulting engagement was undertaken to provide processes and procedures that should prove useful when implementing a PPV project. These practices are applicable to current conditions and circumstance and may have to be modified or adapted for particular or special circumstances. Some variation exists in the implementation and operation of the USG PPV Program when taking into account the practices of 35 USG institutions. These practices should continue to improve over time as part of the ongoing management of the USG PPV Program.

University System of Georgia Public Private Venture Program

The USG PPV Program had $3.8 billion in bonds outstanding representing 168 privatized projects as of June 30, 2011. Thirty two of 35 USG institutions participate in the USG PPV Program and two USG facilities (the Office of Information Technology Services building in Athens, Georgia and the Shared Services Center in Sandersville, Georgia). Projects include student housing, food courts and dining facilities, recreational and athletic facilities, parking structures, space for offices, research, and instruction, and two stadiums. A list of PPV projects sorted by participating USG institution including the projects' name, description and the amount of the original bond issue can be viewed on the USG web site.[1]

The implementation, operations, and support of the USG PPV Program are collaborative efforts between the USG institutions, the USG System Office, and the related foundations that are responsible for PPV debt. At the USG institutions, the USG PPV Program has shared responsibilities among many different offices. Examples include the business office, facilities, student affairs, academic affairs, housing, auxiliary services, parking services, legal, campus planning, and the campus police. The USG institutions' PPV programs are supported by the USG Office of Real Estate and Facilities, the USG Office of Fiscal Affairs, and the USG Office of Legal Affairs.

Definition of a Public Private Venture

A PPV is a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project.

For the University System of Georgia, a PPV is a financing agreement utilizing an issuing authority which loans money to a foundation's LLC to construct physical plants (student housing, parking decks, food courts, and student support facilities) to be rented to the USG for the use of students, faculty and staff of a USG institution.

[1] USG Office of Real Estate & Facilities web site "Real Estate Venture"
http://www.usg.edu/ref/real_ventures/
November 17, 2009 Board of Regents meeting-Public Private Venture Program Asset Management

Financing Structure of a Public Private Venture

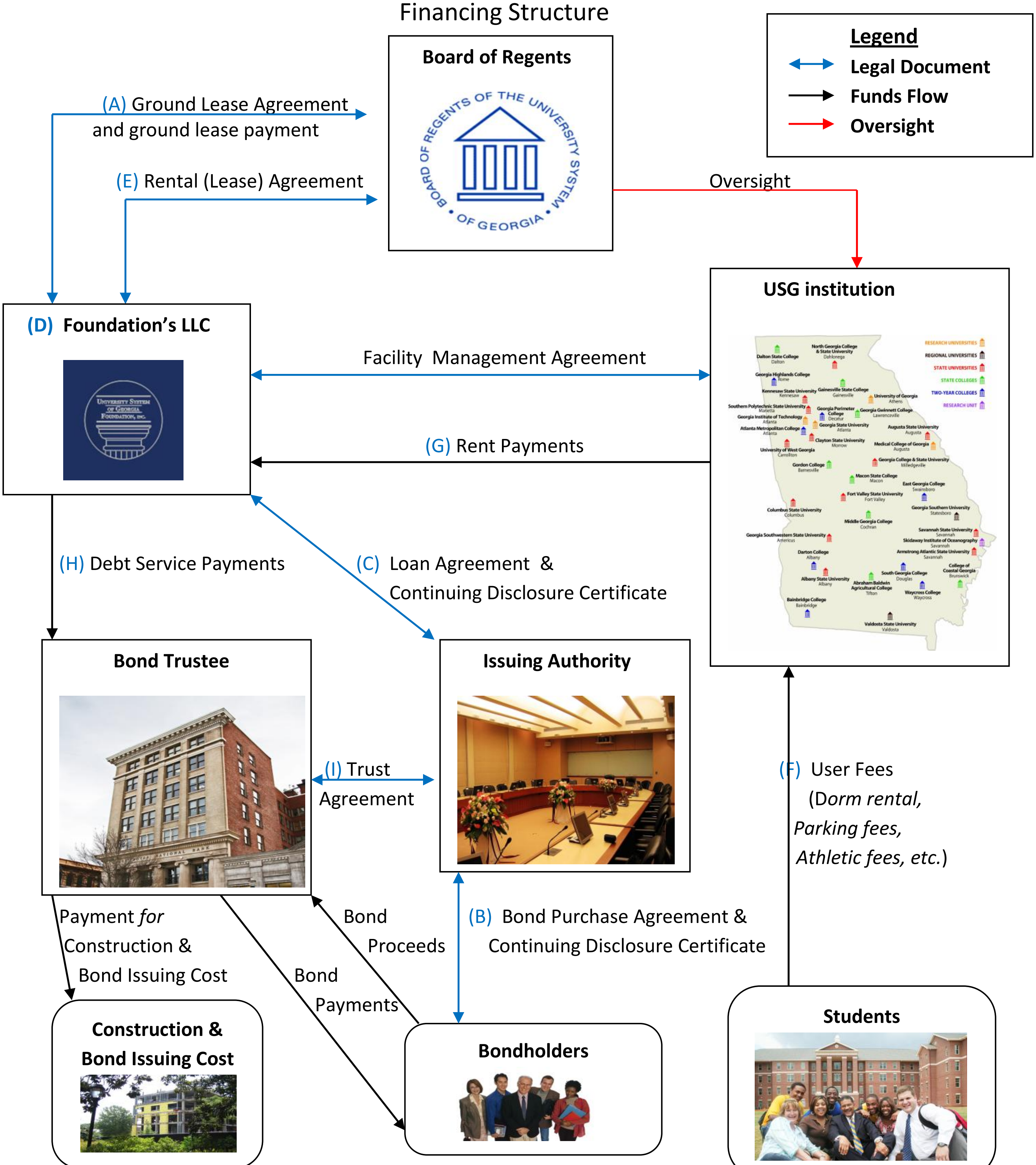
The USG PPV Program traditionally enables financing for projects that have their own dedicated funding (revenue) stream, such as mandatory student fees, parking fees, student housing rentals, bookstore revenue, research grants, or food services revenue. These projects are stand-alone projects that should be self-supporting, (i.e., project-generated revenues should cover project expenses). Steps A. – H. describe the steps in a PPV financing structure. Exhibit A on page 7 diagrams the process. Note that the capital letters in the list below correspond to the capital letters in Exhibit A.

- **A.** The USG is the owner of the land and leases the land to the foundation in the form of a ground lease with the provision that the structure built on the land reverts to the University System after a defined time period (usually once the bond matures and the bond debt is paid in full). The lease agreement usually requires the full payment to be paid in advance and is at a nominal rate.
- **B.** A local development authority issues bonds for the project on behalf of a USG institution's foundation (usually organized as a wholly-owned real estate LLC).
- **C.** The local development authority loans the bond proceeds to the foundation's LLC via a loan agreement.
- **D.** The foundation's LLC uses the loan funds for the acquisition and/or construction of the project. The foundation's LLC owns the facility.
- **E.** The foundation's LLC leases the project facility to the Board of Regents via a rental agreement that provides ownership of the project to the Board of Regents at the end of the lease period.
- **F.** The USG institution collects the related project revenue such as mandatory student fees, parking fees, student housing rentals, or revenue generated by providing food service.[2]
- **G.** This revenue is used to make lease payments to the foundation's LLC.
- **H.** The foundation's LLC uses the funds received from the lease payment to make debt service payments for the bond.[3]

[2] At some USG institutions, the foundation collects the related project revenue, makes the debt service payments service payments for the bond, and provides for facility maintenance and servicing.

[3] Georgia Department of Audits and Accounts

Exhibit A
University System of Georgia Public Private Venture Program
Financing Structure



Report Content and Organization

This consulting engagement was selected as the initial PPV audit project to provide processes and procedures that have proven superior results and to provide a basis for conducting future audits. This documentation is applicable to current conditions and circumstance and may have to be modified or adapted for particular or special circumstances. Some variation exists in the implementation and operations of the USG PPV Program when taking into account the practices of 35 USG institutions. This documentation should evolve to become more informative as improvements are discovered.

This report will discuss documents and control processes including:

- Legal documents;
- Arbitrage provisions;
- Unrelated Trade or Business Activity;
- Unrelated Business Income Tax;
- Engineering reports;
- Accounting for ground lease and rental agreements;
- Contracts with outside vendors;
- Monitoring financial performance; and,
- Conflict of Interest;

The report is organized to discuss the legal documents and control processes for the affiliated foundations and then discuss topics for the USG institutions. Note that the capital letters shown to the right of various document heading corresponds to the capital letters shown in the description of each step in the PPV financing structure which can be referenced on page 6 and on the diagram in Exhibit A, on page 7. The capital letters represent a document, process, or procedure that is associated with the documentation.

An overview and an objective are given for each area discussed. This is followed by procedure and review sections.

Documents and Control Processes

The following chapters are descriptions of documents and control processes that assist in identifying and evaluating areas in the USG PPV Program. The report is organized to discuss the legal documents and control processes for the affiliated foundations and then discuss topics for the USG institutions. These sections are intended to promote strong USG PPV Program accountability by defining major activities that are recommended to be performed and monitored. Although this report is intended to address many of the practices that could apply, this report should not be considered all-inclusive. Further, the practices listed here may not be applicable in all situations and other practices may accomplish the same goals. However, this document can be helpful as a starting point for both USG institution and foundation personnel in deciding what types of practices are more likely to result in efficient, effective, and accountable USG PPV Program operations.

Each document and control process has four sections:

1. Overview;
2. Objective;
3. Procedure; and,
4. Review.

The overview section defines the document or process. This section gives a general outline of a document or summary of a control's purpose. The objective section states the purpose and benefits of the document or control. It also includes the efforts or actions that are intended to be attained or accomplished by the document or control. The procedure section provides the covenants and procedure requirements for the documents or controls. It is in this section that the requirements for the use of facilities are defined, a manner for proceeding and performing duties is defined, and methods for accomplishing a control are given. The review section provides information that can be used in a self-assessment. The information contained in this section also will be used to develop audit plans and identify some of the observations and controls that will be reviewed during a PPV audit.

Bond Documents

Official Statement - Foundation

Overview:
The Official Statement is a document prepared by the issuer that discloses material information on the bond offering. Because the USG PPV Program bonds are primary offerings, the Official Statement is subject to Rule 12c2-12 adopted by the Securities and Exchange Commission under the Security Exchange Act of 1934. This document discloses information about the bond terms, issue purpose, how the bond will be repaid, and the financial and economic characteristics of the bond obligators. This document contains financial information and operating data on the issuer, the foundation, the State of Georgia, the USG, the USG institution, the project being funded, and other parties' material to an evaluation of the bond offering. This document will include a reference to the "Continuing Disclosure Statement."

