

**OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND CSU FULLERTON AUXILIARY SERVICES CORPORATION**

This Agreement is made and entered into by and between the Trustees of the California State University by their duly qualified Chancellor (CSU) and CSU Fullerton Auxiliary Services Corporation (Auxiliary) serving California State University, Fullerton (Campus). The term of this Agreement shall be from June 1, 2016 through June 30, 2046.

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. Bookstores, Food Services, and Campus Services
2. Housing
3. Loans, Scholarships, Grants-in-Aids, Stipends, and Related Financial Assistance
4. Externally Funded Projects Including Research, Workshops, Conferences, and Institutes
5. Gifts, bequests, devises, endowments, trusts and similar funds
6. Public relations, fundraising, fund management, and similar development programs

7. 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:

CSU Fullerton Auxiliary Services Corporation
1121 N. State College Blvd.
Fullerton, CA 92831
Attention: Executive Director

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:

Office of the President
California State University, Fullerton
2600 Nutwood Ave., Suite 1000
Fullerton, CA 92831
Attention: University President

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

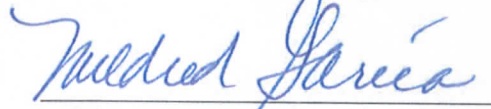
If any section or provision of this Agreement is held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such section or provision shall be deemed severed and the validity of the remainder of this Agreement shall not be affected thereby.

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

Approved on _____, 2016

California State University, Fullerton

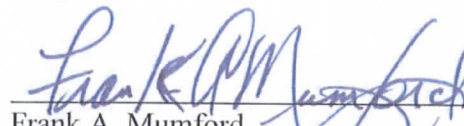
By:


Mildred García

Executed on 4/14, 2016

CSU Fullerton Auxiliary Services
Corporation

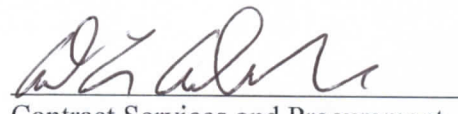
By:


Frank A. Mumford

Executed on 5/4, 2016

California State University
Office of the Chancellor

By:


Contract Services and Procurement
DARRYL DEARBORN



CSU FULLERTON

Auxiliary Services Corporation

Serving the University in the Spirit of Excellence

POLICY: CONFLICT OF INTEREST – GOVERNING BOARD
SECTION: GENERAL ADMINISTRATION

POLICY #: 108
EFFECTIVE: 12/08/11

PURPOSE

The California Education Code has specific requirements for the governing board of an auxiliary organization regarding conflict of interest. This policy addresses those requirements.

- §89906 No member of the governing board of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he is a member, and any contract or transaction entered into in violation of this section is void.
- §89907 No contract or other transaction entered into by the governing board of an auxiliary organization is void under the provisions of Section 89906, nor shall any member of such board be disqualified or deemed guilty of misconduct in office under said provisions, if the circumstances specified in the following subdivisions exist:
- (a) The fact of such financial interest is disclosed or known to the governing board and noted in the minutes, and the governing board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members, and
 - (b) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.
- §89908 The provisions of Section 89907 shall not be applicable if the circumstances specified in any of the following subdivisions exist:
- (a) The contract or transaction is between an auxiliary organization and a member of the governing board of that auxiliary organization.
 - (b) The contract or transaction is between an auxiliary organization and a partnership or unincorporated association of which any member of the governing board of that auxiliary organization is a partner or in which he is the owner or holder, directly or indirectly, of a proprietorship interest.
 - (c) The contract or transaction is between an auxiliary organization and a corporation in which any member of the governing board of that auxiliary organization is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.
 - (d) A member of the governing board of an auxiliary organization is interested in a contract or transaction within the meaning of Section 89906, and without first disclosing such interest to the governing board at a public meeting of the board,

influences or attempts to influence another member or members of the board to enter into the contract or transaction.

