

**OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND
ASSOCIATED STUDENTS SAN JOSE STATE UNIVERSITY**

This agreement is made and entered into by and between the Trustees of the California State University by their duly qualified Chancellor (CSU) and Associated Students (Auxiliary) serving San Jose State University (SJSU). The term of this agreement shall be July 1, 2023 through June 30, 2028.

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(S) 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:

- ☒ Student Body Organization
- ☐ Student Union
- ☐ Housing
- ☐ Philanthropic
- ☐ Externally Funded Projects
- ☐ 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. Student Body Organization Programs & Services, including but not limited to:
 - Alternative Transportation Solutions

- Cesar Chavez Community Action Center
- Child Development Center
- Print & Technology Center
- Student Organizations Trust Services

2. Scholarships and Stipends. Student scholarships and stipends shall only be given to currently admitted students. A record of such financial assistance shall be forwarded on a timely basis to the Financial Aid and Scholarships Office and shall be documented on student financial aid recipient records kept in that office. All such financial assistance provided from student body organization funds shall be approved by the campus financial aid office before such funds are expended, and shall not exceed amounts to be provided under regulations of federal and state financial aid programs, except as provided under CCR Title 5, §42403, subdivision (b).

Receipt of local grants and/or contracts for defined activities in Section 2.1 shall adhere to Auxiliary policy and procedures. State and/or federal grants and /or contracts shall adhere to CSU and SJSU authorized policies and procedures.

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 21, *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 (CFO) 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 CFO 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.

Given the sensitive and important nature of the Child Development Center, the unit will operate with an additional reporting and communication relationship with the Campus. The President will designate an institutional officer to work together with the Executive Director of the Auxiliary to provide oversight of the operations, compliance, safety, and security of the Child Development Center. Through a combination of monthly electronic reporting, quarterly meetings, and periodic reviews related to assessment and accreditation, the Campus and the Auxiliary will work together to ensure that the unit is delivering the educational service at levels consistent with National Association for the Education of Young Children and State of California standards, and that the Auxiliary and the Campus are providing the necessary support to achieve this. Monthly reports will include:

- Enrollment status (total capacity and current enrollment)
- Staffing levels: Filled and open positions
- Incidents: injuries, significant parent communications, police reports, other non-routine matters

The President's designee will also communicate in writing, expectations, and actions of the Campus directly to the Executive Director of the Auxiliary and the Director of the Child Development Center.

Auxiliary agrees to assist the Campus CFO 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 (once completed by the Auxiliary), 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 CFO shall annually review, and submit a written evaluation to the Chancellor's Office in accordance with Section 20, 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, dissolves or disappears in a merger.

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, merger, 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. BACKGROUND CHECK POLICY COMPLIANCE

In compliance with governing laws and CSU policy, Auxiliary shall confirm that background checks are completed for all new hires and for those independent contractors, consultants, outside entities, volunteers and existing employees in positions requiring background checks as set forth in CSU systemwide policy. Auxiliary will provide confirmation of completed and cleared background checks to the University President/Chancellor upon request, or as established by campus policy. (See HR 2016-08).

12. DISPOSITION OF ASSETS

Attached hereto as **Attachment 3** is a copy of Auxiliary's Constitution or Articles of Incorporation (as applicable) which, in accordance with CCR tit.5, §42600, establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed *to the CSU or to another affiliated entity subject to financial accounting and reporting standards issued by the Government Accounting Standards Board*. 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.

13. 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.

In no case, shall the Auxiliary enter into any agreements in conjunction with sponsorships, naming rights, leased space, cellular towers, or charging for use of space within facilities without the written approval of the Campus. Such approval shall not be unreasonably withheld.

14. CONTRACTS FOR CAMPUS SERVICES

Auxiliary may contract with Campus for services to be performed by state employees for the benefit of Auxiliary. Any agreement must be documented in a written memorandum of understanding between Auxiliary and Campus. The memorandum of understanding shall among other things, specify the following: (a) full reimbursement to Campus for services performed by a state employee in accord with CCR tit.5, §42502(f); (b) Auxiliary must clearly identify the specific services to be provided by state employee, (c) Auxiliary must specify any performance measures used by Auxiliary to measure or evaluate the level of service; (d) Auxiliary must explicitly acknowledge that Auxiliary does not retain the right to hire, supervise or otherwise determine how to fulfill the obligations of the Campus to provide the specified services to Auxiliary.

15. 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.

16. FINANCIAL CONTROLS

Recovery of allowable and allocable indirect costs and maintenance and payment of operating expenses must comply with ICSUAM §13680. CCR tit. 5, §42502(g) and (h).

17. 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.

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>.

18. 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.

19. 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.

20. 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:

Associated Students San Jose State University
One Washington Square
Student Union Room 1800
San Jose, CA 95192-0128
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
San Jose State University
One Washington Square
San Jose, CA 95192-0002

21. AMENDMENT

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

22. 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.

23. 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.

24. REMEDIES UPON TERMINATION

Termination by CSU of this agreement pursuant to Section 23, *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.

