OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND
SAN FRANCISCO 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 the San Francisco State University Foundation (Auxiliary) serving San Francisco State University (Campus). The term of this agreement shall be July 1, 2018 through June 30, 2028.

1. PURPOSE

The purpose of this agreement is to set forth the terms and conditions under which Auxiliary may operate as an auxiliary organization pursuant to California Education Code §89900 et seq. and California Code of Regulations (CCR) Title 5, § 42400 et seq. In entering this agreement, CSU finds that certain functions important to its mission are more effectively accomplished by the use of an auxiliary organization rather than by the Campus under the usual state procedures.

2. PRIMARY FUNCTION(S) OF THE AUXILIARY

In consideration of receiving recognition as an official CSU auxiliary organization, Auxiliary agrees, for the period covered by this agreement, that the primary function(s), which the Auxiliary is to manage, operate or administer is/are (Check each category that applies):

[X] Philanthropic
[X] 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. Alumni Programs
2. Gifts, bequests, devises, endowments, trusts and similar funds
3. Public relations, fundraising, fund management, and similar development programs
4. 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 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 the Integrated CSU Administrative Manual (ICSUAM).

The Campus CFO shall annually review, and submit a written evaluation to the Chancellor’s Office in accordance with Section 20, Notices, of the external audit firm selected by the Auxiliary. This review by the Campus CFO must be conducted prior to the Auxiliary engaging an external audit firm and annually thereafter. If the Auxiliary has not changed audit firms, and the audit firm was previously reviewed and received a satisfactory evaluation, a more limited review may be conducted and submitted.

8. USE OF NAME

Campus agrees that Auxiliary may, in connection with its designated functions as a CSU auxiliary organization in good standing and this agreement, use the name of the Campus, the Campus logo, seal or other symbols and marks of the Campus, provided that Auxiliary clearly communicates that it is conducting business in its own name for the benefit of Campus. All correspondence, advertisements, and other communications by Auxiliary must clearly indicate that the communication is by and from Auxiliary and not by or from CSU or Campus.

Auxiliary shall use the name of Campus, logo, seal or other symbols or marks of Campus only in connection with services rendered for the benefit of Campus and in accordance with Campus guidance and direction furnished to Auxiliary by Campus and only if the nature and quality of the services with which the Campus name, logo, seal or other symbol or mark are used are satisfactory to the Campus or as specified by Campus.

Campus shall exercise control over and shall be the sole judge of whether Auxiliary has met or is meeting the standards of quality of the Campus for use of its name, logo, seal or other symbol or mark.
Auxiliary shall not delegate the authority to use the Campus name, logo, seal or other symbol or mark to any person or entity without the prior written approval of the Campus President or designee. Auxiliary shall cease using the Campus name, logo, seal or other symbol or mark upon expiration or termination of this agreement, or if Auxiliary ceases to be a CSU auxiliary organization in good standing, dissolves or disappears in a merger.

9. **CHANGE OR MODIFICATION OF CORPORATE STATUS**

Auxiliary shall provide notice to the CSU upon any change in Auxiliary's legal, operational or tax status including but not limited to changes in its Articles of Incorporation, bylaws, tax status, bankruptcy, dissolution, merger, or change in name.

10. **FAIR EMPLOYMENT PRACTICES**

In the performance of this agreement, and in accordance with California Government Code §12900 et. seq., Auxiliary shall not deny employment opportunities to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status. Auxiliary shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by the CSU.

11. **BACKGROUND CHECK POLICY COMPLIANCE**

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

12. **DISPOSITION OF ASSETS**

Attached hereto as **Attachment 3** is a copy of Auxiliary's Constitution or Articles of Incorporation (as applicable) which, in accordance with CCR tit.5, §42600, establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed to the CSU or to another affiliated entity subject to financial accounting and reporting standards issued by the Government Accounting Standards Board. Auxiliary agrees to maintain this provision as part of its Constitution or Articles of Incorporation. In the event Auxiliary should change this provision to make other dispositions possible, this agreement shall terminate as of the date immediately preceding the date such change becomes effective.
13. **USE OF CAMPUS FACILITIES**

Auxiliary may use those facilities identified for its use in a lease agreement executed between Campus and Auxiliary. If this Operating Agreement terminates or expires and is not renewed within 30 days of the expiration, the lease automatically terminates, unless extended in writing by the parties.

