

OPERATING AGREEMENT
BETWEEN CALIFORNIA STATE UNIVERSITY
AND
STUDENT UNION OF SAN JOSÉ STATE UNIVERSITY

This Agreement is made and entered into by and between the Trustees of the California State University by their duly qualified Chancellor (CSU) and Student Union of San José State University (Auxiliary) serving San José State University (Campus). The term of this Agreement shall be July 1, 2021 through June 30, 2026 unless sooner terminated as herein provided. This 5-year period only may be extended for financing or leasing purposes, and with the written approval of the CSU.

1. PURPOSE

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

2. PRIMARY FUNCTION(S) OF THE AUXILIARY

In consideration of receiving recognition as an official CSU auxiliary organization, Auxiliary agrees, for the period covered by this agreement, that the primary function(s), authorized by CCR, Title 5, 42500 which the Auxiliary is to manage, operate or administer is/are (Check each category that applies):

- Student Body Organization
- Student Union
- Housing
- Philanthropic
- Research, Workshops, Institutes, Conferences
- Real Property Acquisition / Real Property Development
- Commercial

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

- A. Facilities
 1. Diaz Compean Student Union
 2. Provident Credit Union Event Center
 3. Spartan Recreation & Aquatic Center
 4. South Campus Recreation Field

Auxiliary is charged with management of day-to-day program operations including programs, special events and related services as well as provides operational oversight associated with overall use of the facility with the exception of those areas designated for food service, bookstore operations, athletics and academic operation and programs. Auxiliary shall coordinate with appropriate Campus entities to ensure service levels and facility condition is maintained at the appropriate level and ensuring all such programs conducted within the facility are in alignment with CSU, Campus, or other jurisdictional agency policies, procedures, and regulations.

Auxiliary shall collaborate and coordinate schedule and services with Kinesiology and Athletics to accommodate required events and activities with those entities being the primary party responsible for oversight of their scheduled events and activities.

Management of the schedule for overall use of the facility including by the Campus, the Auxiliary and others. Ensure use by others aligns with requirement of the Campus. Responsible for Auxiliary programs taking place at this facility as outlined below.

Auxiliary shall collaborate with University Strategic Sourcing to develop a Memorandum of Understanding concerning external scheduling, use, oversight, and operation of the South Campus Recreation Field and including development of policies and procedures associated with reservation and use of the facility.

Such agreements shall be adopted and executed by Auxiliary and Campus within three months of the execution of this Agreement.

B. Programs and Services

Operation, management, and supervision of all Auxiliary-offered programs, special events, and supporting services which take place on Campus property, including state or non-state facilities associated with Campus, or at other locations as arranged for by Auxiliary. Auxiliary shall submit a Program & Facilities plan to the Campus on an annual basis for approval. This also includes coordinating with appropriate Campus entities concerning scheduling of programs and activities as well as ensuring all such programs are in alignment with CSU, Campus, or other jurisdictional agency policies, procedures, and regulations.

The Campus and its departments will contract with the Auxiliary for services to be performed by Auxiliary employees. Auxiliary to develop a memorandum of understanding (MOU) to specify the level of service and/or agreements to provide services for the benefit of the Campus, Auxiliary programs and, when requested, for University programs where such University programs take place at the Diaz Compean Student Union, Spartan Recreation & Aquatic Center,

Provident Credit Union Event Center, South Campus Recreation Field, Morris Dailey Auditorium, 7th & 9th Street Plaza, Tower Lawn, Caret Plaza, or at other events as requested by the University. The Auxiliary will perform services for the Campus (the Campus will also perform services for the Auxiliary) and utilize a Cost Recovery Method when costs exceed the Auxiliary's approved budget. Cost Recovery is limited to unusual expenses, non-routine operational costs associated with providing service to the campus (e.g. setup requiring the hire/use of outside contractors).

C. General Operations

Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering these purposes for the benefit of the 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 and defined in this Operating Agreement. 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 so as to assure compliance with objectives stated in CCR Title 5, §42401 and 42402.

The Campus shall review Auxiliary to ensure that the written Operating Agreement is current and that the activities of Auxiliary are in compliance with this Agreement at least every five (5) years from the date the Operating Agreement is executed and at least every five years thereafter. Confirmation that this review has been conducted will consist of either an updated operating agreement, or a letter from the Campus CFO or designee to the Campus President with a copy to the Chancellor's Office, certifying that the review has been conducted. As part of these periodic reviews, the Campus President should examine the need for each auxiliary and look at the efficiency of the auxiliary operation and administration.

