

**OPERATING AGREEMENT BETWEEN TRUSTEES AND  
CALIFORNIA STATE UNIVERSITY, STANISLAUS  
AUXILIARY AND BUSINESS SERVICES**

This agreement is made and entered into by and between the State of California through its Trustees of the California State University by their duly qualified and acting Chancellor (hereinafter called State) and California State University, Stanislaus Auxiliary and Business Services (hereinafter called Auxiliary). The term of this agreement shall be the 1st day of January 2009, and ending on the 31st day of December 2013, unless sooner terminated as herein provided.

**I. Purpose**

The purpose of this agreement is to set forth the terms and conditions under which Auxiliary and Business Services may operate as an auxiliary organization pursuant to Chapter 7, Part 55, Division 8, Title 3 (Sections 89900 *et seq.*) of the Education Code, and Subchapter 6, Article 1, Part V (Section 42400 *et seq.*) of Title 5 of the California Code of Regulations (CCR). In entering this agreement, Trustees find that certain functions important to the mission of the California State University are more effectively accomplished by the use of an auxiliary organization rather than the usual state procedures.

**II. Function**

In consideration of receiving recognition as an official auxiliary organization of the California State University, Auxiliary hereby agrees, for the period covered by this agreement, to perform the following functions as defined in Section 42500, Title 5, CCR:

- *Bookstore*
- *Food and Campus Services*
- *Housing Facilities*
- *Community/Leasing Partnerships*
- *Acquisition, development, sale, and transfer of real property and personal property including financing transactions related to these activities*
- *Campus One-Card Program Administration and Maintenance*
- *Business Enterprises as approved by the Board*

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 obtain written approval of Trustees.

Operations of Auxiliary under this Agreement shall be integrated with campus operations and shall be supervised by campus officials so as to assure compliance with the objectives stated in Title 5, CCR, 42401.

### **III. Additional Conditions**

- A. Auxiliary agrees to maintain its organization and operate in accordance with all applicable regulations and policies of State, Chancellor, and California State University, Stanislaus.
- B. With respect to expenditures for public relations, or other purposes which would serve to augment appropriations for California State University operations, Auxiliary may expend funds in such amount and for such purposes as are approved by Auxiliary's governing body. Auxiliary shall file with State a statement of Auxiliary's policy on accumulation and use of public relations funds. The statement shall include the policy and procedures for allowable expenditures, and procedures of control.
- C. No officer or employee of The California State University shall be employed by Auxiliary if such employment would be incompatible, inconsistent or in conflict with his or her duties as a State officer or employee.

### **IV. Records**

Auxiliary shall maintain adequate records and shall submit periodic reports as required by State 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.

### **V. Internal Compliance and Operational Review**

Auxiliary agrees to assist the President and his or her designee in carrying out the compliance and operational reviews required by Executive Order 698 and related policies.

### **VI. Fiscal Audits**

Auxiliary is subject to the provisions of Section 89900 of the Education Code and Section 42408 of Title 5, CCR. In accordance with these provisions, Auxiliary agrees to:

- A. Contract with a certified public accountant for an annual audit at Auxiliary's expense. The report on such examinations shall be furnished to the State.
- B. Permit examination of all Auxiliary records by State or their designee.

### **VII. Remedies on Termination or Breach**

- A. 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 State may involve the limitation or removal of Auxiliary's right to utilize the resources, facilities, and name of State and California State University, Stanislaus (ref. Title 5, CCR, 42406).

- B. Upon termination or breach of this agreement, State, at its sole discretion, may require Auxiliary to transfer all assets in its possession by reason of its status as a CSU auxiliary organization to a successor nonprofit corporation qualified as an auxiliary organization. This remedy shall be in addition to any other remedies available to State upon termination or breach of this agreement.

#### **VIII. Fair Employment Practices**

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

#### **IX. Disposition of Assets**

Attached hereto as Attachment 1 is a copy of Auxiliary's Articles of Incorporation which establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed in accordance with Section 42600, Title 5, California Code of Regulations. For the period covered by this agreement, Auxiliary agrees to maintain this provision as part of its Articles of Incorporation. In the event Auxiliary should change this provision to make other disposition of the net assets, 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 State.

#### **X. Use of Campus Facilities**

Auxiliary may use those facilities identified for its use in a lease agreement executed between California State University, Stanislaus and the Auxiliary. In addition to the facilities covered by the lease agreement, California State University, Stanislaus may permit Auxiliary to utilize other campus facilities. Permission shall be granted by the execution of a license agreement with California State University, Stanislaus. Such a license must be set forth in the format provided by State.