Auxiliary and Campus may agree that Auxiliary may use specified Campus facilities and resources for research projects and for institutes, workshops, and conferences only when such use does not interfere with the instructional program of Campus and upon the written approval from appropriate Campus administrators with such specific delegated authority. Auxiliary shall reimburse Campus for costs of any such use.

14. **CONTRACTS FOR CAMPUS SERVICES**

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

15. **DISPOSITION OF NET EARNINGS**

Auxiliary agrees to comply with CSU and Campus policy on expenditure of funds including, but not limited to, CSU guidelines for the disposition of revenues in excess of expenses and CSU policies on maintaining appropriate reserves. Cal. Educ. Code §89904; Executive Order 1059.

16. **FINANCIAL CONTROLS**

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

17. **ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS**

Auxiliary agrees, if authorized to do so in Section 2 above, that it will accept and administer gifts, grants, contracts, scholarships, loan funds, fellowships, bequests, and devises in accordance with policies of CSU and Campus.

A. Authority to Accept Gifts
If authorized, Auxiliary may evaluate and accept gifts, bequests and personal property on behalf of CSU. In acting pursuant to this delegation, due diligence shall be performed to ensure that all gifts accepted will aid in carrying out the CSU mission as specified in Education Code §§89720 and 66010.4(b).

Auxiliary agrees, before accepting gifts of real estate or gifts with any restrictive terms or conditions that impose an obligation on CSU or the State of California to expend resources in addition to the gift, to obtain written approval from the appropriate campus authority. Auxiliary agrees that it will not accept a gift that has any restriction that is unlawful.

B. Reporting Standards

Gifts shall be recorded in compliance with the Council for Advancement and Support of Education and California State University reporting standards and shall be reported to the Chancellor's Office on an annual basis in accordance with Education Code §89720.

18. INDEMNIFICATION

Auxiliary agrees to indemnify, defend and save harmless the CSU, its officers, agents, employees and constituent campuses and the State of California, collectively "CSU indemnified parties" from any and all loss, damage, or liability that may be suffered or incurred by CSU indemnified parties, caused by, arising out of, or in any way connected with the operation of Auxiliary as an auxiliary organization.

19. INSURANCE

Auxiliary shall maintain insurance protecting the CSU and Campus as provided in this section. CSU's Systemwide Office of Risk Management shall establish minimum insurance requirements for auxiliaries, based on the insurance requirements in Technical Letter RM 2012-01 or its successor then in effect. Auxiliary agrees to maintain at least these minimum insurance requirements.

Auxiliary's participation in a coverage program of the California State University Risk Management Authority (CSURMA) shall fully comply with the insurance requirement for each type of required coverage (which may include but not be limited to, general liability, auto liability, directors and officers liability, fiduciary liability, professional liability, employer’s liability, pollution liability, workers’ compensation, fidelity, property and any other coverage necessary based on Auxiliary’s operations). Auxiliary shall ensure that CSU and Campus are named as additional insured or loss payee as its interests may appear.
20. **NOTICES**

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed to all parties as provided below.

Notice to Auxiliary shall be addressed as follows:

San Francisco State University Foundation  
1600 Holloway Avenue, ADM 151  
San Francisco, CA 94132

Notice to the CSU shall be addressed to:

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

Notice to the Campus shall be addressed as follows:

Office of the President  
San Francisco State University  
1600 Holloway Avenue, 5th Floor  
San Francisco, CA 94132

21. **AMENDMENT**

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

22. **RECORDS**

Auxiliary shall maintain adequate records and shall submit periodic reports as required by CSU showing the operation and financial status of Auxiliary. The records and reports shall cover all activities of Auxiliary whether pursuant to this agreement or otherwise.

23. **TERMINATION**

CSU may terminate this agreement upon Auxiliary’s breach of or failure to comply with any term of this agreement by providing Auxiliary with a minimum of ninety (90) days advance written notice. Auxiliary may use the ninety-day advance notice period to cure the breach. If, in the judgment of CSU, the breach has been cured, the termination notice will be cancelled.
24. **REMEDIES UPON TERMINATION**

Termination by CSU of this agreement pursuant to Section 23, *Termination*, may result in Auxiliary's removal, suspension or probation as a CSU auxiliary in good standing, and loss of any right for Auxiliary to use the name, resources or facilities of CSU or any of its campuses.