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

4. OPERATIONAL COMPLIANCE

Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies. Failure of Auxiliary to comply with any term of this Agreement may result in the removal, suspension or probation of Auxiliary as an auxiliary organization in good standing. Such action by CSU may result in the limitation or removal of Auxiliary's

right to utilize the CSU or campus name, resources and facilities, or the requirements of other agencies having jurisdiction (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 Policy is attached as **Attachment 1**.

6. EXPENDITURES AUGMENTING CSU APPROPRIATIONS

With respect to expenditures for public relations or other purposes which would serve to augment appropriations for CSU operations, Auxiliary may expend funds in such amount and for such purposes as are approved by Auxiliary's governing body. Auxiliary shall file, as **Attachment 2** to this agreement, a statement of Auxiliary's policy on accumulation and use of public relations funds. The statement shall include the policy and procedures for solicitation of funds, the purposes for which the funds may be used, the allowable expenditures and procedures of control.

7. FISCAL AUDITS

Auxiliary agrees to comply with CSU policy and the provisions of CCR Title 5, §42408, regarding fiscal audits. All fiscal audits shall be conducted by auditors meeting the guidelines established the Integrated CSU Administrative Manual (ICSUAM).

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

8. USE OF NAME

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

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

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

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

9. CHANGE OR MODIFICATION OF CORPORATE STATUS

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

10. FAIR EMPLOYMENT PRACTICES

In the performance of this agreement, and in accordance with California Government Code §12900 et. seq., Auxiliary shall not deny employment opportunities to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, and 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 and emergency hires and for those independent contractors, consultants, outside entities, volunteers and existing employees in positions requiring background checks as set-forth in CSU-system wide policy. Auxiliary will provide confirmation of completed and cleared background checks to the University President/Chancellor upon request, or as established by campus policy. (See HR 2016-08).

12. DISPOSITION OF ASSETS

Attached hereto as **Attachment 3** is a copy of Auxiliary's Constitution or Articles of Incorporation (as applicable) which, in accordance with CCR Title 5, §42600, establishes that upon dissolution of Auxiliary, the net assets other than trust funds shall be distributed to the CSU or to another affiliated entity subject to financial accounting and reporting standards issued by the Government Accounting Standards Board.

Auxiliary agrees to maintain this provision as part of its Constitution or Articles of Incorporation. In the event Auxiliary should change this provision to make other dispositions possible, this Agreement shall terminate as of the date immediately preceding the date such change becomes effective.

13. USE OF CAMPUS FACILITIES

Throughout the term of this Agreement, Auxiliary may use the Diaz Compean Student Union, Provident Credit Union Event Center, Spartan Recreation & Aquatic Center, South Campus Recreation Field, and other campus facilities or grounds, leased or owned by the campus for its programs and services, as properly scheduled.

If this Agreement terminates or expires and is not renewed within 30 days of the expiration, use of those facilities named above along with others not named but for which Auxiliary has reserved and scheduled use of shall automatically terminate, unless extended in writing by the parties.

Auxiliary and Campus may agree that Auxiliary may use other Campus facilities and grounds when such does not interfere with instructional or research programs or other priorities of the Campus and upon the written approval from appropriate Campus administrators with such specific delegated authority.

Auxiliary shall reimburse Campus for costs of such use should it be determined the Campus incurred costs for use of such facility that it otherwise would not have incurred, including for damages that may be sustained during such Auxiliary programs.

The Auxiliary shall comply with the CSU policy for all camera systems, and therefore will transfer systems in support to Campus UPD.

14. CONTRACTS FOR CAMPUS SERVICES

Auxiliary shall, in collaboration with University Strategic Sourcing and other Campus departments, develop service level and/or shared service agreement to contract with the Campus for services to be performed by the Campus in support of Auxiliary operations including information technology and facility planning, design, construction, maintenance, repair, operation, Title IX, risk management, and environmental health and safety. The Auxiliary will consult the campus finance and accounting, human resources departments, for the successful and ongoing program operation of the Diaz Compean Student Union, Spartan Recreation & Aquatics Center, Provident Credit Union Event Center, and South Recreation Field in compliance with that of the CSU and Campus.

Such agreements shall be adopted and executed by Auxiliary and Campus within six months of the execution of this Agreement. Any agreement must be documented in a written service level and/or shared service agreement between Auxiliary and Campus, and shall be attached via an appendix to this Agreement.

