

ACTION ITEM #1

Agreement between Washington State University and Washington State University 4-H Foundation (Dan Bernardo)

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Agreement between Washington State University and Washington State 4-H Foundation.

PROPOSED: That the WSU Board of Regents approves the Agreement between Washington State University and Washington State 4-H Foundation (Foundation), in substantially the same form as the attached version.

SUBMITTED BY: Daniel J. Bernardo, Vice President for Agriculture and Extension and Dean CAHNRS

SUPPORTING INFORMATION: 4-H is the youth development and outreach program of the land-grant university system. In Washington State, the WSU Extension 4-H Youth Development Program serves nearly 90,000 youth; mentored and led by over 6,000 volunteer leaders.

Chartered in 1961, the Foundation is a private, not for profit 501(c)(3) corporation, which was established to raise funds for and further the development of 4-H programs and clubs in all 39 counties in Washington state. The Foundation is governed by an independent Board of Trustees, which has 15 members. Garland Capital Management provides financial management services to the Foundation.

An agreement outlining the relationship and expectations between the University and the Foundation has been in existence for at least 35 years; it was last updated in 2009. Under the Agreement, the University provides space and materials for Foundation operations and the Foundation reimburses the University for the University employees who work on behalf of the Foundation. The Foundation currently is staffed by an Executive Director (.25FTE), a Development Coordinator (1.0FTE) and a Program Assistant (.50FTE).

The proposed revisions modify the Agreement in three key

respects: the audit and control and the budget development and approval provisions in Section II are clarified, and a dispute resolution clause has been added to Section III. The Foundation Board of Trustees has reviewed and approved the proposed changes.

Attachment: Agreement with proposed tracked changes

AGREEMENT
between
WASHINGTON STATE UNIVESITY
and
WASHINGTON STATE 4-H FOUNDATION
(Insert Date)

This Agreement is entered into by and between Washington State University, (hereinafter the "University"), and the Washington State 4-H Foundation, a nonprofit corporation (hereinafter the "Foundation"), and supersedes and replaces in its entirety that certain Agreement between Washington State University and the Washington State 4-H Foundation dated September 25, 2009 regarding the same subject matter. In this Agreement, the above entities are jointly referred to as Parties.-

WHEREAS, University, acting through Washington State University Extension, operates and administers the 4-H programs in Washington State; and,

WHEREAS, the University, pursuant to RCW 28B.30.150(24), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from any sources, as may be made from time to time, in trust or otherwise, for the use or benefit of the University, its colleges, schools, or departments; and

WHEREAS, the University has, from this express power to receive property, the implied power to solicit the same; and

WHEREAS, the University has the authority to enter into contracts for these and other lawful purposes; and

WHEREAS, the Foundation is a Washington nonprofit corporation formed for exclusively for charitable, scientific, religious, literary or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, for advancing the 4-H program in the State of Washington as stated at Article 3.1 of its Restated Articles of Incorporation to wit:

- (a) the furtherance of the 4-H program in the State of Washington, and
- (b) to assist in developing participation in the 4-H program in the State of Washington by encouraging gifts which in the reasonable judgment of the Board of Trustees of the Corporation (collectively the "Board of Trustees"; individually "Board Members") can be used for the best mental, moral, intellectual and physical development of the youth engaged in 4-H ~~club~~ workprograms throughout the State of Washington, and as will best meet the needs and advance the interests of 4-H club work generally throughout the state.

WHEREAS, the Foundation, pursuant to RCW 24.03.035(4), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from any sources, as may be made from time to time, in trust or otherwise, for the use or benefit of the 4-H programs in the State of Washington; and,

WHEREAS, the University has determined that the Foundation is the most appropriate organization and means to enhance, coordinate and exchange the beneficial receipt of such gifts, grants, conveyances, devises and bequests for the purpose of supporting all 4-H programs in the State of Washington; and,

WHEREAS, the Foundation and University agree that close collaboration and cooperation is necessary to ~~(a)~~ appropriately serve the educational mission and priorities of 4-H programs in the State of Washington; ~~and (b) to avoid competition for funds or unproductive duplication of effort;~~

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NOW, THEREFORE, the parties hereby agree as follows:

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I. SEPARATE OBLIGATIONS

It is understood that the activities of the Foundation are to be conducted for the benefit of the 4-H programs in the State of Washington and in order to achieve consistencies with the University's plans, programs and policies.

