

**OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND CALIFORNIA STATE UNIVERSITY STANISLAUS 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 California State University, Stanislaus Foundation (FOUNDATION) serving California State University, Stanislaus. The term of this agreement shall be July 1, 2015 through June 30, 2020.

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 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, FOUNDATION agrees, for the period covered by this agreement, that the primary function(s), which the FOUNDATION is to manage, operate or administer is:

- Philanthropic

In carrying out the above, the FOUNDATION engages in the following functions authorized by, CCR tit.5, §42500, which are activities essential and integral to the educational mission of the University:

- Loans, Scholarships, Grants-in-Aids, Stipends, and Related Financial Assistance
- Externally Funded Projects Including Research, Workshops, Conferences, and Institutes
- Gifts, bequests, devises, endowments, trusts and similar funds
- Public relations, fundraising, fund management, and similar development programs

FOUNDATION 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. FOUNDATION 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, FOUNDATION understands and agrees that CSU and FOUNDATION 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 FOUNDATION 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 the FOUNDATION to ensure that the written operating agreement is current and that the activities of FOUNDATION 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.

FOUNDATION 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

FOUNDATION agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies. Failure of FOUNDATION to comply with any term of this agreement may result in the removal, suspension or probation of FOUNDATION as an auxiliary organization in good standing. Such action by CSU may result in the limitation or removal of FOUNDATION'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 FOUNDATION if such appointment or employment would be incompatible, inconsistent or in conflict with his or her duties as a CSU officer or employee.

FOUNDATION has established and will maintain a conflict of interest policy. The FOUNDATION'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, FOUNDATION may expend funds in such amount and for such purposes as are approved by FOUNDATION'S governing body. FOUNDATION shall file, as **Attachment 2** 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 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 FOUNDATION. This review by the Campus CFO must be conducted prior to the FOUNDATION engaging an external audit firm and annually thereafter. If the FOUNDATION 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 FOUNDATION 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 FOUNDATION clearly communicates that it is conducting business in its own name for the benefit of Campus. All correspondence, advertisements, and other communications by FOUNDATION must clearly indicate that the communication is by and from FOUNDATION and not by or from CSU or Campus.

FOUNDATION 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 FOUNDATION 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 FOUNDATION has met or is meeting the standards of quality of the Campus for use of its name, logo, seal or other symbol or mark.

FOUNDATION 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. FOUNDATION shall cease using the Campus name, logo, seal or other symbol or mark upon expiration or termination of this agreement, or if FOUNDATION ceases to be a CSU auxiliary organization in good standing or dissolves.

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 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., 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, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran 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 3** 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, CCR tit.5, §42600. 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.

12. USE OF CAMPUS FACILITIES

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

FOUNDATION and Campus may agree that FOUNDATION 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. 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. Cal. Educ. Code §89904; Executive Order 1059.

14. ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS

FOUNDATION 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, 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 §§89720 and 66010.4(b).

FOUNDATION 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. FOUNDATION 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

FOUNDATION 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 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 in Technical Letter RM 2012-01 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 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 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
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, Stanislaus
One University Circle MSR 390
Turlock, CA 95382

18. AMENDMENT

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

19. RECORDS

FOUNDATION shall maintain adequate records and shall submit periodic reports as required by CSU showing the operation and financial status of FOUNDATION. The records and reports shall cover all activities of FOUNDATION whether pursuant to this agreement or otherwise.

20. TERMINATION

CSU may terminate this agreement upon FOUNDATION’S breach of or failure to comply with any term of this agreement by providing FOUNDATION with a minimum of ninety (90) days advance written notice. FOUNDATION 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 FOUNDATION’S removal, suspension or probation as a CSU auxiliary in good standing, and loss of any right for FOUNDATION 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: June 9, 2016

California State University, Stanislaus

By  President

Executed on: June 9, 2016

California State University Stanislaus Foundation

By *David V. Danner*
Treasurer

Executed on ** date, 201_

California State University
Office of the Chancellor
Contract Services and Procurement

By *Vicente M. Torian*