Objective:
Investors use the information in this document to evaluate the security's credit quality and to make investment decisions.

Procedures for the Foundation Reporting Requirements:
In a review, it will be necessary to obtain a copy of the Official Statement and to review it paying particular attention to the sections referencing the "Continuing Disclosure," the Pro Forma Cash Flow, and the "Rental Agreements." These sections usually include the requirements that have been addressed in the Continuing Disclosure Certificate and the loan agreement. Review the section on the "Debt Service Reserve Funds" and the section that discusses bondholder risks. Review the Official Statement for any additional requirements. There are no strict requirements regarding the contents of an Official Statement. Most legal documents pertaining to the bond are contained in the Official Statement. The information provided in the Official Statement is as of the offering date. There are no obligations to update the information in the Official Statement. This document is the primary source of information that prospective bondholders and bond brokers, who sell the bonds to the public, use to make investment decisions on primary bond offerings and generally is not intended to provide information with respect to trading in the secondary bond market. Comparison of the actual cash flow to the pro forma provided at the origination of the bond usually is found in the Official Statement. This should be completed at least annually and is included with the Continuing Disclosure filing.

Review:
In a review, it will be necessary to obtain a copy of the Official Statement and review the "Representations, Warranties and Covenants of the Foundation." Review the Official Statement for any additional requirements that were not included in the Bond Purchase Agreement or the Continuing Disclosure Certificate.

Bond Purchase Agreement (B)

Overview:
The Bond Purchase Agreement is the contract between the underwriter and the issuer that sets the terms of sale, sale price, interest rate, and conditions upon which the underwriter purchases the bond. The foundation is a party to the bond purchase agreement within the USG PPV Program because of the conduit financing. The USG or its institutions are not involved in or on behalf of the financing. The security of the issue is the pledged revenues or rent from the project that is being financed. The securities do not constitute general obligation of the issuer because the conduit borrower, the foundation, is liable for generating the pledged revenue.

Objective:
The purpose of this agreement is to state the conditions upon which the underwriter purchases the bond. This agreement is between the underwriter and the issuing authority along with the foundation, because the foundation is the conduit borrower.

Procedures for the Foundation Reporting Requirements:
Identify the information and timing requirements for each reporting requirement of the representations, warranties and covenants of the foundation. These usually include requirements that have been addressed in the Continuing Disclosure Certificate and the loan agreement. This document is a source to identify the names and addresses of the parties and their representing legal counsel.

Review:
In a review, it will be necessary to obtain a copy of the Bond Purchase Agreement and review the "Representations, Warranties and Covenants of the Foundation." Review the Bond Purchase Agreement for any additional requirements.

Loan Agreement: Issuing Authority and the Foundation – Foundation (B)

Overview:
The loan agreement is the promissory note of the foundation payable to the issuer. The issuer agrees to lend to the foundation and foundation agrees to borrow from the issuer the proceeds from the sale of bonds. The funds received from this loan agreement will be

used to finance the cost of the identified construction project, pay for bond issuance costs, and to fund the capitalized interest and debt service reserve accounts. The foundation agrees to repay the loan including any bond premium and interest as stated in the repayment schedule. This agreement, between the issuing authority and the borrowing foundation, states the provisions for the use of the bond proceeds, establishes the bond trustee, the bond repayment requirements, and establishes the uses and restrictions for the facility built with the bond proceeds.

Objective:
The purpose of this agreement, between the issuing authority and the borrowing foundation, states the provisions for the use of the bond proceeds, establishes the bond trustee and the states bond payment requirements. This document establishes the security for the note payments which usually includes the revenues generated by the project such as mandatory student fees, parking fees, student housing rentals and revenues generated for providing food service. This document defines the expenses that are paid from the proceeds from the loan and will state the procedures for withdrawing payments from the trustee to pay these expenses. The loan agreement identifies the reporting requirements for the foundation to the issuing authority.

Procedures:
Identify the information and timing requirements for each reporting requirement. The following are examples of potential requirements.

1. Status of project construction and anticipated completion date. This reporting is usually provided monthly during the construction process.
2. Notice indicating failure to make in a timely manner any filings required by the Continuing Disclosure Certificate. This reporting is usually due the date of the required filing as disclosed in the Continuing Disclosure Certificate.
3. Notice indicating any rental agreement that is terminated or the failure to receive rental (lease) payments. This includes notice of any non-renewal of the rental (lease) agreement.
4. Construction budget for the project. This is due prior to bond issuance. An issuer's consent must be obtained for any changes to the original budget.
5. Notice of any contract relating to the project management. These contracts must meet the requirements of Revenue Procedure 97-13 of the Internal Revenue Service and be approved by Bond Counsel.
6. Annual budget for each fiscal year. This is usually required 60 days prior to fiscal year start.
7. Notice of any changes to agreements and contracts including the ground lease or rental (lease) agreements.
8. Copy of the annual report prepared by a certified public accountant. This is due 180 days after the fiscal year end.

9. Notice relating to additional debt. This is required prior to issuing additional debt.
10. Notice of any material adverse change in the financial condition of the USG institution, foundation, or project. This includes notice of any litigation or investigation.

Review:
In a review, it will be necessary to obtain a copy of the Loan Agreement and to identify the reporting requirements including the names and addresses of the required receivers. This is usually the Issuer Secretary/Treasurer. Identify the timing requirements of each disclosure.
These filings should be reported to the foundation's board of directors and the event should be recorded in the board minutes. It is recommended that copies of these filings be sent to the Underwriter, the Trustee, the USG institution chief business officer and to Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia. Review the document retention procedures.

Continuing Disclosure Certification – Foundation (C)

Overview:
The Continuing Disclosure Certificate details the annual filing requirements and special events reporting. This document is signed by the authorized representative of the foundation's real estate LLC and is for the benefit of the bond holders. This document assists the participating underwriter in complying with Rule 15c2-12(b)(5) "Municipal Securities Disclosure" adopted by the Securities and Exchange Commission under the Security Exchange Act of 1934.

Objective:
The purpose of the filing of this document is to provide assurance to the bond holders and to comply with the filing requirements as stated in the Official Statement published by the bond underwriter. It is the foundation's management responsibility to insure that the requirements as stated in the Continuing Disclosure Certificate are performed in an accurately and timely manner. It is recommended that these disclosures have an appropriate review by members of the management team. The Continuing Disclosure Certificate should be filed and records maintained to show proof of delivery and copies of the contents. The annual filing and any reporting of special events should be reported to the foundation's board of directors and the event recorded in the board minutes. A notification to the USG institution management team should also be evidenced.

Procedures of Filing:
Identify the information that needs to be included with the filing of the annual disclosure certificate. The following are examples of the information requirements.

1. The Foundation's Audited Financial Statements accompanied with the audit report prepared and signed by a CPA.
2. A notice indicating any accounting principles that changed from the previous fiscal year. If there have been no changes, it is recommended to have a statement confirming that there have been no changes to the accounting principles during the past fiscal year.
3. A statement indicating that the fiscal year has not changed.
4. The required information for the preceding fiscal year. Examples of information that are required in this section include; analysis of State General Fund Receipts, summary of appropriation allotments to the Board of Regents, actual to bond pro forma analysis, enrollment numbers, admission, tuition, fees, and a reference to the official statements of all other debt issues.
5. Reporting and financial performance of project.

Identify the requirements for filing a "Notice to Repositories of the Occurrence of a 'Significant Event'." The following are examples of these events:

1. Principal and interest payment delinquencies;
2. Unscheduled draws on the debt service reserve;
3. Unscheduled draw on credit enhancements;
4. Substitution of credit of liquidity providers; and,
5. Rating changes.

Once a bond is paid in full, identify and perform the requirements for notification for bonds that have been paid in full.

Copies of these filings should be sent to the Underwriter, Trustee and to the USG institution chief business officer. Review the document retention procedures. Discuss with the USG Vice Chancellor for Fiscal Affairs any communications with Moody's, Standard & Poor's, or other rating agencies.

"The annual Cash Flow data requested by the BOR, Office or Real Estate and Facilities and the Continuous Disclosure Statement are very similar. The Continuous Disclosure Statement requires additional data beyond that requested in the annual Cash Flow submittal. Data submitted pursuant to these requests is used to evaluate the financial and operational stability of the PPV project. The data focuses on the cash position of the project by evaluating revenue and expenses. Also addressed are rental payments, repair and replacement and capital expenses. As needed, the campus and the foundation should work together in compiling and verifying the requested information. For any given period, the information submitted for these two requests should be consistent."[4]

Review:
In a review, it will be necessary to obtain a copy of the Continuing Disclosure Certificate

[4] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

and to identify the disclosure requirements including the names and addresses of the required receivers. Identify and update the list of names and addresses of the National and State Repositories. Identify the timing requirements of the disclosure. This is usually annually not later than 150 days after the fiscal year end for the annual reporting and the date of the "reportable" occurrence for any special filings.

In the Appendix, Exhibit III includes the "Frequently Asked Questions" about the Electronic Municipal Market Access (EMMA) written by the Municipal Securities Rulemaking Board.

Trust Indenture (Trust Agreement) – Foundation (I)

Overview:
The Trust Indenture, a Trust Agreement, is a contract between the issuing authority and the bond trustee. The bond trustee is a bank designated by the issuer to be the custodian of the bond proceeds and is the official representative of the bondholders. The bond trustee is appointed to ensure compliance with the bond documents and to represent the bondholders in enforcing the bondholders' contract with the issuer. The Trustee serves as the administrator responsible for the disbursement of bond proceeds for cost of issuance, construction draws, investment of bond proceeds, and receipt of bond payments. The Trustee makes the interest and principal payments to the individual bond holders.

Objective:
The primary purpose of the trust agreement between the issuer and the bond trustee is to protect the interest of the bondholders. The trustee's responsibility is to issue the bonds, maintain the books and records including the record of ownership, to make interest and principal payments to the bondholders, to ensure the issue is in compliance with legal requirements, and to monitor for events of default and significant events. These events include but are not limited to: principal and interest payment delinquencies, non-payment related defaults, unscheduled draws on the debt service reserves, unscheduled draws on credit enhancements, substitution of credit or liquidity providers, adverse tax opinions or events affecting the tax-exempt status of the bond, and a bond rating change.
This document:

1. Authorizes and secures the bonds.
2. Establishes the description, and purpose of the bonds.
3. Contains the issuer's covenants and obligations with respect to the project and payment of the debt service.
4. Specifies the events of default and the action to be taken in the event of a default.
5. Outlines the trustee's fiduciary responsibilities and bondholders' rights.
6. Establishes the parameters for the administration of the bonds.
7. Establishes the relationships between and duties of the borrower, the bank as trustee, and the bondholders.

