



HUMBOLDT STATE UNIVERSITY

Office of the President

September 24, 2020

By US Mail

Humboldt State University
University Center
1 Harpst Street
Arcata, California 95521

Re: Failure to Comply with Operating Agreement

Dear University Center Board of Directors:

After consultation and concurrence from Chancellor Timothy White, I write to provide the Humboldt State University Center (“UC”) notice of the termination of the Operating Agreement between the Board of Trustees of the California State University (“CSU”) and the UC (“Agreement”) pursuant to Section 22 of the Agreement, effective December 23, 2020, due to the UC’s failure to comply with the Agreement (Attachment 1).¹

I. On October 1, 2019, the UC Authorized a \$300,000 Line of Credit to the North Humboldt Recreation and Park District in Violation of Section 2, Section 4, and Exhibit A of the Agreement.

In August 2020, it came to my attention that the UC had issued a \$300,000 line of credit to the North Humboldt Recreation and Park District (“NHRPD”)—a local special district that runs the Arcata Community Pool—pursuant to an operating agreement that runs from October 1, 2019 to September 30, 2020 (Attachment 2). According to the operating agreement between the UC and NHRPD, the purpose of the line of credit was “to allow NHRPD to pay expenditures related to approved and accepted construction projects of which reimbursements are delayed due to contractual agreements.” (Attachment 2 at p. 1.)

The issuance of this line of credit violates Title 5, CSU policy, and the Agreement, as follows:

¹ Section 22 of the Agreement states: “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.”

- 5 C.C.R. § 42665: Auxiliaries must be “engaged in activities which are essential and integral to the mission and purpose of the California State University system.”
- Executive Order 1059: “Campus auxiliary organizations are . . . operated solely for the benefit of the campus”
- Section 2 of the Agreement: “Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering [its contracted functions] for the benefit of CSU and the Campus.”
- Section 4 of the Agreement: “Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies.”
- Section 11.2.1(a) of Exhibit A to the Agreement: Auxiliary “[e]xpenditures must further the CSU educational mission and comply with trustee and campus policy.”

II. The UC Transferred \$100,000 to the NHRPD in Violation of Section 2, Section 4, and Exhibit A of the Agreement.

On February 12, 2020, the UC transferred \$100,000 to the NHRPD via wire transfer pursuant to the operating agreement between the UC and NHRPD (Attachment 3).

This payment violates Title 5, CSU policy, and the Agreement, as follows:

- 5 C.C.R. § 42665: Auxiliaries must be “engaged in activities which are essential and integral to the mission and purpose of the California State University system.”
- Executive Order 1059: “Campus auxiliary organizations are . . . operated solely for the benefit of the campus”
- ICSUAM 03103.02
 - “Payments greater than or equal to \$50,000 require second level review and approval.”
 - “ACH payments must be processed in accordance with standard Payment procedures, including dual control and be reasonably secured from erroneous or fraudulent manipulation.”
- Section 2 of the Agreement: “Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering [its contracted functions] for the benefit of CSU and the Campus.”
- Section 4 of the Agreement: “Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies.”

- Section 11.2.1(a) of Exhibit A to the Agreement: Auxiliary “[e]xpenditures must further the CSU educational mission and comply with trustee and campus policy.”

III. The UC Transferred \$50,000 to the NHRPD for Operating Costs in Violation of Section 2, Section 4, and Exhibit A of the Agreement.

The operating agreement between the UC and NHRPD provides that the line of credit “funds are not intended to supplement general operational needs of NHRPD.” (Attachment 2 at p. 1.)

The UC issued a payment to the NHRPD for operating costs that fall outside the scope of the operating agreement with the NHRPD. In July 2020, the UC transferred \$50,000 to the NHRPD pursuant to the operating agreement for insurance premiums, workers’ compensation annual premiums, UC’s accounting and management services fee (see section IV), operating expenses, and payroll² (Attachment 4; Attachment 5).

This payment violates Title 5, CSU policy, and the Agreement, as follows:

- 5 C.C.R. § 42665: Auxiliaries must be “engaged in activities which are essential and integral to the mission and purpose of the California State University system.”
- Executive Order 1059: “Campus auxiliary organizations are . . . operated solely for the benefit of the campus”
- ICSUAM 03103.02
 - “Payments greater than or equal to \$50,000 require second level review and approval.”
 - “ACH payments must be processed in accordance with standard Payment procedures, including dual control and be reasonably secured from erroneous or fraudulent manipulation.”
- Section 2 of the Agreement: “Auxiliary agrees to receive and apply exclusively the funds and properties coming into its possession toward furthering [its contractual functions] for the benefit of CSU and the Campus.”