§89909 It is unlawful for any person to utilize any information, not a matter of public record, which is received by him by reason of his membership on the governing board of an auxiliary organization, for personal pecuniary gain, regardless of whether he is or is not a member of the governing board at the time such gain is realized.

DISCLOSURE

All Board members are required to disclose any business or financial relationship they, or members of their immediate families, have or propose to have with the ASC, either directly or through another entity in which they have a significant interest. If at any time a Board member determines that a conflict of interest exists, he/she will immediately, or as soon as actually possible, disclose the circumstances to the Executive Director of the ASC.

Each year Board members are required to review the applicable portion of the California Education Code and attest that they do not have any conflicting financial interests.

CONFLICT RESOLUTION

In the event that a conflict, or potential conflict, exists and cannot be resolved, the disputed matter will be reviewed by the Executive Committee. In the absence of a resolution, the Executive Committee will refer the matter to the Board of Directors, and the Board of Directors will review and take final action on the matter.

APPROVAL

Approved by the ASC Board of Directors on 12/08/11, effective immediately.



AUXILIARY SERVICES CORPORATION

POLICY: PUBLIC RELATIONS FUND
SECTION: GENERAL ADMINISTRATION

POLICY #: 111
REVISED: 06/20/13
HISTORY: 04/03/86

PURPOSE

As public understanding and goodwill materially affect the success of the auxiliary organizations as well as the University, CSU Fullerton Auxiliary Services Corporation (ASC) is deemed an appropriate source of limited funds for public relations purposes within the purview of Title 5, subject to proper procedures.

POLICY & PRACTICE

The President of the University, if deemed appropriate, shall include a request for community outreach (public relations) funds as part of the annual budgeting process. The President's annual request is submitted to the ASC Board of Directors for approval. If approved by the Board, it designates funds from working capital reserves for University Needs.

Source of Funds

The ASC makes no effort to solicit public relations funds. ASC constitutes a limited source of funds for public relations which serve to augment state appropriations for the University.

Use of Funds

The use of funds is confined to those expenditures likely to be most helpful to the University's instructional programs and/or ASC projects on a university-wide basis.

Allowable Expenditures

Allowable expenditures generally fall into three categories:

1. Dues, memberships and subscriptions providing continuing contact with key organizations not otherwise available;
2. Meals and accommodations for visitors who serve the mission of ASC; and
3. Community affairs, lectures, conferences and special events.

Control Procedures

Careful screening of proposed expenditures, as recommended by the President and designated by the ASC Board of Directors, ensures an appropriate budget at the outset. Control of expenditures is maintained by these requirements:

1. All authorizations to be vested in the ASC Executive Director or his designee;
2. Monthly statements of expenditures by budget classifications to be distributed on a regular basis;

3. All funds not expended in the fiscal year for which designated, revert to the fund from which designated;
4. Year-to-year carryover of unexpended funds is allowed only by written request; and
5. A report of each year's use of funds for community outreach is made by the ASC Executive Director to the President and the ASC Board of Directors.



CSU FULLERTON

Auxiliary Services Corporation

Serving the University in the Spirit of Excellence

RESTATED ARTICLES OF INCORPORATION

The undersigned certify that:

1. They are the Chairman of the Board and the Secretary of the CSU Fullerton Auxiliary Services Corporation, a California corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

CSU FULLERTON AUXILIARY SERVICES CORPORATION ARTICLES OF INCORPORATION

ARTICLE I

The name of this corporation is the CSU FULLERTON AUXILIARY SERVICES CORPORATION.

ARTICLE II

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.

The specific purpose for which this corporation is formed shall be to promote and assist the educational program of the California State University, Fullerton or such institution as shall succeed to the purposes and functions of said university, and to apply the funds and properties coming into its hands toward furthering the educational services carried on or approved by the administrative officers of the California State University, Fullerton.