Upon expiration of the term of this agreement, the parties shall have 30 days to enter into a new operating agreement which period may be extended by written mutual agreement.

25. **SEVERABILITY**

If any section or provision of this Agreement is held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such section or provision shall be deemed severed and the validity of the remainder of this Agreement shall not be affected thereby.

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

Approved: 8·22, 2018

San Francisco State University

By

Leslie Wong

President

Executed on: 8/21, 2018

San Francisco State University Foundation

By

[Signature]

President

Executed on 8/21, 2018

California State University
Office of the Chancellor
Contract Services and Procurement

By [Signature]
I. BACKGROUND

Title 5 of the California Code of Regulations, §42502(l), requires each auxiliary organization to maintain a policy on the "accumulation and use of public relations funds if such funds are obtained and used by the auxiliary organization to augment State appropriations for public relations." The policy must include "...the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control."

Executive Order No. 761 prescribes rules and restrictions that apply to hospitality expenses and reimbursements for fund sources, including those held and administered by an auxiliary organization.

II. POLICY

Solicitation and Accumulation of Public Relations Funds

The Foundation does not solicit public relations funds, and does not annually budget for funds to be available for public relations purposes.

Source of Public Relations Funds

Public relations funds, when expended, may be sourced from Foundation-held Discretionary or Restricted Funds. These funds may be derived from various sources including corporate auxiliary revenues, donations, or the proceeds from the sale of non-cash gifts made to the Foundation. Expenditures from Discretionary or Restricted Funds must clearly advance the objectives of the campus and the California State University, and that are consistent with applicable procurement and accounting practices. In general, expenditures must be appropriate for campus authorized educational, social, development, hospitality, community and employee relations, employee business travel and related considerations, student aid, and for other purposes that benefit California State University or the campus. All expenditures from a Restricted Fund must be clearly consistent with the restricted purpose.
Procedures

Any expenditure of Foundation funds for purposes of public relations shall only be at the request of the University President. The source of funds would be any Discretionary or Restricted Fund account that is available to the President. Consistent with sound purchasing policies and procedures, the request shall be accompanied by appropriate supporting documentation, with dates, purpose and individuals or groups involved, location, and amounts clearly stated, and any other requirements.

Foundation management is authorized to adopt written guidelines to implement this policy statement, consistent with Executive Order No. 761, dated October 31, 2000.

Policy Filing

The Foundation shall file a copy of this Policy with the Chancellor's Office, as required by Title 5 of the California Code Regulations, §42502().
SAN FRANCISCO STATE UNIVERSITY FOUNDATION

POLICY STATEMENT

SECTION NO. XXX

SECTION: POLICY STATEMENT - COMPLIANCE

SUBJECT: BOARD OF DIRECTORS' CONFLICT OF INTEREST POLICY

PURPOSE: To provide a conflict of interest policy applicable to the Board of Directors of the SF State Foundation that complies with requirements of the California Education Code, the Internal Revenue Code and similar statutory provisions.

EFFECTIVE DATE: July 17, 2008

I. BACKGROUND AND PURPOSE

San Francisco State University Foundation is a California nonprofit public benefit, tax-exempt corporation. It is also an auxiliary of The California State University subject to the California Education Code and the policies of the CSU and of San Francisco State University.

The Board of Directors of the SF State Foundation adopted this policy in order to establish standards of conduct that ensure that all statutory requirements involving conflicts of interest have been addressed and that Board members have established guidelines applicable to their activities and dealings on behalf of the SF State Foundation.

II. POLICY

A. Members of the Board of Directors of the Foundation are subject to the following conflict of interest provisions of the California Education Code:

§89906 FINANCIAL INTEREST PROHIBITED. No member of the governing board of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he/she is a member, and any contract or transaction entered into in violation of this section is void.

§89907 EXCEPTION. No contract or other transaction entered into by the governing board of an auxiliary organization is void under the provisions of §89906, nor shall any member of such board be disqualified or deemed guilty of misconduct in office under said provisions, if the circumstances specified in the following subdivisions exists:

(a) The fact of such financial interest is disclosed or known to the governing board and noted in the Minutes, and the governing board thereafter authorizes, approves, or ratifies the contract or transaction in
good faith by a vote sufficient for the purpose without counting the vote
or votes of such financially interested member or members, and

(b) The contract or transaction is just and reasonable as to the
auxiliary organization at the time it is authorized or approved.

