

**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 CSUSB Philanthropic Foundation serving CSU San Bernardino. The term of this agreement shall be January 1, 2022 through December 31, 2027.

**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
- Externally Funded Projects
- 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 21, *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 (CFO) 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 CFO 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 (CFO) 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 20, 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. BACKGROUND CHECK POLICY COMPLIANCE**

In compliance with governing laws and CSU policy, Auxiliary shall confirm that background checks are completed for all new hires and for those independent contractors, consultants, outside entities, volunteers and existing employees in positions requiring background checks as set forth in CSU systemwide policy. Auxiliary will provide confirmation of completed and cleared background checks to the University President/Chancellor upon request, or as established by campus policy. (See HR 2016-08).

## **12. 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 accordance 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 effective.

### **13. 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.

### **14. CONTRACTS FOR CAMPUS SERVICES**

Auxiliary may contract with Campus for services to be performed by state employees for the benefit of Auxiliary. Any agreement must be documented in a written memorandum of understanding between Auxiliary and Campus. The memorandum of understanding shall among other things, specify the following: (a) full reimbursement to Campus for services performed by a state employee in accord with CCR tit.5, §42502(f); (b) Auxiliary must clearly identify the specific services to be provided by state employee, (c) Auxiliary must specify any performance measures used by Auxiliary to measure or evaluate the level of service; (d) Auxiliary must explicitly acknowledge that Auxiliary does not retain the right to hire, supervise or otherwise determine how to fulfill the obligations of the Campus to provide the specified services to Auxiliary.

### **15. 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.

### **16. FINANCIAL CONTROLS**

Recovery of allowable and allocable indirect costs and maintenance and payment of operating expenses must comply with ICSUAM §13680. CCR tit. 5, §42502(g) and (h).

### **17. 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.

**18. 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.

**19. 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.

## **20. 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:

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

## **21. AMENDMENT**

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

## **22. 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.

## **23. 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.

**24. REMEDIES UPON TERMINATION**

Termination by CSU of this agreement pursuant to Section 23, *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.


**25. 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.

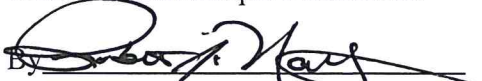
Approved: December 16, 2021

California State University, San Bernardino

By  \_\_\_\_\_  
Tomás D. Morales, President

Executed on January 1, 2022

CSUSB Philanthropic Foundation

By  \_\_\_\_\_  
Robert J. Nava, Executive Director

Executed on January 1, 2022

California State University  
Office of the Chancellor  
Contract Services and Procurement

By \_\_\_\_\_



**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 2, 2021, through June 30, 2022.

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 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 CSUSB's hospitality policy <https://www.csusb.edu/policies/hospitality-policy> 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.
2. A purchase request or request for reimbursement must include the following:
  - a. Name of the person requesting the expenditure and approved signature authority.
  - 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.
3. Purchase requests will follow the procurement policy and guidelines for the CSUSB Philanthropic Foundation.

## ARTICLES OF INCORPORATION

ATTACHMENT 3

### CSUSB PHILANTHROPIC FOUNDATION

#### ARTICLE I. Corporate Name/Registered Office

The name of this corporation shall be the CSUSB Philanthropic Foundation. The principal office for the transaction of the business of this corporation shall be in the City of San Bernardino, County of San Bernardino, in the State of California.

#### ARTICLE II. Corporate Status

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes.

#### ARTICLE III. Purposes

This corporation is organized exclusively for charitable and educational purposes, in connection with the teaching, research and community services purposes of California State University, San Bernardino, (CSUSB) within the meaning of Internal Revenue Code §503(c)(3) or the corresponding provision of any future United States internal revenue law. The specific and primary purposes for which this corporation is organized are:

- (a) To develop and increase the facilities of California State University, San Bernardino for broader educational opportunities and service to students, alumni and the citizens of the State of California by encouraging gifts to California State University, San Bernardino of money, property, works of art, historical papers, documents, museum specimens of educational, artistic or historical value, and any other assets of value of any description;
- (b) To provide gift funding for scientific, economic, and other types of research at Cal State University, San Bernardino;
- (c) To provide funding for the establishment of scholarships and other student assistance programs to California State University, San Bernardino, and other programs essential to the academic mission of California State University, San Bernardino from sources other than those from which the State of California ordinarily makes appropriations to California State University, San Bernardino; and;
- (d) To provide advisory counsel and assistance to the President of California State University, San Bernardino.