15. DISPOSITION OF NET EARNINGS

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

16. FINANCIAL CONTROLS

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

17. ACCEPTANCE, ADMINISTRATION, AND USE OF GIFTS

The Auxiliary is not authorized to accept and administer gifts, grants, contracts, scholarships, loan funds, fellowships, bequests, and devises in accordance with policies of CSU and Campus.

18. INDEMNIFICATION

Auxiliary agrees to indemnify, defend and save harmless the CSU, the Campus, 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 System wide Office of Risk Management shall establish minimum insurance requirements for auxiliaries, based on the insurance requirements in Technical Letter RM 2012-01 or its successor then in effect. Auxiliary agrees to maintain at least these minimum insurance requirements.

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

Auxiliary shall consult with the Campus Risk Manager or other appropriate administrator regarding any questions relating to insurance.

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:

Executive Director, Student Union at San José State University
San José State University
1 Washington Square
San Jose, CA 95192-0155

Notice to the CSU shall be addressed to:

Trustees of the California State University
401 Golden Shore
Long Beach, California 90802
Attention: Assistant Vice Chancellor, Strategic Sourcing & Chief Procurement Officer

Notice to the Campus shall be addressed as follows:

Office of the President
San José State University
1 Washington Square

San Jose, CA 95192-0002

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 in advance notice period to cure the breach. If, in the judgement 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.

26. USE OF PREMISES

- A. Auxiliary may occupy, operate, program and use the Diaz Compean Student Union, Provident Credit Union Event Center, and Spartan Recreation & Aquatic Center only in connection with the functions and activities authorized in accordance with the terms in this Agreement, including administration of programs and services for students, faculty, staff, alumni and guests of the Campus.
- B. The Auxiliary is granted the ability to externally (defined as non-affiliates to Campus) sell services, rent spaces or facilities with the written permission of the Campus when it is not in conflict with priority Student and Campus programming and generate revenue from exclusively these activities, which also includes SRAC memberships and from Bowling Alley/Billiards. Auxiliary shall submit a revenue plan for Campus approval outlining all revenue generating activity, as a part of the annual budget. Applicable Cost Recovery for services to the Campus shall occur in accordance with Section 2, Paragraph B of this Agreement.

- C. In no case, shall the Auxiliary enter into any agreements in conjunction with sponsorships, naming rights, leased space, cellular towers, or charging for use of space within facilities (except as noted herein) without the written approval of the Campus.
- D. For the facilities listed in Paragraph A, the facility use fee proceeds shall be deposited in the Student Union Trust Account. Expenses for the spaces, including but not limited to utilities, maintenance and custodial services shall be paid by funds deposited in the aforementioned account. Notwithstanding the foregoing, this provision does not apply to facility use fee proceeds from external, non-affiliates to campus.

27. CONSIDERATION

- A. Auxiliary shall operate as an auxiliary organization as set forth in this Agreement.
- B. Auxiliary shall manage and operate the facilities in accordance with bond indentures, the policies of the CSU, Campus, this Agreement, and for the benefit of Campus.

28. APPLICATION OF DIAZ COMPEAN STUDENT UNION FEES

- A. Pursuant to the CSU System wide Revenue Bond program, retirement of the debt (or new debt obligations)-incurred by CSU for the construction of the Diaz Compean Student Union, Provident Credit Union Event Center and Spartan Recreation and Aquatic Center is to come from a mandatory Student Union fee to be paid by all enrolled students. After required funds have been set aside for debt service and all reserves for above facilities, CSU agrees to make available to Auxiliary a portion of any remaining funds, as authorized by Education Code, Section 90076. CSU agrees to transfer such funds, if any, in the Student Fee Trust Fund account, in the following circumstances:
 - 1. Auxiliary shall periodically request transfers of funds as required for operating purposes. The transfer for operating purposes will be based on needs as shown in the operating budget and approved by the campus Chief Financial Officer or designated staff subject to the availability of such funds.
 - 2. Additional transfers of revenue may be made for extraordinary expenses as requested by Auxiliary and approved by the campus' Chief Financial Officer or designated staff, subject to the availability of funds.
 - 3. Annual reviews shall occur of the University Student Fee Trust and the various expenditures that occur in the account.
- B. This section shall be subject to and construed in conformity with the Indenture of the Trustees of the CSU adopted April 1, 2002 authorizing the issuance of System wide Revenue Bonds and made a part of this agreement.