§89908 CERTAIN PROVISIONS NOT APPLICABLE. The provisions of
§89907 shall not be applicable if the circumstances specified in any of the
following subdivisions exist:

(a) The contract or transaction is between an auxiliary organization
and a member of the governing board of that auxiliary organization.

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

(c) The contract or transaction is between an auxiliary organization
and a corporation in which any member of the governing board of that
auxiliary organization is the owner or holder, directly or indirectly, of
five (5) percent or more of the outstanding common stock.

(d) A member of the governing board of an auxiliary organization is
interested in a contract or transaction within the meaning of §89906,
and without first disclosing such interest to the governing board at a
public meeting of the board, influences or attempts to influence another
member or members of the board to enter into the contract or
transaction.

§89909 UNLAWFUL TO UTILIZE NONPUBLIC INFORMATION FOR
PERSONAL PECUNIARY GAIN. It is unlawful for any person to utilize any
information, not a matter of public record, which is received by him/her by
reason of his/her membership of the governing board of an auxiliary
organization, for personal pecuniary gain, regardless of whether he/she is or is
not a member of the governing board at the time such gain is realized.

B. Each member of the Board of Directors shall on annual basis review prior year
transactions and relationships and acknowledge in writing compliance with the above
statutory provisions.

III. PROCEDURES

A. Members of the Board of Directors shall consult with the Foundation President
and Foundation counsel regarding transactions or relationships that may constitute a
Conflict of Interest. If a Conflict of Interest is deemed to exist pursuant to such initial
consultation, it shall first be reported to the Audit Committee to devise and
recommend to the Board a proposed resolution of, or course of action with respect to,
the Conflict of Interest.

B. If a Conflict of Interest is deemed by the Foundation President and Foundation
counsel to exist, the Audit Committee shall place the matter on the regular meeting
agenda for appropriate action by the Board of Directors. The Board shall discuss the
matter in open session, allowing the Director whose conduct is at issue to provide an explanation. The Board shall then by majority vote (not including the vote of any Director whose conduct is at issue) take action regarding the matter. Such action may include, but is not limited to, validation of the transaction pursuant to §89907, if available, validation of the transaction with conditions, censure or removal of the Director, rescission of the transaction, or any other action deemed appropriate by the Board.

C. If a transaction is proposed that may constitute a Conflict of Interest, the Foundation President and Foundation counsel shall determine whether the proposed transaction represents a conflict that would violate §89906 and, if so, whether to present the proposed transaction to the Board for possible approval in accordance with §89907, if available, or whether the proposed transaction should not be pursued.

D. Members of the Board of Directors shall recuse themselves from the vote on any matter that involves an actual or potential Conflict of Interest involving that Director.

E. Any allegation or evidence of violation of this Conflict of Interest policy by a Director shall be reported to the University President. The Foundation President and Foundation counsel shall discuss the matter with the Director to obtain additional facts and perspective. If a Conflict of Interest relationship is deemed to exist, it shall be reported to the Audit Committee to devise and recommend to the Board a proposed resolution of, or course of action with respect to, the Conflict of Interest.

F. Officers, Directors or employees may report any allegation or evidence of violation of this Conflict of Interest policy, or irregularities in accounting or financial matters, to the Audit Committee Chairman or the Foundation counsel. The Audit Committee, in consultation with the Foundation counsel, shall then take proper action to investigate the matter and recommend a response to the allegations. Employees who report suspected Conflicts of Interest or financial or accounting irregularities shall be protected from any retaliation as a result of the report.

IV. IMPLEMENTING PRACTICES

A. The Audit Committee and Management may develop and implement internal practices to implement this policy statement.
SAN FRANCISCO STATE UNIVERSITY FOUNDATION

CONFLICT OF INTEREST STATEMENT

Board Member Name: ________________________________

Please describe below any relationships, positions or circumstances in which you are involved that you believe could constitute a Conflict of Interest (as defined in the Foundation's Policy on Conflicts of Interest):

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have received a copy of the Foundation's Policy on Conflicts of Interest and I have read and understand it. In addition, I agree to abide by the Policy that is currently in effect. Finally, I understand that the Foundation is a tax-exempt nonprofit corporation, and that in order to maintain its federal tax exemption, the Foundation must engage primarily in activities which accomplish its tax-exempt purpose.

__________________________  ___________________________
Signature                        Date

Conflict of Interest Statement
July 1, 2008