The powers that it shall have in furtherance of said purpose are

- (1) To receive property by gift, bequest, by will, or upon trust to the same extent as a natural person, grant, or otherwise acquire and hold all property, real or personal, including stocks, bonds or securities of other corporations; to make gift or trade of such property; to give and grant scholarships to students; to originate and carry on research projects, surveys and investigations in all matters applicable or related to such purposes.
- (2) To further the educational objectives of California State University, Fullerton, its students and its faculty, and as a part thereof, to furnish to them at a reasonable cost new and used books, materials and supplies, food, board, lodging and housing facilities; and to acquire, own, operate and maintain book stores, cafeterias, food-dispensing service, dormitories, and housing facilities, and such other facilities as may serve to accomplish or assist in such objectives.
- (3) To promote and assist the educational services of the California State University, Fullerton, or such institution as shall succeed to the properties and functions of said

university, and to apply the funds and properties coming into its hands toward furthering the educational services carried on or approved by the administrative officers of said California State University, Fullerton.

(4) To act as Trustee under any trust incidental to the principal objects of the corporation and to receive, hold, or administer and expend funds and property subject to such trust.

(5) To have and exercise all powers conferred by the laws of the State of California that are incidental to but are necessary for carrying out the primary purposes of the corporation.

The foregoing statement of purposes shall be construed as a statement of both purposes and powers, and the purposes and powers stated in each clause, shall, except where otherwise expressed, be in no wise limited or restricted by reference to or inference to any provision of any other clause, but shall be regarded as intended purposes and powers.

This corporation elects to be governed by all the provisions of the Nonprofit Corporation Law of 1980 not otherwise applicable to it under Part 5.

ARTICLE III

This corporation is organized and operated exclusively for Public purposes within the meaning of Section 501(c)(3), Internal Revenue Code.

No substantial part of the activities of this corporation shall consist of carrying on propaganda, otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including publishing or distribution of statements) on behalf of any candidate for political office.

ARTICLE IV

The Directors and officers of the corporation shall be drawn from the faculty and administrative staff of California State University, Fullerton or such other institution as may hereafter succeed to the properties and functions of said school, from citizens residing in the region served by the university, and from the student body of the university. The corporation shall have no members other than the persons constituting its Board of Directors. The persons constituting its Board of Directors shall, for the purposes of any statutory provisions or rule of law relating to non-profit corporations, or otherwise, be taken to be the members of such corporation, and exercise all rights and powers of members thereof. This Article may be amended only by the unanimous approval of the Directors of the corporation.

ARTICLE V

This corporation is not organized, nor shall it be operated, for pecuniary gain or profit and does not contemplate the distribution of gain, profit or dividend to its members or to any private shareholder or individual.

The property, assets, profits and net income of this corporation are irrevocably dedicated to the public and charitable purposes set forth in Article II, and no part of the profits or net income or assets of the corporation shall ever inure to the benefit of any private shareholder or individual. Prior to the 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 or winding up of this corporation, net assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation, shall be distributed to a successor non-profit corporation, foundation or fund which is organized and operated exclusively for public purposes, and which is selected and approved by the President of the University and the Chancellor of The California State University. Such fund, foundation or corporation shall have established tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE VI

The principal office for the transaction of the business of this corporation will be located in the County of Orange, State of California.

ARTICLE VII

The number of Directors of this corporation shall be no less than fifteen and no more than twenty-five.

ARTICLE VIII

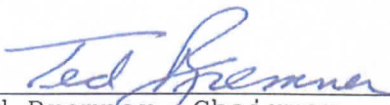
The term for which this corporation is to exist is perpetual.

3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors.

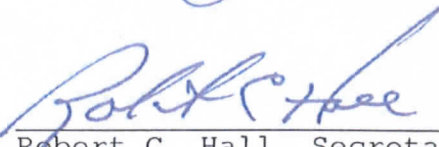
4. The corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: 9-28-12


Ted Bremner, Chairman

Date: 9-20-12


Robert C. Hall, Secretary