



RESEARCH CORPORATION
of the UNIVERSITY OF GUAM

RESOLUTION NO. 14-02

**RELATIVE TO ADOPTING THE OPERATING AGREEMENT BETWEEN THE
RESEARCH CORPORATION OF THE UNIVERSITY OF GUAM
AND THE UNIVERSITY OF GUAM**

WHEREAS, The Research Corporation of the University of Guam (RCUOG) was established by Public Law 32-114 as a public corporation; and

WHEREAS, the purpose of the RCUOG includes the promotion of assigned educational, scientific and literary pursuits of the University of Guam's grants and contracts through aiding in the development of study, training, and research and to furnish the means and methods to do so; and

WHEREAS, the Operating Agreement between the RCUOG and the University of Guam sets forth the terms and conditions under which the RCUOG may operate as a public corporation of the University of Guam pursuant to Guam Public Law 32-114, and which is appended to this resolution as Attachment A; and

WHEREAS, The term of the Operating Agreement shall be for five (5) years upon the signing of the Agreement by the parties, unless sooner terminated as provided in the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby adopts the Operating Agreement between for the Research Corporation of the University of Guam and the University of Guam;

Adopted this 8th day of August, 2014.

Dr. Robert A. Underwood, Chairperson

ATTESTED:

David O'Brien, Treasurer

OPERATING AGREEMENT BETWEEN THE UNIVERSITY OF GUAM BOARD OF REGENTS AND THE RESEARCH CORPORATION, UNIVERSITY OF GUAM

This Agreement is made and entered into by and between the University of Guam Board of Regents (Regents) and the Research Corporation, University of Guam (“RCUOG”). The term of this Agreement shall be for five (5) years upon the signing of the Agreement by the parties, unless sooner terminated as herein provided.

I. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions under which the RCUOG may operate as a public corporation of the University of Guam (“University” or “UOG”) pursuant to Guam Public Law 32-114. In entering into this Agreement, the Regents find that certain functions important to the mission of the University, which include but are not limited to the promotion of assigned educational, scientific and literary pursuits of grants and contracts, are more effectively accomplished by the use of a research corporation rather than through the usual governmental processes and procedures.

II. FUNCTIONS

A. RCUOG

Notwithstanding any other provision of law, rule or regulation, the RCUOG is authorized to conduct the following activities:

- (a) to create, adopt, amend, and repeal bylaws governing the conduct of its business and the exercise of the powers and performance of duties granted to it or imposed upon it by law;
- (b) to enter into and perform such contracts, leases, cooperative agreements, grants or other transactions on behalf of the University, as may be necessary to facilitate the conduct of the authorized activities described herein;
- (c) to buy, sell, lease, rent, hold, maintain, use, and operate any property, real, personal, or mixed, tangible or intangible, in accordance with the conditions under which it was received and under the purposes of the RCUOG;
- (d) to submit each year for the approval of the Board of Directors an annual budget; such budget will include projected income, including indirect/facilities and administrative revenue, and a cost of operating expenses of the RCUOG, as well as the distribution plan of the net proceeds for the University’s use, which shall include a reasonable corporate reserve; the allocation of indirect/facilities and administrative cost will be determined by the Board of Directors, and following UOG-BOR Resolution 08-40;
- (e) to receive through University policies and procedures, by gifts, grants, devises, bequests, or otherwise from private or public sources, any property, real, personal, or mixed, intangible or tangible, absolutely or in trust, to be sued and disposed of, either the principal or the income therefrom, in accordance with the conditions under which it was

received; *except*, that no gift to the RCUOG shall be accepted *unless* approved or confirmed by the RCUOG Board of Directors;