29. BUILDINGS, SIGNS, FIXTURES, AND EQUIPMENT

During the term of this Agreement, Auxiliary shall have the right to erect, place, and attached fixtures, signs, and equipment within the Diaz Compean Student Union, Provident Credit Union

Event Center, and Spartan Recreation & Aquatics Center which would be affixed to the building or structure provided written approval is provided by the appropriate Campus administrators. In such instances, the Auxiliary shall coordinate with the Campus Facilities Development & Operations department, utilizing typical processes and procedures to request such work. Plans and/or specifications for such work along with required permits and approvals shall be conducted by and coordinated with the Campus Facilities Development & Operations department and must be approved, in writing, by the Campus and, where applicable, CSU. Fixtures, signs, and equipment so erected, placed or attached under such approval shall be and remain the property of the Auxiliary and may be removed, in coordination with the Campus, by the Auxiliary prior to the termination of the Agreement.

30. ALTERATIONS

The Diaz Compean Student Union, Spartan Recreation & Aquatics Center, Provident Credit Union Event Center, South Campus Recreation Field, or other Campus facility, leased or owned by the Campus, utilized by Auxiliary under this Agreement shall not be altered or changed in any manner or respect without the written consent of the Campus, and changes that may be authorized shall be made under the direction of the Campus and at the expense of Auxiliary.

31. RIGHT OF ENTRY

It is understood and agreed that the Auxiliary does not have exclusive use of the facilities and at any time CSU, campus and its agents shall have the right to enter the Diaz Compean Student Union, Spartan Recreation & Aquatics Center, Provident Credit Union Event Center, South Campus Recreation Field, or other Campus facility, leased or owned by the Campus, utilized by Auxiliary under this Agreement or any part thereof for the purpose of maintenance, care, repairs, examination or supervision. The Auxiliary shall comply with the CSU policy for all camera systems, and therefore will transfer systems in support to Campus UPD.- The Auxiliary shall insure that University has permanent access to all doors and no additional security devices are to be added.

Care, maintenance, cleaning and repair of the "managed' property or operations" shall be outlined in the service level agreement between FD&O and Auxiliary service.

32. RESTORATION OF PREMISES

Upon termination of this agreement, CSU shall have the option to require Auxiliary, at its own expense and risk, to restore the demised premises as nearly as possible to the condition existing prior to the execution of the agreement, with the exception of normal wear and tear.

But, if Auxiliary shall fail to do so within 90 days after CSU's option, CSU may restore the property at the risk of the Auxiliary and all costs and expenses of such removal or restoration shall be paid by Auxiliary upon demand of CSU. CSU shall have the right to exercise this option within 30 days after the expiration of this agreement, but not thereafter.

33. MORTGAGES

Auxiliary shall not have the right to subject this agreement to any mortgage, trust deed, or other security device without the written consent of CSU.

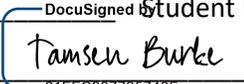
34. POSSESSORY INTEREST

The County Assessor may value the possessory interest created by this agreement, or any Campus subleases. Under California Revenue and Taxation Code section 107, a property interest tax may be levied on that possessory interest. The Campus lessee is obligated to pay this property tax, and failure to do so may be considered a material breach of the agreement."

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

Approved:  San José State University
By Steve Perez

Steve Perez, Interim President

Executed on: 9/8/2022  Student Union at San José State University
By _____

Tamsen K. Burke, Executive Director

Executed on 9/8/2022  California State University Office of the Chancellor
By _____

Contract Services and Procurement

**Attachment 1
Auxiliary Conflict of Interest Policy**

STUDENT UNION AT SAN JOSE STATE UNIVERSITY

BOARD OF DIRECTOR

SUBJECT: Legal Issues & Conflict of Interest Policy & Procedure

REFERENCES:

1. CSU Conflict of Interest Handbook
2. Internal Revenue Service, Governance & Related Topics, February 04, 2008
3. Return of Organization Exempt from Income Tax Form 990
4. California Education Code Sections 89906 to 89909; 89920-89928

PURPOSE: The Student Union, Inc. (SUI) is a California nonprofit public benefit, Tax-exempt Corporation. It is also an auxiliary of the California State University subject to the California Education Code and the policies of the CSU and San Jose State University.

The purpose of this policy is to establish standards of conduct that ensure that all statute requirements involving Board member legal issues and Conflict of interest have been addressed and that Board members have established guidelines applicable to their activities and dealings on behalf of the Student Union, Inc..

