

**OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND THE STUDENT UNION OF 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 The Student Union of San Jose State University (Auxiliary) serving San Jose State University (Campus). The term of this agreement shall be November 1, 2024 through October 31, 2034 unless sooner terminated as herein provided.

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 (*Check each category that applies*):

- 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:

- A. Student Union, which includes the maintaining, programming, scheduling and day to day management of four major facilities:
 - i. Diaz Compean Student Union
 - ii. The Provident Credit Union Event Center
 - iii. Spartan Recreation and Aquatic Center
 - iv. South Campus Recreation Field

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.

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, 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 under CSU's Policy regarding Auxiliary Organizations External Audit Firm Qualifications (<https://calstate.policystat.com/policy/14463852/latest>).

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 system wide 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 an agreement executed between Campus and Auxiliary. If this Operating Agreement terminates or expires and is not renewed within 30 days of the expiration, the Agreement 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.

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 quality and 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.

While the Auxiliary has the authority to contract directly with external third-party vendors for all minor repairs and maintenance and services required to support the Diaz Compean Student Union, The Provident Credit Union Event Center, and the Spartan Recreation and Aquatic Center, the Campus and the Auxiliary shall work collaboratively together to review existing and proposed annual service agreements to ensure that there is mutual agreement with the agreed upon performance criteria for service delivery and compliance with campus building standards. For maintenance, repair and capital improvements performed for the buildings listed in Section 2A, Auxiliary commits to utilizing Campus pre-approved service providers and contractors. If Auxiliary desires to use an alternative service provider or contractor, Auxiliary will seek feedback and a “sign off” from the Campus prior to proceeding. In the event of an emergency repair, the Auxiliary will consult with the Campus deputy building in regards to the Auxiliary being able to contract directly for such repair work depending upon the scope of the repair and any plan approval requirements.

In accordance with CSU policy, consultation with the Executive Facilities Officer shall be required for all minor and major capital projects and shall align with applicable CSU

policies, the University's Capital Outlay Management Plan which delegates authority to the University to manage design and construction activities in coordination with the Auxiliary, and all applicable codes regulations governing CSU construction-related work efforts. Work efforts requiring a building permit, as defined in the California Building Code shall be overseen by, and where required, permitted by the Campus Deputy Building Official. The Campus and the Auxiliary will work together to develop a five-year prioritized list of both minor and major capital outlay projects based upon the programmatic needs of the 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).

The Campus shall utilize an equitable and transparent methodology when determining indirect costs allocated to the Auxiliary. Campus will seek feedback from the Auxiliary on the methodology for calculation of allowable indirect costs prior to any final determination and shall ensure compliance with CSU Executive Order 1000.

17. ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS

In accordance with Section 2 above, Auxiliary is not authorized to accept and administer gifts, grants, contracts, scholarships, loan funds, fellowships, bequests, and devises in accordance with policies of CSU and Campus.

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 System wide Office of Risk Management shall establish minimum insurance requirements for auxiliaries, based on the insurance requirements in the

[California State University Insurance Requirements](#) policy. 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:

*Executive Director, Student Union at San José State University
San José State University
1 Washington Square
San Jose, CA 95192-0155*

Notice to the CSU shall be addressed to:

*Trustees of the California State University
401 Golden Shore
Long Beach, California 90802
Attention: Assistant Vice Chancellor, Strategic Sourcing & Chief Procurement Officer*

Notice to the Campus shall be addressed as follows:

*Office of the President
San José State University
1 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.

26. USE OF PREMISES

A. Auxiliary may occupy, operate, and use the property only in connection with the following functions and activities in accordance with the terms of this agreement:

1. Operating, programming, scheduling and maintaining the Student Union facility for the students, faculty, staff, alumni, and guests of the campus.
2. Operating, programming scheduling and maintaining the Student Recreation and Aquatic facility for the students, faculty, staff, alumni and guests of the campus.
3. Operating programming, scheduling and maintaining the Event Center facility for the students, faculty, staff, alumni and guests of the campus.
4. Operating programming and scheduling the South Campus Recreation Field for the students, faculty, staff, alumni and guests of the campus.

B. Auxiliary shall use the property only for functions and activities that are consistent with the Functions established in Section 2 and guidelines and policies that have been or may hereafter be adopted by CSU.

27. CONSIDERATION

- A. Auxiliary shall operate as an auxiliary organization as set forth in this agreement.
- B. Auxiliary shall manage and operate the student union facilities in accordance with the bond indenture, the policies of the CSU, Campus, this agreement, and for the benefit of Campus.