- (f) to facilitate multi-year contracts;
- (g) to have a corporate seal;
- (h) to sue and to be sued in its own name, and to indemnify the University against losses incurred specific to that activity;
- (i) to serve as trustee or beneficiary under terms of any gift, indenture, or will;
- (j) to apply for, take out, receive by purchase or gift, hold, administer, and dispose of copyrights, patents rights, licenses, assignments of inventions, discoveries, processes, and other property, rights or interest therein, the income thereof, absolutely or subject to such conditions or trusts as may be attached thereto or be imposed thereon, and to obligate itself to perform and execute any and all such conditions or trusts in coordination with UOG's Intellectual Property Policy;
- (k) to conduct research, studies, experiments, investigations, and tests in all fields of knowledge; to promote and develop the scientific and commercial value of inventions, discoveries, and processes; and to make published, and distribute the results thereof;
- (l) to do any and all other acts reasonably necessary to carry out the objectives and purposes of the RCUOG and the University, as approved by the University and the RCUOG Board of Directors;
- (m) to coordinate and correlate activities and projects of the RCUOG with the work of government of Guam agencies for the purpose of relating research work to the economic development of Guam whenever practical or desirable;
- (n) to stimulate and promote cooperative research projects and activities;
- (o) to establish and maintain, or to assist in establishing and maintaining, scholarships, fellowships, and professorships, and other staff positions for the purpose of aiding in the acquisition and dissemination of knowledge; and to enter into agreements or contracts with other corporations, organizations, institutions, or persons for this purpose and to pay the necessary and appropriate expenses therefor;
- (p) to prepare, print, or publish any manuscript, research article, report, study, discussion reference, collection, or any pictorial or schematic representation or group or collection thereof, whether it belongs to or is the work of any government of Guam agency or its employees, or the University or one of its faculty members or employees, or the RCUOG or its employees, or a contractor of RCUOG. The printing or publication may be accomplished through whatever person, company, or agency is deemed most appropriate by the Board of Directors.
- (q) to promulgate rules and regulations for the hiring, employment, procurement and property set forth by RCUOG Policy, and the requirements applicable to each major grant program and on internal control over compliance in accordance with OMB Circulars A-133 and A-21, and Federal Acquisition Requirements.

B. University

The University will provide to RCUOG under separate contract, terms to be negotiated, the following services, which may include but are not limited to: purchasing, accounting, payroll, Information Technology, human resources and financial reporting support for RCUOG authorized activities.

III. ADDITIONAL CONDITIONS

- A. With respect to expenditures for public relations, or other purposes which would serve to augment appropriations for University operations, the RCUOG may expend funds in such amount and for such purposes as are approved by the RCUOG's governing body as required by P.L. 32-114.
- B. No officer or employee of the University shall be employed by the RCUOG if such employment would be incompatible, inconsistent or in conflict with his or her duties as a University officer or employee. University employees may be assigned to the RCUOG for certain time periods in which case the RCUOG and UOG agree to a buyout of the UOG employee's time. Appointments must be approved by the President of the University of Guam.
- C. The RCUOG may not enter into any contract or any business arrangement involving the acquisition or sale of real property without the prior approval of the University President through the University Vice President for Administration and Finance (VPAF).
- D. The RCUOG may be directed to acquire, receive and hold title, and/or sell real property by the University President through the University VPAF.

IV. RECORDS

The RCOG shall maintain adequate records and shall submit periodic reports as required by the University showing the operation and financial status of RCUOG. The records and reports shall cover all activities of the RCUOG, whether pursuant to this Agreement or otherwise.

V. INTERNAL COMPLIANCE AND OPERATIONAL REVIEW

The RCUOG agrees to coordinate with the President and his or her designee in carrying out RCUOG compliance and operational reviews required by federal and local laws and policies.

VI. FISCAL AUDITS

The RCUOG is subject to Section 2807 of P.L. 32-144. In accordance with these provisions, the RCUOG agrees to:

- A. Coordinate for the annual auditing of the books, records and accounts of the RCUOG as part of the University's annual audit. Any audits undertaken separately by RCUOG shall be forwarded to the University.
- B. Permit examination of all RCUOG records by the Government of Guam, Regents, University, or their designees.

VII. TERMINATION

This Agreement may be terminated by the Regents upon breach of any part herein and result in removal or suspension of the RCUOG by providing the RCUOG with a minimum of ninety (90) days' advance written notice. The RCUOG may utilize the ninety-day advance notice period to cure the breach. If, in the judgment of the Regents, the breach has been cured, the termination notice will be cancelled.

VIII. REMEDIES ON TERMINATION OR BREACH

- A. Failure of the RCUOG to comply with any term of this Agreement may result in the removal or suspension of the RCUOG's right to utilize the resources, facilities and name of the University and Regents.
- B. Upon termination or breach of this Agreement, the Regents, at their sole discretion, may require the RCUOG to transfer all assets in its possession by reason of its status as a public corporation of the University of Guam to the University or to a successor non-profit corporation as determined by the University President. This remedy shall be in addition to any other remedies available to the Regents upon termination or breach of this Agreement.