The foregoing provisions shall be construed as both purposes and powers of this corporation, but no recitation, expression, or declaration; of specific or special powers or purposes herein enumerated shall be deemed to be exclusive, but it is hereby expressly declared that all other lawful purposes and powers not inconsistent herewith are hereby included.

#### ARTICLE IV. Conformity with Law

The corporation shall be an auxiliary organization of California State University, San Bernardino, and shall conduct its operations in conformity with the California statutes governing such organizations (Chapter 7, commencing with Section 89900, of Part 55, Division 8, Title 3 of the Education Code) and the Regulations adopted by the Board of Trustees of California State University (Subchapter 6, commencing with Section 42400, of Chapter 1, Division 5 of Title 5 of the California Code of Regulations) as required by the Education Code, Section 89900 (c).

#### ARTICLE V. Exempt Status and Limitations on Activities

This corporation is organized and shall be operated exclusively for charitable and educational purposes, including but not limited to the purposes stated in Article III. No substantial part of the activities of this corporation shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation; provided, however, that notwithstanding the foregoing, this corporation shall have the power to make the election provided for in Section 501(h) of the Internal Revenue Code of 1986 as amended with respect to influencing legislation and, only if it so elects, to make lobbying or grass roots expenditures that do not normally exceed the ceiling amounts prescribed by Section 501(h)(2)(B) and (D) of the Internal Revenue Code of 1986 as amended. This corporation shall not participate or intervene in any political campaign (including publishing or distributing of statements) on behalf of or in opposition to any candidate for public office. Notwithstanding any provisions of these articles, this corporation shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation, and this corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1986 as amended or (b) by a corporation contribution to which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1986 as amended.

#### ARTICLE VI. Directors

The number of Directors, their qualifications, powers, duties, terms of office, manner of removal and filling vacancies on the Board, and the manner of calling and holding meetings of Directors, shall be stated in the Bylaws.

## ARTICLE VII. Members

This corporation shall have no members other than the persons constituting its Board of Directors. The Board of Directors shall, under any statute or rule of law, be the members of this corporation and shall have all the rights and powers members would otherwise have.

## ARTICLE VIII. Initial Agent for Service of Process

The name and address in the State of California of the initial agent of this corporation for service of process is:

Ron Fremont, Vice President  
University Advancement  
5500 University Parkway  
San Bernardino, CA 92407-2393

## ARTICLE IX. Voting

Each voting member of the Board of Directors shall have one vote. There shall be no proxy voting permitted for the transaction of any of the business of this corporation.


## ARTICLE X. Irrevocable Dedication and Dissolution

The property, assets, profits and net income of this Corporation are irrevocably dedicated to the public purposes set forth in Article III, and no part of the profits or net income or assets of this Corporation shall ever inure to the benefit of any of its directors, officers, private shareholder, members or individuals. Upon the winding up and dissolution of the Corporation, the board will direct staff to work with legal counsel and the President of the University or his representative to develop a dissolution plan that is consistent with applicable laws and statutes. Upon the dissolution of this corporation, net assets after paying or adequately providing for the debts, obligations and liabilities of the corporation other than trust funds, shall be distributed to a successor approved by the President of California State University, San Bernardino and by the Chancellor of California State University.

## ARTICLE XI. Amendments

These Articles of Incorporation may be amended in the manner authorized by law and the bylaws of the corporation at the time of amendment.

Date: 12-14, 2012

  
\_\_\_\_\_  
Ron Fremont, Incorporator