POLICY: Members of the Student Union Board of Directors are subject to the following conflict of interest

1. Each member of the Board of Directors is required on an annual basis to read and acknowledge in writing compliance with and understanding of the following legal issues related to their service as member of the Board of Directors of an auxiliary organization:
 - a. Open Meeting Law - Auxiliary organizations shall conduct the meetings of the Board of Directors and committees in accordance with the requirements set forth in California Education Code §88920 through §89928.
 - b. Conflict of Interest - No member of the Board of Directors shall be financially interested in any contract or other transaction entered into by the Board in which he/she is a member.
 - c. Public Documents - All documents of the SU, Inc. that are not otherwise privileged shall be regarded as public documents.
 - d. Board of Directors Liability - each member of the Board of Directors must perform their functions with the care that an ordinary prudent person would exercise.
 - e. Use of Non-Public Information — it is unlawful for a Board member to utilize information that is not a matter of public record for personal pecuniary gain.
 - f. Use of funds and political activities — auxiliary organizations may not expend funds (1) to support or oppose any candidate for public office or (2) to support or oppose any issues before the voters of California, any local government, city, or municipality.

PROCEDURE: Legal responsibilities and conflict of interest related to service on the Board of Directors will be reviewed with all incoming board members during the annual Board of Directors Orientation. In addition, the Legal Issues packet and Legal Issues memorandum will be distributed to all members of the Board of Directors and Executive Secretaries.

1. The Legal Issues packet/memo will be distributed at the Board Orientation. The Legal Issues packet/memo will be sent electronically for those members who are unable to attend the orientation. Members who join the board at a later date will receive the Legal Issues packet/memo during their individual orientations.
 - a. Members who attend the orientation will sign the Legal Issues memorandum the day of the orientation.
 - b. Members who are not able to attend the orientation will have two weeks from the date of the Board Orientation to sign and return the Legal Issues memorandum.
2. The memorandum will direct each recipient to read the Legal Issues packet which describes the following: California's Open Meeting Law, Conflict of Interest, Public Documents, Board of Directors Liability, Use of Non-Public Information, and Use of Funds for Political Activities
3. The memorandum will direct each member to sign the signature page. The member's signature attests that the member has read and understood the issues and will comply as stipulated.
4. The member will return the signature page of the signed memorandum to the Executive Director's Executive Assistant who will file the original set for audit purposes.

CERTIFICATION OF NON-CONFLICT OF INTEREST

I have read and understand Sections 89906, 89907, 89908, and 89909 of the California Education Code.

I declare that I am not in conflict with the above provisions of the California Education Code. I am not involved financially, through employment or family connections with any business, firm, vendor, or service bureau engaged in contracts with the Student Union, Inc. of San Jose State University.

I declare that, during my tenure as a member of the Board of Directors of the Student Union of San Jose State University, I shall disclose any potential conflict of interest regarding contractual matters before the Board of Directors. If I am legally considered to be in a position of conflict, I shall abide by the conditions set forth in Section 89907 of the California Education Code.

Signature

Printed Name

Date

California Education Code Section 89906

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.

California Education Code Section 89907

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 transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members, and
- (b) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

California Education Code Section 89908

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 transaction 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.

California Education Code Section 89909

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

Attachment 2
Auxiliary Policy on Accumulation & Use of
Public Relations Funds

San Jose State University
Student Union, Inc.

- SUBJECT:** Policy on Accumulation and Use of Public Relations Funds
- REFERENCE:** Title 5, Section 42502(i), California State University Auxiliary Organizations Compliance Guide, 10.3
- PURPOSE:** To provide policy guidance on the accumulation and use of funds by the Student Union at San Jose State University (SUSJSU) for public relations purposes
- RESPONSIBILITY:** The Executive Director or his/her designee is charged with the responsibility of implementing this policy through procedures, guidelines and forms, if needed
- SCOPE:** 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."
- POLICY:** Solicitation and Accumulation of Public Relations Funds SUSJSU does not solicit public relations funds and does not provide public relations funds to San Jose State University (SJSU) President or other SJSU administrators.
- DEFINITION:** Public Relations Funds – Funds used by the auxiliary organization to augment state appropriations and expenses are included in the annual or amended operating budget as approved by the Board of Directors.
- PROCEDURES:** Any expenditure of SUSJSU funds for purposes of public relations shall only be at the request of the Student Union at San Jose State University (SUSJSU) Executive Director. The source of funds would be SUSJSU operating accounts. Pursuant to the SUSJSU'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.