A. To that end, the Foundation shall:

1. Expend its best efforts to seek to accrue gifts, grants, conveyances, devises, and bequests of money and both real and personal property for the benefit of the 4-H programs in the State of Washington. For this purpose, it will continue to utilize the standard gift acceptance processes already approved by the University to solicit and receive such money and property all to further the purposes of the 4-H programs as defined from time-to-time by the University and/ the Foundation.
2. Communicate and collaborate with the University in all capital and special project campaigns relating to 4-H programs, and all public relations and publication programs in support of any development and fund raising activities for 4-H programs. Such campaigns must be consistent with the University's goals for the 4-H program in the State of Washington, the Foundation's Bylaws, and Washington law.
3. Comply with all applicable federal and state laws. For this purpose, the Foundation will maintain its current rules and procedures for the management of all affairs of the Foundation in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b) the laws of the state of Washington applicable to the Foundation, including but not limited to those governing charitable solicitations (e.g., chapter 19.09 RCW), nonprofit corporations (e.g., chapter 24.03 RCW); and the authority of state agencies (e.g. RCW 11.110 and 43.09).
4. Not accept any non-cash gift, including gifts of real property, or any restricted cash gift that in any way obligates or restricts the University, unless the Foundation has

obtained the written approval of the University President or University officer delegated the authority by the University President.

5. Tender to the University immediately all gifts grants, conveyances, devises, and bequests or other donations it may receive wherein the University (including University Extension) is designated as recipient; and account for and be responsible for all donations that designate the Foundation as the recipient in a manner required by the Foundation's Bylaws and Washington law;

6. Provide assistance to the University in the development of real properties for use by, or for the benefit of, the University in support of 4_H programs.

7. Transfer title to the University of real property received by the Foundation for the use or benefit of 4H programs as a gift, grant, conveyance, devise, bequest or otherwise, upon receipt of title or beneficial ownership, provided not inconsistent with donor restriction or intent and subject to agreement between the Foundation and the University. Foundation shall be solely responsible and liable for any damages to persons or property resulting from use of any property held in the name or for the benefit of the Foundation. The Foundation shall obtain commercial general liability insurance covering such liability in the amount of \$~~2~~2-million. Such insurance shall be primary and non-contributory and shall name the University as an additional insured.

8. Accept, hold, administer, invest and disburse funds and properties of any kind or character as from time-to-time may be given to it, in accordance with the terms of such gift;

9. Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the University's 4-H programs.

10. Use all assets and earnings of the Foundation for the benefit of the Washington State University 4-H Program, including using grants restricted to the use of 4-H affiliates or local 4-H clubs for the benefit of those affiliates and clubs so long as the use remains consistent with the goals established by the University's 4-H program, or for payment of necessary and reasonable administrative expenses of the Foundation. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the Foundation or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred;

11. Not merge, consolidate, or change the Foundation's Restated Articles of Incorporation or its Restated Bylaws without 60 days advance written notice to the University.

B. The University shall:

1. Provide the Foundation, without cost, office space, including utilities, use of office furniture, file cabinets, and associated equipment, and warehouse space for temporary storage of donated materials and equipment;

2. Provide the Foundation with use of office machines, materials and services as reasonably required for its operation. Such material and services should be consistent with the Foundation's annual operating budget established and agreed to by the University and the 4-H Foundation;

3. Communicate and collaborate with the Foundation in the development of its fund-raising programs and campaigns, including providing information, data, plans,

speakers, facilities for meetings on the University campus and access to Extension's Marketing, News and Educational Communications Unit as may be reasonable and such other materials and services as may be reasonable-necessary for the successful conduct of fund raising programs and campaigns;

4. Consult with the Foundation prior to the University's assignment of an employee who will serve as the executive director of the Foundation's activities. ~~A University employee who serves as Executive Director of the Foundation will be responsible for the day-to-day management of the Foundation.~~In the event that the University does not assign an employee to serve as Executive Director, the Foundation may elect to employ or contract with a person or entity to provide such services. If the Foundation does so employ or contract, it shall be solely responsible and liable for any and all actions or omissions of the employee or contractor, all compensation and benefits, and compliance with all local, state, and federal laws and regulations applicable to such contractor. The Foundation shall purchase commercial general liability and automobile liability insurance to cover such liabilities in the minimum amount of \$2 million per occurrence. Such insurance shall be primary and non-contributory and shall name the University as an additional insured; ~~and~~

5. Comply with the terms of any gift use agreement regarding real property transferred to the University for the benefit or use of the University's 4-H programs, pursuant to Paragraph A.7 above.

