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July 15, 2016

To: Robert Tarsia, Director, Audit and Advisory Services
Antonio Manas-Melendez, Principle Auditor, Audit and Advisory Services
Stacy Stone, Audit Analyst, Audit and Advisory Services

From: Marisela Márquez, Ph.D., Executive Director, Associated Students
Jimmy Villarreal, President, Associated Students

Cc: Margaret Klawuun, Ph.D., Vice Chancellor, Student Affairs
Bill McTague, Executive Director of Resources Planning, Information Technology & Sustainability
Ed Schatz, Director, Internal Operations, Associated Students
Cindy Lopez, Assistant Director, Budget and Finance

Chancellor Henry Yang
Nancy Hamill, Chief Campus Council, UCSB/Senior Council Education

RE: Internal Control Review, Audit No. 08-16-0007

Following is the Associated Students response to the Internal Control Review Report Draft dated June 8, 2016. Associated Students appreciates the attention that Audit and Advisory Services provided in making their recommendations. These recommendations follow the recognition by Student Government that internal controls and processes are critical to the effective operations and oversight of Associated Students. To help facilitate related improvements, from 2009 to the present, students have approved funding for and have staffed the Director of Technical Assistance and Internal Operations. This new position is charged with reviewing and updating policies, procedures, and related documentation across the Associated Students Department. While recognizing the importance for continuous evaluation, Associated Students also believes that it has been operating appropriately with delegated authority for many years utilizing an effective, safe, and proven parallel procurement system. This system has been built around the unique needs of the Department, and is appropriate for facilitating a thriving independent student organization, with the flexibility to adapt to ever-changing Student Government legislation and student body needs.

In addressing test documentation requests for this Audit, Associated Students initially overlooked a couple of back up documents that would have provided additional clarity. The Department believes it has addressed those issues with the attachments in this response.

In addition, Associated Students has attached a Comment Letter to this response from Bill McTague, Executive Director/CFO in the Division of Student Affairs.

Sincerely,

Marisela Marquez, PhD, Executive Director, Associated Students

Jimmy Villarreal, President, Associated Students

Procurement

1. Procurement Authority and Oversight

A. **Observation:** Based on the available documentation, we have concluded that, although Associated Students has authority to expend funds, it does not have full, formal authority for procurement.

A. **Response:** Associated Students was established and reaffirmed by Chancellor delegation as an independent Student Government department. Independent financial authority has been referenced in this delegation as a key element for creating and maintaining effective student voice and department independence. As a result, Associated Students has operated securely and effectively for decades with the understanding that delegated financial authority logically includes procurement functions, and that there was no intent, either specifically or implied, to create a separation.

While the Audit Review specifies that there are no delegation statements that directly address actual procurement authority, that assumes, by virtue of absence, that there was an intent to do so. However, there is no evidence that such a separation was intended. Associated Students believes that, given the significance of separating the two, there would have been specific direction in that regard, including definition distinctions. Moreover, Associated Students believes that the overriding focus for the procurement authority question should be on the intent of the delegations for Student Government to chart its own course. This is critical for allowing students the independence of legitimate decision making relative to the use of their student fee resources, the freedom to learn how to improve their community through the projects developed from these resources, and to the preservation of an independent voice that projects student body values.

There are additional examples of precedence that reinforce this intent beyond the 1982 delegation of authority from the Chancellor, provided during field tests:

a) Two separate ASUC Organizations Documents, one from 1972 (**Attachment 1**) and one from 1977 (**Attachment 2**) provide reference to the UC establishment of Associated Students departments with the recognized need and delegation of independent authority. While these documents reference the initial establishment of a UC Associated Students department at UC Berkeley, it seems clear that this applies equally to all campuses within the UC system.

b) In a 1988 University Response to the FCC concerning the independent operation of the Associated Students Radio Station KCSB (**Attachment 3**), the University affirmed the need for independent Associated Students authority as it applies to KCSB and its operations in general, and as they are formalized within the Associated Students bylaws. While a reference to the need of preserving First Amendment rights to free speech is referenced relative to KCSB, this serves as a parallel example to the importance of preserving procurement authority within Associated Students so that student agency is not eroded. A specific example from this attachment on page 2, subheading 2.a states, “What the Commission perceives as conflicts are simply *rightful delegation of specified powers and responsibilities* to the appropriate positions and groups *which are all responsible to the UCSB Chancellor* and...”.

c) The office of the Vice Chancellor for Student Affairs maintains Organizational Charts that illustrate the independent department status of Associated Students within the Division (**Attachments 4a and 4b**). Associated Students is shown with a “dotted line” connection to the Vice Chancellor of Student Affairs.