1. Funds for public relations to augment state appropriations must be identified in the public Relations line item of the Administration budget
2. Expenditures of funds must be approved by the Student Union Board of Directors during the annual budget process or during the quarterly revision process.
3. The cash disbursement request for the expenditures must be authorized and approved by the Executive Director/or designee and must contain appropriate documentation for use of the funds.
4. Funds not utilized for public relations will be reallocated to the general operating budget of Student Union, Inc.

SOURCE OF PUBLIC RELATIONS FUNDS:

Public relations funds may be sourced from SUSJSU-held Discretionary funds, indirect cost recovery funds generated by events, conferences and other self- supported programs, as approved by the SUSJSU Board of Directors in the operating budget. Public Relations expenditures must clearly advance the objectives of the SUSJSU, the SJSU and the California State University; and be consistent with applicable procurement and accounting practices. All expenditures must be appropriate for campus authorized educational, research, and community services purposes.

POLICY FILING:

SUSJSU 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).

RELATED POLICY INFORMATION:

Non applicable

REQUIRED FORMS:

Non Applicable

REFERENCES AND RELATED INFORMATION:

Title 5 California Code of Regulations §42502(1)
General Accepted Accounting Principles (GAAP)

RECORD RETENTION: All documents and records are maintained in accordance with Student Union at SJSU Record Retention requirements.

The Student Union of San Jose State University Auxiliary does not accumulate or utilize funds for public relations, nor are they expecting to in the foreseeable future.

Board Approved: 03/18/2022

Policy on Accumulation and Use of Public Relations Funds Signature Page

Title	First Name	Signature	Date
Student-at-Large Member	Isaiah Andrews	DocuSigned by: <i>Isaiah Andrews</i> 5D7F07664D6C40E...	3/18/2022
Faculty Member	Kathryn Blackmer Reyes	DocuSigned by: <i>Kathryn Blackmer Reyes</i> 58755B374571470...	3/18/2022
Student-at-Large Member	Hoon Cho	DocuSigned by: <i>Hoon Cho</i> 7B4DBEC7F18C4F1...	3/22/2022
Ex-Officio SJSU Student Affairs Designee	Dr. Sonja G. Daniels	DocuSigned by: <i>S G Daniels</i> 851CB8E78C2047A...	3/24/2022
Ex-Officio SJSU Vice President Accounting and Finance*	Charlie Faas	DocuSigned by: <i>Charlie Faas</i> A8A67319C3F8409...	3/24/2022
Student-at-Large Member	James Figueroa	DocuSigned by: <i>James Figueroa</i> FCE8AA5A0761493...	4/6/2022
Student - Associated Student President	Anoop Kaur	DocuSigned by: <i>Anoop Kaur</i> E08FA65215074A2...	4/6/2022
Community Member	Peter Lee	DocuSigned by: <i>Peter Lee</i> 8E96DF47331B4D9...	4/13/2022
Student-at-Large Member	Joshua Reyes	DocuSigned by: <i>Joshua Reyes</i> BA85155D1DE8460...	4/13/2022
Student-at-Large Member	Aarushi Sharma	DocuSigned by: <i>Aarushi Sharma</i> 7F512A7B60674C1...	4/14/2022
Student-at-Large Member	Soumya Trivedi	DocuSigned by: <i>Soumya Trivedi</i> 1154CF66B4AD472...	4/26/2022
Executive Director	Tamsen Burke	DocuSigned by: <i>Tamsen Burke</i> 61FFC907735748F...	4/27/2022
Associate Executive Director	Timothy Banks	DocuSigned by: <i>Timothy Banks</i> 30E679F209E64F5...	4/27/2022
Associate Director of Accounting & Finance	David Alves	DocuSigned by: <i>Dave Alves</i> 52FF3C49736D449...	4/27/2022

**Attachment 3
Auxiliary Articles of
Incorporation**

ARTICLES OF INCORPORATION

THE STUDENT UNION, INC.

SAN JOSÉ STATE UNIVERSITY

Revised November 20, 2019

ARTICLES OF INCORPORATION
OF
THE STUDENT UNION OF
SAN JOSÉ STATE UNIVERSITY

I

The name of this corporation is:

THE STUDENT UNION OF
SAN JOSÉ STATE UNIVERSITY

II

THE STUDENT UNION OF SAN JOSÉ STATE UNIVERSITY, hereinafter called the "Corporation," shall conduct its operations in conformity with regulations established by the Trustees of The California State University and approved by the Director of Finance as required by the California Education code, Section 89900.

III.

