

**MASTER OPERATING AGREEMENT
BETWEEN THE TRUSTEES
OF THE CALIFORNIA STATE UNIVERSITY
AND
CALIFORNIA POLYTECHNIC STATE UNIVERSITY FOUNDATION**

This Master Operating Agreement (“MOA”) is made and entered into by and between the Trustees of The California State University by their duly qualified and acting Chancellor (“TRUSTEES”) on behalf of California Polytechnic State University, San Luis Obispo (“UNIVERSITY”) and California Polytechnic State University Foundation (“FOUNDATION”). The term of this MOA shall be from July 1, 2006 through June 30, 2016, unless sooner terminated as herein provided.

Recitals

The purpose of this MOA is to set forth the terms and conditions under which the FOUNDATION may operate as an auxiliary organization pursuant to Chapter 7, Part 55, Division 8, Title 3 (Sections 89900 *et seq.*) of the Education Code, and Subchapter 6, Article 1, Part V (Sections 42400 *et seq.*) of Title 5 of the California Code of Regulations.

In entering into this MOA, the TRUSTEES find that certain functions, important to the mission of The California State University (“CSU”), are more effectively accomplished by the use of an auxiliary organization, such as the FOUNDATION. Such functions shall be performed in accordance with applicable policies, rules, and regulations.

I. Purpose

The FOUNDATION was organized and incorporated in 2006, as a separate 501(c)(3) organization and pursuant to Chapter 7, Part 55, Division 8, Title 3 (Sections 89900 *et seq.*) of the Education Code, and Subchapter 6, Article 1, Part V (Sections 42400 *et seq.*) of Title 5 of the California Code of Regulations, for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations and others for the benefit of the UNIVERSITY.

The FOUNDATION exists to raise and manage private resources supporting the mission and priorities of the UNIVERSITY and provide a margin of excellence unattainable with state funds. The FOUNDATION is dedicated to assisting the UNIVERSITY in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the UNIVERSITY.

Accordingly, this MOA authorizes the functions listed below. The TRUSTEES and the FOUNDATION may enter into supplemental agreements specific to these functions and the related services to further clarify the role and responsibility of each party relative to the management and operation of program activity, and to authorize use of state facilities in the

performance of these functions. These supplemental agreements are not intended to supersede the general terms and conditions of this MOA in its entirety but shall take precedence over conflicting sections of the MOA. The balance of the MOA will be in full force and effect for the authorized function being amended by the supplemental agreement.

II. Authorized Functions

In consideration of receiving recognition as an official auxiliary organization in good standing of the CSU, the FOUNDATION is hereby authorized to perform the following functions, as specified in Section 42500, Title 5, California Code of Regulations, for the term of this MOA in accordance with any and all related supplemental agreements. These functions may be performed by the FOUNDATION in concert with the UNIVERSITY or other auxiliary organizations. This is a comprehensive list of the general functions authorized by the UNIVERSITY for FOUNDATION:

- A. Solicitation, receipt and management of gifts, bequests, endowments, trusts and similar funds;
- B. Public relations, fundraising, and similar development programs;
- C. Acquisition, development, sale and transfer of real and personal property, including financing transactions related to these activities; and
- D. Other functions approved by the TRUSTEES and authorized by the UNIVERSITY.

The FOUNDATION will serve as the primary gift receiving organization; however both the UNIVERSITY and other auxiliary organizations may also receive gifts.

Prior to initiating any additional functions, the FOUNDATION agrees to obtain written approval of the President of the UNIVERSITY ("President") and the TRUSTEES.

Nothing in this statement of functions shall limit or be interpreted to limit the ability of the UNIVERSITY to engage directly in such functions itself. Operations of FOUNDATION under this MOA shall be integrated with campus operations and shall be supervised by campus officials so as to assure compliance with the objectives stated in Title 5, CCR, 42401.

Consistent with its mission to help advance the plans and objectives of the UNIVERSITY, the FOUNDATION is authorized by the UNIVERSITY to use the UNIVERSITY's name, symbols, and trademarks in the performance of the authorized functions. In addition, the FOUNDATION may operate with its own symbols and graphic identity, subject to UNIVERSITY approval.

III. Foundation Responsibilities

The FOUNDATION shall hold all assets solely for the purpose of supporting the mission and functions of the UNIVERSITY, consistent with donor intent and the provisions of gift agreements and other similar documents, and according to the provisions of applicable state and federal laws.

The FOUNDATION is responsible for the control and management of all assets of the FOUNDATION, including the prudent management of all gifts.