The campus may be used for research projects and for institutes, workshops, and conferences only when such use does not interfere with the instructional program of the campus.

#### **XI. Disposition of Net Earnings**

Auxiliary agrees to comply with Trustee's and California State University, Stanislaus policy on expenditure of funds, including but not limited to State guidelines for the disposition of revenues in excess of expenses and State policies on maintaining appropriate reserves.

## **XII. Indemnification**

Auxiliary agrees to indemnify, defend, and save harmless the State of California, the Trustees of the California State University, Chancellor, and California State University, Stanislaus, their officers, agents, volunteers, and employees of each of them (all of which are hereinafter referred to as "State") from any and all loss, damage, or liability that may be suffered or incurred by State, caused by, arising out of, or in any way connected with the operations of Auxiliary.

## **XIII. Charges for Facilities & Services Provided by the State**

Auxiliary agrees to reimburse State for expenses incurred by State as the result of Auxiliary's activities under this agreement. Reimbursement shall be for items including, but not limited to rentals, campus services, and indirect costs. Reimbursement shall be on a simple but equitable basis and in accordance with the policies for reimbursement of costs as established by State. Auxiliary agrees to make reimbursement within 30 days from receipt of notice of such determination.

## **XIV. Insurance**

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

B. Minimum Scope of Insurance Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- 4) "All Risk" Property Insurance with applicable limits for all property that the Campus has an insurable interest in.

C. Minimum Limits of Insurance

Auxiliary shall maintain limits no less than:

- 1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- 3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- 4) Property Insurance: Full replacement of insured property.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Campus. At the option of the Campus, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Campus, its trustees, officers, employees and volunteers; or the Auxiliary shall provide a financial guarantee satisfactory to the Campus guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The Campus, its trustees, officers, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Auxiliary; and with respect to liability arising out of work or operations performed by or on behalf of the Auxiliary including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Auxiliary's insurance, or as a separate owner's policy.
- 2) For any claims related to a project, the Auxiliary's insurance coverage shall be primary insurance as respects the Campus, its trustees, officers, employees, and volunteers. Any insurance or self-insurance maintained by the Campus, its trustees, officers, employees, or volunteers shall be excess of the Auxiliary's insurance and shall not contribute with it.
- 3) All insurance required under this agreement shall contain an endorsement naming the State of California, the Trustees of the California State University, the California State University, Stanislaus, and the officers, agents, volunteers, and employees of each of them as additional insureds. It shall also contain a clause requiring thirty (30) days written notice from the insurance company to both parties before cancellation or change in Coverage, scope or amount of any policy. Each policy, or a certificate of the policy, shall be deposited with the Campus within thirty (30) days after execution of this agreement and, on renewal of the policy, not less than thirty (30) days before the expiration of the term of the policy."

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current AM. Best's rating of no less than A:VII.

G. Verification of Coverage

Auxiliary shall furnish the Campus with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Campus or on other than the Campus' forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Campus before work commences. The Campus reserves the right to require complete, certified copies of all

required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

H. Subcontractors

Auxiliary shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**XV. Maintenance And Operating Expense**

Auxiliary shall be responsible for the payment of organizational maintenance and operating expense during the term of this agreement.

**XVI. Americans With Disabilities Act (ADA)**

Auxiliary assures the State that it complies with the American with Disabilities Act (ADA) of 1990, if that act is otherwise applicable. The ADA prohibits discrimination on the basis of disability. (42 USC 12101 et seq.)

**XVII. Notices**

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

Notice to Auxiliary shall be addressed as follows:

California State University, Stanislaus  
Auxiliary and Business Services  
One University Circle  
Turlock CA 95382

Notice to the State shall be addressed to:

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

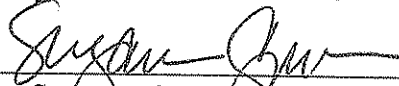
Notice to the President shall be addressed as follows:

California State University, Stanislaus  
President's Office  
One University Circle  
Turlock CA 95382

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


Executed on 12/1, 2008

California State University, Stanislaus  
Auxiliary and Business Services

By   
Suzanne Green, Treasurer  
Auxiliary and Business Services

Executed on 12/3/08, 2008

California State University, Stanislaus

By   
Hamid Shirvani, President

Approved: \_\_\_\_\_  
California State University  
Office of the Chancellor