B. Recommendation: Consult with the Vice Chancellor for Student Affairs and Procurement Services to clarify whether Associated Students needs a formal delegation of procurement authority to conduct its own procurement activities.

B. Response: Associated Students has and will continue to clarify formal delegation of procurement authority with the Chancellor, the Vice Chancellor, Student Affairs including considerations for additional documentation necessary to confirm related discussions. Based on Vice Chancellor for Student Affairs and the Chancellor office’s recommendations, Associated Students will engage Procurement Services. Associated Students anticipates concluding its conversations by the beginning of the 2016 Fall Academic Quarter. Updates to documentation, templates, and training processes (including version dating) will be implemented.

C. Recommendation: Consult with Procurement Services to determine if delegated procurement authority would be the best approach by Associated Students.

C. Response: At its base level, Associated Students facilitates student agency through shared student governance. As such, it requires significant independence from Campus and UC protocols in order to establish a meaningful voice for the student community. A key tool for accomplishing this is the possession of independent financial authority including the procurement component. While recommendations for improvements to related processes are important and welcomed, it is critical that procurement decision-making is preserved within Associated Students. By continuing to accomplish both, Associated Students has and will continue to create a strong redundant procurement system that it is obligated to follow through its Legal Code, with additional welcomed guidance

from Procurement Services where feasible. The AS President and a “dotted line” reporting relationship to the Vice Chancellor for Student Affairs delegate internal controls, within the department to the Executive Director with oversight as sited in AS Legal Code. Without procurement independence, Student Government’s voice and self-determination becomes greatly diminished, and many of the Department’s programs, resources, and related educational opportunities would be severely compromised if not fully impossible to continue. Further, students maintaining their right to disagree—or challenge decisions made by the university of California itself is one of the fundamental reasons for its independence.

D. Observation: Oversight - As discussed in the following sections of this report, Associated Students does not always comply with University policies in its procurement practices, including bidding and award requirements, use of contract and purchase order forms that are consistent with University policies and requirements, and inclusion of required terms and conditions. We also noted that Associated Students only uses Gateway, the campus procurement system, in a limited manner, generally only for office supplies. We were also informed that Associated Students does not routinely consult with Procurement Services regarding its procurement activities.

D. Response: Associated Students has operated with the understanding, and without any previous directive to the contrary, that it has been delegated independent financial authority inclusive of procurement, and as a 501(c)(3) non-profit entity (**Attachments 5 and 6**), it is responsible to an independent Board of Governance in the form of Student Government. This Student Government possesses the high-level responsibility of overseeing the use of student-approved fees including related practices as directed through guidelines set in the Associated Students Legal Code and the Associated Students Financial Guide. These are guidelines beneficial to both Associated Students and the University as they create a redundant procurement system where multiple layers of processes on an as-needed basis are employed.

It is important to note that there is one exception to following Legal Code, and that is related to Human Resources as Associated Students staff are classified as UC employees. In terms of oversight, all staff are the responsibility of the Executive Director as the Department head. Legal Code only manages the office’s actions. In addition, this is a rare area where Associated Students interacts directly with Campus information systems, in this case the Kronos payroll system. This is tied to the classification of staff as UC employees, and not related to any restrictions on the delegated independent authority of the Department.

In regards to delegated authority to enter into contracts, there are previous examples of established precedence:

a) UCSB Campus Regulations (page 13, item 2 – See **Attachment 7**), provides contracts clarification for Associated Students with the following – “Contracts for

the Associated Students need only to be signed by the Executive Director, Associated Students.” This appears to clearly indicate an independent authority for entering into contracts.

b) Three prior correspondence examples with Campus officials affirm the Associated Students independent authority to enter into contracts including from the year 2010 (**Attachment 8**), 2013 (**Attachment 9**), and 2016 (**Attachment 10**).

Associated Students governance encompasses a number of entities including an elected Student Senate with both on and off Campus representation, elected executive officers, a student run Finance Board for annual budget and projects oversight and approvals (see Funding Guide **Attachment 11**), a Business Services oversight committee (Office of the Controller), numerous other area-specific governing boards, and relatively new appointed student executive positions such as a Chief Financial Officer and Chief Operating Officer. Additional administrative oversight is led by a robust management structure including an Executive Director, eight area-specific Assistant Directors, and a newly created Director of Internal Operations position. Associated Students believes this oversight is significant and effective for protecting student, Department, and UC interests.