Procedures:
Obtain a copy of the Trust agreement and review, in particular, the section (Article) on "Funds." This section (Article) will provide a description of the funds (accounts) and the use of the monies in these funds (accounts). This section will also describe the process to direct the bond trustee to pay for project expenses. This is usually a written request with signatures indicating authorization and approval to pay an expense with bond funds. This authorization is a written request from the foundation's real estate LLC, the USG institution, with approval by the Program Manager and Construction Manager. An example of a written authorization and approval to draw funds can be found in the Appendix, Example V.

"The Trust Indenture document between the Issuer and the Trustee provides the legal guidelines for disbursing Repair, Replacement and Maintenance Funds. This document typically provides an Exhibit that must be completed and certified and signed by the authorized representative of the foundation prior to receiving funds. The Exhibit serves to document the amount of funds requested, the payee and the amount to be paid.

Each campus should review the Trust Indenture document and verify with its foundation and Trustee the specific requirements and procedures for requesting funds from the Repair, Replacement and Maintenance Fund.

Tapping into or use of any of the funds found in the Debt Service Reserve should occur as the very last option. These funds should never be touched unless all other potential means of meeting the debt service payment have been eliminated. When considering using these funds, contact should be made with the BOR and consensus reached as to the need to access this reserve account. Remember the Trustee is obligated to report any use of the Debt Service Reserve Account. Use of these funds can possibly trigger a downgrading of the bonds for the project as well as impact the rating of the entire System."[5]

Review:
Review the section (Article) on "Custody and application of Proceeds of the Bonds." This section states the dollar amount of funding to the different trust funds (accounts). These amounts establish the beginning balances for each trust fund (account). It is recommended that the foundation implement the same internal controls that are used for the checking accounts to control these trust funds (accounts). The foundation will receive monthly accounting statements for these funds from the trustee.

Review the Exhibit that shows the "Debt Service Schedule." It is recommended that a control is in place to monitor the funds in the trust accounts to ensure that funds are

[5] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

available to meet the debt service schedule. If at any time this will not occur contact the Vice Chancellor for Facilities and the Vice Chancellor for Fiscal Affairs at the Board of Regents, the USG institution President, the USG institution auxiliary services director, the USG institution chief business officer, and the foundation president. These disclosures should be reported to the foundation's board of directors and the event recorded in the board minutes.

Review the section (Article) that discusses "Notices." This section will give the form of delivery, and the addresses of parties to be included in the mailings. These usually include requirements that have been addressed in the Continuing Disclosure Certificate and the loan agreement.

Ground Lease – Foundation & USG Institution (A)

Overview:
The Ground Lease is a legal contract between the Board of Regents and an affiliated foundation that allows for the temporary right to use land that is located on a campus of a USG institution in exchange for payment or rent. The land is owned by the Board of Regents which leases the land to the affiliated foundation. This land is the site for the construction of the PPV project. The foundation is obligated to build a structure that is defined in the ground lease agreement. This ground lease is a long term agreement that states the lessee (foundation) is obligated to pay rent for the use of the land for the duration of the contract. The contract duration is usually until the underlying bond, the proceeds of which were used to construct a building, is paid in full. The lessee (foundation) builds on the land and the foundation then leases the building to the Board of Regents. The buildings must revert to the Board of Regents at the termination of the contract.

Objective:
The ground lease separates the ownership of the land from the building for a set period of time. The ground lease provides a number of advantages to the Board of Regents. The Board of Regents may not have the capital required to develop the land. The ground lease allows the foundation to develop the land. The Board of Regents will benefit from the appreciation in the financial value of the land due to the development. And, more importantly, an appreciation in the use of the land since the land now has a building with beneficial use for the students, faculty, and staff. Additionally, a ground lease can provide the Board of Regents with a stream of rental income long after the ground lease expires.

Procedures:
The purpose of this agreement, between the Board of Regents and the affiliated foundation, states the requirements for the use of the land and the improvements to be

constructed on the property. This document defines the rent and expenses to be paid along with the reporting requirements. Topics covered in this agreement include:

1. Provisions for the use of the land (for the purpose of constructing, owning, operating, and maintaining a facility on the land);
2. Rent amount and number of years (usually paid in advance upon execution);
3. Primary term of the lease in years and any termination extension time frames;
4. Provision that all buildings and land improvement revert to the Board of Regents at the termination of the ground lease;
5. Assigning the responsibility for maintaining the building and which party will pay for the cost of maintenance;
6. Required coverage for insurance and the required documentation for insurance to show proof of coverage.
   Examples of required coverage include:
   1. Workers' Compensation Insurance
   2. Employers' Liability Insurance
   3. Commercial General Liability Insurance
   4. Commercial Business Automobile Liability Insurance
   5. Commercial Umbrella Liability Insurance
   6. Builders Risk Insurance
   7. Property Insurance
   8. Terrorist Insurance (resident halls and student unions)
   9. Sexual Assault Insurance;
7. Requirement that all subcontractors must provide proof of "Workers' Compensation Insurance" and a required coverage certificate;
8. Assigning responsibility for utilities and the cost of utilities; and,
9. Assigning responsibility for all taxes and assessments.

Review:
In a review, it will be necessary to obtain a copy of the Ground Lease Agreement and to identify the reporting requirements to include the names and addresses of required receivers. This is usually the Vice Chancellor for Facilities at the Board of Regents, the USG institution President, the USG Chief Business Officer, auxiliary services director, and the foundation president. It is recommended that copies of these filings be sent to the USG institution chief business officer. These disclosures should be reported to the foundation's board of directors and the event recorded in the board minutes. Identify the timing requirements of each of the disclosures. Review the procedure for document retention for these documents.

Rental (Lease) Agreement - Foundation & USG Institution (E)

Overview:
The Rental Agreement is a legal contract between an affiliated foundation and the Board of Regents that establishes the temporary right to use a facility for a specific length of time in exchange for payment of rent. The affiliated foundation owns the facility which was constructed by the foundation with the proceeds received from a bond issue. This facility is the PPV project and is the source for a legal description of the facility.

Objective:
The Board of Regents rents or leases the building that was constructed by the affiliated foundation with the use of the proceeds that were received from the issuing of bonds. The facility is owned by the affiliated foundation which leases the facility to the Board of Regents for use by USG institution students, faculty and staff.

Procedures:
The facility owner or foundation is called the "landlord" or the "lessor." The Board of Regents, on behalf of the USG institution, is called the "tenant" or "lessee" and is entitled to occupy and use the facility. The agreement terms include the rent payment amount and other tenancy rules that may not be changed during the specified period, except by agreement of both the landlord and the tenant. The rental agreement should cover all of the specifics of the arrangements, to include responsibility for utility charges, upkeep, repairs and capital improvements. The agreement specifics should agree with the ground lease specifics.

The rental agreements with the Board of Regents are opt-in leases and must be renewed annually. The lease runs from July 1 to June 30 of each year. The agreement will state the number of years the lease may be renewed (which is usually the number of years until the bond debt is paid in full). An annual renewal notice should be given to the landlord (foundation) 60 days prior to the expiration date of the agreement or by May 1 of each year. The renewal process is usually well defined within the first few pages of the rental agreement. It is recommended that a copy of this notice be sent to the Vice Chancellor for Facilities at the Board of Regents and the USG institution chief business officer. These notices should be reported to the foundation's board of directors and the event recorded in the board minutes. An example of a renewal notice can be found in the Appendix Exhibit II – Rental (Lease) Agreement Renewal Notice.

The purpose of this rental agreement, between the affiliated foundation and the Board of Regents, is to state the requirements for use of the facility. This document defines the rent and expenses to be paid along with any reporting requirements. Topics covered in this agreement include:

1. Provisions for the use of the facility (for the use of facility, owning, operating, and maintaining a facility which is on the USG land);
2. Rent amount and number of years the rental agreement can be renewed;
3. Primary term of the lease in years and any termination extension time frames;
4. Provision that all buildings and land improvement revert to the Board of Regents at the termination of the rental agreement;
5. Responsibility for maintaining the building and the source for payment of maintenance costs ; and,
6. Required coverage for insurance and the required documentation to show proof of insurance coverage.

   Examples of required insurance coverage include:
    1. Property insurance for fixtures, furnishings, equipment, and personal property which it used or stored on the premises;
    2. Tenant provides third party liability coverage for acts of its officers, and employees through the Georgia Tort Claims Act;
    3. Workers' Compensation Insurance;
    4. The Foundation's Employers' Liability Insurance;
    5. Commercial General Liability Insurance;
    6. Commercial Business Automobile Liability Insurance;
    7. Commercial Umbrella Liability Insurance;
    8. Builders Risk Insurance (consider the 30% completion rule - owned by the university or foundation);
    9. Property Insurance (fire and hazard property insurance);
    10. Loss of operating income insurance (Rental Interruption Insurance);
    11. Terrorist Insurance (resident halls and student unions); and,
    12. Sexual Assault Insurance;
7. Requirement that all subcontractors must provide proof of "Workers' Compensation Insurance" and a required coverage certificate.

   > "This is to certify that all contractors and subcontractors performing work or occupying the Premises are covered by their own workers' compensation insurance or are covered by the Landlord's workers' compensation insurance";
8. Requirement that all subcontractors must provide proof of "Employers' Liability Insurance" and a required coverage certificate.

   > "This is to certify that all contractors and subcontractors performing work or occupying the Premises are covered by their own Employers' Liability Insurance or are covered by the Landlord's Liability Insurance.";
9. Requirement that all subcontractors must provide proof of U.S. citizenship.

   > This is to certify that all contractors and subcontractors performing

work certify that have registered and participate in the federal work authorization program to verify information of all employees;[6]

10. Responsibility and payment for janitorial services, trash removal, termite and rodent protection;
11. Responsibility and payment for utilities and the cost of utilities;
12. Responsibility and payment for maintenance, repairs, and capital improvements;
13. Responsibility and payment for providing an engineering report of the physical and mechanical condition of the premises (usually every 5 years);
14. Defining the process and payment for tenant improvements;
15. Protecting the tax-exempt status of the debt instruments of the Landlord;
16. Requirements of any contract relating to the management of the premises by a party other than the tenant and meeting the requirement of 1997 IRS Revenue Procedure 97-13 regarding tax exempt bond financing; and,
17. Responsibility for and payment of all taxes and assessments.

Review:
In a review, it will be necessary to obtain a copy of the Rental Agreement and the annual renewal notice. Identify the reporting requirements including the names and addresses of the required receivers. This is usually the Vice Chancellor for Facilities at the Board of Regents, the USG institution President, the USG institution auxiliary services director, and the foundation president. It is recommended that copies of the annual renewal notice be sent to the USG institution chief business officer and to the foundation chief business officer. These renewals should be reported to the foundation's board of directors and the event recorded in the board minutes. Identify the timing requirements of each renewal. Review the document retention procedures.

