

**UNIVERSITY OF MINNESOTA**

**BOARD OF REGENTS**

**December 14, 2007**

A meeting of the Board of Regents of the University of Minnesota was held on Friday, December 14, 2007, at 9:00 a.m. in the Boardroom, 600 McNamara Alumni Center.

Regents present: Patricia Simmons, presiding; Clyde Allen, Anthony Baraga, Dallas Bohnsack, Maureen Cisneros, Linda Cohen, John Frobenius, Venora Hung, Steven Hunter, Dean Johnson, David Larson, and David Metzen.

Staff Present: President Robert Bruininks; Chancellors Charles Casey, Jacqueline Johnson, and Stephen Lehmkuhle; Senior Vice President and Provost Thomas Sullivan; Senior Vice Presidents Frank Cerra and Robert Jones; Vice Presidents Kathryn Brown, Carol Carrier, Karen Himle, Timothy Mulcahy, Kathleen O'Brien, and Richard Pfitzenreuter; General Counsel Mark Rotenberg; Executive Director Ann Cieslak; and Associate Vice Presidents Gail Klatt and Michael Volna.

**RECOGNITIONS**

Recognition was given to Gunda Georg, McKnight Presidential Chair in Medicinal Chemistry; Robert Hecky, McKnight Presidential Professor in Biological Limnology; and David Wilkins, McKnight Presidential Professor in American Indian Studies.

**APPROVAL OF MINUTES**

A motion was made and seconded, and the Board of Regents voted unanimously to approve the minutes of the following meetings:

Audit Committee – November 8, 2007  
Educational Planning & Policy Committee – November 8, 2007  
Facilities Committee – November 8, 2007  
Finance & Operations Committee – November 8, 2007  
Board of Regents – November 9, 2007

**REPORT OF THE PRESIDENT**

President Bruininks reported that the past year has been one of considerable progress in a number of strategic areas. He reported on trends and goals in the number of students participating in an international experience and study abroad. He discussed the University's continuing emphasis on "access to success," (efforts to keep higher education affordable), scholarships, and the impact this financial support has had on student retention rates.

The President spoke about the University's commitment to sustainability and how the institution is addressing energy consumption, environmental issues, climate change, pollution, food production, and stewardship of resources.

He noted the Nobel Prize award ceremony for Professor Leonid Hurwicz earlier in the week and also acknowledged the retirement of Vice Provost and Dean for Undergraduate Education Craig Swan.

#### **REPORT OF THE CHAIR**

Chair Simmons noted the passing of Regent Emeritus Thomas Reagan earlier in the month, and expressed appreciation to Regent Metzen, who represented the Board at the memorial ceremony.

Simmons noted that the next Board of Regents meetings are scheduled for February 7-8, 2008. On behalf of the Board, she extended best wishes for 2008 to the University community.

#### **RECEIVE AND FILE REPORTS**

Chair Simmons noted the receipt and filing of the Quarterly Report of Grant and Contract Activity and the Annual Financial Report.

#### **CONSENT REPORT – AUDIT COMMITTEE**

Associate Vice President Klatt presented the Consent Report as detailed in the docket materials, including the engagement of an audit firm with a value greater than \$25,000 to:

- McGladrey & Pullen, Certified Public Accountants, by the University's Office for Technology Commercialization, for agreed-upon procedures for the period April 1, 2002 through June 30, 2007. This contract is for a value not to exceed \$43,500.

A motion was made and seconded, and the Board of Regents voted unanimously to approve the Consent Report.

#### **GIFTS**

Foundation President Gerald Fischer presented the list of gifts to the University of Minnesota, the University of Minnesota Foundation, the Arboretum Foundation, and the Minnesota Medical Foundation through October 31, 2007.

A motion was made, seconded, and the Board of Regents voted unanimously to approve the receipt of gifts as presented.



WHEREAS, detailed project cost estimates and program planning for the new Ambulatory Care Center are actively underway and significant progress is being made with a goal of constructing this project late next year; and

WHEREAS, the creation of the new Ambulatory Care Center will entail the development and implementation of a complex operational, financial and legal partnership involving the University of Minnesota Physicians, Fairview Health System and the Academic Health Center; and

WHEREAS, the infrastructure associated with a new Ambulatory Care Center interfaces with the broader infrastructure of the Academic Health Center precinct and requires further evaluation and coordination to address technical and operational interdependencies; and

WHEREAS, numerous critical schedule, operational and financing variables associated with the Ambulatory Care Center resulted in a judgment that this complex project had the potential to distract from higher priority capital projects facing the University.

