

**MASTER OPERATING AGREEMENT
BETWEEN THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY
AND CAL POLY CORPORATION**

This Master Operating Agreement (“Agreement” or “MOA”) is made and entered into by and between the Trustees of the California State University by their duly qualified Chancellor (“CSU”) on behalf of the California Polytechnic State University, San Luis Obispo (“University” or “Cal Poly”), and the Cal Poly Corporation (“Auxiliary” or “Corporation”). The term of this Agreement shall be July 1, 2019 through June 30, 2029 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 Corporation 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 University under the usual state procedures.

This MOA authorizes the functions listed in this Agreement. University may also enter into Supplemental Operating Agreements (“SOA”) with Corporation, specific to these functions and related services to further clarify the role and responsibility of each Party relative to the management and operation of program activity. These SOA’s are not intended to supersede the general terms and conditions of this MOA in its entirety, but shall take precedence over identified sections of the MOA being amended. The balance of the MOA will remain in full force and effect for the authorized function being amended by the SOA. This MOA, together with any SOA’s and related lease/license agreements are intended to satisfy the writing requirements enumerated in CCR §§ 42501 and 42502.

In conjunction with such SOA’s, University will institute procedures to ensure that all Corporation activities are consistent with its educational mission.

2. PRIMARY FUNCTION(S) OF THE AUXILIARY

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

- Housing
- Externally Funded Projects
- Real Property Acquisition / Real Property Development
- Commercial

Some of these functions may be performed exclusively by the Corporation while others will be performed in concert with the University or other recognized auxiliary organizations as noted in existing or future separate agreements.

In carrying out the above, the Corporation 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. Bookstores, Food Services, and Campus Services, which broadly includes commercial retail sales and services, vending services, third party pop up retail, conference services, and associated operator and vendor contracts .
2. Housing
3. Externally Funded Projects Including Research, Workshops, Conferences, Centers and Institutes, which includes fee-for-service, memberships, and other externally-funded University activities that are not covered under a separate agreement¹
4. Instructionally related Programs and related activities (“Aid-To-Instruction Projects and Programs”), including Agriculture, Athletics, Radio and Television Stations, Newspapers. Films, Transportation. Printing and other Instructionally Related Programs and Activities
5. Gifts, bequests, devises, endowments, trusts and similar funds.
6. Public relations, fundraising, fund management, and similar development programs
7. Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities, and Public Private Partnership (“P3”) transactions.

The University and the California Polytechnic State University Foundation, also an officially recognized auxiliary organization, will serve as the primary gift entities except where extant agreements provide otherwise. However, this MOA is not intended to prevent Corporation from also receiving and administering gifts of any kind, including but not limited to funds received for the purpose of carrying out donor funded projects.

Corporation 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 University. 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 University. Prior to initiating any additional functions, Corporation understands and agrees that CSU and Corporation must amend this Agreement in accordance with Section 21, *Amendment*.

Nothing in this assignment of functions shall limit or be interpreted to limit the ability of University to engage directly in such functions itself, unless extant agreements provide otherwise.

¹ If “*Externally Funded Projects*” is listed, your operating agreement must also include italicized language in Section 16 and Attachment 4 for Campus Designation of Authority to Auxiliary re: Administration of Grants and Contracts.

3. UNIVERSITY OVERSIGHT AND OPERATIONAL REVIEW

The responsibility and authority of the University president regarding auxiliary organizations is set forth in CCR tit.5, §42402, which requires that auxiliary organizations operate in conformity with CSU and University policies. The University 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 University. The operations and activities of Corporation under this Agreement shall be integrated with University operations and policies and shall be overseen by the University's Chief Financial Officer ("CFO") or designee so as to assure compliance with objectives stated in CCR tit.5, §42401.

The University shall review Corporation to ensure that the written operating agreement is current and that the activities of Corporation 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 University CFO or designee to the University President with a copy to the Chancellor's Office, certifying that the review has been conducted. As part of these periodic reviews, the University President should examine the need for each auxiliary and look at the efficiency of the auxiliary operation and administration.