This Corporation shall be operated as an integral part of the educational programs of the San José State University, hereinafter called the "University" as required by the California Administrative code, Title 5, Section 42401; and its operations shall be integrated with University operations ~~and administered or supervised by the President of the University as required by the California~~
Administrative Code, Title 5, Section 42601(c).

IV.

The purposes for which this Corporation is formed are:

(1) The specific and primary purpose of this Corporation is to operate the Student Union at San José State University as a student body center for the benefit of students, faculty, staff, and alumni in order to promote and assist the educational program of the University or such institution as shall succeed to the properties and functions of said University and to apply the funds and properties coming into its hands toward furthering the educational program carried on or approved by the administrative officers of the University. This corporation shall not carry on any activities not approved by the administrative officers of the University.

(2) This Corporation shall not make personal loans of a non-scholarship nature except that loans to faculty members or employees may be made when such loans are specifically authorized by a trust instrument under which the funds were received, as required by the California Administrative Code, Title 5, Section 42403 (c)(2).

(3) This Corporation shall never operate for the primary purpose of carrying on a trade or business for profit.

(4) Notwithstanding any of the above statements of purposes and powers, this Corporation shall not engage in activities which in themselves are not in furtherance of the charitable and educational purposes set forth in paragraph 1 of this Article IV.

V

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.

VI

This Corporation is not organized, nor shall it be operated, for pecuniary gain or profit, and does not contemplate the distribution of gains, profits or dividends to its members or to any private shareholder or individual. The property, assets, profits, and net income of this Corporation are irrevocably dedicated to the charitable purposes set forth in Article IV, and no part of the profits and/or income of this Corporation shall ever inure to the benefit of any private share holder or individual except that this provision shall not be construed so as to prevent the payment to directors, officers or employees of reasonable compensation for services actually rendered to the Corporation.

VII

Upon dissolution of this Corporation, net assets other than trust funds shall be distributed to a successor approved by the President of the campus and the Chancellor.

Such nonprofit corporation or corporations must be qualified for federal income tax exemption under Sections 501(a) and 501(c)(3) of the United States Internal Revenue Code of 1954, and be organized and operated exclusively for charitable, scientific, literary, or educational purposes, or for a combination of said purposes. In the alternative, upon dissolution of the Corporation, net assets other than trust funds shall be distributed to the San Jose State University.

If, upon dissolution, this Corporation holds any assets in trust, such assets shall be disposed of in such manner as may be directed by decree of the Superior Court of the county in which this Corporation's principal office is located upon petition therefore by the Attorney General or by

any person concerned in the liquidation. In no event shall any assets be distributed to any member, director, or officer of this Corporation.

VIII

The name and address in the State of California of this Corporation's agent for the service of process is: Tamsen K. Burke, Executive Secretary, Student Union Inc., San José State University, San José, CA 95192-0201.

IX

This Corporation shall have no members other than the persons constituting its Board of Directors. The persons constituting its Board of Directors shall, for the purpose of any statutory provision or rule of law relating to nonprofit corporations or otherwise, be taken to be the members of such Corporation and exercise all the rights and powers of members thereof. If a Director who is qualified for Board membership because he or she is a member of the University staff or faculty terminates his or her employment with the University, he or she shall cease to be a Director of this Corporation. A Director who is qualified for Board membership because he or she is a student shall be a Director of this Corporation only so long as such student status continues. The President of the University or his or her designated representative shall be a member of the Board of Directors of this Corporation in order to insure that this Corporation operates in conformity with the University policy as required by the California Administrative Code, Title 5, Section 42404. This Article is not subject to amendment, change or alteration in any of its clauses or provisions by the Bylaws of the Corporation.

X

The number of Directors shall be set forth in the Bylaws. The Directors shall not be personally liable for the debts, liabilities or obligations of this Corporation.

XI

The Articles of Incorporation of this Corporation shall not be amended except with a vote or written consent of two-thirds (2/3) of the total voting membership of the Board of Directors.

XII

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

XIII

The official name of this corporation as noted in Article I is THE STUDENT UNION OF SAN JOSÉ STATE UNIVERSITY.

DECLARATION

CYNTHIA FERNANDEZ-RIOS and TAMSEN K. BURKE declare under penalty of perjury

They are the chairman and executive secretary, respectively, of THE STUDENT UNION OF SAN JOSÉ STATE UNIVERSITY, the corporation referred to in the articles of incorporation to which this declaration is attached.