28. APPLICATION OF STUDENT UNION FEES

A. Pursuant to the CSU System wide Revenue Bond program, retirement of the debt incurred by CSU for the construction of the Student Union facility is to come from a mandatory student union fee to be paid by all enrolled students. After required funds have been set aside for debt service and all reserves, CSU agrees to make available to Auxiliary a portion of any remaining funds, as authorized by Education Code, Section 90076. CSU agrees to transfer such funds, if any, in the Student Union Net Revenue Fund account and/or applicable Trust Fund account, in the following circumstances:

- 1) Auxiliary shall be entitled to a transfer of funds, which will be disbursed annually as required for operating purposes. The transfer for operating purposes will be based on needs as shown in the operating budget and approved by the campus' Chief Financial Officer or designated staff subject to the availability of such funds.
- 2) Additional transfers of revenue may be made for extraordinary expenses as requested by Auxiliary and approved by the campus' Chief Financial Officer or designated staff, subject to the availability of funds.
- 3) On an annual basis during development of the annual Auxiliary operating budget, Campus shall consult with the Auxiliary regarding projected annual revenue to be collected from student fees, projected fund balances, projected expenditures from reserve funds, and projected assessment for annual indirect cost recovery. The campus CFO shall consider recommendations from the Auxiliary Board for additional operating revenues to meet current and future programmatic and staffing requirements in accordance with University Strategic Plan. Such approval by campus CFO shall not be unreasonably withheld as the campus President is ultimately responsible for reviewing campus auxiliary organization' programs and budgets in order to ensure fiscal viability.

B. This Section shall be subject to and construed in conformity with the Indenture of the Trustees of the CSU adopted April 1, 2002 authorizing the issuance of System wide Revenue Bonds and made a part of this agreement.

29. BUILDINGS, SIGNS, FIXTURES, AND EQUIPMENT

During the term of this Agreement, Auxiliary shall have the right to erect, place, and attach buildings, fixtures, signs, and equipment in and upon the property. Plans and working drawings for buildings to be placed on the land shall have prior approval of CSU. The number, size, and location of signs are subject to prior written approval of the Campus. Fixtures, signs, and equipment so erected, placed, or attached by the Auxiliary shall be and remain the property of the Auxiliary and may be removed there from by the Auxiliary prior to the termination of this Agreement.

30. ALTERATIONS

The premises shall not be altered or changed in any manner or respect without the written consent of the Campus, and changes that may be authorized shall be made under the direction of the Campus and at the expense of Auxiliary. Permanent alterations shall have prior approval of Campus.

31. RIGHT OF ENTRY

It is understood and agreed that at any time CSU and its agents shall have the right to enter the premises or any part thereof for the purpose of examination or supervision.

Care, maintenance, and repair of the property shall be provided as follows:

- A. Care and Maintenance: Auxiliary agrees to keep and maintain the property in a clean and orderly condition and shall at its own expense, at reasonably frequent intervals, and in a lawful manner dispose of all waste from the property.
- B. Repairs: Auxiliary agrees to keep the premises in good repair.

32. RESTORATION OF PREMISES

Upon termination of this Agreement, CSU shall have the option to require Auxiliary, at its own expense and risk, to restore the demised premises as nearly as possible to the condition existing prior to the execution of the Agreement, with the exception of normal wear and tear.

But, if Auxiliary shall fail to do so within 90 days after CSU's option, CSU may restore the property at the risk of the Auxiliary and all costs and expenses of such removal or restoration shall be paid by Auxiliary upon demand of State. CSU shall have the right to exercise this option within 30 days after the expiration of this Agreement, but not thereafter.

33. MORTGAGES

Auxiliary shall not have the right to subject this Agreement to any mortgage, trust deed, or other security device without the written consent of CSU.

34. POSSESSORY INTEREST

The County Assessor may value the possessory interest created by this Agreement or any subleases. Under California Revenue and Taxation Code section 107, a property interest tax may be levied on that possessory interest. The lessee is obligated to pay this property tax, and failure to do so may be considered a material breach of the Agreement."

35. ASSIGNMENTS OR SUBLEASE

Auxiliary shall not assign or sublease any part of the premises covered by this Agreement without the written permission of CSU.

CSU agrees, however, that Auxiliary may sublease any portion of the premises with the approval of the Campus. Substantial deviation from CSU's policy and model sub-leases requires the approval of the Campus.

Subleases may be written with terms in excess of this agreement: however, the continuation of the sublease past the term of this Agreement is contingent on this Agreement's renewal.

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

Approved: February 25, 2025

San Jose State University

Signed by:
By Cynthia Teniente-Matson
Cynthia Teniente-Matson, President

Executed on February 25, 2025

Student Union of San Jose State University

DocuSigned by:
By Aaron Burgess
Aaron Burgess, Interim Executive Director

Signed by:
By Mari Fuentes-Martin
Mari Fuentes-Martin, Ed.D., Vice President for Student Affairs

Executed on February 25, 2025

California State University
Office of the Chancellor

Signed by:
By Brad Wells
Bradley Wells, Associate Vice Chancellor