Corporation agrees to assist the University CFO or designee in carrying out the compliance and operational reviews required by applicable CSU Executive Orders and related policies.

4. OPERATIONAL COMPLIANCE

Corporation agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and University rules, regulations and policies. Failure of Corporation to comply with any term of this Agreement may result in the removal, suspension or probation of Corporation as an auxiliary organization in good standing. Such action by CSU may result in the limitation or removal of Corporation's right to utilize the CSU or University's 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 Corporation 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, Corporation may expend funds in such amount and for such purposes as are approved by Corporation's governing body. Corporation shall file, as Attachment 2 to this Agreement, a statement of Corporation'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

Corporation 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 Corporation. This review by the Campus CFO must be conducted prior to the Corporation engaging an external audit firm and annually thereafter. If the Corporation 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 UNIVERSITY NAME, SYMBOLS, AND MARKS

The University authorizes Corporation to serve as its agent in the licensing of approved commercial uses of the University logo, seal or other symbols and marks of the University. Corporation may operate with its own symbols and graphic identity, subject to University approval.

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

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

University shall exercise control over and shall be the sole judge of whether Corporation has met or is meeting the standards of quality of the University for use of its name, logo, seal or other symbol or mark.

Corporation shall not delegate the authority to use the University name, logo, seal or other symbol or mark to any person or entity without the prior written approval of the University President or designee. Corporation shall cease using the University name, logo, seal or other symbol or mark upon expiration or termination of this Agreement, or if Corporation ceases to be a CSU auxiliary organization in good standing, dissolves or disappears in a merger.

9. CHANGE OR MODIFICATION OF CORPORATE STATUS

Corporation shall provide notice to the CSU upon any change in Corporation'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., Corporation 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. Corporation 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, Corporation 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. Corporation will provide confirmation of completed and cleared background checks to the University President/Chancellor upon request, or as established by University policy. (See HR 2016-08).

12. DISPOSITION OF ASSETS

Attached hereto as **Attachment 3** is a copy of Corporation's Articles of Incorporation which, in accordance with CCR tit.5, §42600, establishes that upon dissolution of Corporation, the net assets other than trust funds shall be distributed to one or more nonprofit corporations organized and operated for the benefit of the California Polytechnic State University as approved by the President of the University and by the Chancellor of the California State University. Corporation agrees to maintain this

provision as part of its Articles of Incorporation. In the event Corporation 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 UNIVERSITY FACILITIES

Corporation may use those facilities identified for its use in a lease agreement executed between University and Corporation. If this Master 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.

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

14. CONTRACTS FOR UNIVERSITY SERVICES

Corporation may contract with University for services to be performed by state employees for the benefit of Corporation. Any agreement must be documented in a written memorandum of understanding between Corporation and University. The memorandum of understanding shall among other things, specify the following: (a) full reimbursement to University for services performed by a state employee in accord with CCR tit.5, §42502(f); (b) Corporation must clearly identify the specific services to be provided by state employee, (c) Corporation must specify any performance measures used by Corporation to measure or evaluate the level of service; (d) Corporation must explicitly acknowledge that Corporation 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 Corporation.

15. DISPOSITION OF NET EARNINGS

Corporation agrees to comply with CSU and University 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, which includes fee-for-service, memberships, and other externally-funded University activities that are not covered under a separate agreement, must comply with ICSUAM §13680. CCR tit. 5, §42502(g) and (h).

17. ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS

Corporation 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 University.

A. Authority to Accept Gifts

If authorized, Corporation 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).

Corporation 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 University authority. Corporation agrees that it will not accept a gift that has any restriction that is unlawful.

University Designation of Authority to Corporation re: Administration of Grants and Contracts is attached as **Attachment 4**.

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

Corporation 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 Corporation as an auxiliary organization.

19. INSURANCE

Corporation shall maintain insurance protecting the CSU and University 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. Corporation agrees to maintain at least these minimum insurance requirements.