NOW, THEREFORE, BE IT RESOLVED that the Board of Regents approves a modification of the University's 2008 State Capital Request to the State of Minnesota by the removal of the \$20,000,000 Ambulatory Care Center infrastructure project resulting in a revised 2008 State Capital Request totaling \$288,000,000 consisting of \$225,300,000 from the State of Minnesota and \$62,700,000 from the University of Minnesota.

#### **BOARD OF REGENTS POLICY: MISSION STATEMENT**

Chair Simmons presented proposed amendments to Board of Regents Policy: *Mission Statement*, as included in the docket materials. The proposed amendments are not substantive and are intended to update language and formatting to provide consistency with other Board policies.

Regent Larson noted that many effective mission statements are quite brief and suggested a more concise statement be considered.

The policy will return for action at the February 2008 Board of Regents meeting.

#### **REPORT OF THE STUDENT REPRESENTATIVES TO THE BOARD OF REGENTS**

Meghan Keil, Chair of the Student Representatives to the Board of Regents, presented their semi-annual report. The report reflected the student perspective on issues and concerns facing University students and identified issues explored by Student Representatives. The report addressed: sustainability; student assessment of faculty instruction; Twin Cities campus safety; and technology in the classroom and access to student academic resources.

President Bruininks complimented the Student Representatives on their report. He described the impact of several sustainability practices underway, and discussed ways in which the administration is addressing campus safety.

A copy of the report is included in the docket materials on file in the Board Office.

### **ANNUAL REPORT ON THE STATUS OF UNIVERSITY RESEARCH**

Vice President Mulcahy presented the Annual Report on the Status of University Research Programs as provided in the docket and associated materials distributed at the meeting and on file in the Board Office. Included in the report were research statistics for FY2007; ten-year trend analysis of research expenditures reported by the National Science Foundation; comparative analysis with other public research universities; and strategies to increase research competitiveness.

Key highlights of the report indicated that research awards for FY2007 totaled \$619 million, a 7.5 percent increase from FY2006. Expenditures totaled \$548 million, an increase of 5.7 percent over the previous year. Award totals increased significantly in several colleges: Academic Health Center shared units; the School of Public Health; College of Liberal Arts; the Institute of Technology; and the College of Veterinary Medicine. Mulcahy noted that patent and licensing activity continues to be strong, with the institution ranking sixth nationally in terms of revenue generation from university-based technologies.

Mulcahy discussed several research expenditure trends. He reported that in 2006, University research expenditures reached \$595 million, an 8.4 percent increase over 2005. This growth was the second largest increase among top twenty public research universities and among top twenty universities public and private included, which reflects strategic positioning initiatives implemented at the University. Among public institutions, the University ranked 9<sup>th</sup> in 2006, up from 10<sup>th</sup> in 2005.

Mulcahy noted that declining levels of federal funds appropriated for research support have had a profound impact on the University's research portfolio. He stressed the importance of generating additional institutional support for research and identified trends in major categories of research support available. He cited increased support from business and industry and those sectors of the economy that are growing as ways to diversify research portfolios.

Mulcahy discussed ranking systems developed to illustrate different perspectives on relative strengths of research programs that can be used in conjunction with expenditure statistics and other quality measures to better inform an evaluation of overall quality and standing among peer institutions. He described where this institution ranks strongly within the various parameters of the three rankings systems and where additional attention is needed.

Mulcahy concluded by stating that, though early, the data suggest that strategic positioning initiatives are beginning to move the University toward its aspirational goals.

In response to a question from Regent Frobenius, Mulcahy agreed that there are capacity concerns in the medical and health sciences areas. He stressed that increasing and enhancing physical capacity, both in terms of additional laboratory

space and upgraded laboratory space, is critical in order to remain competitive, attract top faculty and researchers, and maintain or advance in research rankings.

### **ANNUAL FINANCIAL REPORT**

Vice President Pfitzenreuter and Acting Controller Denise Seck presented an overview of the 2007 Annual Financial Report, as detailed in the docket materials and associated materials distributed at the meeting.

Seck reported that the University's balance sheet continues to be strong. Total assets increased by \$590.0 million or 15 percent over the prior year, due partly to favorable returns on investments during FY2007 and to bond proceeds of \$148 million earmarked for the TCF Bank Stadium project. Property, plant, and equipment increased as a result of multiple capital improvement projects. Future financial strength remains dependent on new sources of revenue, cost containment, and state support. She reported that University liabilities increased as well by \$244.3 million, or 21 percent, with the most significant increase in the area of long-term debt associated with the issuance of Commercial Paper and Special Purpose Revenue Bonds.

Seck reviewed details of the balance sheet, the statement of revenue and expenses, and changes in net assets. She provided information related to total revenues and revenue sources, and provided a summary of cash flows.

