

**OPERATING AGREEMENT  
BETWEEN CALIFORNIA STATE UNIVERSITY  
AND SONOMA STATE UNIVERSITY 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 Sonoma State University Foundation serving Sonoma State University. The term of this agreement shall be July 1, 2022 through June 30, 2032 *(10 Year Term unless sooner terminated as herein provided. This 10 year period only may be extended for financing or leasing purposes, and with the written approval of the CSU.)*

**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:

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 22, *Amendment*.

### **3. ADDITIONAL CONDITIONS**

- A. Auxiliary agrees to maintain its organization and to operate in accordance with all applicable regulations and policies of the State, Chancellor, and Sonoma State University.
- B. The Auxiliary agrees to adopt the fiscal, human resources, and logistical practices, processes, procedures and policies of Sonoma State University in their entirety.
- C. The Auxiliary agrees to reimburse the University for all University services performed by University employees for the benefit of the Auxiliary organization.

### **4. 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.

#### **5. 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).

#### **6. 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**.

#### **7. 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.

#### **8. 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 21, 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.

## **9. 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.

## **10. 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.

## **11. 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.

## **12. 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).

### **13. 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.

### **14. 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.

### **15. 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.

### **16. 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.

#### **17. 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).

#### **18. 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.

#### **19. 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.

## **20. 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.

## **21. 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:

Sonoma State University Foundation  
1801 East Cotati Avenue  
Rohnert Park, CA 94928

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:

Contracts and Procurement  
Sonoma State University  
1801 East Cotati Avenue  
Rohnert Park, CA 94928

## **22. AMENDMENT**

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

## **23. 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.

## **24. 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.

## **25. REMEDIES UPON TERMINATION**

Termination by CSU of this agreement pursuant to Section 24, *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.

## **26. 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: 04/25/2022

Sonoma State University

By   
Dr. Judy K. Sakaki  
President

Executed on 04/15/22

Sonoma State University Foundation

By   
~~Mario A. Perez, Ed.D.~~  
CEO

Executed on 3/8/22

Sonoma State University Foundation

By   
Ian Hannah  
Chief Operating Officer

Executed on 5/4/22

California State University  
Office of the Chancellor  
Contract Services and Procurement

By 



**Jeremy L. Olsan**

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September 17, 2021

Board of Directors  
Sonoma State University Foundation  
1801 East Cotati Avenue  
Rohnert Park, CA 94928

Re: Your Duties and Obligations as Board Members, and the Nonprofit Integrity Act

Dear Members of the Board:

You have been both kind and generous in agreeing to serve as a director of the Sonoma State University Foundation (the "Foundation" or the "corporation"). Your participation on the Board is a valuable service to the campus, to the broader Sonoma County community, and to the people of the State of California.

The purpose of this letter, which is presented annually at a Board meeting, is to provide information to both new and continuing Board members regarding your legal responsibilities as a director of the Foundation, and about the California Nonprofit Integrity Act. Please read it carefully, contact me if you have questions, and then promptly print the letter, check the appropriate box, date and sign the letter at the end, and return the signed copy to the Foundation. **You are encouraged to do this by emailing a completed PDF copy to the Foundation staff.**

The Foundation is a not-for-profit corporation organized under the Education Code of the State of California. This is different from most not for profits or other corporations with which you may have Board experience, as those organizations are formed solely under the California Corporations Code. The Education Code (amplified by provisions of the California Code of Regulations) sets up a higher standard of responsibility for the directors than is applicable toward other corporations. To the extent that the Education Code does not establish specific standards, they are set by the California Nonprofit Corporation Law.

The Foundation is an "auxiliary organization" of Sonoma State University. Its purpose is not to produce a profit for itself but to produce a service to the campus, and it can do this in any number of ways. The Foundation's specific purposes are stated in the Articles of Incorporation and are generally

to promote the objectives of the University in such manner as the President may determine to be appropriate.