Corporation'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 Corporation's operations). Corporation shall ensure that CSU and University 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:

*Cal Poly Corporation
Attention: Corporation Counsel
1 Grand Avenue, Bldg. 15
San Luis Obispo, CA 93401*

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 University shall be addressed as follows:

*California Polytechnic State University
Office of the President
1 Grand Avenue., Bldg. 1
San Luis Obispo, CA 93401*

21. PERSONAL AND OTHER CONFIDENTIAL INFORMATION

A. Personal Information

- i) Corporation acknowledges the privacy rights of individuals to their personal information that are expressed in the State's Information Practices Act (California Civil Code Section 1798 et seq.) and in California Constitution Article I, Section I. Corporation further acknowledges Federal privacy laws such as Gramm-Leach- Bliley Act (Title 15, United States Code, Sections 6801(b) and 6805(b)(2)) applicable to financial transactions and Family Educational Rights and Privacy Act (Title 20, United

States Code, Section 1232g) applicable to student records and information from student records.

ii) Corporation shall not release personal information contained in University records without full compliance with applicable state and federal privacy laws. Corporation shall maintain the privacy of protected personal information, including strictly limiting access to protected personal information only to its employees and contractors who need to know of the protected personal information and to its financial, legal or other advisors who are advising Corporation. Corporation shall not provide a contractor with protected personal information from University records without prior consent of the University. Corporation will adhere to commercially reasonable standards in the storage and disposal of protected personal information. Corporation shall disclose any breach of protected personal information and the disclosure shall be made in the most expedient time possible consistent with the methods prescribed in California Civil Code 1798. Corporation shall notify University's chief information security officer immediately if there is a breach of protected personal information from University records.

B. Other Confidential Information

Under the terms of this MOA and its underlying agreements, University and Corporation will frequently work in concert to further their mutual goals. As such, Corporation may disclose to University certain business and technical information (whether oral, in writing, in machine readable or other tangible form) concerning Corporation's interests and activities which Corporation deems proprietary, including but not limited to, financial information, trade secrets, know-how, product formulae, processing procedures and equipment, standards and specifications, product samples, product development plans, proposed products and services, business plans, customer lists, prices, market and sales information and plans, and any non-public information which concerns the business and operations of Corporation ("Confidential Information"). Such Confidential Information will be handled as follows:

i. Confidentiality of Information

University and CSU agree to receive the Confidential Information in absolute confidence. University and CSU agree that it will not distribute, disclose or disseminate any Confidential Information of Corporation in any way to anyone, except only to its employees and contractors who need to know the Confidential Information and to its financial, legal or other advisors who are advising University and CSU regarding related activities, or as required by law. University and CSU agree that its disclosure of Confidential Information to its employees, contractors and/or advisors who have such a need to know shall be limited to only so much of such Confidential Information as is necessary for an employee, contractor and/or advisor to perform his/her function.

ii. Standards of Care

University agrees that it will treat the Confidential Information of Corporation in the same manner it treats its own Confidential Information that it does not wish to disclose to the public, but in all instances University agrees to use at least a reasonable degree of care to protect the Confidential Information of Corporation.

iii) Inapplicability of Restrictions

There shall be no restrictions under this provision with respect to any portion of the Confidential information which:

- (a) is known to University at the time of its disclosure to University;
- (b) is or becomes publicly known through no wrongful act of University or of any affiliated entity of University;
- (c) is received from a third party without breach of the restrictions contained in this provision;
- (d) is independently developed by University;
- (e) is furnished to any third party by Corporation without a similar restriction on the receiving party's rights;
- (f) is approved for release by Corporation; or
- (g) is required by the Public Records Act or otherwise by law, court order or a governmental agency to be disclosed.

iv. Ownership. All Confidential Information delivered by Corporation to University pursuant to this MOA or any of its underlying agreements shall be and remain the property of Corporation. All such Confidential Information, and any copies thereof, shall be promptly returned to Corporation upon written request, or, at Corporation's option and instruction, destroyed. Additionally, upon written request by Corporation, University shall certify in writing to Corporation that, to the best of University's knowledge, all originals and copies of any Confidential Information that were used or possessed by University have been returned to a designated officer of Corporation on.

v. Term. The restrictions and obligations under this section shall endure until Auxiliary, releases University and/or Trustees from such obligations in writing, or until such obligations are extinguished by operation of law.

vi. Disclosure Sought Under Legal Process. University shall immediately notify Corporation in writing of any subpoena, court order or other legal process seeking or purporting to compel disclosure of any of the Confidential Information to allow Corporation to challenge, oppose or appeal any such subpoena, order or legal process to the extent deemed appropriate by Corporation. In no event shall University voluntarily, without a court order, disclose or permit the disclosure of any of the Confidential Information in response to legal process unless and until University has

given the required notice to Corporation and Corporation has exhausted any and all legal remedies available to it to limit to prevent the disclosure.