IX. FAIR EMPLOYMENT PRACTICES

In the performance of this Agreement, the RCUOG shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, sexual orientation, marital status, pregnancy, age, physical or mental disability, medical condition, or veteran's status. The RCUOG shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by the Regents.

X. DISPOSITION OF ASSETS

Pursuant to Guam P.L. 32-114 Section 2808, in the event of dissolution of the RCUOG, all of its property, real, personal, and mixed, shall vest immediately and absolutely in the University of Guam.

XI. USE OF CAMPUS FACILITIES

The RCUOG may use those facilities identified for its use in a Memorandum of Agreement (MOA) executed between the University and the RCUOG. In addition to the facilities covered by the MOA, the University may permit the RCUOG to utilize other University facilities. Such agreement must be set forth in the format provided by the University.

XII. DISPOSITION OF NET EARNINGS

The RCUOG agrees to comply with the University's policies on the expenditure of funds, including but not limited to, University policies for the disposition of revenues in excess of expenses, and policies on maintaining appropriate reserves.

XIII. SPECIFIC PROVISIONS RELATING TO TRAVEL STUDY COURSES

The RCUOG may, with prior written approval of the President, perform the following services in connection with authorized travel study courses:

Collect from participants in a travel study course the costs of travel, meals, accommodations, insurance and other costs authorized by the President, or his or her designee. The collection offices shall be handled in accordance with established University procedures.

XIV. CHARGES FOR FACILITIES, SYSTEMS AND SERVICES BY UNIVERSITY

The RCUOG agrees to make fair and equitable reimbursement to the University for services rendered to the RCUOG by the University and for use of facilities and other resources, which services shall not be unreasonably withheld. This may be an annual determination as agreed to by RCUOG and the University. Said reimbursements shall be net of any services, facilities or other resources provided by the RCUOG to the University. Upon approval of the VPAF of the value of such services, facilities or other resources, and preparation of appropriate documentation, reimbursement under this provision need not be only in the form of cash, and the net reimbursement may be calculated across a variety of services.

XV. MAINTENANCE AND OPERATING EXPENSE

The RCUOG shall be responsible for the payment of organizational maintenance and operating expense during the term of this Agreement as specified, including maintenance of adequate reserves.

XVI. INDEMNIFICATION

The RCUOG agrees to indemnify, defend, and hold harmless the Regents, the University, their officers, agents and employees of each of them from any and all loss, damage, or liability that may be suffered or incurred by them, caused by, arising out of, or in any way connected with the operation of the RCUOG.

The RCUOG agrees as part of the responsibility of performing the functions identified in Paragraph 2 of this Agreement that indemnification includes indemnification for actions of the University and its employees, to the extent those actions involve the functions of the RCUOG. For any claims arising out of the action of the University or its employees, the University through its VPAF will manage the claim, and will assign financial responsibility with consideration given to the source of funding for the functions giving rise to the claim, including funding administered for the University's benefit by the RCUOG.

XVII. INSURANCE

A. The RCUOG shall maintain in force during the term of this Agreement and all extensions thereof, liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the RCUOG, its agents, representatives, employees or subcontractors.

B. Minimum Limits of Insurance

The RCUOG shall maintain coverage in the forms and amounts and with deductibles similar to that maintained by the University, subject to annual review and the respective needs of the RCUOG.

XVIII. NOTICES

All notice herein required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage paid, and addressed as herein provided.

Notice to the RCUOG shall be addressed to:

Executive Director
Research Corporation, University of Guam
UOG Station
Mangilao, Guam 96923

Notice to the Regents shall be addressed to:

University of Guam Board of Regents
Attn: Office of the President
UOG Station
Mangilao, Guam 96923

Notices to the University of Guam shall be addressed to:

Office of the President
University of Guam
UOG Station
Mangilao, Guam 96923

and

Vice-President for Finance and Administration
University of Guam
UOG Station
Mangilao, Guam 96923

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the following date:

RESEARCH CORPORATION, UNIVERSITY OF GUAM

Cathleen Moore Linn
Cathleen Moore-Linn, Executive Director

Date: 8/8/14

UNIVERSITY OF GUAM

William Leon Guerrero
William Leon Guerrero, Chairperson
Board of Regents

Date: 9/25/14

Robert A. Underwood
Robert A. Underwood, President

Date: 8/8/14

Victorina M.Y. Renacia
Victorina M.Y. Renacia, Legal Counsel

Date: 8/8/14