**Generally speaking, if you regularly and diligently prepare for and attend Board meetings, disclose any conflicts of interest you have regarding a Board matter and recuse yourself prior to the Board taking action on the matter, act in good faith and in a manner in which you reasonably believe to be in the best interests of the Foundation, make reasonable inquiries where a reasonable person would make such an inquiry, and vote "no" where you conclude that a proposed Board action is inappropriate, you will have fulfilled your duties and your conduct will be above reproach.**

Your function is to manage the affairs of the Foundation. The Board can do this by delegating some management functions and corporate powers to others, provided that the Board ultimately directs and controls the actions of those to whom management powers are delegated, and provided that you have determined that the people to whom you delegate authority are competent, experienced and trustworthy.

In managing the Foundation, each of you must exercise your own independent judgment and in doing so you may not always be right. **You are generally not responsible for errors in your judgment, so long as in reaching your decision you have exercised the degree of care that would be expected of a knowledgeable individual acting in good faith. This is also known as the "business judgment rule," which protects a director by a presumption that the director acted reasonably. This presumption does not apply where the director has a financial interest in the subject matter on which his or her business judgment is being exercised.** In that circumstance, the director must prove he or she satisfied their fiduciary duty to the Foundation.

#### **A. MANAGEMENT**

The Board of Directors is ultimately responsible for the management of the Foundation. The Education Code, the Code of Regulations, and the Nonprofit Corporation Law set the following standards you must adhere to in properly managing the affairs of the Foundation:

**1. General Fiduciary Duty.** Your fiduciary duty to the corporation includes the duty of care, the duty of inquiry, the duty of loyalty, and the duty to comply with investment standards. To satisfy these duties, you are required to act in good faith, and in a way you reasonably believe to be in the best interests of the Foundation, with the same care as an ordinary prudent person in a like position would use under similar circumstances.

**2. Duty of Inquiry.** You cannot close your eyes to how others are conducting the Foundation's business. You are required to make reasonable inquiry into the matters to be dealt with

by the Board, particularly if circumstances would put a reasonable person in your position on notice of the need to inquire further. This means that you may not passively sit in meetings and let others decide what course to take on issues before the Board. Each director must make a reasonable effort to determine the nature of the matters to be considered and the consequences to the Foundation of any actions (or inaction) being considered.

**3. Duty to Comply with Investment Standards.** This requires you and the Foundation to do the following:

3.1. Avoid speculation and instead to look to permanent disposition of investment funds, considering the probable outcome and the probable safety of the Foundation's capital (Corporations Code § 5240(b)(1));

3.2. Comply with any additional standards imposed by the Foundation's Investment Policy and in the Foundation's Bylaws (Corp. Code § 5240(b)(2)). The Bylaws address Restricted Funds in Article V:

"The corporation may receive funds which have been earmarked for specific purposes and functions. The corporation, acting through its officers, will ensure that such funds are not commingled with other funds of the corporation, but they may be merged for investment purposes. All funds are to be used for the purpose for which they were gifted."

3.3 Comply with the express terms of all instruments or agreements under which the assets were contributed, such as trusts, donor agreements, and the like. (Corp. Code § 5240(b)(2)); and

3.4 Comply with the general fiduciary duties of care and inquiry previously mentioned. (Corp. Code § 5240(d)). Note that an investment does not violate these standards if it was required (as opposed to merely being authorized) by the instrument or agreement under which the assets were contributed (Corp. Code § 5240(c)). If the trust or other instrument or agreement merely authorizes the investment without requiring that it be made, the investment can still violate your general fiduciary duty of care and inquiry.

**4. Reliance.** In making your decisions, you are entitled to rely on certain information presented to the Board. This information would include opinions, reports, financial data, and statements, including financial statements, prepared or presented by any of the following:

- 4.1. An officer or employee of the Corporation whom the director believes to be reliable and competent in the matter presented.
- 4.2. Counsel, independent accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence.
- 4.3. A committee of the Board on which the director does not serve as to matters within its designated authority if the director believes the committee merits confidence.

Reliance is not warranted, however, and a duty to inquire further into the matter arises, when the need for inquiry is indicated by the circumstances or when the director has knowledge that would cause reliance to be unwarranted.

Subject to the more specific duties enumerated below, if you act in accordance with the foregoing requirements, you will not be liable for any act or omission, including those which may exceed or defeat the corporation's purposes. However, liability may be incurred on a separate basis, e.g., misleading outsiders, furthering your own interests, or your own commission of a tort.