Control Processes

Application for Recognition of Tax Exempt Status- Foundation

Overview:
Foundations that meet the requirements of Internal Revenue Code section 501(c)(3) are exempt from federal income tax as charitable organizations. In addition, contributions made to charitable organizations by individuals and corporations are deductible under Code section 170. The Foundation should have a unique employer identification number and an approved application for recognition of tax exemption with all supporting documents. Generally, foundations must notify the Service within 27 months from the date of their formation to be treated as described in section 501(c)(3) from the date formed.

[6] Official Code of Georgia; Volume 11; Title 13, Contracts; Article 3; 13-10-91; Verification of new employee information; applicability; rules and regulations.

Review:
Verify that the foundation has a unique employee identification number and an approved letter of recognition of tax exemption from the Internal Revenue Service.

Arbitrage Provisions – Foundation

Overview:
In general, arbitrage is realized when the yield on investments acquired with proceeds of a bond issue exceeds the interest paid on the bond issue. Qualified 501(c)(3) bonds lose their tax-exempt status if they are arbitrage bonds.

> For purposes of the IRS Code, the term “arbitrage bond” means any bond issued, or part of an issue, that any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly to acquire higher yielding investments, or to replace funds which were used directly or indirectly to acquire higher yielding investments. Reference information and forms for the Arbitrage Provisions are:
>
> IRC § 148(a).
> Form 8038-T
> Form 8038-R

Objective and Process:
Verify that the foundation is in compliance with the arbitrage provisions of section 148 of the Internal Revenue Code, particularly Section 148(f) of the Code. Because of the sophistication of arbitrage calculation, it is recommended to hire a professional firm acquainted with the calculation and can assist the staff to defend the results presented. This calculation is usually required every 5 years and at the completion of the project. It is recommended to have this calculation performed and reviewed annually to allow time for any needed adjustments.

Review:
Determine whether the § 501(c)(3) organizations has written procedures or guidelines for monitoring compliance with applicable arbitrage yield restriction and rebate requirements. In order to ensure compliance with the arbitrage requirements under § 148 of the Code (including the requirement to rebate excessive arbitrage earnings to the U.S. Treasury), procedures should be instituted that monitor investment activities that may result in arbitrage noncompliance.

Bond Proceeds Drawdown Requirements

Project Fund

"Proceeds of a bond issue deposited into a project fund to be used for a capital project may be invested at an unrestricted yield (a yield higher than the yield on the bonds) for three years if, on the date of issuance of the bonds, the issuer reasonably expects that:

1. within six months the issuer will incur a substantial binding obligation to a third party to expend at least 5% of the net sale proceeds on the capital project,
2. completion of the capital project and the allocation of the net sale proceeds to expenditures therefor will proceed with due diligence to completion, and
3. at least 85% of the net sale proceeds will be allocated to expenditures on the capital project within three years from the date of issue.

Debt Service Reserve Fund

Bond proceeds deposited into a Debt Service Reserve Fund may be invested at a yield higher than the yield on the Bonds if the amounts in the fund comply with size limitations imposed by Treasury regulations.

Rebate

Project Fund

An issuer does not have to rebate any arbitrage profits that it earns on the amounts deposited into a project fund if the issuer satisfies one of several spending exceptions. The most common exception is the two-year spending exception. The two-year exception applies to a bond issue that is primarily for a construction project as opposed to an acquisition project. In order to satisfy the two-year spending exception with respect to the funds on deposit in a project fund, the moneys (which includes interest earnings on the bond proceeds) must be spent in accordance with the following schedule:

(1) at least 10% of such moneys must be spent within six months,
(2) at least 45% of such moneys must be spent within one year,
(3) at least 75% of such moneys must be spent within 18 months, and
(4) 100% of such moneys must be spent within two years.

Debt Service Reserve Fund

Amounts on deposit in a Debt Service Reserve Fund generally will not be exempt from rebate."[7]

Unrelated Trade or Business Activity – Foundation & USG Institution

Overview:

Unrelated business activity is activity from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption.

[7] Mae Charles Barnes, Attorney at Law, Murray Barnes Finister LLP

Objective and Process:
Determine whether the bond issue remains in compliance with the modified private business tests, which limit to only 5% the amount of bond proceeds that may be used to finance unrelated trade or business use of bond-financed property.

Review:
In a review of the unrelated business activity, verify whether the foundation and USG institution maintained records documenting the unrelated trade or business use of their bond financed facilities. Review the unrelated Trade or Business Activity reports and records. Make a determination as to whether the bond issue remains in compliance with the modified private business tests, which limit to only 5% the amount of bond proceeds that may be used to finance unrelated trade or business use of bond-financed property.

Unrelated Trade or Business Income – Foundation & USG Institution

Overview:
Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption.

Objective and Process:
Determine whether Unrelated Business Income exists. For most organizations, an activity is an unrelated business (and subject to unrelated business income tax) if it meets three requirements:

1. It is a trade or business,
2. It is regularly carried on, and
3. It is not substantially related to furthering the exempt purpose of the organization.

“The Internal Revenue Code contains a number of modifications, exclusions, and exceptions to unrelated business income. For example, dividends, interest, certain other investment income, royalties, certain rental income, certain income from research activities, and gains or losses from the disposition of property are excluded when computing unrelated business income. In addition, the following activities are specifically excluded from the definition of unrelated trade or business:

- Volunteer Labor: Any trade or business is excluded in which substantially all the work is performed for the organization without compensation. Some fundraising activities,” such as volunteer operated silent auctions, “may meet this exception.
- Convenience of Members: Any trade or business is excluded that is carried on

by an organization described in section 501(c)(3) or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees. A typical example of this is a school cafeteria.

- Selling Donated Merchandise: Any trade or business is excluded that consists of selling merchandise, substantially all of which the organization received as gifts or contributions. Many thrift shop operations of exempt organizations would meet this exception."[8]

Review:
In a review of the unrelated business income, verify whether the foundation and USG institution maintains records relating to the unrelated trade or business income. Review the unrelated Trade or Business Activity reports and records for the PPV project. Make a determination as to whether unrelated business income exists. Determine if unrelated an "Unrelated Business Income Tax" return was filed.

<u>Engineering Report – Foundation & USG Institution</u>

Overview, Objective, and Process:
An engineering report is usually a requirement of the "Rental Agreement" and is highly recommended if the requirement is not present in the document. This engineering report is usually updated every five years. This is usually the landlord's or foundation's responsibility. If not stated in the rental agreement, establish a documented memorandum of understanding between the foundation and the USG institution as to which party accepts responsibility and payment for providing an engineering report pertaining to the physical and mechanical condition of the premises. The Foundation, as owner of the facility, will provide the Board of Regents an engineering report on the physical and mechanical condition of the facilities performed by an engineering firm acceptable to the foundation and Board of Regents. The report should include a capital asset replacement analysis and an evaluation of the adequacy of the monthly additional rent to fund the Maintenance, Repair, and Replacement Fund. The report should include recommendations as to any required adjustments to the maintenance program or to the funding amount for maintenance, repairs, and replacement. The report should be reviewed and any required adjustments to the monthly additional rent to fund the Maintenance, Repair, and Replacement Fund should be documented and included with the next annual renewal of the rental agreement.

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[8] IRS publication – Unrelated Business Income Tax Exceptions and Exclusions, http://www.irs.gov/charities/charitable/article/0,,id=123415,00.html

Review:
In a review, it will be necessary to obtain a copy of the prior engineering reports. Review the frequency of the engineering review determining if there is a five year frequency. Determine if there is an established agreement between the foundation and the USG institution as to which party accepts responsibility and payment for providing an engineering report of the physical and mechanical condition of the premises. Verify that a copy of the report has been provided to the Board of Regents. Verify the report was performed by an engineering firm acceptable to the Board of Regents. Review the capital asset replacement analysis and the evaluation of the adequacy of the monthly additional rent to fund the Maintenance, Repair, and Replacement Fund. Review the recommendations for adjustments to the maintenance program or to the funding amount for maintenance, repairs, and replacement. Review the documentation for any adjustments to the monthly additional rent to fund the Maintenance, Repair, and Replacement Fund.

Accounting for Ground Lease and Rental Agreement – Foundation & USG Institution

Overview and Objective:
Accounting entry postings for PPV projects is defined in the USG Business Procedures Manual. It is recommended to refer to Section 7 titled "Capitalization." An example of the postings for a PPV project can be found in Section 7.1.6 "Calculation of Leased Asset and Liability Amounts" examples 2 and 3.

For the foundation, it is recommended that the foundation request guidance from their external auditor on the proper posting of PPV transactions.

It is very important to coordinate the posting between the foundation and the USG institution to avoid the "double" counting of the PPV project in the State Comprehensive Financial Report (CAFR).

Process:
"Leases for PPV facilities are legally viewed as "Operating Leases" and should never be confused with Capital Leases. The relationship between the campus and the foundation is that of tenant and landlord. The terms and conditions guiding the campus occupancy are delineated in the Rental Agreement and are best described as a legal and financial leasehold interest.

For accounting purposes, the PPV projects are treated the same as a "Capital Lease." These projects are recorded in the foundation annual financial statement and each campus accounts for and records the lease payments. In calculating the amount that should be recorded, the USG institution and foundation working in conjunction with the BOR

Office of Fiscal Affairs utilizes a formula that takes in consideration rental obligations over the term of the bond. The financial and accounting reporting of the PPV projects by the foundation and campus are completed pursuant to general accepted accounting principles. Great care should be taken at all times not to confuse accounting principles and processes with real estate finance practices."[9]

Review:
In a review, obtain a copy of the foundation's annual audited financial report and verify that the postings agree with the procedures defined in the USG Business Procedures Manual. Contact the USG Office of Fiscal Affairs to confirm there are no accounting issues with the foundation as it relates to the State Comprehensive Financial Report (CAFR).

Contracts with Outside Vendors – Foundation & USG Institution

Overview and Objective:
Contracts with outside vendors (food service) that offer upfront incentives to assist in the construction or rebuild cost of the food courts need to be reviewed. These contracts usually have time commitments. The USG institution is required to have cash reserves that are equal to the total amount of the outstanding commitment.

An example is a five year contract with $500,000 upfront construction assistance and with the requirement of return of the 20% for each year the contract is not honored. The first year a $500,000 reserve is required, the second year a $400,000 reserve is required. All the reserves should be drawn at the end of the incentive period or the end of the 5th year. These reserve funds should be accounted for separately. Review the legal arrangement and determine if a contract or a qualified Management agreement is required.

