OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND CALIFORNIA STATE UNIVERSITY STANISLAUS FOUNDATION

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 California State University, Stanislaus Foundation (FOUNDATION). 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 FOUNDATION 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, FOUNDATION agrees, for the period covered by this agreement, that its primary activity generally can be classified as:

- Philanthropic

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

- Gifts, bequests, devises, endowments, trusts and similar funds, including scholarship funds and campus program funds.

- Public relations, fundraising, fund management, and similar development programs, including alumni and community outreach.

FOUNDATION 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, FOUNDATION 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 FOUNDATION under this agreement shall be integrated with campus operations and policies established by the campus 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.

FOUNDATION 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

FOUNDATION 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 California State University, Stanislaus. Failure of FOUNDATION to comply with any term of this agreement may result in the removal, suspension or placing on probation of FOUNDATION as an auxiliary organization in good standing. Such action by CSU may involve the limitation or removal of FOUNDATION'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 FOUNDATION 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, FOUNDATION may expend funds in such amount and for such purposes as are approved by FOUNDATION’s governing body. FOUNDATION shall file, as Attachment 1 to this agreement, a statement of FOUNDATION’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**

FOUNDATION 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 by 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 FOUNDATION. This review must be conducted annually and prior to entering into an engagement letter with an external audit firm. If FOUNDATION has not changed auditor and the audit firm was previously subjected to this review only a limited review need be submitted.

9. **CHANGE OR MODIFICATION OF CORPORATE STATUS**

FOUNDATION shall provide notice to the CSU upon any change in FOUNDATION’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.

10. **FAIR EMPLOYMENT PRACTICES**

In the performance of this agreement, and in accordance with Government Code 12900 et. seq., FOUNDATION 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, sexual orientation or veteran's status. FOUNDATION 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 2 is a copy of FOUNDATION’s Constitution or Articles of Incorporation (as applicable) which establishes that upon dissolution of FOUNDATION, 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, FOUNDATION agrees to maintain this provision as part of its Constitution or Articles of Incorporation. In the event FOUNDATION 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 FOUNDATION 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.
12. **USE OF CAMPUS FACILITIES**

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

FOUNDATION 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. FOUNDATION shall reimburse Campus for costs of any such use.

13. **DISPOSITION OF NET EARNINGS**

FOUNDATION 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.

14. **ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS**

The FOUNDATION agrees 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**

FOUNDATION 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).
15. INDEMNIFICATION

FOUNDATION 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 FOUNDATION as an auxiliary organization.

16. INSURANCE

FOUNDATION 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. FOUNDATION agrees to maintain at least these minimum insurance requirements.

FOUNDATION’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 FOUNDATION’s operations). FOUNDATION shall ensure that CSU and campus are scheduled 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 FOUNDATION shall be addressed as follows:

California State University Stanislaus, Foundation
Attention: Treasurer
California State University, Stanislaus
One University Circle MSR 290
Turlock, CA 95382

Notice to the CSU shall be addressed to:

Trustees of the California State University
Attention: Director, Contract Services & Procurement
401 Golden Shore
Long Beach, CA 90802
Notice to the Campus shall be addressed as follows:

Office of the President
California State University, Stanislaus
One University Circle MSR 390
Turlock, CA 95382

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

Approved: June 5, 2013
California State University, Stanislaus
By
Joseph F. Sheley, President

Executed on June 25, 2013
California State University, Stanislaus Foundation
By
Russell Giambelluca, Treasurer

Executed on June 7, 2013
California State University Office of the Chancellor
Contract Services and Procurement
By