

OPERATING AGREEMENT BETWEEN TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

AND SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION

This Agreement is made and entered into by and between the Trustees of the California State University (hereinafter called Trustees or CSU) by their duly qualified and acting Chancellor, and the San Diego State University Research Foundation (hereinafter called Auxiliary) serving San Diego State University (hereinafter called SDSU or University). The term of this Agreement shall be July 1, 2011 through June 30, 2016, unless sooner terminated as herein provided.

I. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions under which the Auxiliary 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 (Sections 42400 et seq.) of Title 5 of the California Code of Regulations. In entering into this Agreement the Trustees find that certain functions, important to the mission of the University, are more effectively accomplished by the use of an auxiliary organization rather than the usual State of California (hereinafter called State) procedures. By reference, this Agreement incorporates the SDSU Scope of Authority – Auxiliary Organizations which sets forth policy and functions, business transactions and activities of auxiliary organizations.

II. FUNCTION

In consideration of receiving recognition as an official auxiliary organization of the CSU, Auxiliary hereby agrees for the period covered by this Agreement, to perform the following functions specified in 42500, Title 5, California Code of Regulations, subject to the concurrence of the President that the activity is supportive of and consistent with the academic mission and conducted solely for the benefit of the University:

A. Functions

1. Assisting faculty and staff in developing and administering federal, state and privately funded research and educational projects:
 - a. Identifying funding sources, offering grant-related workshops, and assisting with proposal development and submission;
 - b. Developing project budgets, obtaining university approvals, and negotiating sponsored grant and contract awards;
 - c. Interpreting agency guidelines and policies.
2. Providing technology transfer services:
 - a. Protecting intellectual property;
 - b. Commercializing technology developed at University;
 - c. Assisting spin-out companies based on University inventions.

3. Identifying, acquiring, and managing real property in support of sponsored programs.
 4. Performing business functions such as purchasing, accounting, payroll, human resources and financial reporting support, for research and project funds, scholarships, institutes, KPBS, and The Campanile Foundation.
 5. Acceptance of fund drive revenues for KPBS and administration of gift annuities that pre-date authorization of The Campanile Foundation to do so.
 6. Act as a Sponsored Program Administrator (SPA).
 7. Provide administrative and accounting support for various programs including centers and institutes and campus programs where University has delegated this responsibility through the completion of Auxiliary's Account Request Form.
- B. Auxiliary, when acting as SPA, agrees to comply with CSU Executive Order No. 890 and to provide grants and contracts services to ensure the submission of proposals and administration of contracts and grants in accordance with University's policy for Sponsored Program Administration, federal and state regulations, funding agency regulations, and other applicable CSU, campus and Auxiliary policies.
- C. Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering these purposes only for the benefit of University. Auxiliary shall not obtain, receive or hold funds, properties or assets for its own purpose or for any other purpose than for the benefit of University. Prior to initiating any additional functions, Auxiliary agrees to obtain written approval of the President through the Vice President of Business and Financial Affairs. Nothing in this statement of functions shall limit the ability of University to engage directly in such functions itself. Operations of Auxiliary under this Agreement shall be integrated with University operations and shall be supervised by University officials so as to assure compliance with the objectives stated in Section 42401 of Title 5 of the California Code of Regulations.

III. ADDITIONAL CONDITIONS

- A. Auxiliary agrees to maintain its organization and operate in accordance with all applicable regulations and policies of Trustees, Chancellor and University including, but not limited to, the SDSU Scope of Authority - Auxiliary Organizations.
- B. With respect to expenditures for public relations, or other purposes which would serve to augment appropriations for University operations; Auxiliary may expend funds in such amount and for such purposes as are approved by Auxiliary's governing body as required by Section 42502(I) of Title 5. If Auxiliary expends funds for public relations, it shall have a policy and shall file with Trustees 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, purposes for which the funds will be used, allowable expenditures, and procedures of control.

- C. No officer or employee of the University shall be employed by Auxiliary if such employment would be incompatible, inconsistent or in conflict with his or her duties as a University officer or employee.
- D. Auxiliary may not enter into any contract or any business arrangement involving the acquisition or sale of real property without the prior approval of the University President through the University Vice President for Business and Financial Affairs.
- E. Auxiliary may be directed to acquire, receive and hold title, and/or sell real property by the University President through the University Vice President of Business and Financial Affairs.

IV. RECORDS

Auxiliary shall maintain adequate records and shall submit periodic reports as required by Trustees 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 CSU Executive Order No. 698 and related policies.

