

**OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND
CSUSB PHILANTHROPIC FOUNDATION**

This agreement is made and entered into by and between the Trustees of the California State University by their duly qualified Chancellor (CSU) and the CSUSB Philanthropic Foundation) serving CSU San Bernardino The term of this agreement shall be January 1, 2016 through December 31, 2021.

1. PURPOSE

The purpose of this agreement is to set forth the terms and conditions under which Auxiliary may operate as an auxiliary organization pursuant to California Education Code §89900 et seq. and California Code of Regulations (CCR) Title 5, § 42400 et seq. In entering this agreement, CSU finds that certain functions important to its mission are more effectively accomplished by the use of an auxiliary organization rather than by the Campus under the usual state procedures.

2. PRIMARY FUNCTION OF THE AUXILIARY

In consideration of receiving recognition as an official CSU auxiliary organization, Auxiliary agrees, for the period covered by this agreement, that the primary function(s), which the Auxiliary is to manage, operate or administer is/are (*Check each category that applies*):

- Student Body Organization
- Student Union
- Housing
- Philanthropic
- Research, Workshops, Institutes, Conferences
- Real Property Acquisition / Real Property Development
- Commercial

In carrying out the above, the Auxiliary engages in the following functions authorized by, CCR tit.5, §42500, which are activities essential and integral to the educational mission of the University:

1. Loans, Scholarships, Grants-in-Aids, Stipends, and Related Financial Assistance
- 2.. Alumni Programs
3. Gifts, bequests, devises, endowments, trusts and similar funds
4. Public relations, fundraising, fund management, and similar development programs
5. Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities

Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering these purposes for the benefit of CSU and the Campus. Auxiliary further agrees that it shall not perform any of the functions listed in CCR tit.5, §42500 unless the function has been specifically assigned in this operating agreement with the Campus. Prior to initiating any additional functions, Auxiliary understands and agrees that CSU and Auxiliary must amend this agreement in accordance with Section 18, *Amendment*.

3. CAMPUS OVERSIGHT AND OPERATIONAL REVIEW

The responsibility and authority of the Campus president regarding auxiliary organizations is set forth in CCR tit.5, §42402, which requires that auxiliary organizations operate in conformity with CSU and Campus policies. The Campus President has been delegated authority by the CSU Board of Trustees (Standing Orders §VI) to carry out all necessary functions for the operation of the Campus. The operations and activities of Auxiliary under this agreement shall be integrated with Campus operations and policies and shall be overseen by the campus Chief Financial Officer or designee so as to assure compliance with objectives stated in CCR tit.5, §42401.

The Campus shall review Auxiliary to ensure that the written operating agreement is current and that the activities of Auxiliary are in compliance with this agreement at least every five (5) years from the date the operating agreement is executed and at least every five years thereafter. Confirmation that this review has been conducted will consist of either an updated operating agreement, or a letter from the Campus chief financial officer or designee to the Campus President with a copy to the Chancellor's Office, certifying that the review has been conducted. As part of these periodic reviews, the Campus President should examine the need for each auxiliary and look at the efficiency of the auxiliary operation and administration.

Auxiliary agrees to assist the Campus chief financial officer or designee in carrying out the compliance and operational reviews required by applicable CSU Executive Orders and related policies.

4. OPERATIONAL COMPLIANCE

Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies. Failure of Auxiliary to comply with any term of this agreement may result in the removal, suspension or probation of Auxiliary as an auxiliary organization in good standing. Such action by CSU may result in the limitation or removal of Auxiliary's right to utilize the CSU or campus name, resources and facilities (CCR tit.5, §42406).

5. CONFLICT OF INTEREST

No officer or employee of the CSU shall be appointed or employed by Auxiliary if such appointment or employment would be incompatible, inconsistent or in conflict with his or her duties as a CSU officer or employee.

Auxiliary has established and will maintain a conflict of interest policy. The Auxiliary's Conflict of Interest Policy is attached as **Attachment 1**.

6. EXPENDITURES AUGMENTING CSU APPROPRIATIONS

With respect to expenditures for public relations or other purposes which would serve to augment appropriations for CSU operations, Auxiliary may expend funds in such amount and for such purposes as are approved by Auxiliary's governing body. Auxiliary shall file, as **Attachment 2** to this agreement, a statement of Auxiliary's policy on accumulation and use of public relations funds. The statement shall include the policy and procedures for solicitation of funds, the purposes for which the funds may be used, the allowable expenditures and procedures of control.