IV. Conformance with State Law, Regulations and Policies

The FOUNDATION agrees to maintain its organization and operate in accordance with all applicable regulations and policies of the TRUSTEES and all policies of the UNIVERSITY in effect during the term of this MOA.

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

No officer or employee of the CSU shall be employed by the FOUNDATION if such employment would be incompatible, inconsistent, or in conflict with his or her duties as a State officer or employee.

FOUNDATION assures the Trustees that it complies with the Americans with Disabilities Act (ADA) of 1990, if that act is otherwise applicable. The ADA prohibits discrimination on the basis of disability. (42 U.S.C. 12101 et seq.)

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

FOUNDATION agrees to assist the President and his or her designee in carrying out the compliance and operational reviews required by Executive Order 698 and related policies.

FOUNDATION is subject to the provisions of Section 89900 of the Education Code and Section 42408 of Title 5, California Code of Regulations. In accordance with these provisions, FOUNDATION agrees to 1) Contract with a certified public accountant for an annual audit at FOUNDATION's expense. The report on such examinations shall be furnished to the TRUSTEES; and 2) Permit examination of all FOUNDATION records by the TRUSTEES.

V. Termination or Breach

Failure of the FOUNDATION to comply with any term of this MOA may result in the removal, suspension, or placing on probation of FOUNDATION as an auxiliary organization in good standing. Such action by the TRUSTEES may involve the limitation or removal of the FOUNDATION's right to utilize the resources, facilities, and name of the TRUSTEES and the UNIVERSITY.

Upon termination or breach of this MOA, the TRUSTEES, at their sole discretion, may require the FOUNDATION to transfer all assets in its possession by reason of its status as a CSU auxiliary organization to a successor nonprofit corporation qualifying as an auxiliary organization. This remedy shall be in addition to any other remedies available to it upon termination or breach of this MOA.

This MOA and or any subsequent supplemental agreements may be terminated without cause by the TRUSTEES at any time, without recourse by the FOUNDATION. Any termination notification must be in writing giving 180 days notice to the FOUNDATION. In the event of an urgent necessity by the TRUSTEES no waiting period is necessary for termination.

VI. Fair Employment Practices

In the performance of this MOA, FOUNDATION shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, sexual preference, marital status, pregnancy, age, physical or mental disability, medical condition, or veteran's status. FOUNDATION shall adopt employment procedures consistent with the policy statement on nondiscrimination and affirmative action in employment adopted by TRUSTEES.

VII. Disposition of Assets

Upon dissolution of the FOUNDATION, the net assets, other than trust funds, shall be distributed in accord with Section 42600, Title 5, California Code of Regulations. For the period covered by this MOA, FOUNDATION agrees to maintain this provision as part of its Articles of Incorporation. In the event FOUNDATION should change this provision to make other disposition of the net assets, this MOA shall terminate as of the date immediately preceding the date such change becomes effective, and all net assets shall become the property of TRUSTEES.

VIII. Disposition of Net Earnings

The FOUNDATION agrees to comply with TRUSTEE policy on expenditure of funds, including but not limited to TRUSTEE guidelines for the disposition of revenues in excess of expenses and TRUSTEE policies on maintaining appropriate reserves.

IX. Use of Campus Facilities

The UNIVERSITY may permit the FOUNDATION to utilize campus facilities on an exclusive basis in connection with the authorized functions and activities after execution of a lease agreement. Other facilities used on a non-exclusive shared basis with the UNIVERSITY may be authorized after execution of a license agreement.

The use of state facilities is subject to:

- A. The use of the campus facilities for civil defense purposes or in the event of a State or national emergency; or

- B. Unanticipated need of the TRUSTEES to meet the demands of the educational objectives of the UNIVERSITY. The right to the use of any campus facilities included in this MOA or supplemental agreement shall cease upon written notice by the President to FOUNDATION that the facility is needed for the exclusive use of the TRUSTEES.

X. Specific Provisions Relating to the Acceptance and Administration of Gifts and Trusts

The FOUNDATION agrees that it will accept and administer only such gifts, trusts, bequests, endowments and similar funds as are so conditioned that they may be used only for purposes consistent with all policies of the TRUSTEES and all policies of the UNIVERSITY in effect during the term of this MOA.

XI. Charges for Services

FOUNDATION shall reimburse the TRUSTEES for expenditures incurred by the TRUSTEES as the result of the FOUNDATION's activities under the terms of this MOA. Reimbursement shall be on a simple but equitable basis and in accordance with the policies for reimbursement of costs as established by the TRUSTEES. The FOUNDATION agrees to make reimbursement within 30 days from receipt of notice of such determination.