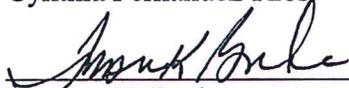
Executed at San José, California on November 20, 2019



Cynthia Fernandez-Rios

01/13/2020

Date



Tamsen K. Burke

1/16/2020

Date





SAN JOSÉ STATE UNIVERSITY

STUDENT UNION OF SAN JOSÉ STATE UNIVERSITY CORPORATION NO. C 1105403

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

Student Union, Inc.
One Washington Square
San José, CA 95192-0155
E-mail: info@union.sjsu.edu
http://www.union.sjsu.edu

Student Union
211 South 9th Street
San José, CA 95192-0155
Voice: 408 924-6310
Fax: 408 924-6399

Event Center
290 South 7th Street
San José, CA 95192-0201
Voice: 408 924-6360
Fax: 408 924-6390

Aquatic Center
290 South 7th Street
San José, CA 95192-0201
Voice: 408 924-6341
Fax: 408 924-6390

The undersigned certify that:

1. They are the Chairman of the Board and the President, respectively, of The Student Union, Inc. of San José State University, a California corporation.
2. Article VIII of the Articles of Incorporation of this corporation is amended to read as follows:

Article VIII

The name and address in the State of California of this Corporation's agent for the service of process is: Tamsen K. Burke, Executive Secretary, Student Union, Inc., at San José State University, San José, CA 95192-0201.

3. The foregoing amendment of Articles of Incorporation has been duly approved by the Board of Directors.
4. This 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: 12/03/2019

DocuSigned by:
Cynthia Fernandez Rios
6069722DBA42490...
Cynthia Fernandez-Rios, Chairman of the Board

DocuSigned by:
Tamsen Burke
61FEC907735748E
Tamsen K. Burke, President



California Secretary of State Electronic Certified Copy

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify that the attached transcript of 2 pages is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.



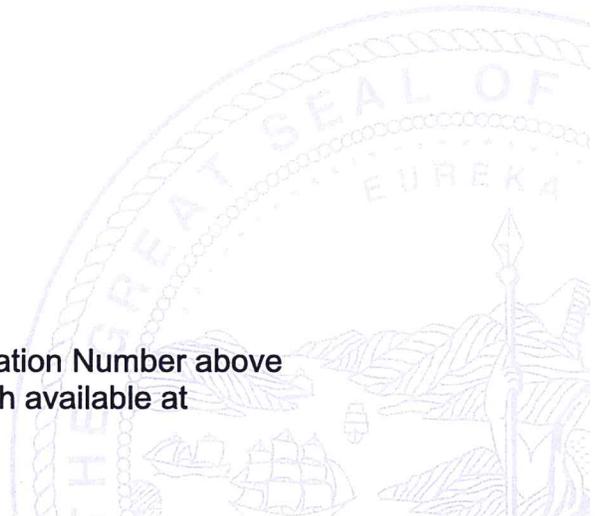
IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California on
this day of February 09, 2022

A handwritten signature in black ink, appearing to read "S. N. Weber".

SHIRLEY N. WEBER, Ph.D.
Secretary of State

Verification Number: KARZ9YN
Entity (File) Number: C1105403

To verify the issuance of this Certificate, use the Verification Number above
with the Secretary of State Electronic Verification Search available at
bizfile.sos.ca.gov





California Secretary of State Electronic Filing



Corporation - Statement of Information

Entity Name: THE STUDENT UNION OF SAN JOSE
STATE UNIVERSITY

Entity (File) Number: C1105403
File Date: 02/07/2022
Entity Type: Corporation
Jurisdiction: CALIFORNIA
Document ID: H204764

Detailed Filing Information

1. Entity Name: THE STUDENT UNION OF SAN JOSE
STATE UNIVERSITY

2. Business Addresses:
 - a. Street Address of Principal Office in California: 211 South 9th Street
San Jose, California 95192-0155
United States of America

 - b. Mailing Address: 211 South 9th Street
San Jose, California 95192-0155
United States of America

3. Officers:
 - a. Chief Executive Officer: Tamsen Burke
211 South 9th Street
San Jose, California 95192-0155
United States of America

 - b. Secretary: Tamsen Burke
211 South 9th Street
San Jose, California 95192-0155
United States of America

Certificate Verification Number: KARZ9YN
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California Secretary of State Electronic Filing

Officers (Cont'd):

c. Chief Financial Officer:

David Alves
211 South 9th Street
San Jose, California 95192-0155
United States of America

4. Agent for Service of Process:

David Alves
211 South 9th Street
San Jose, California 95192-0155
United States of America

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: David Alves

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