**5. Conflict of Interest (self-dealing).** You are prohibited from having any financial interest in any contract or transaction entered into by the Foundation. The consequences of a violation can be draconian: **The contract or transaction is void, except where all the following conditions are met:**

- 5.1. The fact of the financial interest by a Board member is either disclosed to the Board or known to the Board before the Board acts on the matter; and
- 5.2. The fact of the financial interest and disclosure of it prior to the Board is noted in the minutes; and
- 5.3. The Board thereafter authorizes, approves or ratifies the contract or transaction in good faith and the vote of the Board is sufficient to approve the matter, without counting the vote or votes of the financially-interested member or members;
- 5.4. The contract or transaction is just and reasonable as to the auxiliary organization at the time it is approved.

The preceding exceptions to the conflict-of-interest rule do not apply in the following instances, and the Board is **absolutely prohibited** from entering into any contract or transaction between the Foundation and the following:

- A. Any director(s);
- B. Any partnership or unincorporated association in which any director is a partner or in which the director is an owner or holder, directly or indirectly, of any proprietorship interest;
- C. Any corporation in which any director is an owner or holder, directly or indirectly, of 5% or more of the outstanding common stock.

It is also absolutely prohibited for you to attempt to influence another director to enter into any contract or transaction in which you have a financial interest without first disclosing that financial interest to the Board at a public meeting of the Board.

**6. Transactions With Other Entities For Which You Are Also A Director (Common Director Transactions).** If you do not have one of the conflicts of financial interest described above, the Corporation can enter into transactions with other entities, such as Sonoma State Enterprises, Inc., so long as the following requirements are strictly adhered to:

- 6.1 The Board (or any committees of the Board), must be fully informed of the common directorship and of the material facts as to the transaction, before the Board votes to approve the transaction; and
- 6.2 The transaction must be approved in good faith, without counting the vote of the common director(s).

**7. Use of Unpublished Information.** You may not use for personal pecuniary gain any information that is not a matter of public record which you received by reason of membership on the Board. The prohibition applies whether you are currently on the Board, or not, and there is no fixed time limitation on the prohibition.

**8. Elections.** The duties of directors in connection with election, selection or nomination of other directors are governed by the rules of good faith, prudence, inquiry, and reliance set forth above.

**9. Loans and Distributions.** You are prohibited from reaping any pecuniary gain from the Foundation. This prohibition applies to loans of money or property, guarantees of any obligation of any director or officer, and any distribution to any officer or director of any money or property. The income and assets of the Foundation are absolutely committed to its nonprofit purposes. The Foundation is permitted to make advances to directors or officers for certain expenses reasonably anticipated to be incurred in the performance of the duties of the officer or director, provided that the

officer or director would be entitled to be reimbursed for such expenses by the corporation if the advance had not been made.

**10. Breach of Duty; Remedies.** Civil or criminal lawsuits against or involving the directors of nonprofit corporations are very rare. However, if you attend a meeting where an action is taken in violation of certain laws, with knowledge that it is a violation, you may be guilty of a misdemeanor and may also be subject to civil liability and damages. This rule applies even if you abstain, so it is always prudent to vote "no" to create a clear record of your objection, whether it be to a potentially illegal Board action or just to an action that you disagree with.

Any contract, transaction or election entered into or conducted in violation of the above principles may be deemed void as to all parties, whether innocent or culpable. Each director who knowingly approves any of the above prohibited transactions, or who abstains from voting against an action that director knows is illegal, may also be personally liable to the Foundation for the entire amount of any financial damage sustained by the Foundation. Your protection is to be sure that the other directors act in accordance with these standards and, if they do not, then to vote "no". Abstaining in this situation can be equivalent to having cast a "yes" vote.

Suit may be brought for the Foundation's breach of these rules by the Foundation itself, or by any officer or director, the Attorney General of the State of California and, in appropriate cases, any creditor of the corporation or other person damaged. The statute of limitations within which suit can be brought on most of these breaches is extremely long: ten years.