In addition, Associated Students has made a practice of engaging Procurement Services on an as-needed basis where additional recommendations beyond the standards of its internal Financial Guidelines is helpful as opposed to establishing a standard and regular engagement (this also applies to Campus Business Services and Risk Management Services). However, Associated Students is open to discussing requests for additional consultation standards with Procurement Services.

E. **Recommendation:** Ensure that Department personnel involved in procurement have had the appropriate training.

E. **Response:** While Associated Students does train designated Department personnel in its procurement processes, it will work with Procurement Services to expand that training to encompass additional applicable recommendations by the beginning of the 2016 Fall Quarter.

F. **Recommendation:** Perform periodic reporting of procurement information to Procurement Services.

F. **Response:** While Associated Students performs extensive procurement approval and reporting controls through its Student Government oversight processes, the Department will work with Procurement Services to determine what procurement information would be practical and useful to report to their Department. Associated Students will target the beginning of the 2016 Fall Quarter for related reporting implementations.

G. Recommendation: Evaluating expanded use of Gateway for purchasing goods and services.

G. Response: While Associated Students uses the Gateway portal, it finds the need to regularly source outside of it for a variety of important reasons established by Student Government that go beyond pricing criteria. For example, Student Government adopted a Green Bill for sustainability practices within Associated Students and incorporated this into the Department's Legal Code (**Attachment 12**). The related purchasing requirements are an important part of the Associated Students Financial Guide and must be incorporated into procurement decisions, which regularly necessitates procurement sourcing away from the Gateway system. However, Associated Students will continue to evaluate sourcing options within Gateway while meeting Associated Students Legal Code criteria.

H. Recommendation: Implement other measures as agreed to with Procurement Services.

H. Response: As previously discussed, Associated Students will engage Procurement Services for improvement recommendations that preserve the requirements of the Associated Students Legal Code.

2. Bidding and Award

A. Observation: Procedures covering the required competitive process for purchases over \$100,000 are not documented, nor are procedures documented for the process of obtaining, documenting, and evaluating negotiations with vendors for purchases under \$100,000. As outlined in Table 2, the requirements for competitive processes and negotiations are included in UC Policy BUS-43, *Materiel Management*.

B. Observation: There was no documentation of a competitive process or negotiation for the one procurement of \$100,000 we reviewed; there was also no Sole Source Justification form. There was also no documentation of negotiations with vendors for the six procurements under \$100,000 we reviewed; the value of these procurement ranged from \$5,000 to \$80,000.

A. & B. Response: Bidding and awards are driven by the Associated Students Financial Guide as determined by Student Government relative to the expenditure of student funds, and under the budget direction and approval of the student-run Associated Students Finance Board.

While the Associated Students Finance Guide does not require documentation of any negotiations with vendors, the Guide does require purchase estimates from at least three vendors for purchases over \$5,000. Such purchases must also be approved by Student Government. Administrative processing is then conducted after formal Administration review, requisition, and approval.

It is important to note that many large Associated Students purchases are talent agreements for student program events. These vendors are performers with a unique “product” where a competitive bidding process is an irrelevant exercise. This happens to be the case for the tested procurements referenced in the Audit Review Report that are over or near the \$100,000 amounts. While a Sole Source Justification form is not required per the Associated Students Financial Guide, Student Government reviews and approves the performer procurement through the student-run Program Board prior to the requisition process (which takes place after the Assistant Director of Student Programs, Events, and Services reviews agreement details, including input from Campus Risk Management).

Associated Students welcomes additional recommendations from Procurement Services and relative to BUS-43 in this area, but those recommendations need to be made with efforts to preserve the Associated Students Legal Code and Financial Guidelines.

3. Formation of Procurement Agreements

A. **Observation:** Limited use of standard forms required by UC Policy BUS-43 or Procurement Services, such as the standard University of California Terms and Conditions of Purchase. The standard terms form was not included in seven of the eight agreements we reviewed for which these requirements would be applicable.

B **Observation:** Limited use of procurement agreement templates and language approved by Procurement Services. Four of eight of the agreements we reviewed, for which these requirements would be applicable, did not use templates that had been reviewed and approved by Procurement Services.