- vii. Enforcement. The parties agree that money damages would not be a sufficient remedy for any breach of this provision and that Corporation shall be entitled to seek injunctive relief or remedy to prevent any breach or threatened breach of this provision. Such remedy shall not be the exclusive remedy for any breach of this provision, but shall be in addition to all other rights and remedies available at law or in equity.

22. AMENDMENT

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

23. RECORDS

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

24. TERMINATION

CSU may terminate this Agreement upon Corporation's breach of or failure to comply with any term of this Agreement by providing Corporation with a minimum of ninety (90) days advance written notice. Corporation 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. DISPUTE RESOLUTION

Any dispute arising under the terms of this Agreement that is not resolved within a reasonable period of time shall be brought to the attention of the Executive Director of the Corporation and the Vice President for Administration and Finance of the University for joint resolution. Despite an unresolved dispute, the Parties shall continue without delay to perform their respective responsibilities under this Agreement pending final resolution.

26. REMEDIES UPON TERMINATION

Termination by CSU of this Agreement pursuant to Section 24, *Termination*, may result in Corporation's removal, suspension or probation as a CSU auxiliary in good standing, and loss of any right for Corporation 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 thirty (30) days to enter into a new operating agreement which period may be extended by written mutual agreement.

27. 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: 2019-08-07, 2019

California Polytechnic State University

DocuSigned by:
By Jeffrey D. Armstrong
Jeffrey D. Armstrong, President

Executed on: 2019-07-26, 2019

Cal Poly Corporation

DocuSigned by:
By Lorlie Leetham
Lorlie Leetham, Executive Director
Associate Vice President, Commercial Services

Executed on: 2019-08-07, 2019

California State University
Office of the Chancellor
Contract Services and Procurement

DocuSigned by:
By Verna Ale Pariani
5FCAF12A5D69429...



MEMORANDUM

To: <<Name>> **Date:** June 7, 2019

From: Lorie Leetham **File:** BOD/COI
Executive Director, Cal Poly Corporation
Assoc. V.P. Commercial Services, Administration & Finance

Subject: **ACKNOWLEDGEMENT AND DECLARATION OF STANDARDS
OF CONDUCT AND CONFLICT-OF-INTEREST FOR FY 2019-20**

This memorandum has been prepared to assure that each executive employee and member of the Corporation Board of Directors is made aware of the declaration on standards of conduct and conflict of interest. The applicable standards are attached.

1. California Education Code Sections 89006 and 89906 through 89909 prescribe specific financial interest standards ("conflict of interest standards") for auxiliary governing body members and employees.
2. California Corporations Code Sections 5230 through 5234 set forth standards of conduct for nonprofit corporation directors.
3. California Education Code Sections 89920 through 89928 set forth open meeting laws by which the auxiliary is bound.

To acknowledge your receipt of these laws and to acknowledge your intent to abide by these standards, please sign the statement on the attached page. Please retain a copy of the standards for your files, and return the signature page to Ann Roy.

**ACKNOWLEDGMENT AND DECLARATION
ON STANDARDS OF CONDUCT AND
CONFLICT-OF-INTEREST**

Acknowledgment. I have read and understand Sections 89006 and 89906 through 89909 of the California Education Code and Sections 5230 through 5234 of the California Corporation Code as it relates to my service to the Cal Poly Corporation.