7. FISCAL AUDITS

Auxiliary agrees to comply with CSU policy and the provisions of CCR tit.5, §42408, regarding fiscal audits. All fiscal audits shall be conducted by auditors meeting the guidelines established the Integrated CSU Administrative Manual (ICSUAM).

The Campus chief financial officer (CFO) shall annually review, and submit a written evaluation to the Chancellor's Office in accordance with Section 17, Notices, *of* the external audit firm selected by the Auxiliary. This review by the Campus CFO must be conducted prior to the Auxiliary engaging an external audit firm and annually thereafter. If the Auxiliary has not changed audit firms, and the audit firm was previously reviewed and received a satisfactory evaluation, a more limited review may be conducted and submitted.

8. USE OF NAME

Campus agrees that Auxiliary may, in connection with its designated functions as a CSU auxiliary organization in good standing and this agreement, use the name of the Campus, The Campus logo, seal or other symbols and marks of the Campus, provided that Auxiliary clearly communicates that it is conducting business in its own name for the benefit of Campus. All correspondence, advertisements, and other communications by Auxiliary must clearly indicate that the communication is by and from Auxiliary and not by or from CSU or Campus.

Auxiliary shall use the name of Campus, logo, seal or other symbols or marks of Campus only in connection with services rendered for the benefit of Campus and in accordance with Campus guidance and direction furnished to Auxiliary by Campus and only if the nature and quality of the services with which the Campus name, logo, seal or other symbol or mark are used are satisfactory to the Campus or as specified by Campus.

Campus shall exercise control over and shall be the sole judge of whether Auxiliary has met or is meeting the standards of quality of the Campus for use of its name, logo, seal or other symbol or mark.

Auxiliary shall not delegate the authority to use the Campus name, logo, seal or other symbol or mark to any person or entity without the prior written approval of the Campus President or designee. Auxiliary shall cease using the Campus name, logo, seal or other symbol or mark upon expiration or termination of this agreement, or if Auxiliary ceases to be a CSU auxiliary organization in good standing or dissolves.

9. CHANGE OR MODIFICATION OF CORPORATE STATUS

Auxiliary shall provide notice to the CSU upon any change in Auxiliary's legal, operational or tax status including but not limited to changes in its Articles of Incorporation, bylaws, tax status, bankruptcy, dissolution or change in name.

10. FAIR EMPLOYMENT PRACTICES

In the performance of this agreement, and in accordance with California Government Code §12900 et. seq., Auxiliary shall not deny employment opportunities to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status. Auxiliary shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by the CSU.

11. DISPOSITION OF ASSETS

Attached hereto as **Attachment 3** is a copy of Auxiliary's Constitution or Articles of Incorporation (as applicable) which establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed in accord with, CCR tit.5, §42600. Auxiliary agrees to maintain this provision as part of its Constitution or Articles of Incorporation. In the event Auxiliary should change this provision to make other dispositions possible, this agreement shall terminate as of the date immediately preceding the date such change becomes.

12. USE OF CAMPUS FACILITIES

Auxiliary may use those facilities identified for its use in a lease agreement executed between Campus and Auxiliary. If this Operating Agreement terminates or expires and is not renewed within 30 days of the expiration, the lease automatically terminates, unless extended in writing by the parties.

Auxiliary and Campus may agree that Auxiliary may use specified Campus facilities and resources for research projects and for institutes, workshops, and conferences only when such use does not interfere with the instructional program of Campus and upon the written approval from appropriate Campus administrators with such specific delegated authority. Auxiliary shall reimburse Campus for costs of any such use.

13. DISPOSITION OF NET EARNINGS

Auxiliary agrees to comply with CSU and Campus policy on expenditure of funds including, but not limited to, CSU guidelines for the disposition of revenues in excess of expenses and CSU policies on maintaining appropriate reserves. Cal. Educ. Code §89904; Executive Order 1059.

14. ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS

Auxiliary agrees, if authorized to do so in Section 2 above, that it will accept and administer gifts, grants, contracts, scholarships, loan funds, fellowships, bequests, and devises in accordance with policies of CSU and Campus.

A. Authority to Accept Gifts

If authorized, Auxiliary may evaluate and accept gifts, bequests and personal property on behalf of CSU. In acting pursuant to this delegation, due diligence shall be performed to ensure that all gifts accepted will aid in carrying out the CSU mission as specified in Education Code §§89720 and 66010.4(b).