6. Provide real estate services with the respect to the acquisition, disposal, and management of real property donated to the University for the use or benefit of the University 4-H programs.

II. ACCOUNTING AND AUDITING

~~—To provide proper accounting and auditing for the property and services provided by each party under Article I:~~

A. The Foundation is a separate entity from the University; it is not an affiliate or subordinate organization of the University. Pursuant to its Bylaws and Washington law relating to nonprofit corporations, it shall periodically be audited or a compilation and reconciliation completed by a certified public accountant or reputable independent accounting firm selected by the Foundation. ~~Accounting and fiscal functions shall be performed by the Foundation's program coordinator with outside assistance as needed from professional accountants and auditors and with oversight by the Foundation's Board of Directors and its Audit and/or Finance Committees.~~

B. The University is a state institution of higher education, and shall be audited by the State Auditor's Office.

~~B. —Before each fiscal year (July 1 through June 30), the CAHNRS business office, in collaboration with the 4 H Foundation, shall prepare a budget showing all anticipated transactions and services under this Agreement for that upcoming year, including all space and equipment, supplies, personnel, and other services the University expects to provide to the Foundation. The presidents of the Foundation and the University, and/or their designees, will review and approve that budget, which shall be an Addendum to this Agreement to be executed annually.~~

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C. The Foundation shall permit the president of the University, or the president's designee, to inspect and/or copy all Foundation books, accounts and records at all reasonable times in order to determine compliance with the commitments made in this Agreement. The president's designee may include institutional or state auditors. Nothing herein shall be deemed to affect the rights and responsibilities of the State Auditor.

~~C. The value of all space and equipment, supplies, personnel, and other services which the University provides to the Foundation, where the costs of are not paid to the University by the Foundation, shall not exceed the agreed upon budget in any fiscal year. The University, through the CAHNRS business office, will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded. The CAHNRS business office will annually prepare, and the presidents of the Foundation and the University and/or their designees will annually review, a post closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.~~

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D. To provide proper accounting and auditing for the property and services provided by each party under Article I, (The Foundation shall:

1. Perform accounting and fiscal functions. These functions will be performed by the Foundation's program coordinator with outside assistance as needed from professional accountants and auditors and with oversight by the Foundation's Board of Directors and its Audit and/or Finance Committees, annually confirm to the University that it has fully complied with its obligations under this agreement. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the University its revenue and expense statements for the preceding year and its end-of-year balance sheet.

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2. Before each fiscal year (July 1 through June 30), the Foundation's Executive Director and/or their designee shall present to the CAHNRS Business and Finance Office Director and/or their designee an operating budget showing projected reasonable operating expenses for the upcoming fiscal year, including supplies, travel and other expenses needed for successful 4-H fund raising campaign activities. Annual operating budget shall be negotiated by both Parties. Final operating budget shall be an Addendum incorporated into this Agreement to be executed annually.

3. Establish a separate Memorandum of Agreement (MOA) with the University for Foundation staff personnel costs, which shall be updated with an annual addendum -on or before the start of each calendar year. A separate Addendum executed annually will support the Memorandum of Agreement. The Parties shall insure that in all instances where a University employee serves as staff to the Foundation said employee shall not have signature authority for the University, and internal controls shall be in place to prevent a conflict of interest.

4. The Foundation shall semi-annually confirm to the University that is has fully complied with its obligations under this agreement. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the University (CAHNRS Budget and Finance Office Director or their designee) its revenue and expense statements for the preceding year and its end-of-year balance sheet on June 30.

~~E. The Foundation is a separate entity from the University; it is not an affiliate or subordinate organization of the University. Pursuant to its Bylaws and Washington law relating to nonprofit corporations, it shall periodically be audited or a compilation and reconciliation completed by a certified public accountant or reputable independent accounting firm selected by the Foundation.~~

~~E. F. The University shall: is a state institution of higher education, and shall be audited by the State Auditor's Office.~~

~~1. Before each fiscal year (July 1 through June 30), the CAHNRS Business and Finance Director and/or their designee, in collaboration with the Foundation, review and negotiate the Foundation's annual operating budget showing all anticipated transactions and services under this Agreement for the upcoming year, including all space and equipment, supplies, personnel, travel, and other services the University expects to provide to the Foundation. The presidents of the Foundation and the University, and/or their designees, will review and approve the budget, which shall be an addendum incorporated into this Agreement to be executed annually.~~

