

**OPERATING AGREEMENT BETWEEN
CALIFORNIA STATE UNIVERSITY
AND
SDSU MISSION VALLEY ENTERPRISES**

Effective September 14, 2023

This agreement is made and entered into by and between the Trustees of the California State University by their duly qualified Chancellor ("CSU") and SDSU Mission Valley Enterprises ("Auxiliary") serving San Diego State University ("Campus"). The term of this agreement shall be September 14, 2023, through August 31, 2034, unless sooner terminated as herein provided.

1. PURPOSE

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

2. PRIMARY FUNCTION(S) OF THE AUXILIARY

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

- Real Property Acquisition/Real Property Development.

This includes ground lease administration and related contract and financial management, site (including park and open space) operation, management, and maintenance, and commercial leasing.

In carrying out the above, Auxiliary engages in the following functions authorized by CCR Title 5, §42500, which are activities essential and integral to the educational mission of the University:

1. Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities. Examples of such activities may include, without limitation: coordinating with developers of real property; collecting rent and other fees, and managing the accounting thereof; and operating, managing, and maintaining real property (including parks and open space).

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 Title 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 Title 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, pursuant to CSU policy Designation of Chief Financial Officer, so as to assure compliance with objectives stated in CCR Title 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 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 Title 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 Policies in force as of the date of this operating agreement are 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, and any updates to 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 Title 5, §42408, regarding fiscal audits. All fiscal audits shall be conducted by auditors meeting the requirements set forth in Auxiliary Organization External Auditor Firms Qualifications.

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 Auxiliary. This review by the Campus CFO must be conducted prior to Auxiliary engaging an external audit firm and annually thereafter. If 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 CSU Background Check Policy).

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 Title 5, §42600, establishes that upon dissolution of Auxiliary, the net assets 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 Title 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; Campus Auxiliary Organizations Policy.

16. FINANCIAL CONTROLS Recovery of allowable and allocable indirect costs and maintenance and payment of operating expenses must comply with CSU policy including Placement and Control of Receipts for Campus Activities and Programs, Campus Auxiliary Organizations Policy; and CCR Title 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 CSU policy Campus Auxiliary Organizations Policy. Auxiliary agrees to maintain at least these minimum insurance requirements.

Auxiliary's participation in a coverage program of the California State University Risk Management Authority (CSURMA) shall fully comply with the insurance requirement for each type of required coverage including, as applicable, general liability, auto liability, director and officers liability, fiduciary liability, professional liability, employer's liability, pollution liability, workers' compensation, fidelity, property and any other coverage 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:

SDSU Mission Valley Enterprises
Attention: Vice Chair
5500 Campanile Drive
San Diego, California 92182-1620

Notice to the CSU shall be addressed as follows:

Trustees of the California State University
401 Golden Shore
Long Beach, California 90802
Attention: Executive Vice Chancellor and Chief Financial Officer

Notice to the Campus shall be addressed as follows:

Office of the President
San Diego State University
5500 Campanile Drive
San Diego, California 92182-3340

And

The Vice President for Business and Financial Affairs
San Diego State University
5500 Campanile Drive
San Diego, California 92182-1620

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: _____

San Diego State University



By _____

Adela de la Torre, President

Executed on: Sep 18, 2023

SDSU Mission Valley Enterprises


Gina Jacobs

By _____

Vice Chair

Executed on: Sep 19, 2023

California State University
Office of the Chancellor
Office of the Executive Vice Chancellor and Chief
Financial Officer

By  _____
SDSU-REV-01 (Sep 19, 2023 14:19 PDF)

Name Steven Relyea

Title Executive Vice Chancellor and CFO

Conflict of Interest Policy

WHEREAS a fiduciary relationship exists between SDSU Mission Valley Enterprises (the "Auxiliary") and its Directors and Officers (as defined herein), and

WHEREAS said fiduciary relationship requires all Directors and Officers to exercise their best skill and independent judgment on behalf, and for the benefit of, the Auxiliary in a loyal and faithful manner, and

WHEREAS it is in the best interests of the Auxiliary and all Directors and Officers to implement and enforce a strict policy prohibiting conflicts of interest between the Auxiliary and all Directors and Officers;

WHEREAS Title 5 Sections 42401, 42402, 42500 and Education Code Section 89900, 88906 specify the policies and procedures and the sound business practices that are in the best interest of the Campus;

WHEREAS Section 4.5 of SDSU Mission Valley Enterprises' Bylaws defines Financially Interested Directors and prohibited transactions;

NOW THEREFORE, BE IT RESOLVED by the SDSU Mission Valley Enterprises Board of Directors that the Auxiliary hereby adopts the following policy on Conflicts of Interest reflecting the above principles:

A. Policy Statement. All Directors and Officers shall conduct their personal business and private affairs to avoid any potential conflict of interest or appearance of a conflict of interest between themselves, their friends and family and the Auxiliary. All Directors and Officers shall take immediate and appropriate action to resolve any conflict of interest, which actually arises or could potentially arise. All Directors and Officers shall report to the Board of Directors any facts or circumstances, which they know, or should know, have resulted or will result in a conflict of interest, or perceived conflict of interest. The Board of Directors shall have ultimate and final responsibility for determining whether a potential or actual conflict of interest exists, and for enforcement of this policy.

B. Definitions.

- i. "Directors" means all compensated and uncompensated members of the Board of Directors of the Auxiliary.
- ii. "Officers" includes all compensated and uncompensated Officers of the Auxiliary.
- iii. "Conflict of Interest" includes all situations where the personal activities and financial affairs of the Director or Officer may adversely influence his or her judgment in the performance of his or her duties for the Auxiliary.
- iv. "Conflict of interest" also includes a relationship, transaction, other circumstance that enables, potentially enables, or appears to enable, an individual (or family and friends) to personally benefit from his/her relationship with the Auxiliary.