Declaration. I declare that I am not, nor have I been in conflict with applicable provisions of the California Education Code, Sections 89006 and 89906 through 89909, nor the standards of conduct set forth in Sections 5230 through 5234 of the California Corporations Code. I am not financially interested in any contract or other transaction entered into by the Cal Poly Corporation, and I do not otherwise have a conflict of interest relating to my association with the Corporation for the period of July 1, 2019 through June 30, 2020.

I will inform the Executive Director in a reasonably prompt time if any conflicts of interest arise during this academic year of service so that appropriate notice and/or action may be taken to avoid any conflicts of interest in my service as a board member of the Cal Poly Corporation with my personal and financial interests, including but not limited to, informing the other board members prior to a discussion to abstaining from discussion or votes on matters related to my personal and financial interests.

<<Name>>

<<Title>>

Signature

Date

SPECIFIC FINANCIAL INTEREST STANDARDS

California Education Code:

SECTION 89006. 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, that is received by that person by reason of his or her employment by, or contractual relationship with, the trustees, the California State University, or an auxiliary organization of the California State University, for personal pecuniary gain, not contemplated by the terms of the employment or contract, regardless of whether the person is or is not so employed or under contract at the time the gain is realized. (4/93)

SECTION 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 is a member, and any contract or transaction entered into in violation of this section is void. (4/77)

SECTION 89907. EXCEPTION TO FINANCIAL INTEREST PROHIBITION

No contract or other transaction entered into by the governing board of an auxiliary organization is void under the provisions of Section 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 exist:

- (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 trans-action 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. (4/77)

SECTION 89908. OTHER PROHIBITED FINANCIAL INTERESTS

The provisions of Section 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 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 trans-action within the meaning of Section 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. (4/77)

SECTION 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 by reason of his membership on the governing board of an auxiliary organization, for personal pecuniary gain, regardless of whether he is or is not a member of the governing board at the time such gain is realized. (4/77)

EXTRACTS OF STATUTORY REQUIREMENTS CONCERNING CORPORATE DIRECTOR STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

California Corporations Code:

Standards of Conduct

SECTION 5230.

- (a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is compensated by the Corporation.
- (b) Part 4 (commencing with Section 16000) of the Probate Code does not apply to the directors of any corporation. (1/88)

SECTION 5231.

- (a) A director shall perform the duties of a director, including duties as a member of any committee of the Board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.
- (b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:
 - (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;
 - (2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or
 - (3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need, therefore, is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.
- (c) Except as provided in Section 5233, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated. (1/80)

SECTION 5232.

- (a) Section 5231 governs the duties of directors as to any acts or omissions in connection with the election, selection, or nomination of directors.
- (b) This section shall not be construed to limit the generality of Section 5231. (1/80)

SECTION 5233.

- (a) Except as provided in subdivision (b), for the purpose of this section, a self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest and which does not meet the requirements of paragraph (1), (2), or (3) of subdivision (d). Such a director is an "interested director" for the purpose of this section.

- (b) The provisions of this section do not apply to any of the following:
 - (1) An action of the board fixing the compensation of a director as a director or officer of the corporation.
 - (2) A transaction which is part of a public or charitable program of the corporation if it: (i) is approved or authorized by the corporation in good faith and without unjustified favoritism; and (ii) results in a benefit to one or more directors or their families because they are in the class of persons intended to be benefited by the public or charitable program.
 - (3) A transaction, of which the interested director or directors have no actual knowledge, and which does not exceed the lesser of 1 percent of the gross receipts of the corporation for the preceding fiscal year or one hundred thousand dollars (\$100,000).

- (c) The Attorney General, or if the Attorney General is joined as an indispensable party, any of the following may bring an action in the superior court of the proper county for the remedies specified in subdivision (h):
 - (1) The corporation, or a member asserting the right in the name of the corporation pursuant to Section 5710.
 - (2) A director of the corporation.
 - (3) An officer of the corporation.
 - (4) Any person granted relator status by the Attorney General.