XII. Indemnification

The FOUNDATION will defend, indemnify, hold harmless and protect the State of California, the TRUSTEES of the California State University, the UNIVERSITY, their officers, employees, representatives, agents, students and volunteers from and against any and all liability, loss, damage, expense, cost (including without limitation to costs and fees of litigation) of every nature arising out of or in connection with FOUNDATION's (any subcontractor, anyone directly or indirectly employed by anyone for whose acts any of them may be liable) operations under this MOA, except such loss or damage which was caused by the sole negligence or willful misconduct of the State of California, the TRUSTEES of the California State University, the UNIVERSITY, their officers, employees, representatives, agents, students and volunteers.

XIII. Insurance

Insurance Requirements for FOUNDATION:

FOUNDATION shall procure and maintain for the duration of this MOA insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and operations hereunder by the FOUNDATION, its agents, representatives, employees or contractors not a party to this MOA.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) for liability arising out of work or operations performed by or on behalf of FOUNDATION including materials, parts, products or equipment furnished in connection with such work or operations and completed operations.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto) for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of FOUNDATION.
3. Workers' Compensation coverage as required by the State of California and Employer's Liability coverage.
4. Crime coverage with coverage for employee dishonesty, forgery or alteration, premises, transit, money orders and counterfeit currency, computer fraud and fund transfer fraud.
5. Errors and Omissions Liability including coverage for the acts of directors and employees including employment practices liability.

Minimum Limits of Insurance

FOUNDATION shall maintain limits no less than:

1. General Liability (GL): \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability (AL): \$1,000,000 per accident for bodily injury and property damage.
3. Workers Compensation and Employer's Liability (WC): Statutory limits for Workers Comp and \$1,000,000 per accident for bodily injury or disease for Employer's Liability.
4. Crime coverage: Minimum of \$1,000,000 for employee dishonesty and forgery, \$500,000 for premises and transit coverage, \$500,000 for money orders and computer fraud.
5. Errors and Omissions Liability coverage: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions greater than \$25,000 must be declared to and approved by the UNIVERSITY. At the option of the UNIVERSITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the UNIVERSITY; or FOUNDATION shall provide a financial guarantee satisfactory to the UNIVERSITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The State of California, the TRUSTEES, the UNIVERSITY, and each of their officers, public officials, employees, representatives, agents, and volunteers are to be covered as additional insureds.
2. For any claims which are the responsibility of FOUNDATION pursuant to the provisions of the indemnification clause contained in this MOA (Provision XII) or any sub-agreement between UNIVERSITY and FOUNDATION, FOUNDATION's insurance coverage shall be primary insurance as respects the UNIVERSITY. Any insurance or self-insurance maintained by the UNIVERSITY shall be excess of FOUNDATION's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to the UNIVERSITY.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Subrogation

The insurers providing GL, AL, and WC shall provide endorsements waiving all rights of subrogation against the other party.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

FOUNDATION shall furnish the UNIVERSITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the UNIVERSITY or on other than the UNIVERSITY'S forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the UNIVERSITY before any work commences. The UNIVERSITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Contractors

FOUNDATION shall ensure that all contractors, not a party to this MOA, performing work for FOUNDATION shall have adequate insurance coverage including general liability, automobile liability, and workers compensation coverage. Where appropriate, such policies should name FOUNDATION and the State of California, the TRUSTEES, the UNIVERSITY, their officers, public officials, employees, representatives, agents, and volunteers as additional insureds.

Sub Agreements

Additional forms and limits of coverage may be required as agreed upon by the parties in specific supplemental agreements.

Form of Coverage

It is understood and agreed that FOUNDATION may participate in various risk financing programs and will provide comparable coverage and evidence of such coverage shall be acceptable in lieu of the requirements stated above.

Risk Identification and Evaluation

In accordance with Executive Order No. 849 of the California State University, the UNIVERSITY will at such time or times as it deems appropriate conduct a risk assessment and evaluation to determine and amend the appropriate types and minimum levels of coverage to be maintained pursuant to this MOA.

UNIVERSITY is Self-insured

The State of California has elected to self-insure for its general, vehicle, employer's, workers' compensation and professional liability exposures through an annual appropriation from the General Fund. As a State agency, the California State University Office of the Chancellor, the TRUSTEES, and its system of 23 campuses (including the UNIVERSITY) participate in this self-insured program.