A. & B. **Response:** Associated Students has utilized an effective and parallel procurement system that is tailored to the Department’s unique needs relative to its independent Student Government Legal Code requirements. In fact, AS Executive Director (Tamara Scott with the guidance and advice from the Internal Audit department developed its accounting system. As such, the Department has not been required by Student Government legislation to incorporate documents and templates approved by Procurement Services. However, related Associated Students documentation includes Performance Agreement forms (**Attachment 13**), Independent Contractor Agreement forms (**Attachment 14**), Requisition forms (**Attachment 15**), as well as Student Government and Committee approvals, and inclusion of other documentation where recommended by Campus Business Services, Procurement Services, and Risk Management engagement took place.

Associated Students welcomes input for updates to its documents. It is also important to note again that Associated Students has a history of engaging Procurement Services for input on a number of purchase agreements when relevant.

One such Audit Review test example is the Tickets West ticketing vendor agreement.

C. **Observation:** Two agreements were not properly signed. Associated Students signed two contracts in the name of The Regents of University of California without the proper authority, and another was not fully executed.

C. **Response:** The Tickets West agreement was signed by the Associated Students Executive Director under the Associated Students signature line and not the Regents signature line. The Regents signature line was signed by the UCSB Associate Director of Accounting Services and Controls. This unique signature approach was chosen since the agreement was for shared ticketing services across a number of Campus departments at the request of Campus leadership. Associated Students was asked to be the operational hub for facilitating the services so that related Campus ticketing needs could be centralized.

With regards to any other signatures under a Regents signature line, vendors can on occasion mistakenly indicate 'Regents' instead of 'Associated Students', which appears to be the case with the Konica-Minolta test sample in at least two signature locations. While this was an exception to the Department's general practice of signing as Associated Students, the Department will continue to be vigilant to catch and correct any such inconsistencies from vendors.

D. **Observation:** Four contracts did not comply with mandatory insurance requirements, potentially putting the University at risk of economic loss. Two of these contracts were for major campus events, and Risk Services indicated to us that they were not consulted, nor they would have agreed to a waiver of insurance, for these events.

D. **Response:** The two referenced major Campus events did comply with mandatory insurance requirements and those two Certificates of Liability Insurance are attached (**Attachment 16 and 17**). Associated Students takes its insurance responsibilities seriously and works with Campus Risk Services on a regular basis. The statement that they were not consulted appears to be a misunderstanding given the otherwise strong working relationship between both departments and the attached evidence of insurance.

A third referenced insurance certificate is associated with the leased building known as the Pardall Center. The insurance certificate from that building's landlord, Nicole Anter, is attached (**Attachment 18**).

The fourth referenced insurance certificate is associated with the independent contractor Robin Unander. While she confirms that her insurance coverage is current, she is unable to provide a confirming copy in time for this response. She reports that it will be available after Monday, July 18, 2016.

4. Vendor Qualification

A. **Observation:** By managing its own vendor list, Associated Students is limiting opportunities to access lower negotiated prices included in UC Strategic Sourcing Agreements.

A. **Response:** By managing its own vendor list, Associated Students is able to access additional sourcing opportunities beyond the limitations of UC sourcing agreements. A primary part of the Associated Students mission is to provide a means for independent student voice and governance. A key component to that independence is the control point of Student Government oversight with vendor qualification based on criteria that meets their accepted standards. Some examples of these criteria standards include sustainability practices (reference Green Bill example **Attachment 12**), social justice and human rights contributions (or lack thereof), investment considerations, and political affiliations. Limiting vendor selection to UC sourcing agreements alone would significantly and negatively impact Student Government's ability to enter into acceptable vendor relationships.

B. **Observation:** Associated Students records do not include any documentation of conflict of interest disclosure forms, which are a necessary step that helps ensure that vendor relationships are consistent with University conflict of interest policies.

B. **Response:** While Associated Students has not included the referenced Conflict of Interest form to vendors, it does have a general internal control requirement for vendors to complete, when relevant, a Performance Agreement form (**Attachment 13**) or an Independent Contractor Agreement form (**Attachment 14**). However, Associated Students welcomes input regarding any necessary updates to these documents as well as discussion for the incorporation of the referenced Conflict of Interest Disclosure form.

C. **Observation:** Two employees were set up as vendors to be reimbursed for substantial expenditures, including \$7,468 in photography equipment and food purchases for the food bank operated by Associated Students. Making purchases for the organization in this manner circumvents normal procurement and payment processing controls.