The types of damages that may be recovered include: an accounting for and paying to the corporation any profits made on the transaction by the director; loss of any profits the Foundation may have made on the transaction, payment for the use of any Foundation property taken; return or replacement of any property lost, plus payment of any income that was or would have been derived from the property, plus the appreciation in value of the property or in the case it was sold; and return of the sale proceeds. In addition, interest is collectible and where the act was willful, punitive damages may be assessed. The court may give any other appropriate remedy.

**11. Mandated Duties.** The Education Code and Nonprofit Corporation Law require the following be done by any auxiliary organization:

11.1. Engage a certified public accountant to audit, in accordance with procedures proscribed by the Department of Finance, all funds annually. The Chancellor's office should furnish the accountant with the appropriate procedures. The audit must be submitted to the trustees and to the Director of Finance. An audited statement shall be published and disseminated as widely as feasible and must be available to any

person upon request. Publication in the campus student newspaper is deemed sufficient.

By statute, the President of the University is responsible for ascertaining that expenditures accord with trustee policy, are proper, and for the integrity of the financial reporting.

11.2. Conduct the corporation's operations in conformity with regulations established by the trustees including, but not limited to, providing salaries, working conditions and benefits for full-time employees which are comparable to those provided California State University and Colleges' employees performing similar services or, if the employee's duties are not comparable, then at least equal to salaries prevailing in other educational institutions in the area or commercial operations of like nature. Benefits may exclude retirement benefits, if so provided in the regulations.

11.3. Hold at least one business meeting per quarter.

11.4. Have the benefit of the advice and counsel of at least one attorney admitted to practice law in California and at least one licensed certified public accountant.

11.5. Accept no grant, contract, bequest, trust or gift unless it is so conditioned that it may be used only for purposes consistent with policies of the trustees.

11.6. Conduct your business in public meetings, except where closed sessions are permitted, all in accordance with the provisions of the California Education Code, commencing with Section 89920.

11.7. Approve all expenditures and fund appropriations. Appropriations of funds for use outside your normal business operations must be approved in accordance with trustee policy and regulations by an officer designated by the trustees.

11.8. Conduct your operations of commercial services, if any, so that they are self-supporting.

11.9. Maintain up-to-date Articles of Incorporation, Bylaws, records of members, records of account and minutes of proceedings.

**12. Indemnity.** The law provides that the Foundation may indemnify its directors, officers, employees, and agents against whom an action, whether civil, criminal or administrative, is threatened or brought for an alleged breach of the person's duties. The indemnity can cover any



amount actually and reasonably incurred in connection with such a proceeding, including attorneys' fees, judgments, fines, and other expenses. The Foundation's Bylaws include a provision providing that, to the fullest extent permitted by law, the Foundation will indemnify its directors and officers against expenses you incur by in connection with any legal proceeding you are involved in by reason of your serving on the Board. However, indemnity is only available to a director or officer if the person acted in good faith and in a manner such person reasonably believes was in the best interest of the Foundation. The fact that the proceeding may turn out adversely to the person is not in itself a presumption the person did not act in good faith and in a way he or she reasonably believed to be in the best interest of the Foundation, with the probable exception of cases of conflict of interest. These rules are rather lengthy and complicated and in the event any action is threatened or instituted you should consult with your own counsel, Board counsel, and the Board concerning appropriate Board action.

#### **B. CONTRACT LIABILITY**

The directors ordinarily will have no personal liability for performance of the contracts of the Foundation or for its debts. One of the principal purposes of incorporating is to insulate the officers and directors from liability on the debts and contracts of the Foundation.

#### **C. TORTS AND CRIMINAL CONDUCT**

A tort is the violation of another person's rights, other than rights established by contract, which results in the injury to the person or his or her property. Most commonly it is based on negligence or willful misconduct, but in specific instances it may result without fault. Willful misconduct is also generally a crime.

As with contract liability, the directors and officers are not liable for the torts of other officers, directors, employees, or agents of the Foundation unless the person participated in or authorized the conduct constituting the tort. As an example, if one of your employees negligently injures another person without your participation or authorization, you are not personally responsible although the Foundation may be. However, even the Foundation ordinarily would not be responsible for willful misconduct of a director, officer, employee, or agent. The Foundation should carry adequate liability insurance to protect itself against losses arising out of torts. Liability insurance to protect the individual directors and officers is also prudent. I have been told by Foundation officials that the Foundation carries both types of insurance.