~~2. The value of all space and equipment, supplies, personnel, and other services which the University provides to the Foundation, where the costs of are not paid to the University by the Foundation, shall not exceed the agreed upon operating budget in any fiscal year. The University, through the CAHNRS Business and Finance Office Director and/or their designee, will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded.~~

~~3. The CAHNRS Business and Finance office will annually prepare, and the presidents of the Foundation and the University and/or their designees will annually review, a post-closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.~~

~~G. The Foundation shall permit the president of the University, or the president's designee, to inspect and/or copy all Foundation books, accounts and records at all reasonable times in order to determine compliance with the commitments made in this Agreement. The president's designee may include institutional or state auditors. Nothing herein shall be deemed to affect the rights and responsibilities of the State Auditor.~~

III. OTHER AGREEMENTS

A. Independent Capacity: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an agent or representative of the other party.

B. No Indemnification: Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

C. No Assignment: This agreement is not assignable by either party, in whole or in part.

D. Governing Law and Disputes: This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, a party, through its president, shall meet with the president of the other party and attempt in good faith to

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resolve the disagreement. Venue of any action hereunder shall be in Whitman County Superior Court.

E. Disputes: Except as otherwise provided in this Agreement, when a dispute arises between the Parties and it cannot be resolved by direct negotiation, any party may request a dispute resolution panel (DRP). A request for a DRP must be in writing, state the disputed issues(s), state the relative positions of the Parties and be sent to all Parties. Parties must provide a response within thirty (30) days unless the Parties mutually agree to an extension of time. Each party shall designate a representative. The representatives shall mutually select an additional member. The DRP shall evaluate the facts, Agreement terms, and applicable statutes and rules and make a determination by majority vote. The decision is binding on the Parties.

Nothing in this Agreement shall be construed to limit the Parties' choice of a mutually acceptable dispute resolution method in addition to the dispute resolution procedure outlined above.

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F. Entire Agreement: This constitutes the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such agreements shall be in writing and signed by the parties.

G. Modification: No alteration or modification of any term of this Agreement shall be valid unless made in writing and signed by the parties.

H. Termination: This agreement shall continue until terminated. It may be terminated by either party upon written notice to the other party at least sixty (60) days in advance thereof. If the Foundation is dissolved or liquidated, all assets of the Foundation shall be distributed in a manner consistent with Article 3.2.2 of the Foundation's Restated Articles of Incorporation, subject only to the terms of any restrictive gift use agreements in compliance with the intent of the donors to the Foundation and with the law.

I. Notices: All official notices required under this agreement shall be given as follows:

Notice to the University: Vice President for Business Affairs and Finance
4432 French Administration Building
Washington State University
Pullman, WA 99164-1045

Notice to the Foundation: Washington State 4-H Foundation
President
2606 W Pioneer
Puyallup, WA 98371-4998

Either party may change the address to which notice shall be sent by providing the other with written notice of the change.

J. Ownership of Donor Records: All records, notes, documentation, including records relating in any manner to expenditures made, or gifts, bequests, donations to or donors of the Foundation, shall be and remain the sole property of Foundation. Unless otherwise required by law, the University agrees not to make any Foundation documents, records or other information whether written, or in any other form, available to a third party without first

providing the Foundation notice of its intend to disclose records so that the Foundation has the opportunity to contest disclosure in court pursuant to RCW 42.~~56.540~~17.330.

K. Severability. In the event that any portion of this Agreement is determined or held to be unenforceable, including by an opinion of the Attorney General or a court order to a party to act other than in accordance with this Agreement, such unenforceability shall not constitute a breach of this Agreement and shall not affect the remaining terms and provisions of this Agreement.

IV. SIGNATURES

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties on this ____ day of _____, 200__.

WASHINGTON STATE UNIVERSITY

WASHINGTON STATE
4-H FOUNDATION

By _____
Scott Carson, Chair
Washington State University Board of Regents
Board of Regents

By _____
John Bernard
Washington State 4-H Foundation
Board of Trustees

By _____
Elson S. Floyd, President
Washington State University

By _____
Linda Bailey, Executive Director
Washington State 4-H Foundation

By _____
Richard Koenig, Director
Washington State University Extension

Approved as to form:

By: _____
Danielle Hess, Sr. AAG
Attorney for WSU