Auxiliary agrees, before accepting gifts of real estate or gifts with any restrictive terms or conditions that impose an obligation on CSU or the State of California to expend resources in addition to the gift, to obtain written approval from the appropriate campus authority. Auxiliary agrees that it will not accept a gift that has any restriction that is unlawful.

B. Reporting Standards

Gifts shall be recorded in compliance with the Council for Advancement and Support of Education and California State University reporting standards and shall be reported to the Chancellor's Office on an annual basis in accordance with Education Code §89720.

15. INDEMNIFICATION

Auxiliary agrees to indemnify, defend and save harmless the CSU, its officers, agents, employees and constituent campuses and the State of California, collectively "CSU indemnified parties" from any and all loss, damage, or liability that may be suffered or incurred by CSU indemnified parties, caused by, arising out of, or in any way connected with the operation of Auxiliary as an auxiliary organization.

16. INSURANCE

Auxiliary shall maintain insurance protecting the CSU and Campus as provided in this section. CSU's Systemwide Office of Risk Management shall establish minimum insurance requirements for auxiliaries, based on the insurance requirements in Technical Letter RM 2012-01 or its successor then in effect. Auxiliary agrees to maintain at least these minimum insurance requirements.

Auxiliary's participation in a coverage program of the California State University Risk Management Authority (CSURMA) shall fully comply with the insurance requirement for each type of required coverage (which may include but not be limited to, general liability, auto liability, directors and officers liability, fiduciary liability, professional liability, employer's liability, pollution liability, workers' compensation, fidelity, property and any other coverage necessary based on Auxiliary's operations). Auxiliary shall ensure that CSU and Campus are named as additional insured or loss payee as its interests may appear.

17. NOTICES

All notices 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 prepaid and addressed to all parties as provided below.

Notice to Auxiliary shall be addressed as follows:

CSUSB Philanthropic Foundation
Attn: Executive Director
5500 University Parkway
San Bernardino, CA 92407

Notice to the CSU shall be addressed to:

Trustees of the California State University
401 Golden Shore
Long Beach, California 90802
Attention: Director, Contract Services & Procurement

Notice to the Campus shall be addressed as follows:

California State University, San Bernardino
Attn: Office of the President
5500 University Parkway
San Bernardino, CA 92407

18. AMENDMENT

This agreement may be amended only in writing signed by an authorized representative of all parties.

19. RECORDS

Auxiliary shall maintain adequate records and shall submit periodic reports as required by CSU showing the operation and financial status of Auxiliary. The records and reports shall cover all activities of Auxiliary whether pursuant to this agreement or otherwise.

20. TERMINATION

CSU may terminate this agreement upon Auxiliary’s breach of or failure to comply with any term of this agreement by providing Auxiliary with a minimum of ninety (90) days advance written notice. Auxiliary may use the ninety-day advance notice period to cure the breach. If, in the judgment of CSU, the breach has been cured, the termination notice will be cancelled.

21. REMEDIES UPON TERMINATION

Termination by CSU of this agreement pursuant to Section 20, *Termination*, may result in Auxiliary’s removal, suspension or probation as a CSU auxiliary in good standing, and loss of any right for Auxiliary to use the name, resources or facilities of CSU or any of its campuses.

Upon expiration of the term of this agreement, the parties shall have 30 days to enter into a new operating agreement which period may be extended by written mutual agreement.

22. SEVERABILITY

If any section or provision of this Agreement is held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such section or provision shall be deemed severed and the validity of the remainder of this Agreement shall not be affected thereby.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto.

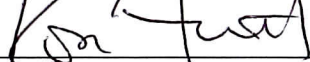
Approved: December 18, 2015

California State University, San Bernardino

By  _____
Tomás D. Morales, President

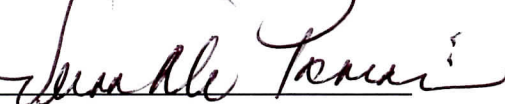
Executed on January 1, 2016

CSUSB Philanthropic Foundation

By  _____
Ron Fremont, Exectutive Director

Executed on January 1, 2016

California State University
Office of the Chancellor
Contract Services and Procurement

By  _____

CSUSB FOUNDATION

Building a Culture of Philanthropy

CONFLICT OF INTEREST **ACCEPTANCE FOR BOARD MEMBERS**

It is the Foundation's responsibility to ensure that all Board members sign a Conflict of Interest for July 1, 2015 through June 30, 2016.

