

OPERATING AGREEMENT  
BETWEEN CALIFORNIA STATE UNIVERSITY  
AND CALIFORNIA STATE UNIVERSITY, BAKERSFIELD  
**STUDENT-CENTERED ENTERPRISES, INC.**  
Campus Operating Agreement (COA) 0497

This agreement is made and entered into by and between the Trustees of the California State University (CSU) and California State University, Bakersfield Student-centered Enterprises, Inc., formerly known as California State University, Bakersfield Student Union, Inc. (Auxiliary) serving California State University, Bakersfield (Campus). The term of this agreement shall be July 1, 2023, through June 30, 2030, unless sooner terminated as herein provided.

**1. PURPOSE**

The purpose of this agreement, including Section 26, Lease of Premises, is to set forth the terms and conditions under which Auxiliary may operate as an auxiliary organization pursuant to California Education Code §89900 et seq. and California Code of Regulations (CCR) Title 5, § 42400 et seq. In entering this agreement, CSU finds that certain functions important to its mission are more effectively accomplished by the use of an auxiliary organization rather than by the Campus under the usual state procedures.

**2. PRIMARY FUNCTION(S) OF THE AUXILIARY**

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

- Student Body Organization
- Student Union
- Housing
- Philanthropic
- Externally Funded Projects
- Real Property Acquisition / Real Property Development
- Commercial

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

- Student Body Organization Programs, which includes the operation of a physical fitness facility known as the Student Recreation Center;
- Student Union Programs;
- Housing;
- Rental of facilities to campus and off-campus entities.

Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering these purposes for the benefit of CSU and the Campus. Auxiliary further agrees that it shall not perform any of the functions listed in CCR tit.5, §42500 unless the function has been specifically assigned in this operating agreement with the Campus. Prior to initiating any additional functions, Auxiliary understands and agrees that CSU and Auxiliary must amend this agreement in accordance with Section 21, Amendment.

### **3. CAMPUS OVERSIGHT AND OPERATIONAL REVIEW**

The responsibility and authority of the Campus President regarding auxiliary organizations is set forth in CCR tit.5, §42402, which requires that auxiliary organizations operate in conformity with CSU and Campus policies. The Campus President has been delegated authority by the CSU Board of Trustees (Standing Orders §VI) to carry out all necessary functions for the operation of the Campus. The operations and activities of Auxiliary under this agreement shall be integrated with Campus operations and policies and shall be overseen by the Campus Chief Financial Officer (CFO) or designee to assure compliance with objectives stated in CCR tit.5, §42401.

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

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

### **4. OPERATIONAL COMPLIANCE**

Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies. Failure of Auxiliary to comply with any term of this agreement may result in the removal, suspension or probation of Auxiliary as an auxiliary organization in good standing. Such action by CSU may result in the limitation or removal of Auxiliary's right to utilize the CSU or Campus name, resources and facilities (CCR tit.5, §42406).

### **5. CONFLICT OF INTEREST**

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

Auxiliary has established and will maintain a conflict-of-interest policy. The Auxiliary's Conflict of Interest Policy is attached as **Attachment 1**.

## **6. EXPENDITURES AUGMENTING CSU APPROPRIATIONS**

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

## **7. FISCAL AUDITS**

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

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

## **8. USE OF NAME**

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

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

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

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

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

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

**10. FAIR EMPLOYMENT PRACTICES**

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

**11. BACKGROUND CHECK POLICY COMPLIANCE**

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

**12. DISPOSITION OF ASSETS**

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

### **13. USE OF CAMPUS FACILITIES**

Auxiliary may use those facilities identified in Section 26, Lease of Premises; for its use identified in Section 27, Use of Premises; and for consideration identified in Section 28, Consideration for Premises. If this Operating Agreement terminates or expires and is not renewed within 30 days of the expiration, the lease automatically terminates, unless extended in writing by the parties.

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

### **14. CONTRACTS FOR CAMPUS SERVICES**

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

### **15. DISPOSITION OF NET EARNINGS**

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

### **16. FINANCIAL CONTROLS**

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

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

Auxiliary agrees, if authorized to do so in Section 2, Primary Function(s) of the Auxiliary, 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 CSU Office of the Chancellor on an annual basis in accordance with Education Code §89720.

**18. INDEMNIFICATION**

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

**19. INSURANCE**

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

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

## 20. NOTICES

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

- Notice to the **Auxiliary** shall be addressed as follows:

California State University, Bakersfield  
Student-centered Enterprises, Inc., 56 SU  
9001 Stockdale Highway  
Bakersfield, CA 93311  
Attn: Executive Director

- Notice to the **Campus** shall be addressed as follows:

California State University, Bakersfield  
Business & Administrative Services, 38 ADM  
9001 Stockdale Highway  
Bakersfield, CA 93311  
Attn: Vice President & CFO

- Notice to the **CSU** shall be addressed to:

CSU Office of the Chancellor  
401 Golden Shore  
Long Beach, California 90802  
Attention: Associate Vice Chancellor, Business and Finance

## 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 and/or Campus 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.