Process:
"Multi-year contracts are permitted, up to a maximum of five (5) years, as long as there is no commitment of debt by the USG institution. An example would be a food services contract with a third party vendor where the vendor is paying the USG institution a commission based upon a percentage of sales.
Multi-year contracts that involve an agreement by the contractor to construct or renovate facilities and amortize that cost over the life of the agreement are permitted when effectively paid by reduction of the anticipated commission payments from the contractor

[9] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

to the USG institution if:

- The agreement has a clause permitting the USG institution to terminate prior to the contract end date; and,
- The USG institution has in reserve at all times the necessary cash funds to pay the full unamortized construction costs." [10]

Review:
In a review, obtain a copy of all contracts with outside vendors and verify the proper reserves and postings for upfront incentives that have been received.

Insurance – Foundation & USG Institution

Overview:
"Because state regulation forbids a state agency from paying rent for a facility it cannot use, the need for strong insurance coverage (property and casualty as well as business interruption) is amplified. This creates a credit risk that delays in completion could prevent payment by the System."[11]

Objective and Process:
Determining whether the required insurance has been purchased and is enforced.

Review:
In a review of the insurance coverage, verify whether foundation or USG institution maintained records relating to the purchase of and payment of premiums for the required insurance. Review the Ground Lease and Rent Agreement to identify the required insurance for the facility. Make a determination as to whether the required insurance is enforced and whether additional insurance is recommended to reduce risk exposure.

Monitoring Financial Performance-Cash Flow Projections-Foundation & USG Institution

Overview:
"As part of the approval process for each lease revenue bond project, campus management must present to the University System Office staff and the Board of Regents a cash flow projection for the project including its expected revenues, projected expenses

[10] The Business Procedures Manual, Section 3.1.1 Cost Limits and Related Processing Rules, paragraph 5.

[11] Moody's report July 2009 "As Lease-Backed Debt of the University System of Georgia Grows Rapidly, Moody's Looks to System and Campus Level Credit Factors" page 2, 5th paragraph – emphasis added

and debt service coverage for the life of the proposed bonds."[12] This analysis is typically for the 30-year life of the related debt and the analysis is updated annually for each project. This analysis is submitted to the University System Office of Real Estate and Facilities and to the Office of Fiscal Affairs for review and tracking.

At the time of the final payment, an analysis must be performed to transfer all reserve account balances to be used to make the final payment. It is understood that any remaining unspent funds revert to the school at the end of the lease.

Objective:
Determine if the associated project revenue is sufficient to cover the bond debt requirement and expected expenses for maintenance, repair and capital improvements.

Process:
"Every year, the campus working in conjunction with its foundation is required to submit to the Board of Regents, Office of Real Estate and Facilities the Finance Cash Flow information for each public private project. The Office of Real Estate and Facilities works closely with the Office of Fiscal Affairs. This data is critical to determine whether each project is performing as originally underwritten in the financing pro-forma by measuring the actual financial performance of the asset as compared to the original bond financing pro-forma. For those facilities that have an approved revised budget, the actual asset performance is also compared to the budget. The Office of Real Estate and Facilities also uses this information to evaluate the overall performance of the entire portfolio.

Each PPV should have an approved pro-forma that is signed during bond financing by the Chief Business Officer. Even when the bond financing includes multiple projects, the pro-forma contains numbers that reflect all projects combined as well as each individual project. This financial document addresses the deal structure from the campus and foundation perspectives as well as outlines the basic economics of the deal. The pro-forma focuses on revenue, expenses, and other costs associated with the project; delineating project revenues, expenses and rental and debt service payments throughout the life of the project. This document serves as the financial guide for ongoing operation and maintenance of each facility.

It is imperative that the campus and the foundation have a copy of the original signed pro-forma as well as any approved modifications and annual budget. The BOR Office of Real Estate and Facilities sends to each chief business officer a request for the cash flow

[12] Moody's report July 2009 "As Lease-Backed Debt of the University System of Georgia Grows Rapidly, Moody's Looks to System and Campus Level Credit Factors" page 7, 2nd paragraph

information in an approved data base. The CBO, working closely with the foundation, is charged with the responsibility for completing and certifying the data. Once submitted, the BOR Office of Real Estate and Facilities will select various projects for comprehensive review whereby the campus and foundation may be asked to address any areas of concern.

If necessary due to changed financial or operational conditions, each campus and foundation may generate a revised pro-forma that more closely reflects current operational and financial performance of the project. This revised pro-forma is to be reviewed and approved by the BOR and signed by the CBO and Foundation. It is imperative to remember that the original pro-forma is directly related to the financing achieved on the project. Therefore, any changes to the pro-forma must be consistent with or better than the financing pro-forma.

The Cash Flow Analysis details the following specific information:

- Actual Revenues and Expenses
- Lease payment including base Rental Payment and Repair and Replacement Reserve
- Total amount in Repair and Replacement Reserve Account.
- Capital Expenditures by interiors, systems and structure expenses.

As to expenses, the pro-forma typically provides only a lump sum estimate which is based on an amount per square foot, per bed or some other basic assumptions. While the campus has some latitude and discretion as to how the facility is operated, there should be some consistency in the reporting of the expenses for all PPV projects on the campus and within the portfolio. The same expense items should be carried in all of the projects that are of the same type. To the extent there are variations, these differences should be noted.

Generally, operating expense is defined as all current expenses paid or accrued for the operations, maintenance and repair of the facility for each project. Such expenses includes salaries, wages, and benefits of those individual directly responsible for the project, the cost of audits, utilities, ad valorem taxes, marketing expenses, insurance premiums, labor, cost of materials and supplies used for current operation, expenses for account services, shuttle services, public safety, landscaping/grounds, cable, telephone, technology and the physical plan.

Operating expenses do not include any reserve for renewals or replacements for extraordinary repairs or any allowance for depreciation. Excluded from operating expenses are any costs associated with repair or improvement that would be considered capital in nature.

It is critical that all expenses paid by the PPV project are consistent with the pro-forma

and annual budget. These financial documents dictate what expenses should be attributed to the project and paid by campus and foundation. The campus should not pay any expenses indicated as a foundation expense. Those expenses should be paid by the foundation. Great care must be taken to fully understand the pro-forma and annual budget for each project and to know which expenses should be paid by each party. The foundation is typically responsible for ongoing fees associated with the bond financing such as the Trustee, Foundation, BOR and Rating Surveillance Fees.
Due to the bond financing of each PPV project it is critical that the finances of each project are kept separate. Ideally, all expenses associated with a particular project should be a direct expense as compared to allocated or estimated expenses. While a campus may provide campus wide services, the expenses associated with a PPV project should be tracked separately.

Each PPV project is underwritten to be financially viable and stable. In event there are operational shortfalls, the project reserves (other than the Debt Service Reserve Fund) should always be used first to offset the deficit. Should the reserves not be enough, then a campus may have to look to other available resources. It is important to remember to seek help at the BOR Office of Real Estate and Facilities in order to address the potential that the project may be considered a non-performing asset. The shared experiences and resources of the entire System may be beneficial in addressing the finances and operation of the project."[13]

Review:
In a review of the cash flow projects, prepare the analysis comparing the actual revenues and expenses to the pro forma submitted at the bond closing. Review the analysis looking for a cash flow plan that demonstrates strong credit fundamentals. Pay particular attention for:

1. Escalations in future debt service requirements;
2. Weakening market demand for the facility;
3. Realistic expectation of enrollment growth for mandatory fee based revenue;
4. Realistic increases for student rental income for housing or food service revenue; and,
5. Variable rate debt exposure.

Variable Rate Debt

Variable rate debt presents additional review requirements. There is a potential difference between the annual debt service cost shown on the pro forma and the actual debt service

[13] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

paid in any particular year due to market conditions. This was evidenced during the credit crises of 2008-2009. Areas that will need additional review include interest rate risk, swap risk, liquidity availability risk, and acceleration of debt service repayment under the bank agreements. During the credit crises, these conditions created an environment in which the debt service cost could far exceed the revenue generated by the project. Consider reducing the amount of variable rate debt though refinancing which replaces the variable rate debt with fixed rate debt. The foundation and/or USG institution may contract with an independent investment advisory firm dedicated to tax-exempt issues. The firm's primary role and responsibility is to guide the management team at the foundation and USG institutions and the USO in making sound decisions regarding financial plans and strategies. The debt advisor is to provide fair, honest, transparent transactions that result in thoughtful, well-managed capital structures for the USG's benefit.

The USG Office of Fiscal Affairs reviews variable rate debt exposure, hedge agreements and coordination of counterparty exposure throughout the System. This will be incorporated in a credit review. "Component units (cooperative organizations or support foundations) of the Board of Regents of the University System of Georgia enter into the various interest rate swaps and swaption agreements with swap counterparties. The Board does not currently formally approve these hedging agreements, although System staff members review swap decisions made in conjunction with the issuance of variable-rate plans of finance for projects the Board approves."[14]

Monitoring Financial Performance – Rating Agencies – Foundation & USG Institution

"The financial performance of each and every Public Private Venture project matters and is critical to the entire stability and positive rating and standing of the entire portfolio. While each school's finance and operations are evaluated by the rating agencies, the continued success in financing various projects utilizing bond financing rest with the strength and performance of the entire portfolio and that of the system. Rating agencies look at the underlying financial wherewithal of the system to be able to back the individual schools financial obligations. Moreover, as the program continues to grow, rating agencies will evaluate the performance of the portfolio's projects located on the campus seeking bond financing.

Ongoing and direct dialogue between the campus and the rating agencies is encouraged and extremely important to the overall success of the USG PPV Program. Great care should be taken to address all questions and inquiries in a timely manner and with

[14] Moody's report July 2009 "As Lease-Backed Debt of the University System of Georgia Grows Rapidly, Moody's Looks to System and Campus Level Credit Factors" page 8, 5th paragraph

accurate data. It is important to remember that the rating agencies are underwriting and/or reviewing the financial strength and ongoing stability of the campus and its operations. A campus may view its abilities to manage and meet objectives with limited and severely decreased resources as extremely positive. On the other hand, the financial market may incorrectly consider this as a sign of deteriorating financial stability for the USG institution and/or the System.

Great care should be taken to provide a true and accurate account of the financial condition of the USG institution. The campus should refrain from editorializing individual efforts. If there is any doubt or confusion regarding a request, contact the BOR Office of Real Estate and Facilities or the Office of Fiscal Affairs. It is a required business practice to notify the BOR of any extraordinary requests, visits or discussions with any of the rating agencies. Many times the rating agencies will verify information obtained at the campus level with the BOR and other sources in the marketplace. Everyone engaged in the financing of the transactions at the campus, foundation and BOR must be able to communicate the same financial and operational picture. Therefore, accuracy and consistency of information and communication is of highest priority."[15]

Conflict of Interest– Foundation & USG Institution

Overview:
Recent high profile conflict of interest violations,[16] additional scrutiny by the public including the government (e.g., the new IRS form 990), additional regulations relating to research, and the pressures created by the current economic environment require additional guidance and clarification on policies and procedures pertaining to conflict of interest. For colleges and universities within the University System of Georgia, conflict of interest concerns are directed toward our employees and our institution's foundation's board of directors.