- (d) In any action brought under subdivision (c) the remedies specified in subdivision (h) shall not be granted if:
 - (1) The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or
 - (2) The following facts are established:
 - (A) The corporation entered into the transaction for its own benefit;
 - (B) The transaction was fair and reasonable as to the corporation at the time the corporation entered into the transaction;
 - (C) Prior to consummating the transaction or any part thereof, the board authorized or approved the transaction in good faith by a vote of a majority of the directors then in office without counting the vote of the interested director or directors, and with knowledge of the material facts concerning the transaction and the director's interest in the transaction. Any other provision of this part notwithstanding, no action by a committee of the board shall satisfy this paragraph; and
 - (D) (i) Prior to authorizing or approving the transaction, the board considered and in good faith determined after reasonable investigation under the circumstances that the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances or (ii) the corporation in fact could not have obtained a more advantageous arrangement with reasonable effort under the circumstances; or
 - (3) The following facts are established:

- (A) A committee or person authorized by the board approved the transaction in a manner consistent with the standards set forth in paragraph (2) of this subdivision;
 - (B) It was not reasonably practicable to obtain approval of the board prior to entering into the transaction; and
 - (C) The board, after determining in good faith that the conditions of subparagraphs (A) and (B) of this paragraph were satisfied, ratified the transaction at its next meeting by a vote of the majority of the directors then in office without counting the vote of the interested director or directors.
- (e) Except as provided in subdivision (f), an action under subdivision (c) must be filed within two years after written notice setting forth the material facts of the transaction and the director's interest in the transaction is filed with the Attorney General in accordance with such regulations, if any, as the Attorney General may adopt, or if no such notice is filed, within three years after the transaction occurred, except for the Attorney General, who shall have 10 years after the transaction occurred within which to file an action.
- (f) In any action for breach of an obligation of the corporation owed to an interested director, where the obligation arises from a self-dealing transaction which has not been approved as provided in subdivision (d), the court may, by way of offset only, make any order authorized by subdivision (h), notwithstanding the expiration of the applicable period specified in subdivision (e).
- (g) Interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes, approves or ratifies a contract or transaction.
- (h) If a self-dealing transaction has taken place, the interested director or directors shall do such things and pay such damages as in the discretion of the court will provide an equitable and fair remedy to the corporation, taking into account any benefit received by the corporation and whether the interested director or directors acted in good faith and with intent to further the best interest of the corporation. Without limiting the generality of the foregoing, the court may order the director to do any or all of the following:
- (1) Account for any profits made from such transaction, and pay them to the corporation;
 - (2) Pay the corporation the value of the use of any of its property used in such transaction; and
 - (3) Return or replace any property lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate. The court may award prejudgment interest to the extent allowed in Section 3287 or 3288 of the Civil Code. In addition, the court may, in its discretion, grant exemplary damages for a fraudulent or malicious violation of this section. (1/80)

SECTION 5234.

- (a) No contract or other transaction between a corporation and any domestic or foreign corporation, firm, or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves, or ratifies the contract or transaction, if:
- (1) The material facts as to the transaction and as to such director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors; or

(2) As to contracts or transactions not approved as provided in paragraph (1) of this subdivision, the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified.

(b) This section does not apply to transactions covered by Section 5233. (1/80)

(J:\BOARD\COI\COICON)

CALIFORNIA EDUCATION CODE

SECTION 89920. PUBLIC MEETING REQUIREMENT

Each governing board, or any sub-board of the governing board, of an auxiliary organization shall conduct its business in public meetings. All governing board and sub-board meetings shall be open and public, and all persons shall be permitted to attend any meeting of the governing board or sub-board of an auxiliary organization, except as otherwise provided in this article. (1984)

SECTION 89921. REGULAR AND SPECIAL MEETINGS; NOTICE

Each governing board and sub-board shall annually establish, by resolution, bylaws, or whatever other rule is required for the conduct of business by that body, the time and locations for holding regular meetings. Each governing board and sub-board shall, at least one week prior to the date set for the meeting, give written notice of every regular meeting, and any special meeting which is called, at least one week prior to the date set for the meeting, to any individual or medium that has filed a written request for notice. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. (1984)