ATTACHMENT 1 TO
OPERATING AGREEMENT

v. "Conflict of interest" also includes the dissemination of information concerning a transaction that will ultimately become public that would benefit a board member, officer, or his/her friends and family earlier than the general public.

C. Avoiding Potential Conflicts. In order to avoid situations which potentially give rise to a conflict of interest, Directors and Officers shall not engage in any of the following activities, except as authorized by a prior, written resolution of the Board of Directors following full disclosure by the affected Director or Officer:

i. Use their position as a Director or Officer, or any knowledge or information obtained there from, for personal gain;

ii. Directly or indirectly engage in any activity (whether as director, officer, principal, employee, agent, or consultant) or directly or indirectly own an ownership interest in any entity (whether as a shareholder, member, partner or sole proprietor) which competes with the existing, planned or potential business of the Auxiliary;

iii. Own any ownership interest either directly (whether as a shareholder, member, partner or sole proprietor) or indirectly (whether through an immediate family member, trust or other arrangement) in any entity which supplies goods or services to the Auxiliary; provided, however, that stock ownership in a publicly traded corporation shall be permitted if the ownership does not exceed five percent of the outstanding stock of the corporation;

iv. Accept any gift of goods or services which is intended to, or which may, influence or affect the judgment of the Director or Officer concerning the Auxiliary affairs; or

v. Engage in any other activity, or take any other action not enumerated herein where the interests of the Director or Officer may compete or conflict with the interests of the Auxiliary.

Reporting of conflicts to the University [Business & Financial Affairs] will take place as they occur and will include the management plan for handling the conflict.

D. Conflict of Interest Statement. Each year the Chair of the Board of Directors ("Chair") shall send to all Directors and Officers, a copy of the Conflict of Interest Policy Statement. All Directors and Officers shall provide a written acknowledgement of the receipt of the policy within 30 days.

E. Board Options. The Board of Directors, having the responsibility for the interpretation and enforcement of this policy, is authorized to take whatever action it deems appropriate in its sole discretion to resolve potential or actual conflicts of interest, to resolve appearances of impropriety, and to address intentional or unintentional violations of this policy including, but not limited to:

i. Prohibiting the affected Director or Officer from participating in any Auxiliary discussions or decisions involving the conflict of interest;

ATTACHMENT 1 TO
OPERATING AGREEMENT

ii. Modifying or redefining the duties and responsibilities of the affected Director or Officer; or

iii. Requiring the resignation of the affected Director or Officer.

F. Effective Date. This policy shall become effective upon its adoption and will apply to all current and future Directors and Officers. No activity, action or state of affairs of any Director or Officer in existence at the time this policy is adopted shall be considered exempt from, or "Grandfathered," by this policy.

ATTACHMENT 2 TO
OPERATING AGREEMENT

**Policy on Accumulation and Use
of Public Relations Funds**

[To be added]

Articles of Incorporation

[On Following Pages]



For Office Use Only
-FILED-
File No.: 5791882
Date Filed: 6/20/2023

ARTICLES OF INCORPORATION
OF
SDSU MISSION VALLEY ENTERPRISES

ARTICLE 1
NAME

The name of this corporation is SDSU MISSION VALLEY ENTERPRISES.

ARTICLE 2
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 public and charitable purposes.

B. The charitable purposes for which this corporation is organized and will be operated exclusively are to perform the authorized functions which carry out and enhance the mission and educational programs for San Diego State University ("SDSU") by performing the authorized functions which carry out and enhance the mission and educational programs of SDSU.

C. The corporation shall be an auxiliary organization of the California State University and shall conduct its operations in conformity with the provisions governing such auxiliary organizations, including, but not limited to, the California Education Code Sections 89900 et seq., the California Code Regulations Title 5, Section 42400 et seq., such rules and regulations as may be established by the Board of Trustees of the California State University, and SDSU policies.

ARTICLE 3
EXEMPT STATUS

A. This corporation is organized and operated solely for the benefit of SDSU.

B. This corporation is organized and operated exclusively for the purposes set forth in Article 2 hereof within the meaning of Internal Revenue Code Section 501(c)(3), or the corresponding provision of any future United States internal revenue law.

C. Despite any other provision in these articles, the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that do not further the purposes of this corporation, and the corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Internal Revenue Code Section 501(c)(3) or the corresponding provision of any future United States internal revenue law, or (b) a corporation, contributions to which are deductible under Internal Revenue Code Section 170(c)(2) or the corresponding provision of any future United States internal revenue law.

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 RECEIVED
 COUNTY CLERK
 SAN DIEGO COUNTY

D. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate in 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 4
PRINCIPAL OFFICE**

The principal office for the transaction of the business of this corporation will be located in San Diego County, State of California. The initial street address of the corporation is 5500 Campanile Drive, San Diego, California 92182-1620.

**ARTICLE 5
AGENT FOR SERVICE OF PROCESS**

The name and address in the State of California of the corporation's initial agent for service of process is Gina Jacobs, 5500 Campanile Drive, San Diego, California 92182-1620.

**ARTICLE 6
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 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 2.

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, shall be distributed to one or more nonprofit corporations organized and operated for the benefit of the San Diego State University, as approved by this corporation's Board of Directors, the President of SDSU, and by the Chancellor of California State University. Such nonprofit corporation or corporations must be qualified for Federal income tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and have established its tax exempt status under Section 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 Section 214 of the California Revenue and Taxation Code.

**ARTICLE 7
AMENDMENTS**

The Articles of Incorporation of this corporation shall be amended by majority vote of the directors then in office, subject to the written approval of the President of SDSU.

DATED: June 1, 2023



Agnes Wong Nickerson, Incorporator