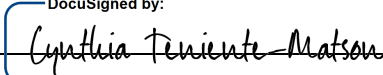
25. SEVERABILITY

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.

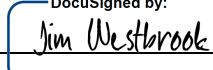
Approved: 6/20/2023

San Jose State University

By 
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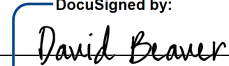
Executed on 6/3/2023

Associated Students

By 
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Executed on 6/21/2023

California State University
Office of the Chancellor
Contract Services and Procurement

By 
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CONFLICT OF INTEREST POLICY

I. California Education Code

A. Section 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.

B. Section 89907:

No contract or other transaction entered into by the governing board of 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:

1. 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
2. The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

C. Section 89908:

The provisions of Section 89907 shall not be applicable if the circumstances specified in any of the following subdivisions exist:

1. The contract or transaction is between an auxiliary organization and a member of the governing board of that auxiliary organization.
2. The contract or transaction is between an auxiliary organization and a partnership or unincorporated association which any member of the governing board of that auxiliary organization is a partner or in which he is the owner or the holder, directly or indirectly, of a proprietorship interest.
3. 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.
4. 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.

D. Section 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 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.

II. Rule II - The Members

A. Section 9:

All Board members shall read and sign a conflict of interest statement before being sworn into office.

III. Certification Of Non-Conflict Of Interest

I have read and understood Sections 89906, 89907, 89908, and 89909 of the California Education Code.

I declare that I am not in conflict with the provisions of the California Education Code. I am not involved financially, through employment or family connections with any business, firm, vendor, or service bureau engaged in contracts with the Associated Students, Incorporated, of San Jose State University.

I declare that, during my tenure as a member of the Board of Directors of the Associated Students, Incorporated of San Jose State University, I shall disclose any potential conflict of interest regarding contractual matters before the Board of Directors. If I am legally considered to be in a position of conflict, I shall abide by the conditions set forth in Section 89907 of California Education Code.

In addition, I acknowledge and understand that Associated Students' policy prohibits a member of the Board of Directors or officer of the Associated Students from simultaneously (1) serving as an employee of the Associated Students regardless of the source of funds for the position; (2) serving as director, chair or employee of an A.S. sponsored program or service which receives funding in whole or in part from the Associated Students; (3) receiving a stipend or grant-in-aid funded in whole or in part by the Associated Students other than that received as a Board Member or officer of the Associated Students.

I also understand that in the event a recognized campus organization or club of which I am a member or in which I participate applies for or receives financial assistance from the Associated Students I will be required to abstain from voting directly or indirectly on a matter affecting financial assistance to that organization or club. I further understand and agree that abstain form voting on any matter which directly or indirectly affects me, my employer and family.

"I declare under penalty of perjury under the laws of the State of California that this Certification is true and correct."

Print Name

Signature

Position

Date

Please list below student clubs or organizations you are affiliated with.

1. _____
2. _____
3. _____
4. _____
5. _____

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Secretary of State
State of California

MAY - 6 2013

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RESTATED ARTICLES OF INCORPORATION
OF
ASSOCIATED STUDENTS SAN JOSÉ STATE UNIVERSITY

The undersigned certify that:

1. They are the Chair of the Board and the Secretary, respectively, of ASSOCIATED STUDENTS SAN JOSÉ STATE UNIVERSITY, a California nonprofit corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

ONE: The name of the Corporation is ASSOCIATED STUDENTS SAN JOSÉ STATE UNIVERSITY.

TWO: 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 charitable purposes.

THREE: This Corporation is organized exclusively for charitable, scientific, literary, or educational purposes, within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law. Notwithstanding any other provision of these Articles, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this Corporation, and the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, or (b) by a corporation, contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

FOUR: The Corporation shall have no members as that term is defined in Section 5056 of the California Corporations Code, or in any successor statute thereto. Any Corporate action which would otherwise require approval by a majority of all members or approval by the members of the Corporation shall require only approval of the Board of Directors.

FIVE: a) No substantial part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in Section 501 (h) of the Internal Revenue Code of 1986, and this Corporation shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office except as otherwise provided in Section 501 (h) of the Internal Revenue Code of 1986.

b) All Corporate property is irrevocably dedicated to the purposes set forth in Article THREE, above. No part of the net earnings of this Corporation shall inure to the benefit of any of its directors, trustees, officers, private shareholders, or to individuals.

c) Upon the winding up and dissolution of the Corporation after paying or adequately providing for the debts, obligations, and liabilities of the Corporation, all net assets, other than trust funds, shall be distributed to a successor approved by the President of San José State University, and by the Chancellor of The California State University. Such successor shall have tax-exempt status under Section 501 (c) (3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States internal revenue law) and under Section 23701d of the California Revenue and Taxation Code, or the corresponding section of any future California revenue and tax law.

3. The foregoing amendment and restatement of 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: 5/1/13

RECEIVED
MAY 1 2013
SAN JOSE STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



Lori Salazar
Lori Salazar, Chair of the Board

Aaron Tsang
Aaron Tsang, Secretary

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