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

This agreement is made and entered into by and between the Chancellor of the California State University on behalf of the Board of Trustees (CSU) and CSU Fullerton Auxiliary Services Corporation (Auxiliary). The term of this agreement shall be July 1, 2013 through June 30, 2018, unless sooner terminated as herein provided.

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 Education Code Sections 89900 et seq. and Sections 42400 et seq. of Title 5 of the California Code of Regulations (CCR). 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 the usual state procedures.

2. PRIMARY FUNCTION OF THE AUXILIARY

In consideration of receiving recognition as an official auxiliary organization of the CSU, Auxiliary agrees, for the period covered by this agreement, that its primary activity generally can be classified as:

- Research, Workshops, Institutes, Conferences
- Commercial

In carrying out this activity, the Auxiliary engages in the following functions authorized by Section 42500, Title 5, CCR, which are activities essential and integral to the educational mission of the University:

- Bookstores, Food Services, and Campus Services
- Housing
- Loans, Scholarships, Grants-in-Aids, Stipends, and Related Financial Assistance
- Externally Funded Projects Including Research, Workshops, Conferences, and Institutes
- Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities

Auxiliary further agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering these purposes. Prior to initiating any additional functions, Auxiliary agrees to amend the existing operating agreement.
3. **CAMPUS OVERSIGHT AND OPERATIONAL REVIEW**

The responsibility and authority of the campus president regarding auxiliary organizations is outlined in Title 5 Section 42402, which in part requires that auxiliary organizations operate in conformity with policy of the Board of Trustees and the campus. The campus President has been delegated authority by the CSU Board of Trustees (Standing Orders Section IV) 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 established by the President and shall be overseen by the campus Chief Financial Officer or designee so as to assure compliance with objectives stated in Title 5 Section 42401.

Auxiliary agrees to assist the Chief Financial Officer and his or her designee in carrying out the compliance and operational reviews required by applicable Executive Orders and related policies.

4. **OPERATIONAL COMPLIANCE**

Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations, and policies promulgated by the Federal Government, the State, Chancellor, and Campus on which the Auxiliary operates. Failure of Auxiliary to comply with any term of this agreement may result in the removal, suspension, or placing on probation of Auxiliary as an auxiliary organization in good standing. Such action by CSU may involve the limitation or removal of Auxiliary's right to utilize the resources and facilities of Campus (ref. Title 5, CCR, 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.

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 1** 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, and the allowable expenditures and procedures of control.
7. **FISCAL AUDITS**

Auxiliary agrees to comply with CSU policy and the provisions of Section 42408 of Title 5, CCR 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 shall submit to the Chancellor’s Office (see Notices below) the written evaluation of the external audit firm selected by the Auxiliary. This review must be conducted annually and prior to entering into an engagement letter with an external audit firm. If the Auxiliary has not changed auditor and the audit firm was previously subjected to this review, only a limited review need be submitted.

8. **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 Articles of Incorporation, bylaws, tax status, bankruptcy, dissolution, or change in name.

9. **FAIR EMPLOYMENT PRACTICES**

In the performance of this agreement, and in accordance with 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, marital status, sex, age, or sexual orientation or veteran's status. Auxiliary shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by the CSU.

10. **DISPOSITION OF ASSETS**

Attached hereto as **Attachment 2** 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 Section 42600, Title 5, CCR. For the period covered by this agreement, 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 and all net assets shall become the property of CSU.

Alternatively, upon termination or breach of this agreement, CSU, at its sole discretion, may require Auxiliary to transfer all assets in its possession to a successor nonprofit corporation qualifying as an auxiliary organization. This remedy shall be in addition to any other remedies available to CSU upon termination or breach of this agreement.
11. **USE OF CAMPUS FACILITIES**

Auxiliary may use those facilities identified for its use in a lease agreement executed between Campus and Auxiliary.

Auxiliary may use 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.

12. **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.

13. **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. Delegation of 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 Sections 89720 and 66010.4(b).

**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 Section 89720 of the Education Code.

**C. Donor Rights**

All donors of gifts, bequests, and personal property shall be treated openly and fairly in accordance with the “Donor Bill of Rights” found at: [http://www.calstate.edu/foundation/donor.shtml](http://www.calstate.edu/foundation/donor.shtml).
14. INDEMNIFICATION

Auxiliary agrees to indemnify, defend, and save harmless the CSU, its officers, agents, employees, and constituent campuses (all of which are hereafter referred to as “CSU”) from any and all loss, damage, or liability that may be suffered or incurred by CSU, caused by, arising out of, or in any way connected with the operation of Auxiliary as an auxiliary organization.

15. 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 described in Technical Letter RM “RM 2011-04” 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 scheduled as additional insured or loss payee as its interests may appear.

16. 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:

Executive Director
CSU Fullerton Auxiliary Services Corporation
2600 Nutwood Avenue, Suite 210
Fullerton, CA 92831-3105

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
800 N. State College Blvd.
Fullerton CA 92831

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

Approved: June 1, 2013
California State University, Fullerton
By: Mildred Garcia
President

Executed on June 27, 2013
CSU Fullerton Auxiliary Services Corporation
By: Frank A. Mumford
Executive Director

Executed on June 5, 2013
California State University
Office of the Chancellor
Contract Services and Procurement
By: 

Attachment 1
Public Relations Fund
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.
Attachment 2
Articles of Incorporation
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