#### **D. THE CALIFORNIA NONPROFIT INTEGRITY ACT**

California's Nonprofit Integrity Act (the "Act") applies to any "charitable corporation or any legal entity holding property for charitable purposes." "Charitable purpose" under California law

includes the advancement of education, as well as other purposes that are beneficial to the community. The Foundation attempts to conduct its activities in full accordance with the Act.

The Act requires the Foundation, as well as commercial fundraisers and fundraising counsel employed by the Foundation, to register with the Attorney General and to file financial disclosure reports. I have been told by Foundation officials that the Foundation complies with these requirements.

Audited financial statements and the appointment of an audit committee are required for any fiscal year in which the gross revenue is \$2 million or more. The Foundation has an Audit Committee. The Act provides that the Committee may include people who are not members of the Board, but no one on the staff of the Foundation, including its president/CEO or treasurer/CFO may be members of the Audit Committee. The Foundation's Finance Committee must be kept separate from the Audit Committee. While members of the Finance Committee can serve on the Audit Committee, the chair of the Audit Committee cannot be a member of the Finance Committee, and members of the Finance Committee must constitute less than one-half of the membership of the Audit Committee. I am told by Foundation officials that the Foundation's Audit Committee complies with all these requirements.

The Audit Committee is responsible for making recommendations to the Board regarding the hiring and termination of the independent auditor, and it may negotiate the auditor's compensation, confer with the auditor to satisfy the members of the Board that the Foundation's financial affairs are in order, review and determine whether to accept the audit, and oversee all non-audit services by the auditing firm. The Audit Committee cannot take any actions independently. Its actions and recommendations are subject to supervision and approval of the Board of the Foundation.

The heart of the Nonprofit Integrity Act is its prohibitions on misrepresenting the purpose, nature or beneficiary of a solicitation. Misrepresentation can take many forms. It can be affirmative statements or conduct, or the failure to speak or act in a certain way which results in the failure to disclose or a misrepresentation of a material fact about the solicitation.

What follows is a list of prohibited practices under the Act, taken from a publication entitled "CSU Auxiliaries: Nonprofit Integrity Act & Charitable Solicitation Compliance Manual", which contains more details about the Act. If you would like a copy, just contact me or a Foundation staff person, and we'll be happy to provide you with one.

This summary of prohibited practices applies to every person or entity involved in planning, conducting, or executing any charitable solicitation or sales promotion, regardless of whether a commercial fundraiser or fundraising counsel is involved and regardless of any exemptions under the Act (including the exemption for educational institutions):

- operating in violation of, or failing to comply with, any of the requirements of the Act or other regulations or orders of the Attorney General, or soliciting contributions after registration with the Registry of Charitable Trusts has expired or has been suspended or revoked;
- using unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding;
- using any name, symbol, emblem, statement, or other material stating, suggesting, or implying to a reasonable person that the contribution is to or for the benefit of a particular charity when that is not the fact;
- misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a charitable solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the charitable solicitation or charitable sales promotion will be used for charitable purposes when that is not the fact;
- misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person's name for these purposes;
- misrepresenting or misleading anyone in any manner to believe that goods or services have endorsement, sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has endorsement, sponsorship, approval, status, or affiliation that the person does not have;
- using or exploiting the fact of registration with the Registry of Charitable Trusts so as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the Attorney General. The following statement is not prohibited:

“The official registration and financial information regarding (insert the legal name of the charity as registered with the Registry of Charitable Trusts) can be obtained from the Attorney General’s Web site at <https://oag.ca.gov/charities> . Registration does not imply endorsement.”.