Objective:
The primary purpose of a conflict of interest policy is to protect the reputation of the USG institution and the foundation. The conflict of interest policy should address three primary principles:

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[15] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

[16] **The Chronicle of Higher Education;** Governing-Boards Association Sharpens Guidance on Conflicts of Interest; By Paul Fain; December 2, 2009
"Bernard L. Madoff and J. Ezra Merkin, who, as powerful trustees at Yeshiva University, steered many millions from the university's endowment to Mr. Madoff's Ponzi scheme. Then came the "clout" scandal at the University of Illinois at Urbana-Champaign, where trustees helped influence the admission of well-connected students."

1. Integrity – Individuals representing the USG institution should perform their work ethically with honesty, diligence, and responsibility. They should observe state and federal laws and the rules and regulations of the USG institution. They should not knowingly be party to any illegal activity, or engage in acts that are discreditable to the USG institution.
2. Objectivity – Individuals representing the USG institution should not participate in any activity or relationship that may impair or be perceived to impair their unbiased judgment. They should not accept gifts or favors that may impair or be perceived to impair their professional judgment and they must disclose all material facts known to them.
3. Confidentiality – Individuals representing the USG institution should be prudent in the use and protection of information acquired in the course of their duties and should not use information for any personal gain. This includes the use of information such as the use of investment or real estate information to gain financial wealth.[17]

Procedures:

Conflict of Interest Principles – Foundations

The USG institution's respective foundations have governing boards. The Association of Governing Board's (AGB) approved a set of principles that are intended to provide guidance on standards and practices for boards. The following is a summary of the twelve guiding principles.

1. "Each board must bear ultimate responsibility for the terms and administration of its conflict of interest policy." *It is the responsibility of the boards to manage and monitor their own governance standards.*
2. "Boards must be sensitive to both actual and apparent conflicts. If reasonable observers, having knowledge of all the relevant circumstances, would conclude that the board member has an actual or apparent conflict of interest in a matter related to the institution, the board member should have no role for the institution in the matter."
3. "When a board member is barred by actual or apparent conflict of interest from voting on a matter, ordinarily the board member should not participate in or attend board discussion of the matter, even if to do so would be legally permissible." *Boards should have documented procedures on how to handle conflicts of interest and should document the conflicts and any exceptions in the board meeting minutes.*
4. *Non-financial conflicts of interest need to be identified and reviewed. Examples*

[17] The Institute of Internal Auditors, Code of Ethics

are: the subjects of political gain, unmerited preference in hiring, student admission decisions, excessive executive compensation, and other conflicts that can compromise the integrity of the board.
5. *Boards should conduct thorough annual reviews of the conflict of interest policies, ensure adherence to the policy, and document any exceptions.*
6. *Board members should disclose annually through written documentation any personal actual or perceived conflict of interest.*
7. *Boards should have the highest standards in the policy and have financial thresholds for mandatory disclosures.*
8. *Board members should disclose all related actual or perceived conflict of interest to include interest involving members of a board member's immediate household.*
9. *Non board members should disclose annually all actual or perceived conflict of interest. This would include board committee members, officers of the organization, and highly paid staff members.*
10. *Boards should consider personal use of information obtained including investment advice.*
11. *Boards should consider if investment committees are held at a higher standard.*
12. *Boards should adopt the recommendations and be consistent with state and federal law requirements.*[18]

The foundations' boards need to take ownership, assign reviews, and use an audit committee (or similar structure, e.g., "Conflicts Committee") to monitor compliance with the conflict of interest policy. Board members should maintain a sense of integrity and ethical awareness in their actions.

Review:
"The responsibilities of each party or entity engaged in the operation of a PPV project are clearly delineated in each project's bond financing legal documents and the associated agreements. These documents include the ground lease and the rental, loan and trust indenture agreements. The typical PPV transaction involves the:

- campus who is responsible for paying the lease payments pursuant to a Rental Agreement, managing revenues and expenses and handling the repair and maintenance of the facility;
- foundation who receives the rent and pays the debt service payment;
- trustee who holds all of the escrow accounts and receives the debt service

[18] AGB Board of Directors' Statement on Conflict of Interest, http://www.agb.org/news/2009-12/agb-board-directors-statement-conflict-interest

payment; and,

- Board of Regents who serves as adviser, facilitator and advocate for the campus and foundation in addition to being the legal party to and signer of the ground and rental agreements.

For the majority of decisions, the campus and foundation is in one accord and focused on making decisions that are best for the welfare of the students, consistent with the campus mission and strategy, as well as supporting the overall goals of the Board of Regents. Nevertheless, occasions may arise whereby the role representing the campus may be in direct conflict with the responsibilities associated with running the foundation or visa-versa."[19]

The chief business office of a USG institution has fiduciary responsibility to the USG institution and to the tax payers of the State of Georgia. The director of the foundation has fiduciary responsibility to the foundation. Although both roles exist for the benefit of the USG institution, there may be issues that are diverse in this common objective. These differences may be perceived or actually conflicts of interest. This can lead to negative publicity and additional scrutiny by the public and the government regulators. This perceived or actual conflict of interest could result to legal actions, fines and penalties, Lawsuits may be filed for actual or perceived conflicts of interest for improper negotiation of contracts and/or the improper use of assets. The financial impact includes loss of gift revenue due to unfavorable public opinion and excessive payments due to unethically negotiated contracts.

It is recommended that the there is a segregation of duties between the positions of Chief Business Officer of the University and Chief Administrator for the Foundations. The purpose of this segregation of duties is to prevent a perceived or actual conflict of interest. These two positions should be held by two different individuals.

Other Documents

The other documents in this section have not been discussed in prior sections. In this section is a list of the documents that have a required filing or it is recommended to review periodically. The filing requirement is presented beside the document's name. A brief description is presented after each document name.

Articles of Incorporation and By Laws (written at time of creation):
The Articles of Incorporation actually creates (form) and brings into existence the foundation. The Articles of Incorporation are the rules that govern the management of a

[19] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

foundation and its associated Limited Liability Corporations (LLC). These articles must be filed with the Secretary of State of Georgia for the foundation to be given legal recognition. Each LLC will have its own Articles of Incorporation which are independently filed with the state. This document or charter defines the name, purpose, and establishes the characteristic of being a not-for–profit. The Articles of Incorporation should be reviewed annually by the board of directors and officers of the foundation to verify that the articles are being adhered to as to the foundation's purpose and management. It is recommended that this annual review be documented in the board minutes with an affirmation statement confirming the articles are being followed. Additional information can be obtained at the Secretary of State's web site: http://corp.sos.state.ga.us/business/.

Application for filing for a 501(c)(3) (once at the time of creating the foundation):
The IRS Form 1023, "Application for Recognition of Exemption", is used to apply for recognition by the IRS of exempt status under section 501(c)(3) of the Code. Refer to the instruction for procedures on how to complete the form. The application must be complete and accompanied by the appropriate user fee. Frequently asked questions about applying for exemption and completing the Form 1023 are available on the IRS web site. The organization should also request an employer identification number. The IRS Form SS-4, "Application for Employer Identification Number", and its related instructions are used to obtain an Employee Identification Number (EIN). The EIN can also be obtained using the telephone, by calling 1-800-829-4933, or by applying online. Organizations will not be treated as described in section 501(c)(3) unless they notify the IRS by applying for recognition of section 501(c)(3) status. A charitable organization must make available for public inspection its approved application for recognition of exemption with all supporting documents and its last three annual information returns. The organization must provide copies of these documents upon request without charge, other than a reasonable fee for reproduction and copying costs. Additional information can be obtained at the IRS web site: http://www.irs.gov/charities/article/0,,id=96109,00.html

IRS Tax Exemption "Determination" Letter (annual review)
The exemption application process provides information for the IRS to issue a ruling on the foundation's exempt status under section 501(c)(3). The foundation will receive an acknowledgment from the IRS in form of a letter. Foundations are frequently asked to provide a tax-exempt "determination" letter to prove its status as a "tax-exempt" or charitable entity. For example, applications for grants from a private foundation or a charitable organization generally require this information as part of the application process. In addition, donors frequently ask for this information as substantiation that the donor's contribution is tax deductible. It is recommended to let the IRS know of any changes in the purpose, character, and method of operations.

IRS Form 990 (annual filing)

The IRS Form is titled "Return of Organization Exempt From Income Tax." The Form 990 is an annual reporting return that certain federally tax-exempt and nonprofit organizations must file with the IRS. Most of the USG Institutions are required to submit this form annually. It provides information on the filing organization's mission, programs, and finances. The Form 990 provides the public and tax authorities with financial information about a given organization. This form is used by government agencies to prevent organizations from abusing their tax-exempt status. The form requires significant disclosures on governance and boards of directors. The Form 990 disclosures do not require but strongly encourage nonprofit boards to adopt a variety of board policies regarding governance practices such as adoption of whistleblower and document retention policies. The IRS has indicated they will use the Form 990 as an enforcement tool, particularly regarding executive compensation. IRC 6104(d) regulations state that an organization must provide copies of its three most recent Form 990's to anyone who requests them. A PDF copy can often be found online at sites such as Foundation Center's 990 Finder, Guidestar.org and the National Center for Charitable Statistics. Additional information can be obtained at the IRS web site: http://www.irs.gov/charities/index.html.

IRS Form 990 Schedule (k): (filed annually)

Beginning with the 2009 tax filings year, any 501(c)(3) entities that have more than $100,000 of outstanding tax-exempt bonds that were issued after December 31, 2002 are required to complete IRS Schedule K in the Form 990. Schedule K addresses compliance in the following areas:

- Use of tax-exempt bond proceeds;
- Private business use issues;
- Management practices and policies to ensure compliance with federal regulations; and,
- Arbitrage rebate compliance.

The IRS is concerned that the 501(c)(3) bonds have a risk of noncompliance due to inadequate record retention, failure to pay rebate, excess private use of facilities, and inadequate compliance monitoring. If the IRS finds noncompliance, the borrower may face financial penalties and a review of its bond's tax exempt status.

Georgia State Registration (annual filing with fee):

"Each business entity registered or filed with the Office of Secretary of State is required to file an annual registration. Filing the annual registration provides a current record of an entity's management structure, correct mailing address, and registered agent's name and address. In addition, entities that do not timely file annual registrations, together with all required fees, may be subject to administrative dissolution or revocation of their authorization to transact business in this State."[20] Additional information can be obtained at the Secretary of State's web site: http://www.sos.ga.gov/corporations/ar_terms.htm.