The California Education Code, Sections 89906-89909 ([Link to Education Code: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=89001-90000&file=89900-89912](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=89001-90000&file=89900-89912)) indicates that no member of the Board of Directors shall be financially interested in any contract or other transaction entered into by the Board of Directors that is not in accordance with these codes.

As a member of the Foundation's Board of Directors, you are required to follow the California Education Codes, Sections 89906-89909.

The following are example relations which are specifically deemed not permissible:

- a) Any contract, other than employment contract, directly between the Foundation and a Foundation Board member.
- b) Any contracts between the Foundation and a partnership or unincorporated association in which a Foundation Board member is a partner, owner, or holder, directly or indirectly, of a proprietorship interest.
- c) Any contract between the Foundation and a for-profit corporation in which a Foundation Board member is the owner or holder, directly or indirectly, of five (5) percent or more of the outstanding common stock.

There are other relationships, including the following, which are permissible:

- d) Contracts between the Foundation and a for-profit corporation in which a Foundation Board member is the owner or holder, directly or indirectly, of less than five (5) percent of the outstanding common stock.

- e) Contracts between the Foundation and a for-profit corporation on whose Board of Directors a Foundation Board member serves and such member is the owner or holder, directly or indirectly, of less than five (5) percent of the outstanding common stock.
- f) Contracts between the Foundation and a nonprofit corporation on whose Board of Directors a Foundation Board member participates.

I have read the California Education Code Sections 89906-89909 and the interpretation of the law and signify, by my signature, that I do not now have a material financial interest in any contract or other transaction to which the Foundation is a party. Should such a conflict arise, I agree to notify the Foundation Executive Director.

Signature

Date

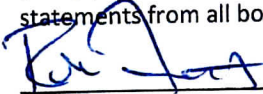
Printed Name

CSUSB FOUNDATION

Building a Culture of Philanthropy

PROCEDURE ON CONFLICT OF INTEREST STATEMENTS

The Philanthropic Foundation procedures require that, in compliance with the *CSU Conflict of Interest Handbook* §2B, dated December 2014, Found at: <http://www.calstate.edu/gc/Docs/ConflictofInterestHandbook.pdf>, we will (a) perform an annual review of conflict of interest statements from board members, and (b) we will work diligently throughout the year (Specifically in July, September, October and December) to ensure that we obtain conflict of interest statements from all board members by December 31st of each year.



Ron Fremont, Executive Director
CSUSB Philanthropic Foundation

10/13/15

Date

Sample Conflict of Interest Statement

The California Education Code, Sections 89906-89909 (Found at http://www.leginfo.ca.gov/html/edc_table_of_contents.html) indicates that no member of the Board of Directors shall be financially interested in any contract or other transaction entered into by the Board of Directors that is not in accordance with these codes.

As a member of the Foundation's Board of Directors, you are required to follow the California Education Codes, Sections 89906-89909.

The following are example relations which are specifically deemed not permissible:

- a) Any contract, other than employment contract, directly between the Foundation and a Foundation Board member.
- b) Any contracts between the Foundation and a partnership or unincorporated association in which a Foundation Board member is a partner, owner, or holder, directly or indirectly, of a proprietorship interest.
- c) Any contract between the Foundation and a for-profit corporation in which a Foundation Board member is the owner or holder, directly or indirectly, of five (5) percent or more of the outstanding common stock.

There are other relationships, including the following, which are permissible:

- d) Contracts between the Foundation and a for-profit corporation in which a Foundation Board member is the owner or holder, directly or indirectly, of less than five (5) percent of the outstanding common stock.
- e) Contracts between the Foundation and a for-profit corporation on whose Board of Directors a Foundation Board member serves and such member is the owner or holder, directly or indirectly, of less than five (5) percent of the outstanding common stock.
- f) Contracts between the Foundation and a nonprofit corporation on whose Board of Directors a Foundation Board member participates.

I have read the California Education Code Sections 89906-89909 and the interpretation of the law and signify, by my signature, that I do not now have a material financial interest in any contract or other transaction to which the Foundation is a party. Should such a conflict arise, I agree to notify the Foundation Executive Director.

Signature

Printed Name

Date

CSUSB PHILANTHROPIC FOUNDATION

DESIGNATION AND USE OF PUBLIC RELATIONS FUNDS

Purpose:

Funds are provided through the Foundation for the purpose of public relations under the existing guidelines of Title 5. These funds, which materially affect the success of the University and the CSUSB Foundation, are used to strengthen relationships with educational and surrounding communities and to foster public understanding and goodwill.