- representing directly or by implication that a charity will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the charity for its use;

- soliciting for advertising to appear in a for-profit publication that relates to, purports to relate to, or that could reasonably be construed to relate to, any charitable purpose without making the following disclosures at the time of solicitation:

- The publication is a for profit, commercial enterprise;
- The true name of the solicitor and the fact that the solicitor is a professional solicitor; and
- The publication is not affiliated with or sponsored by any charity;

- where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall make to the purchaser the disclosures required above in written form and in conspicuous type;

- misrepresenting that another charity will receive a portion of the solicited funds without that charity's consent; and

- representing that tickets will be donated without following the requirements contained in Section 12599.6(f)(12) of the Act.

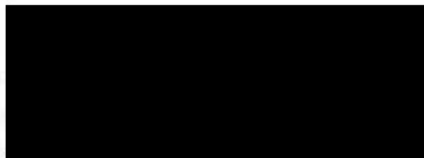
Finally, under the Act, the Foundation must establish and exercise control over fundraising activities that are being conducted for its benefit, including (i) approving all written contracts and agreements with commercial fundraisers or fundraising counsel, (ii) being sure that these contractors are registered with the Attorney General's office, (iii) ensuring that the written contracts with these contractors comply with the requirements of the Act, (iv) and that all of the fundraising activities being conducted by the Foundation or on its behalf are being done without coercion, without using unfair or deceptive acts or practices, without confusing, causing misunderstanding, or misleading the person being solicited about where the proceeds of the contribution will go, what they will be used for, endorsements or sponsors, or any other matter relating to the solicitation.

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Should you have any questions in connection with this letter, or other matters arising out of your service to the Foundation, I will be happy to answer them. Once you have read this letter, please promptly print it, check the appropriate box, date, and sign the letter at the end, and return the signed copy to the Foundation, preferably by emailing a completed PDF.

Very truly yours,

OLSAN LAW, Inc.



By: \_\_\_\_\_  
Jeremy L. Olsan

JLO:abm

**NOTE: PLEASE READ, CHECK THE APPROPRIATE BOX, DATE/SIGN BELOW ON A COPY OF THIS LETTER AND RETURN THE SIGNED COPY TO SONOMA STATE UNIVERSITY FOUNDATION.**

The undersigned, being a member of the Board of Directors of Sonoma State University Foundation, hereby affirm that I have received and read this letter regarding my duties as a member of the Foundation's Board of Directors, prohibitions on conflicts of interest, and the Nonprofit Integrity Act, and that I [check the applicable box below]:

attended the annual Board of Director's meeting at which the Foundation's legal counsel presented these issues.

was unable to attend the annual Board of Director's meeting at which the Foundation's legal counsel presented these issues to the Board, but I am familiar with my duties as a Board member, the rules prohibiting conflicts of interest, and the Nonprofit Integrity Act. If I have questions about these subjects, I will contact the Foundation's legal counsel.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**SONOMA  
STATE  
UNIVERSITY****FOUNDATION**

**Policy Title:** Expenditure of Discretionary and Operational Funds for Public Relations

**Policy Purpose**

It is the Policy of the SSU Foundation Board of Directors that expenditures for discretionary and public relations purposes are appropriate if they advance the mission, goals and objectives of Sonoma State University. The purpose of this policy is to provide definition and scope in the administration of such expenditures.

**Source of Funds**

Primary source are funds received from external sources that are not restricted for other purposes and may be designated by the SSU Foundation Board of Directors for discretionary and public relations purposes. Operational funds primarily consist of pooled endowment earnings allocated by the SSU Foundation Board of Directors through the budget process.

**Solicitation of Funds**

SSU Foundation shall comply with Sonoma State University's Gifts to the University Policy regarding the procedures for solicitation of funds, as can be found on the Sonoma State University Policy website.

**Type of Funds**

**Discretionary Funds:**

Discretionary funds may be used for purposes which serve to augment appropriations for CSU operations. Discretionary expenditures may include public relations and are at the discretion of those designated authority by the SSU Foundation Board of Directors.

**Operational Funds:**

Operational funds are appropriated through the budget approval process each year and are primarily used for operational expenses such as audit, legal, and insurance costs. They may also be used for public relations if they meet the policy purpose and are authorized by an officer of the Corporation.

**Procedure of Control**

The Board of Directors of SSU Foundation authorizes the necessary budget appropriation to accomplish the goals as defined above. The funds are then set aside and disbursed by an authorized signer.