Memorandum of Agreement (reviewed annually)

"The relationship that a USG institution has with its affiliated organization or organizations must be defined by a memorandum of agreement that describes each party's roles and responsibilities.

Minimally, the memorandum of agreement must address the affiliated organization's authority and responsibilities with regard to the following:

1. Solicitation of gifts, donations and grants;
2. Liability;
3. Adequate capitalization for activities;
4. Evidence of satisfactory insurance coverage;
5. Use of USG institutional facilities, programs and services subject to established policies and procedures;
6. Expense reimbursement;
7. Use of the USG institution's name, symbols and trademarks;
8. Disposition of the affiliate organization assets upon dissolution;
9. Compliance with internal revenue code and state law;
10. Use of generally-accepted accounting principles;
11. Submission of an independent annual audit report and financial statements;
12. Elimination of conflicts of interest concerning USG institutional employees and in the relationship with the USG institution; and,
13. Disclosure of funds and other items of value received by the affiliated organization and assurance that funds intended for USG institutional accounts are properly deposited."[21]

Annual Audit by a Certified Public Accountant (annual requirement):

An annual audit of the financial statements by a Certified Public Accounting firm is a requirement for bonds sold on the open market. The CPA firm is an independent entity that attests to the fairness, accuracy, completeness, and reliability of the financial reports being presented by the foundation. The CPA firm must be technically competent to be able to express its professional opinion to assure outsiders that the financial statements prepared by management disclose all relevant information and provide a fair representation of the foundation's and or LLC's financial position and operating results.

Qualified Management Contract: (at the time of contracting for services)

The private use of a tax exempt bond-financed facility must be monitored. All

[20] Secretary of State for the State of Georgia; http://www.sos.ga.gov/corporations/ar_terms.htm

[21] University System of Georgia, Business Procedures Manual; 17.2 Memorandum of Agreement http://www.usg.edu/business_procedures_manual/bpm-sect17.pdf

management contracts associated with a PPV project must be reviewed and approved by bond council. The private use of a tax exempt bond-financed facility can be created by a management contract based, in whole or in part, on sharing of net profits from operation of the facility. Excessive private use is generally not permitted. Under special circumstances limited use in trade or business is permissible. The rationale is that excessive private use provides a private party with a benefit intended for the public. A Qualified Management Contract is the management, service or incentive payment contract for a private company to provide services involving all or a portion of, or any function of, a facility. This includes bookstores, dining and parking facilities. When preparing an RFP for services for a PPV project include language indicating that the contract must comply with Rev. Proc. 97-13. The IRS monitors post-issuance compliance through audits and by reviewing the Form 990. [22] Additional information can be obtained at the IRS web site: http://www.unclefed.com/Tax-Bulls/1997/Rp97-13.pdf.

<u>Notification of Third-Party Audits: (immediate upon notification)</u>
"Third-party audits may be conducted by various audit agencies. These agencies may include, but are not limited to:

- Defense Contract Audit Agency
- Georgia Department of Administrative Services Process Improvement
- Georgia Student Finance Commission
- Health and Human Services (HHS)
- Internal Revenue Service
- Medicare and Medicaid Audits
- Office of Inspector General (Georgia)

It is the responsibility of local institution officials, either the campus auditor or, if none exists, the chief business officer (CBO), to be cognizant of third-party audits and associated issues. Institutional management shall notify the ICA, OIAC, and the Vice Chancellor for Fiscal Affairs of any third-party audits and shall provide a copy of a final audit report." [23]

Additionally, the CBO should contact the USG Office of Real Estate and Facilities, the USG Office of Fiscal Affairs, and the Office of Internal Audit and Compliance should any PPV project become the subject of a third-party audit.

[23] University System of Georgia, Business Procedures Manual; 16.1.4 Third-Party Audits http://www.usg.edu/business_procedures_manual/bpm-sect16.pdf

USG Institution Documents and Control Process

Documents

The following are the documents for the USG institution. A section on each can be found in the Foundation Documents and Control Processes.

• Ground Lease – Foundation & USG Institution (refer to page 17)
• Rental Agreement - Foundation & USG Institution (refer to page 19)

Control Processes

Unrelated Trade or Business Activity – (refer to page 23)
Unrelated Trade or Business Income – (refer to page 24)
Engineering Report – (refer to page 25)
Accounting for Ground Lease & Rental Agreement – (refer to page 26)
Contracts with Outside Vendors – refer to page 27)
Insurance – Foundation and University/College – (refer to page 28)
Monitoring Financial Performance - Cash Flow Projections – (refer to page 28)
Monitoring Financial Performance – Rating Agencies – (refer to page 32)

Conflict of Interest

Overview:
Recent high profile conflict of interest violations,[24] additional scrutiny by the public including the United States government (e.g., the new IRS form 990), additional regulations relating to research, and the pressures created by the current economic environment require additional guidance and clarification on policies and procedures pertaining to conflict of interest. For colleges and universities within the University System of Georgia, conflict of interest concerns are directed toward our employees and our USG institution's foundation's board of directors of an institution's foundation.

Objective:
The primary purpose of a conflict of interest policy is to protect the reputation of the USG institution and the foundation. The conflict of interest policy should address three primary principles:

1. Integrity – Individuals representing the USG institution should perform their work ethically with honesty, diligence, and responsibility. State and federal laws

[24] **The Chronicle of Higher Education;** Governing-Boards Association Sharpens Guidance on Conflicts of Interest; By Paul Fain; December 2, 2009

and the rules and regulations of the USG institution should be observed. Individuals should not knowingly be party to any illegal activity, or engage in acts that discredit the USG institution.

2. Objectivity – Individuals representing the USG institution should not participate in any activity or relationship that may impair or be perceived to impair their unbiased judgment. They should not accept gifts or favors that may impair or be perceived to impair their professional judgment and they must disclose all material facts known to them.
3. Confidentiality – Individuals representing the USG institution should be prudent in the use and protection of information acquired in the course of their duties and should not use information for any personal gain. This includes the use of investment or real estate information to gain financial wealth.[25]

Procedures:

Conflict of Interest Principles – Employees

The underlying principles of a conflict of interest policy should be followed by everyone in their normal course of doing business.

> "The University System of Georgia is committed to the highest ethical and professional standards of conduct in pursuit of its mission to create a more educated Georgia. Accomplishing this mission demands integrity, good judgment and dedication to public service from all members of the USG community. The statement of Core Values and Code of Conduct are intended to build, maintain and protect public trust, recognizing that each member of the USG community is responsible for doing their part by upholding the highest standards of competence and character."[26]

References on conflict of interest are in the agency's Policy Manual, specifically in sections 8.2.13.2 titled "Appearance of Conflict of Interest," 8.2.15 titled "Outside Interest," and 8.2.20 titled "University System of Georgia Ethics Policy."

Management should increase the awareness of conflict of interest issues and concerns. This would include:

1. Are employees aware of conflict of interest policies?
2. How is a potential or actual conflict of interest reported?
3. How is a potential or actual conflict of interest managed?
4. How are the USG institutions tracking and managing their conflict of interest program?
5. Are employees aware of the consequences of violations to our conflict of interest policy?

[25] The Institute of Internal Auditors, Code of Ethics

[26] Board of Regents Policy Manual, 8.2.20 University System of Georgia Ethics Policy, 8.2.20.1 Introduction

Review:

"The responsibilities of each party or entity engaged in the operation of a PPV project are clearly delineated in each project's bond financing legal documents and the associated agreements. These documents include the ground lease and the rental, loan and trust indenture agreements. The typical PPV transaction involves the:

- campus who is responsible for paying the lease payments pursuant to a Rental Agreement, managing revenues and expenses and handling the repair and maintenance of the facility;
- foundation who receives the rent and pays the debt service payment;
- trustee who holds all of the escrow accounts and receives the debt service payment; and
- Board of Regents who serves as adviser, facilitator and advocate for the campus and foundation in addition to being the legal party to and signer of the ground and rental agreements.

For the majority of decisions, the campus and foundation is in one accord and focused on making decisions that are best for the welfare of the students, consistent with the campus mission and strategy, as well as supporting the overall goals of the Board of Regents. Nevertheless, occasions may arise whereby the role representing the campus may be in direct conflict with the responsibilities associated with running the foundation or visa-versa."[27]

The chief business office of a USG institution has fiduciary responsibility to the USG institution and to the tax payers of the State of Georgia. The director of the foundation has fiduciary responsibility to the foundation. Although both roles exist for the benefit of the USG institution, there may be issues that required different response depending upon whether you represent the USG institution or the foundation. These differences may be perceived or actually conflicts of interest and may lead to negative publicity and additional scrutiny by the public and the government regulators. Lawsuits may be filed for actual or perceived conflicts of interest, improper negotiation of contracts and/or the improper use of assets. The potential resulting financial impact includes fines, penalties and loss of gift revenue due to unfavorable public opinion and excessive payments due to unethically negotiated contracts.

It is recommended that there is segregation of duties between the positions of Chief Business Officer of the University and Chief Administrator for the Foundations. The purpose of this segregation of duties is to prevent a perceived or actual conflict of interest. These two positions should be held by two different individuals.

[27] Director of Real Estate Ventures – Asset Management Office of Real Estate and Facilities, Board of Regents of the University System of Georgia

Appendix

Exhibit I - A History of the USG PPV Program

History of the USG PPV Program

In the past, the construction of USG facilities and buildings were usually funded with General Obligation (GO) bonds issued by the state of Georgia. During the early 2000s, the Georgia General Assembly funded only college or university construction projects that were to be used for classroom, libraries, or research laboratories. This left a funding void for student housing, food courts, parking lots, recreation facilities, student unions and stadiums. The USG looked to the PPV Program to fill this void.

Up until the early 2000s, the construction of USG facilities with independent revenue streams (e.g., mandatory student fees, parking fees, student housing rentals, or food service revenue) typically was financed through the issuance of GO bonds approved by the General Assembly. The state, in turn, would loan funds generated by the issuance of the GO bonds to the USG for capital projects. USG paid the annual debt service on these loaned funds through reduced appropriations. The reduced appropriations were replaced with the project-generated revenue, i.e., student fees, rental income, food service revenues, etc.

Since 2001, USG construction projects with independent revenue streams typically have been financed through the USG PPV Program. Unlike GO bonds, the construction of USG facilities through the USG PPV Program does not require General Assembly approval as the PPV debt is assumed by the private foundation. PPV financing is not subject to the constraints associated with the constitutional ceiling on state indebtedness. The State Constitution places a ceiling on state indebtedness by limiting general obligation bond debt service payments to 10% of net treasury receipts for the prior fiscal year. The liability for the PPV bonds payable is recorded on the private foundation's balance sheet. The public institution records a lease purchase obligation.[28]

The current economic recession offers some incentives to expand the use of PPV projects. Such incentives include:

- Low interest rate environment resulting in very favorable financing alternatives;
- Reduced construction costs as much as 20% to 30% due to the current low demand for construction services; and,
- Economic stimulus to the Georgia economy.