Sources of Funds:

Foundation funds, which may be used for public relations, are generated through gifts, various events, and University- and Foundation-sponsored activities. Specific allocations may also be made for campus and community relations by the University annually from the net revenues resulting from various events for campus and community outreach or public relations.

Use of Funds:

The use of funds is limited to those expenditures which promote the mission of the University.

Public Relations Allowable Expenses Guideline:

Allowable expenses fall into several categories, including but not limited to (see Grid of Allowable/Unallowable Expenditures for more specific guidelines):

1. Dues, memberships and subscriptions providing continuing contact with key organizations
2. Meals and accommodations for visitors
3. Community affairs, lectures, conferences, meetings, and special events
4. Travel and constituent relations

Procedures:

1. All authorizations for reimbursement are vested in the Executive Director, or designee. Certain reimbursements also require the approval of the appropriate University Vice President (see Grid of Allowable/Unallowable Expenditures).
2. A purchase request or request for reimbursement must include the following:
 - a. Name of the person requesting the expenditure and signature of the project director or department/division head.
 - b. Complete description of the item(s) or service(s). For events, a brief description of the event and names of those attending or for events, the approximate number expected to attend.
 - c. A brief statement of how the expenditure benefits the mission of the University (e.g., retreat for..., faculty convocation, donor meeting, flowers expressing sympathy, etc.)
 - d. Signature of University Vice President or designee (when required) and Foundation Executive Director or designee approving payment.

**PUBLIC RELATIONS EXPENDITURES
GRID OF ALLOWABLE/UNALLOWABLE EXPENDITURES**

**FOUNDATION
CAMPUS PROGRAM/
PUBLIC RELATIONS
(Footnote 1)**

**Please complete the Community Relations Expense Voucher or Travel
Authorization form where applicable**

Categories for reimbursement for Public Relations expenses

1. Employee's local meals when University business with visitors, guests, job candidates, students, advisory committees, industry committees, search committees, college/department retreats, seminars, colloquiums, picnics, working/planning/staff meetings (not weekly/monthly/routine or regular), open house, receptions for event, speakers, lecturers, artists, performers, etc. (Payments are usually due to restaurant, caterers, grocery stores or Reimbursed to an individual.)	Allowable
2. Flowers for official University or Foundation functions and for donors. additionally flowers may be purchased for funeral arrangements for deceased employees; in lieu of flowers, monetary contributions (not to exceed \$100) to a non-profit charity, research or educational organization is permitted.	Allowable
3. Plaques, certificates of achievement, similar recognitions for employees	Allowable
4. Memberships of employees to professional organizations	Allowable
5. Local or out-of-state/country meals for official University visitors, guests, job candidates, volunteers, or students in excess of state meal regulations	
6. Decorative office supplies	Allowable
7. Water service for campus offices	Allowable
8. Overnight accommodations for official visitors, volunteers, and job candidates within 25 Miles of home or office	Allowable
9. Department sponsored campus entertainment for official guests of the University	Allowable
10. Noncash gifts/awards to nonemployees for business/public relations purposes: campus event tickets, plaques, certificates, cards	Allowable
11. Nonmeal expenses of employees at official function where attendance Required, i.e., event tickets, cap and gown rental, tuxedo/gown rental, etc.	Allowable
12. Nonmeal expenses of official visitors at official functions, i.e., event tickets, cap and gown rental	Allowable
13. Overnight accommodations for employees or volunteers within 25 miles of home or office	Allowable w/ justification
14. Expenditure for travel/hotel/meals beginning more than 24 hours in advance of start of conference/seminar located off campus	Allowable w/ justification
15. Coffee service for campus offices (except President's Board Room)	Unallowable
16. Birthday, wedding, baby shower gifts for employees	Unallowable
17. Financial assistance for employees	Unallowable
18. Flowers for events other than official functions (birthdays, get well, etc.) (Ref. #2)	Unallowable
19. Personal use of club memberships	Unallowable
20. Spousal travel for job candidates	See Footnote 2
21. Awards to employees or volunteers for recognition of University service	See Footnote 4
22. Business related entertainment at home for official guests of the University	See Footnote 4
23. At home, department or campus-sponsored event for employee morale	See Footnote 4
24. Alcoholic beverages	See Footnote 4
25. Tuition and/or books for classes taken	See Footnotes 4 & 5

- (1) Some allowable categories are restricted by individual campus program or restricted by purpose as designated by the President
- (2) Use of travel request/authorization and reimbursement forms
- (3) Unallowable unless approved by funding agency
- (4) Vice President's approval required
- (5) Must be job related