VI. FISCAL AUDITS

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

- A. Contract with a certified public accountant for an annual audit at Auxiliary's expense. The examination shall meet the standards specified by the University President. The audit shall be coordinated through the University Vice President for Business and Financial Affairs or his or her designee. The report on such examinations shall be furnished to the University through the Vice President for Business and Financial Affairs and to the Trustees.
- B. Permit examination of all Auxiliary records by State, Trustees, University, or their designees.

VII. TERMINATION

This agreement may be terminated by the Trustees upon breach of any part herein and result in removal or suspension of Auxiliary as an Auxiliary in good standing, by providing the Auxiliary with a minimum of ninety (90) days advance written notice. Auxiliary may utilize the ninety-day advance notice period to cure the breach. If, in the judgment of the Trustees, the breach has been cured, the termination notice will be cancelled.

VIII. 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 Trustees may involve the limitation or removal of Auxiliary's right to utilize the resources, facilities and name of Trustees and University (reference Title 5, CCR, 42406).
- B. Upon termination or breach of this Agreement, Trustees, 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 University or to a successor non-profit corporation qualifying as an auxiliary of University as determined by the University President. This remedy shall be in addition to any other remedies available to Trustees upon termination or breach of this Agreement.

IX. 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 orientation, 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 Trustees.

X. 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 accord with Section 42600 of Title 5, California Code of Regulations and University policy. 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 distribution of net assets, this Agreement shall terminate as of the date immediately preceding the day such change becomes effective, and all net assets shall become property of University.

XI. USE OF CAMPUS FACILITIES

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

XII. DISPOSITION OF NET EARNINGS

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

XIII. SPECIFIC PROVISIONS RELATING TO TRAVEL STUDY COURSES

Auxiliary may, with prior written approval of the President of University, perform the following services in connection with authorized travel study courses:

Collect from participants in a travel study course costs of travel, meals, accommodations, insurance and other costs authorized by the President, or his or her designee. The collection of Trustees' fees shall be handled in accordance with established Trustees' procedures.

XIV. CHARGES FOR FACILITIES AND SERVICES BY UNIVERSITY

Auxiliary agrees to make fair and equitable reimbursement to Trustees for services rendered to Auxiliary by the University and for use of facilities and other resources. Said reimbursements shall be net of any services, facilities or other resources provided by Auxiliary to Trustees. Upon approval of the University Vice President of Business and Financial Affairs of the value of such services, facilities or other resources, and preparation of appropriate documentation, reimbursement under this provision need not be only in the form of cash, and the net reimbursement may be calculated across a variety of services.

XV. MAINTENANCE AND OPERATING EXPENSE

Auxiliary shall be responsible for the payment of organizational maintenance and operating expense during the term of this Agreement as specified, including maintenance of adequate reserves.

XVI. INDEMNIFICATION

Auxiliary agrees to indemnify, defend, and save harmless the State, the Trustees, Chancellor, and University, their officers, agents and employees of each of them from any and all loss, damage, or liability that may be suffered or incurred by them, caused by, arising out of, or in any way connected with the operation of Auxiliary as an auxiliary organization.

Auxiliary agrees as part of the responsibility of performing the functions identified in paragraph 2 of this agreement that indemnification includes indemnification for actions of the University and its employees, to the extent those actions involve the functions of Auxiliary. For any claims arising out of the action of the University or its employees, the University through its Vice President for Business and Financial Affairs will manage the claim, and will assign financial responsibility with consideration given to the source of funding for the functions giving rise to the claim, including funding administered for the University's benefit by Auxiliary.

XVII. 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 University. At the option of the University, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the University, its trustees, officers, employees and volunteers; or the Auxiliary shall provide a financial guarantee satisfactory to the University 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 State, Trustees, University and its trustees, officers, employees, and volunteers are to be covered as additional insured 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 State, Trustees, University and its trustees, officers, employees, and volunteers. Any insurance or self-insurance maintained by the University, 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, Trustees, University, and the officers, agents and employees of each of them as additional insured. It shall also contain language 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 University 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 University with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the University or on other than the University's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the University prior to their effective dates. The University 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 insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

XVIII. NOTICES

All notice 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 paid, and addressed as herein provided.

Notice to the Auxiliary shall be addressed to:

Executive Director
San Diego State University Research Foundation
5500 Campanile Drive
San Diego, CA 92182-1930

Notice to the Trustees shall be addressed to:

Trustees of the California State University
Attn: Contracts and Procurement
401 Golden Shore
Long Beach, CA 90802-4275

Notices to San Diego State University shall be addressed as follows:

The President's Office
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-3340

and

The Vice President for Business and Financial Affairs
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-1620

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the following date:

SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION

By: Dan M. Gilbreath, Executive Director

Date _____

SAN DIEGO STATE UNIVERSITY

By Stephen L. Weber, President

Date _____

Approved: _____
**THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR**

Date _____