[28] Georgia Department of Audits and Accounts

Exhibit II - Rental (Lease) Agreement Renewal Notice

[PLACE ON INSTITUTION LETTERHEAD]

DATE

__________ Foundation
Street Address70 Washington Street
City and State and Zip Code
Attention: ____________

RE: Option to Renew Rental Agreement: **SCHOOL NAME**
Project Name: **Name of Project**
Project Type: **Type (Parking, Housing, Student Center, etc.)**
Total Units/
Measurements: **Spaces, Beds, Square feet, Seats. etc.**
Option Period: **__of____**
Financing Source: ________

Dear __________:

Notice is hereby given of our desire to renew the Rental Agreement dated _______, between _____________Foundation and the Board of Regents of the University System of Georgia pursuant to Article ____thereof for an additional one (1) term beginning ______________ and monthly payments will be made on ___________1st each month in the amount of _______ for a total of _____________.

Sincerely,

NAME OF SCHOOL

Print:_______________________________________

By:____

Title:_______________________________________
President of College or Chief Business Officer

Copy:
Cynthia Robinson Alexander
Director of Real Estate Ventures-
Asset Management
Board of Regents
Office of Real Estate and Facilities
270 Washington Street, SW
Atlanta, Georgia 30332-1450

Exhibit III - Municipal Securities Rulemaking Board (MSRB) – Electronic Municipal Market Access (EMMA) - Continuing Disclosure Submission

FAQs About MSRB's Continuing Disclosure Submission Process

Questions and answers about how annual/periodic and event filings from municipal bond issuers will be collected by the MSRB for posting on EMMA.

Q: When will the MSRB start to disseminate continuing disclosure information on the EMMA website?
A: EMMA will disseminate continuing disclosure documents beginning July 1, 2009.

Q: What rule requires issuers and obligated persons to submit annual financial information and other continuing disclosure documents for public access on EMMA?
A: Continuing disclosure submissions to EMMA are based on Securities Exchange Act Rule 15c2-12, using simplified procedures recently adopted by the SEC. Under this rule, issuers and obligated persons are required to enter into contractual agreements to disclose annual financial information.

Q: When does the requirement to submit continuing disclosure documents to EMMA become effective?
A: The revised SEC Rule 15c2-12 becomes effective July 1, 2009.

Q: Municipal bond issuers historically have submitted continuing disclosure documents to Nationally Recognized Municipal Securities Information Repositories, known as NRMSIRs. Must issuers submit continuing disclosures to the NRMSIRs?
A: Not after July 1, 2009. Revised Rule 15c2-12 removes the need for issuers and obligated parties to file continuing disclosure documents at the NRMSIRs. Filing with EMMA will be sufficient to provide necessary disclosure to the public.

Q: How will continuing disclosures for offerings underwritten before July 1, 2009 be treated?
A: According to revised Rule 15c2-12, disclosure agreements in effect before July 1, 2009 to send continuing disclosure to multiple NRMSIRs will be satisfied making submissions to the EMMA website, according to revised Rule 15c2-12.

Q: What types of continuing disclosure can be made to EMMA?
A: EMMA accepts two broad categories of continuing disclosure: annual/periodic filings such as comprehensive annual financial reports, and event filings that report material events.

Q: What material events must be disclosed?
A: Material events that must be disclosed under a continuing disclosure agreement that meet requirements of Rule 15c2-12 include the following, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of securities holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities; (11) rating changes; and (12) failure to provide annual financial information as required.

Q: Can an agent or obligated person submit continuing disclosure documents on behalf of an issuer?
A: Yes.

Q: How will an agent or obligor register on behalf of an issuer to EMMA?
A: The registration process for submissions will be done through the MSRB's Gateway, a secure access point for all MSRB applications. When a party registers as a designated agent or obligor of an issuer, the issuer will receive an e-mail from MSRB asking for confirmation that the party is authorized to act on the issuer's behalf.

Q: What happens next?
A: Once the user receives a user ID and password, he or she will log into EMMA to submit continuing disclosures, following self-explanatory screens and the *EMMA Dataport Manual for Continuing Disclosure Submissions.*

Q: Can one party submit continuing disclosures for several issuers?
A: Yes. Issuers can designate a single party as their agent for the submission of continuing disclosures to EMMA, and agents can act on behalf of multiple issuers.

Q: How will submitters input documents and other information into EMMA?
A: EMMA will have two interfaces for accepting input: a set of web-based input screens accessible by web browser for accommodating individual submissions, and a secure, authenticated computer-to-computer connection for batch submissions. The submitter may elect to use either or both interfaces.

Q: Can underwriters or their agents make multiple submissions to EMMA at one time?
A: Yes. The computer-to-computer interface will support submission of one or many documents (and associated indexing information) continuously.

Q: What does it cost to submit documents to EMMA?
A: There is no charge to submit continuing disclosure documents to EMMA.

Q: How will a submitter associate a particular continuing disclosure submission to a particular security?
A: The EMMA submission screens will provide the opportunity for the submitter to provide indexing information for submissions. This information will also allow the public to search and retrieve continuing disclosures for a specific municipal securities issue.

Q: Does a submission need to list every CUSIP that is associated with the bond issue?
A: Not necessarily. At the submitter's request, EMMA will display all issues of an issuer. The submitter may designate those CUSIP numbers within an issue that are associated with a particular continuing disclosure. For example, a submitter may specify a six-digit CUSIP number ("issuer CUSIP") and state that all nine-digit CUSIPs of that issuer CUSIP are related to a filing. A submitter may also group several issuer CUSIPs together, if they are all associated with a municipality or obligor. The user-defined group of CUSIP numbers can be reused for later submissions.

Q: How long does it take for continuing disclosure information to appear on EMMA after submission?
A: EMMA will generally make all submitted documents available to the public within about an hour of submission.

Q: Will the MSRB offer training on continuing disclosure submissions?
A: Yes. MSRB will offer training "Webinars," on a schedule to be determined.

Q: Does the EMMA website provide notification to submitters when a document such as annual financial report is due to be posted?
A: No.

Q: What about notification to submitters when a document has been posted?
A: EMMA will notify a submitter when a document has been posted.

Q: Does the EMMA website require a particular format for submitted continuing disclosure documents?
A: Continuing disclosure documents must be submitted to the EMMA website as portable document format (PDF) files that permit the document to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. Any document submitted to the MSRB on or after January 1, 2010 must also be word-searchable (without regard to diagrams, images and other non-textual elements).

Q: Can a user submit paper documents to EMMA?
A: No, EMMA will accept documents only as electronic PDF files. [29]

[29] Municipal Securities Rulemaking Board (MSRB); Electronic Municipal Market Access (EMMA); http://emma.msrb.org/

Exhibit IV - Project Annual Schedule of Events

University System of Georgia
Public Private Venture Program
Project Origination and Construction
Schedule of Events

Primary Source	Responsible Person	Projected Completion Date	Actual Completion Date	Activity
campus				**Occupancy / Post Construction Phase**
				Discuss Bond Pro-forma, building maintenance, and capital improvements with USG staff. A. Annual Updates of the following: 1. Institutional Pro-forma a. Variance from Final Pro-forma b. Variance from Prior Pro-forma 2. Foundation Pro-forma a. Variance from Final Pro-forma b. Variance from Prior Pro-forma B. Annual Audits with attest letter C. filing the IRS 990 tax return D. Annual Fee Request E. Operating Reports (twice/year)
campus				**5 year engineering study**

Source for Exhibit IV – Project Annual Schedule of Events - Edited document – document originally received from the University System of Georgia Office of Real Estate and Facilities

Exhibit V - Example Authorization to draw funds from the Bond Trustee

Letter from the USG institution Foundation to the Bond Trustee

(date)

Primary Contact and Relationship Manager at the Bond Trustee
Bond Trustee's name
Bond Trustee's address

RE: reference the Trust (Bond) Indenture Agreement with date
Example:
Georgia Higher Education Facilities Authority
(a public body corporate and politic created and existing under the laws of the State of Georgia)
and
Wells Fargo Bank, National Association
(a banking association organized and existing under the laws of the United States of America)
Trust Indenture
Dated as of November 1, 2008
Relating to $100,000,000
Georgia Higher Education Facilities Authority Revenue Bond
(USG Real Estate Foundation I, LLC Project)

Dear (name Primary Contact and Relationship Manager at the Bond Trustee):

This letter services as authorization and approval to draw funds from the (Projects Name) project fund held with Wells Fargo Bank as Bond Trustee. These funds are requested to pay for construction expenses in the amount of $100,000.00. The follow are the "Statement of Responsibility" for each authorized individual with signatures.

1. Construction Manager: I have reviewed the attached invoices and confirm that the materials and services have been used, applied, or performed at the quantities, quality and standards required by the construction contract, agreements as amended and with the construction requirements for the State of Georgia.
   Signature ____________________________________ date______________________

2. Project Manager: I have reviewed the attached invoices and confirm that the materials and services have been received and performed at the quantities, quality and standards required by the contract.
   Signature ____________________________________ date______________________

3. CBO: I have reviewed the attached invoices and tested and reviewed the document for reasonableness and monitored the expenses to the project budget.
   Signature ____________________________________ date______________________

Page 1 of 2

4. Facilities Manager: I have reviewed the attached invoices with the Project Manager to test the invoice to confirm that the materials and services have been received and services have been received and performed at the quantities, quality and standards required by the contract. I have tested and reviewed the document for reasonableness and monitored the expenses to the project budget.
Signature ________________________________ date____________________

5. Authorized Institutional Representative: Based on the approval and authorizations provided above I direct Wells Fargo Bank to process these construction expenses in the amount of $_____________ making a payment to:
Name of Construction Company
In care of : Name of Representative at Construction Company
Address of company for checks or wire transfer instructions

Sincerely,

Notice:

Attach a "Certificate and Requisition for Payment" that can be found as an exhibit in the Trust Indenture.

Source for Exhibit VI – Example Authorization to draw funds from the Bond Trustee – information received during interviews with staff members of the University System of Georgia Office of Real Estate and Facilities

References

List of total bond balance outstanding by fiscal year end.
http://www.usg.edu/ref/real_ventures/docs/usg_debt_capacity11-09.pdf

USG PPV Program
http://www.usg.edu/ref/real_ventures/docs/ppv_program11-09.pdf

List of USG PPV projects by institution
http://www.usg.edu/ref/real_ventures/docs/USG_Public_Private_Ventures030110.pdf