Recommended by 5/21/13 SSUF Finance/Investment Committee  
Approved by 6/14/13 SSUF Board of Directors

0713584

FILED  
Secretary of State  
State of California  
1cc APR 14 2017

**Restated Articles of Incorporation**

The undersigned certify that:

1. They are the chair and secretary, respectively, of Sonoma State University Academic Foundation Inc., a California corporation.
2. The Articles of Incorporation of this corporation, including a change of name, are restated and amended to read as follows:

**Restated and Amended Articles of Incorporation**

**ARTICLE I. Name**

The name of this corporation is:

Sonoma State University Foundation.

**ARTICLE II. Purposes**

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 public and charitable purposes.

This corporation elects to be governed by all of the provisions of the Nonprofit Corporation Law of 1980 not otherwise applicable to it under Part 5.

The charitable purposes for which this corporation is organized and will be operated exclusively are to perform authorized auxiliary functions, including the active promotion, pursuit and stewardship of private support, for the benefit of Sonoma State University (University). This corporation is organized exclusively for charitable purposes within the meaning of §501(c)(3) of the Internal Revenue Code of 1986, as amended.

The corporation is and at all times hereafter shall be operated as an auxiliary organization under §89900 *et seq.*, of the California Education Code, and within regulations adopted by the Board of Trustees of the California State University (Title 5).

The foregoing provisions shall be construed as both purposes and powers, but no recitation, expression or declaration of specific or special powers or purposes herein enumerated shall be deemed to be exclusive, and it is hereby expressly declared that all other lawful powers not inconsistent herewith are hereby included.

### ARTICLE III. Exempt Status and Limitation of Activities

This corporation is organized and operated exclusively for the charitable purposes described in Article II, and it shall be nonprofit and nonpartisan.

Nothing in Article II shall be construed as allowing the corporation to carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under §501(c)(3) of the Internal Revenue Code of 1986, as amended, or (2) by corporation contributions which are deductible under §§170(c)(2), 2055(a)(2), 2106(a)(2)(A)(ii), 2522(a)(2), or 2522(b)(2) of the Internal Revenue Code.

No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

### ARTICLE IV. Principal Office

The principal office for the transaction of the business of this corporation will be located in the County of Sonoma, State of California.

### ARTICLE V. Dedication and Dissolution

The property of this corporation is irrevocably dedicated to charitable purposes. No part of the net income or assets of this corporation shall ever inure to the benefit of its directors or officers, or to any private person, except that the corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II.



On the winding up and dissolution of this corporation, net assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation, other than trust funds shall be distributed to the University or to one or more nonprofit corporations organized and operated for the benefit of the University, as approved by this corporation's Board of Directors, the President of the University and by the Chancellor of California State University. Such nonprofit corporation or corporations must be qualified for Federal income tax exemption under §501(c)(3) of the Internal Revenue Code of 1986, as amended, and have established its tax exempt status under §23701d of the California Revenue and Taxation Code, as amended, be organized and operated exclusively for charitable or educational purposes, and meet the requirement for exemption specified in §214 of the California Revenue and Taxation Code.

ARTICLE VI. Amendments

The Articles of Incorporation of this corporation shall be amended only by the two-thirds vote of a majority of the qualified directors then in office, subject to the approval of the University President.

- 3. The foregoing restated and amended Articles of Incorporation have been duly approved by the board of directors and President, Sonoma State University.
- 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: 3/24/17

[Redacted signature area]

*[Handwritten Signature]* Chair

[Redacted signature area]

, Secretary



1. I have reviewed the transcript of the proceedings and certify that it is a true and correct copy of the original record in the custody of the California Secretary of State's office.

STATE OF CALIFORNIA

The following transcript was prepared by the undersigned and is a true and correct copy of the original record in the custody of the California Secretary of State's office.

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Page 3 of 3

*[Handwritten signature]*  
Date: \_\_\_\_\_



I hereby certify that the foregoing transcript of 3 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

APR 25 2017 *RM*

Date: \_\_\_\_\_

*Alex Padilla*  
ALEX PADILLA, Secretary of State