² To date, the NHRPD has drawn \$150,000 on the line of credit and currently owes the UC \$75,000.

- Section 4 of the Agreement: “Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies.”
- Section 11.2.1(a) of Exhibit A to the Agreement: Auxiliary “[e]xpenditures must further the CSU educational mission and comply with trustee and campus policy.”
- Section 5.0 of Exhibit B to the Agreement: “Perform procurement activities in a consistent manner in accordance with external and internal requirements.”

IV. The UC Entered into a Business Services Agreement with the NHRPD in Violation of Sections 2 and 4 of the Agreement.

The UC entered into a “Business and Accounting Services Agreement” with the NHRPD for the period commencing July 1, 2018 and ending June 30, 2021 (Attachment 6). Through this agreement, the UC provides accounting and business services and management consultation services to the NHRPD (Attachment 6 at pp. 1, 4–6).

The UC’s participation in this agreement does not fall within the approved functions of an auxiliary identified in Title 5 (5 C.C.R. § 42500) or the functions of the UC identified in Section 2 of the Agreement. In addition, the UC’s participation in this agreement is in violation of Executive Order 1059, which provides, in relevant part, that “[c]ampus auxiliary organizations are . . . operated solely for the benefit of the campus” Therefore, the UC’s participation in this agreement violates both Section 2 and 4 of the Agreement.

V. The UC Failed to Provide the University with Annual Letters of Attestation, Annual Reports of Internal Controls and Proper Segregation of Duties, and Quarterly Financial Statements in Violation of Section 3 of the Agreement.

Section 3 of the Agreement provides that the UC must provide the University the following documents:

- Letter of Attestation, attesting to their compliance with the CSU Auxiliary Organizations Compliance Guide and CSU Auxiliary Organizations Sound Business Practice Guidelines annually, on or before July 1st
- Review of both internal controls and proper segregation of duties to be reported to the Campus President or designee and the Auxiliary’s Board of Directors; annually, on or before July 1st
- Quarterly financial statements with supporting transactional data to the Campus chief financial officer or designee

The UC has breached this Section by not providing these documents to the University.

VI. The UC Violated Sections 3 and 4 of the Agreement When Members of the Board Refused to Participate in the President's Review of UC Programs.

Title 5 provides, in relevant part:

[F]or the president to exercise his responsibility over the entire campus program, he shall require that auxiliary organizations operate in conformity with policy of the Board of Trustees and the campus. To execute this authority, the president shall require that each auxiliary organization submit its programs and budgets for review at a time and in a manner specified by the president.

(5 C.C.R. § 42402.) In accordance with this authority, I announced a review of UC programs in August 2020. In response to this announcement, multiple members of the Board refused to participate in this review.

This conduct violates CSU policy and the Agreement, as follows:

- Executive Order 1059: “Campus auxiliary organizations shall not operate outside the regulation and oversight of the campus.”
- Section 3 of the Agreement: “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.”
- Section 4 of the Agreement: “Auxiliary agrees to maintain and operate its organization in accordance with all applicable laws, regulations and CSU and Campus rules, regulations and policies.”

* * *

For all the reasons stated herein, the University finds that the UC has failed to comply with the Agreement. The University is invoking its right under Section 22 of the Agreement to terminate the Agreement with 90 days' notice. In accordance with the Agreement, the UC may use the 90 advance notice period to cure the breaches of the Agreement (Attachment 1, § 22).

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Per Section 19 of the Agreement, this notice was mailed to:

Humboldt State University
University Center
1 Harpst Street
Arcata, California 95521

The University reserves the right to supplement this notice, as appropriate.

Sincerely,

A handwritten signature in black ink that reads "Tom Jackson, Jr." with a stylized flourish at the end.

Tom Jackson, Jr., Ed.D.
President

cc: T. White, Chancellor, California State University
D. May, University Counsel, California State University
S. Gordon, Vice President for Administration & Finance, HSU
J. Meriwether, Vice President for Enrollment Management, HSU