C. **Response:** While this may not be a normal Campus procurement and payment processing procedure, it is for Associated Students as approved by Student Government and outlined within the Department's Financial Guide. As with most accounting systems, the Associated Students system and related processes classify reimbursable employees as vendors. This is an acceptable general accounting practice, confirmed by the annual Associated Students external audit, for critical purchase processes in a number of Associated Students areas. In both Audit Review Report examples, the retail vendor locations required in-person purchases for employee item selection, purchase timeliness, and efficiency. To facilitate this, the Associated Students procurement process includes internal control points for such

purchases including the completion of a formal requisition form (complete with relevant price quotes and/or receipts), two authorized department signatures, and Executive Director review and signed approval. These controls represent a proven and effective parallel system for purchase approvals and related reimbursements.

D. Observation: Form W-9 was not on file for two of the ten vendors we reviewed. (Also) The organizations vendor validation process is generally limited to requesting IRS Form W-9, *Request for Taxpayer Identification Number* (Form W-9).

D. Response: In regards to the two vendors reviewed without W-9 Forms on file, the first, Robin Unander, is a long-time independent contractor providing services under a formal Independent Contractor agreement and who originally met Associated Students criteria for providing those services. She is sent a Form 1099 annually and Associated Students has equivalent W-9 information on file. A W-9 Form can be added to her file.

The second vendor, Your Travel Center, has been a unique service vendor where student travel reservation coordination services are provided. Associated Students helps facilitate access to this vendor for students and can add a W-9 Form to their file.

In terms of vendor validation, requesting W-9 Forms is a generally accepted control process that Associated Students incorporates into its internal vendor controls. As previously discussed, while pricing is an important consideration, there are a number of additional control criteria that Associated Students and Student Government consider based on broad value requirements (beyond UC Form M pricing focus). As a result, and taking into consideration related Student Government set standards, Associated Students believes it qualifies vendors effectively and appropriately relative to the Department's unique needs.

Cash Controls

1. Procedures, Roles and Responsibilities, and Training

A. Recommendation: Consult with Business and Financial Services to ensure sufficient internal controls and best practices.

A. Response: Associated Students has worked closely with Business and Financial Services over the last fiscal year to ensure data security processes and PCI data compliance. Associated Students will continue to engage them for additional input on best practices recommendations.

B. Recommendation: Document and implement clear descriptions of roles and responsibilities.

B. Response: The Associated Students Cashiers and Ticket Office has been in process of updating and consolidating its process documents, and will continue to do so with related documentation to further clarify existing descriptions of roles and responsibilities. Target completion will be the beginning of the 2016 Fall Quarter.

C. Recommendation: Update and consolidate training requirements and documentation.

C. Response: While the cash handling training requirements are practiced including shadowing practices and knowledge confirmation by Cashiers and Ticket Office management, an updated training checklist with confirmation signature and dates of completion is in development and will be implemented with a target completion of the beginning of the 2016 Fall Quarter.

D. Recommendation: Provide detailed description of reconciliation processes, required supporting documentation, and required signoffs by preparers and those responsible for supervisory review.

D. Response: Over the last fiscal year, the Cashiers and Ticket Office has improved supporting documentation and signoffs, and samples from this period are likely to show that improved consistency. As part of the general process updates, reconciliations will be examined further and updates made to provide additional clarity. Target completion will be the beginning of the 2016 Fall Quarter.

E. Recommendation: Identification of activities requiring dual custody and appropriate separation of duties.

E. Response: As previously discussed, improvements have been in process over the last fiscal year but additional update opportunities will be examined and implemented. At this time, dual custody improvements for remote events will receive priority. Target implementation timing will be the beginning of the 2016 Fall Quarter.

2. Supporting Documentation

A. Recommendation: Required forms and templates that include fields for basic information such as document name, version date, and signoffs by preparers and those responsible for supervisory review.

A. Response: Forms and templates are currently used and have been continuously modified throughout years of operations. Further updates are currently in progress and will be completed based on recommendations for additional clarity. Target completion will be the beginning of the 2016 Fall Quarter.

It is important to note that testing was done with samples taken from the 2014 – 2015 fiscal year. Current Cashiers and Ticket Office management was not in place

at that time and confidence is high that supporting documentation, reconciliation, and verification is greatly improved for the just completed 2015-2016 fiscal year. Regardless, Associated Students welcomes suggestions for improvements and has begun, and will continue to update, its internal documentation, forms, and templates.