SECTION 89922. SPECIAL MEETINGS; CALL AND NOTICE

A special meeting may be called at any time by the presiding officer of a governing board or sub-board, or by a majority of the members of the governing board or sub-board, by delivering personally or by mail written notice to each member of the board or sub-board, and to any medium or other party to be directly affected by a meeting, or any other person who has requested notice in writing. The call and notice of a special meeting shall be delivered at least 24 hours prior to any meeting and shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the governing board or sub-board. Written notice may be dispensed with as to any member who, at or prior to the time the meeting convenes, files with the clerk or the secretary of the governing board or sub-board a written waiver of notice. The waiver may be given by telegram. Written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. (1984)

SECTION 89923. CLOSED SESSIONS

Any governing board or sub-board may hold closed sessions to consider matters relating to litigation, collective bargaining, or the appointment, employment, evaluation of performance, or dismissal of an employee, or to hear complaints or charges brought against an employee by another person or employee, unless the employee requests a public hearing. For the purposes of this section, "employee" does not include any person elected or appointed to an office. A board or sub-board, upon a favorable majority vote of its members, may also hold a closed session to discuss investments where a public discussion could have a negative impact on the auxiliary organization's financial situation. In this case, a final decision shall only be made during public sessions. (1984)

SECTION 89924. POSTING OF ISSUES PRIOR TO BOARD ACTION

No governing board or sub-board shall take action on any issue until that issue has been publicly posted for at least one week. (1984)

SECTION 89925. ELECTION OF OFFICERS AND BOARD MEMBERS

Each auxiliary organization shall establish, by constitution, statute, bylaws, or resolution, provisions for elections of officers and board members. These provisions shall be designed to allow all those eligible to vote complete access to all information on issues and candidates. These provisions shall include, but not be limited to, provisions for sample ballots, numbers of days and hours for voting, polling locations, and notice of elections. (1984)

SECTION 89926. JUDICIARY OR JUDICIAL COUNCIL; FINALITY OF DECISIONS

Where the constitution or articles of incorporation of an associated students auxiliary organization provides for a judiciary or judicial council with powers separate from the governing board of the auxiliary organization, decisions rendered by the judiciary or judicial council shall be final. (1984)

SECTION 89927. KNOWLEDGE OF MEETING IN CONTRAVENTION OF ARTICLE; VIOLATION BY ATTENDEES

Each member of a governing board pursuant to this article who attends a meeting of the governing board where action is taken in violation of any provision of this article, with knowledge of the fact that the meeting is in violation of this article, is guilty of a misdemeanor. (1984)

SECTION 89928. APPLICABILITY OF ARTICLE

This article is applicable to the governing board of any statewide student organization, which represents the students of the California State University and student body organizations of the campuses of the California State University. (2000)



Policy 106

Source and Use of Public Relations Funds

Section: 100 – General Administration
Responsible Executive: Executive Director
Responsible Department: Executive Office
First Effective Date: February, 1976
Last Reviewed: March 2018
Next Scheduled Review: June 2023

1.0 PURPOSE

- 1.1. To provide policy guidance on the accumulation and use of funds by the Cal Poly Corporation (“CPC”) for public relations purposes.

2.0 BACKGROUND

- 2.1. Per Title 5 California Code of Regulations §42502(i), each auxiliary organization shall 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.”

3.0 POLICY

- 3.1. Solicitation and Accumulation of Public Relations Funds. CPC does not solicit public relations funds, and does not annually budget for funds to be available for public relations purposes.
- 3.2. Procedures. Any expenditure of CPC 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. Pursuant to the CPC’s 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.
- 3.3. Source of Public Relations Funds. Public relations funds may be sourced from CPC-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 CPC for benefit of specific University activities, departments, entities or individuals. Expenditures from discretionary or restricted funds must clearly advance the objectives of the campus and California State University; and be consistent with applicable procurement and accounting practices. All 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 the California State University or the campus. All expenditures from a restricted fund must be clearly consistent with the restricted purpose.
- 3.4. Policy filing. CPC shall file a copy of this policy with the California State University Chancellor’s Office, per the requirements of Title 5 California Code Regulations §42502(i).

4.0 DEFINITIONS

- 4.1. None.

5.0 PROCEDURES, GUIDELINES AND FORMS

5.1. The Executive Director or his/her designee is charged with the responsibility of implementing this policy through procedures, guidelines and forms, if needed, as approved by the Executive Director.