The CSU Office of Risk Management administers the general, employer's, professional, and workers' compensation liability programs through the California State University Risk Management Authority (CSURMA) a Joint Powers Authority (JPA) authorized by the State of California.

The California State University maintains public entity liability coverage on an occurrence basis including general, employer's and professional liability through a pooled layer of coverage. The California State University purchases excess coverage from Schools Excess Liability Fund (SELF) a JPA authorized by the State of California. The California State University participates as a State agency in the self-funded program of direct payment of automobile liabilities, covering bodily injury and property damage, through the Vehicle Self-Insurance Program administered by the State Office of Risk and Insurance Management. This program covers liabilities arising from operation of owned, non-owned and hired vehicles.

XIV. Amendment Clause

This MOA may not be amended, changed, modified, or altered without the written consent of the UNIVERSITY, TRUSTEES and the FOUNDATION.

XV. Holding Over

Should the FOUNDATION hold over after the expiration of the term hereof with the express or implied consent of the UNIVERSITY, such holding over shall be on a month-to-month basis subject to the terms and conditions of this MOA.

XVI. Notices

All notices herein 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 five (5) days after deposit in the United States mail, certified and postage prepaid and addressed as herein provided.

Notice to the TRUSTEES shall be addressed as follows:

Trustees of The California State University
401 Golden Shore
Long Beach, CA 90802
Attn: Contracts & Procurement

Notice to the UNIVERSITY shall be addressed as follows:

Director, Contract and Procurement Services
California Polytechnic State University
San Luis Obispo, CA 93407

Notice to FOUNDATION shall be addressed as follows:

Chief Executive Officer
California Polytechnic State University Foundation
San Luis Obispo, CA 93407

XVII. Assignment

This MOA is not assignable by FOUNDATION either in whole or in part without written permission of the UNIVERSITY.

XVIII. Waiver

The waiver by any party of a breach by the other party of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition herein.

XIX. Relationship of Parties

The FOUNDATION and the agents and employees of the FOUNDATION in the performance of this MOA shall act in an independent capacity and not as officers or employees or agents of the TRUSTEES, except as expressly provided in writing by the UNIVERSITY. The employees of the TRUSTEES who participate in the performance of this MOA are not agents of the FOUNDATION.

XX. MOA Neither Construed For or Against Any Party

The interpretation made of this MOA will not be construed against either party on the ground that the party drafted the agreement.

XXI. Partial Invalidity

If any one or more of the terms, provisions, covenants or conditions of this MOA are to any extent declared invalid, unenforceable, void or voidable for any reason by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants or conditions of this MOA will be affected thereby, and each provision of this MOA will be valid and enforceable to the fullest extent permitted by law.

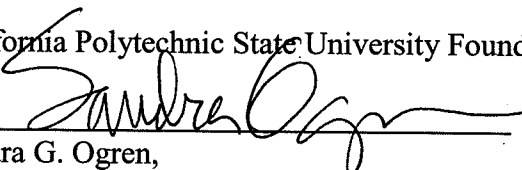
XXII. Section Headings

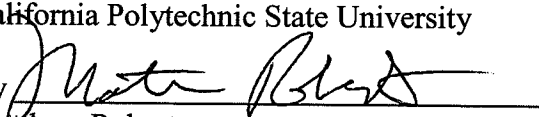
All articles, paragraph and section headings, titles or captions contained in this MOA are for convenience of reference only and are not intended to define or limit the scope of any provision of this MOA.

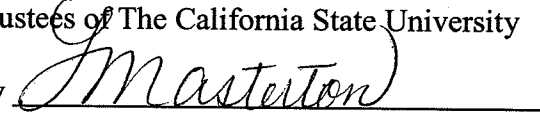
XXIII. Dispute Resolution

Any dispute arising under the terms of this MOA that is not resolved within a reasonable period of time shall be brought to the attention of the Chief Executive Officer of the FOUNDATION (or designee) and the Vice President for Administration and Finance (or designee) of UNIVERSITY for joint resolution. Despite an unresolved dispute, the parties shall continue without delay to perform their respective responsibilities under this MOA.

This MOA is accepted and executed by the duly authorized representatives of the parties.

Executed on _____, 2006. California Polytechnic State University Foundation
By 
Sandra G. Ogren,
CEO, California Polytechnic State University
Foundation

Executed on 8/17, 2006. California Polytechnic State University
By 
Matthew Roberts,
Director, Contract and Procurement Services
California Polytechnic State University

Executed on 9.5, 2006. Trustees of The California State University
By 
for Tom Roberts,
Director, Contract Services & Procurement