



Office of the Vice President California State University San Marcos 333 S. Twin Oaks Valley Road San Marcos, CA 92096-0001
Tel: 760.750.4400 jmberger@csusm.edu www.csusm.edu/advancement

MEMORANDUM

DATE: November 17, 2023

TO: Leon Wyden, Jr.
CSUSM Vice President of Finance & Administrative Services
CSUSM, Chief Financial Officer
CSUSM Foundation, Secretary and Treasurer

FROM: Jessica Berger *Jessica Berger*
Vice President, University Advancement
Executive Director, CSUSM Foundation

SUBJECT: CSUSM Foundation Operating Agreement

As noted in Section 3. Campus Oversight and Operational Review in the CSUSM Foundation Operating Agreement, the operations and activities of the Foundation are integrated with Campus operations and policies and are overseen by the campus Chief Financial Officer to assure compliance.

Further, the campus Chief Financial Officer shall ensure that the written operating agreement is current and that the activities of the Foundation are in compliance with this agreement. This certifies that the Foundation primary functions are current, as notated in the enclosed operating agreement and addendum:

- Philanthropic
- Real Property Acquisition / Real Property Development
- Externally Funded Projects Including Research, Workshops, Conferences and Institutes

Concur approval: *Leon Wyden Jr.*
[Leon Wyden Jr \(Dec 1, 2023 10:24 PST\)](#)

Leon Wyden, Jr.
CSUSM Vice President of Finance & Administrative Services
CSUSM, Chief Financial Officer
CSUSM Foundation, Secretary and Treasurer

Date: 12/01/2023

Enclosure: Operating Agreement Between CSU and CSUSM Foundation
Administration of Grants and Contracts Addendum to the Auxiliary Operating Agreement

cc: Chancellor's Office
CSUSM President
CSUSM Procurement

Administration of Grants and Contracts
Addendum to Auxiliary Operating Agreement
Between Trustees of the California State University,
California State University San Marcos
And
California State University San Marcos Foundation

This is an addendum to the Operating Agreement between the Trustees of the California State University (CSU) and **California State University San Marcos Foundation** (Auxiliary) serving **California State University San Marcos** (Campus), effective from July 1, 2016 through June 30, 2026, and authorizes the Auxiliary to perform the function "7. Externally Funded Projects Including Research, Workshops, Conferences and Institutes" as specified in 5 CCR (California Code of Regulations) 42500.

With this addendum, Campus designates Auxiliary as:

- The primary Sponsored Program Administrator (SPA) for the Campus;
- A SPA for specific types of grants and contracts for Auxiliary primary business purpose.¹
Accepts grants and contracts from sources that require a 501(c)(3) status.

Auxiliary will ensure that all proposals for external funding are reviewed by the President or designees to provide programmatic and fiscal written approval in accordance with CSU systemwide policy, [ICSUAM 11002.01](#) (formerly [EO 890](#)).²

Auxiliary, when acting as SPA, agrees to provide grant and contract administration services in compliance with all CSU (see [ICSUAM](#), Section 11000), Campus and Auxiliary policies related to sponsored program administration, federal and state regulations and funding agency (sponsor) regulations and guidelines.

Approved:

California State University San Marcos



Karen Haynes
President

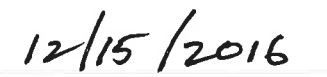


Date

California State University San Marcos Foundation



Neal Hoss
Executive Director



Date

¹ For example: certain grants may be awarded to the associated students (AS) auxiliary that directly support AS programs; or a non-profit foundation may require the grant recipient to be qualified under a particular IRS code, such as 501(c)(3) or its subsections. In either case, the auxiliary accepting the grant may choose to enter into an agreement with the Campus primary SPA for more effective grant administration.

² ICSUAM Policy 11002.01 incorporates the relevant policy sections from EO890, including proposal review and approval requirements. EO890 is superseded by ICSUAM Section 11000 et al.



California State University
SAN MARCOS

The
Foundation

The CSUSM Foundation California State University San Marcos 333 S. Twin Oaks Valley Road San Marcos, CA 92096-0001
Tel: 760.750.4400 Tax ID: 80-0390564 www.csusm.edu/foundation

Memorandum

DATE: April 28, 2016

TO: Director, Contract Services & Procurement
Trustees of the California State University
401 Golden Shore
Long Beach, California 90802

FROM: Donna Day
Secretary to the CSUSM Foundation

SUBJECT: CSUSM Foundation Operating Agreement

Enclosed is the Operating Agreement between the Trustees of the California State University and the California State University San Marcos Foundation. Should you have any questions, please call me at 760-750-7307.

Thank you,
Donna



**OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND CALIFORNIA STATE UNIVERSITY SAN MARCOS 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 San Marcos Foundation (Auxiliary) serving California State University San Marcos (Campus). The term of this agreement shall be July 1, 2016 through June 30, 2026.

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

- Philanthropic
- Real Property Acquisition / Real Property Development

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. Gifts, bequests, devises, endowments, trusts and similar funds
2. Public relations, fundraising, fund management, and similar development programs
3. Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities

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 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 Auxiliary 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 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 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.

Auxiliary 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

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 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 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 or dissolves.

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 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. DISPOSITION OF ASSETS

Attached hereto as Attachment 3 is a copy of Auxiliary's Constitution or Articles of Incorporation (as applicable) which establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed in accord with, CCR tit.5, §42600. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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 Auxiliary shall be addressed as follows:

California State University San Marcos Foundation
333 South Twin Oaks Road
San Marcos, CA 92096
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:

California State University San Marcos
333 South Twin Oaks Road
San Marcos, CA 92096
Attention: Office of the President

18. AMENDMENT

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

19. 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.

20. 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.

21. REMEDIES UPON TERMINATION

Termination by CSU of this agreement pursuant to Section 20, 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.


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.

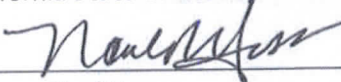
Approved on: 4/27/16

California State University San Marcos

By 
Karen Haynes
President

Executed on: 4-25-2016

California State University San Marcos Foundation

By 
Neal Hoss
Executive Director

Executed on: 6/6/16

California State University Office of the Chancellor
Contract Services and Procurement

By 