6.0 COMPLIANCE

6.1. All auxiliary units, departments and personnel and any authorized personnel requesting funds from any account held by CPC must comply with this policy.

7.0 REFERENCES AND RELATED POLICY

7.1. Title 5 California Code of Regulations §42502(i)

7.2. General Accepted Accounting Principles (GAAP)

Technical and administrative change updates

7-25-12 for title and organization structure changes.

RESTATED ARTICLES OF INCORPORATION**ENDORSED - FILED**
in the office of the Secretary of State
of the State of California

SEP 23 2011

The undersigned certify that:

1. They are the Chair of the Board and Secretary, respectively of **Cal Poly Corporation** (Corporation Entity No. C0183601), a California corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

**RESTATED ARTICLES OF INCORPORATION
OF
CAL POLY CORPORATION**

ARTICLE I. Name

The name of this corporation is the "Cal Poly Corporation."

ARTICLE II. Purposes

(a) 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 charitable purposes.

(b) The charitable purposes for which this corporation is organized and will be operated exclusively are to perform the functions of, and to carry out the mission and educational programs that benefit California Polytechnic State University, San Luis Obispo. This corporation is organized exclusively for charitable purposes within the meaning of §501(c)(3) of the Internal Revenue Code of 1986, as amended.

(c) 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

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

(b) Nothing in Article II shall be construed as allowing the Cal Poly 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.

(c) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Cal Poly 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 the corporation will be located in the County of San Luis Obispo, State of California.

ARTICLE V. Dedication and Dissolution

(a) 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 Cal Poly 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.

(b) Upon dissolution or winding up 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 one or more nonprofit corporations organized and operated for the benefit of the California Polytechnic State University as approved by the President of the University and by the Board of Trustees 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. Amendment


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 President of California Polytechnic State University.

3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors and the President of California Polytechnic 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: June 21, 2011



Larry Kelley, Chair of the Board



David Wehner, Secretary

in the presence of two or more witnesses, and the same shall be duly attested by the Secretary of the Corporation.



Notary Public for the State of California
My Commission Expires: 06/30/2011



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.

OCT 17 2011

Date:

Debra Bowen

DEBRA BOWEN, Secretary of State

A0734692

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

**CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION**

NOV 05 2012

The undersigned certify that:

1. They are the Chair of the Board and Secretary, respectively of **Cal Poly Corporation** (Corporation Entity No. C0183601), a California corporation.
2. Article V(b) of this corporation is amended to read as follows:

Upon dissolution or winding up 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 one or more nonprofit corporations organized and operated for the benefit of the California Polytechnic State University as approved by 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.

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.
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: October 26, 2012



Larry Kelley, Chair of the Board



David Wehner, Secretary/Treasurer

Notary Public for the State of California
My Commission Expires 12/31/2012
I hereby certify that the foregoing is a true and correct copy of the original as filed in my office on the date hereon.

NOV 05 2012

SECRET



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

NOV 19 2012

Date: _____ *JM*

Debra Bowen
DEBRA BOWEN, Secretary of State

Attachment 4
Administration of Grants and Contracts
Addendum to Auxiliary Operating Agreement
Between Trustees of the California State University,
California Polytechnic State University
And
Cal Poly Corporation

This is an addendum to the Operating Agreement between the Trustees of the California State University (CSU) and Cal Poly Corporation (Auxiliary) serving California Polytechnic State University (Campus), effective from 2019 through June 30, 2029, 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:

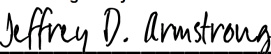
- The primary Sponsored Program Administrator (SPA) for the Campus;
- A SPA for specific types of grants and contracts for Auxiliary primary business purpose.¹
[Campus may include examples]

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 Polytechnic State University

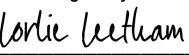
DocuSigned by:


Jeffrey D. Armstrong
President

2019-08-07

Date

Cal Poly Corporation

DocuSigned by:


Lorlie Leetham
Executive Director/Associate Vice President, Commercial Services

2019-07-26

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.