#### **26. LEASE OF PREMISES**

A. Auxiliary may lease the following premises in accordance with the terms of this agreement:

1. Student Recreation Center
  - a. Student Recreation Center, Campus building #67
  - b. Student Recreation Center, Intramural Field #3, Campus field #74
  - c. Student Recreation Center, Sand Volleyball Court, Campus facility
  - d. Student Recreation Center, Challenge Course, Campus facility
2. Student Union
  - a. Student Union, Campus building 53
3. Student Housing East
  - a. Student Housing East, Campus building #54A

B. Auxiliary lease of the premises is subject to:

1. The use of the property for civil defense purposes or in the event of a State, CSU or national emergency
2. Unanticipated need to meet the demands of the educational objectives of the CSU. The right to the use of any property included in this lease shall cease upon written notice by the CSU to Auxiliary that the property is needed for its exclusive use.



**27. USE OF PREMISES**

- A. Auxiliary may occupy, operate, and use the leased property only in connection with the following functions and activities in accordance with the terms of this agreement:
  - 1. Operating the Student Recreation Center programs and related activities for the Campus students, faculty, staff, alumni and guests.
  - 2. Operating the Student Union programs and related activities for the Campus students, faculty, staff, alumni and guests.
  - 3. Operating the Student Housing East programs and related activities the Campus students, faculty, staff, alumni and guests.
- B. Auxiliary shall use the leased property only for functions and activities that are consistent with the functions established in Section 2, Primary Function(s) of the Auxiliary, and guidelines and policies that have been or may hereafter be adopted by CSU.

**28. CONSIDERATION FOR PREMISES**

- A. Auxiliary shall operate as an auxiliary organization as set forth in this agreement.
- B. Campus shall manage the facilities of the Student Recreation Center, Student Union, and Student Housing East, in accordance with the bond indenture, the policies of the CSU, Campus, this agreement, and for the benefit of Campus.

**29. APPLICATION OF FEES**

- A. Pursuant to the CSU Systemwide Revenue Bond program, retirement of the debt incurred by CSU for the construction of:
  - 1. Student Recreation Center is to come from a mandatory student recreation center fee to be paid by all enrolled students,
  - 2. Student Union is to come from a mandatory student union fee to be paid by all enrolled students,
  - 3. Student Housing East is to come from a non-mandatory student housing fee to be paid by all housing students
- B. After Campus has set aside required funds for:
  - 1. Debt service and all reserves,

2. Facilities care, maintenance and repair,
  3. Direct personnel costs, and
  4. Indirect costs established in Section 14, Contracts for Campuses Services
- C. Campus agrees to make available to Auxiliary a portion of any remaining funds, as authorized by Education Code, Section 90076. Campus agrees to transfer such funds, if any, in the following circumstances:
1. Auxiliary shall be entitled to a transfer of funds as required for operating the programs and related activities. The transfer for operating the programs and related activities will be based on needs as shown in the programs and related activities operating budget approved by the Auxiliary governing board and then approved by the Campus Chief Financial Officer or designated staff subject to the availability of such funds.
  2. Additional transfers of funds may be made for extraordinary expenses as requested by the Auxiliary and approved by the Campus Chief Financial Officer or designated staff, subject to the availability of funds.
- D. 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 Systemwide Revenue Bonds and made a part of this agreement.

### **30. BUILDINGS, SIGNS, FIXTURES, AND EQUIPMENT**

During the term of this Agreement, Auxiliary shall have the right to erect, place, and attach buildings, fixtures, signs, and equipment in and upon the leased property. Plans and working drawings for buildings to be placed on the leased land shall have prior approval of CSU. The number, size, and location of signs are subject to prior written approval of the Campus. Fixtures, signs, and equipment so erected, placed, or attached by the Auxiliary shall be and remain the property of the Auxiliary and may be removed there from by the Auxiliary prior to the termination of this lease.

### **31. ALTERATIONS**

The leased premises 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. Permanent alterations shall have prior approval of Campus.

**32. RIGHT OF ENTRY**

It is understood and agreed that at any time CSU and its agents shall have the right to enter the leased premises or any part thereof for the purpose of examination or supervision.

**33. RESTORATION OF PREMISES**

Upon termination of this lease, 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 lease, except for 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 State. CSU shall have the right to exercise this option within 30 days after the expiration of this lease, but not thereafter.

**34. MORTGAGES**

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

**35. POSSESSORY INTEREST**

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

**36. ASSIGNMENTS OR SUBLEASE**

Auxiliary shall not assign or sublease any part of the premises covered by this lease without the written permission of CSU.

CSU agrees, however, that Auxiliary may sublease any portion of the premises with the approval of the Campus. Substantial deviation from CSU's policy and model sub-leases requires the approval of the Campus.

Subleases may be written with terms in excess of this agreement, however, the continuation of the sublease past the term of this Agreement is contingent on this Agreement's renewal.

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

Approved: 07/20/2023

**Auxiliary**

California State University, Bakersfield  
Student-Centered Enterprises, Inc.

By *Thomas D. Wallace*  
Thomas Wallace, Executive Director

Approved: 07/24/2023

**Campus**

California State University, Bakersfield

By *TD*  
Thom Davis (Jul 24, 2023 08:45 PDT)  
Thom Davis, CFO

Executed on 07/25/2023

**CSU**

California State University  
Office of the Chancellor

By *Bradley Wells*  
Brad Wells, Associate Vice Chancellor  
Business and Finance