Seck discussed future reporting requirements that will impact financial statement reporting beginning in FY2008.

### **REPORT OF THE FINANCE & OPERATIONS COMMITTEE**

Regent Hunter, Chair of the committee, reported that the committee voted unanimously to recommend:

- a) Approval of the Consent Report for the Finance & Operations Committee as presented to the committee and described in the December 13, 2007 minutes.

The Board of Regents voted unanimously to approve the recommendation of the Finance & Operations Committee.

Hunter reported that the committee also discussed: issues related to the Annual Financial Report; an overview of invested assets; and the Six-Year Capital Improvement Plan/Debt Capacity Update; and also reviewed the information items included in the docket materials.

### **REPORT OF THE EDUCATIONAL PLANNING & POLICY COMMITTEE**

Regent Larson, Chair of the committee, reported that the committee voted unanimously to recommend:

- a) Approval of the Consent Report for the Educational Planning & Policy Committee as presented to the committee and described in the December 13, 2007 minutes.

- b) Adoption of Board of Regents Policy: *Commercialization of Intellectual Property Rights*.

### **Commercialization of Intellectual Property Rights**

#### SECTION I. SCOPE.

This policy governs patents and the ownership, commercialization, and dissemination of intellectual property rights in technology created at the University of Minnesota (University).

#### SECTION II. EXCLUSIONS.

Subd. 1. Copyright. With the exception of the commercialization of intellectual property rights in software owned by the University, this policy shall not apply to the ownership or use of copyrighted works that are governed by other Board of Regents (Board) or administrative policies.

Subd. 2. Trademarks. With the exception of intellectual property rights in University trademarks that identify University-owned plant varieties or that are commercialized in conjunction with other technology covered by this policy, this policy shall not apply to the use of University-owned or licensed names, trademarks, or service marks.

Subd. 3. Equity Interests. This policy shall not apply (a) to the University's acquisition of equity securities in a publicly held company or appointment of a voting member to the governing body of a publicly held company or (b) to the acquisition of equity securities of a publicly held company by a University employee.

#### SECTION III. DEFINITIONS.

Subd. 1. Inventor. Inventor shall mean a University employee, student, or post-doctoral or other fellow who invents technology.

Subd. 2. Technology. Technology shall mean the following items and their related intellectual property rights:

- (a) a discovery or invention, patentable or not;
- (b) software owned by the University; and
- (c) trademarks owned by the University that identify University-owned or University-licensed plant varieties or that are commercialized in conjunction with other technology covered by this policy.

Subd. 3. University Official. University official shall mean a person defined as a University official in Board of Regents Policy: Institutional Conflict of Interest and any person covered by administrative policies or procedures implementing that policy.

Subd. 4. Controlling Equity Interest. Controlling equity interest shall mean the University's ownership of equity securities of a licensee sufficient to grant the University the power to direct the licensee's management. The University shall be considered to have a controlling equity interest in a licensee under this policy if:

- (a) the University owns a majority of the voting equity interest in the licensee; or
- (b) the University has the power to appoint a majority of the voting members of the governing body of the licensee.

Subd. 5. Licensee. Licensee shall mean a for-profit, privately held company to which the University licenses or assigns intellectual property rights in University-owned technology.

Subd. 6. Net Income. Net income shall mean the gross monetary payments the University receives as a result of transferring rights in the technology less the University's out-of-pocket expenditures (including legal fees) directly attributable to protecting, developing, and transferring that technology.

#### SECTION IV. GUIDING PRINCIPLES.

The following principles shall guide the University in commercializing technology:

- (a) The primary mission of University research is the generation and dissemination of knowledge, and academic freedom requires that faculty, staff, and students be free to pursue areas of research and study without regard to the potential for the creation of inventions.
- (b) The development and dissemination of new knowledge, technology, or scientific procedures resulting in innovative products, practices, and ideas is a valued supplement to scholarly publications.
- (c) University commercialization activities shall not inhibit the ability of University researchers to pursue research of their choosing, to publish results of their work in a timely manner, and otherwise to exercise their rights of academic freedom.
- (d) Licensing University-owned technology to private companies promotes the University's interest in successful commercial development of University-owned intellectual property. In some circumstances, a non-commercial method of distribution, such as open source sharing of technology or licensing for humanitarian needs, may be the preferred method of providing public access to, and use of, University discoveries.
- (e) The University may own a controlling equity interest and assert control over the direction and management of a licensee only when doing so

- (1) enhances the potential for the licensee to successfully develop and make available to the public useful products and services and
- (2) increases the potential value of the University's investment.

#### SECTION V. OWNERSHIP OF TECHNOLOGY.

Subd. 1. Ownership. The University shall be the sole owner of all rights, titles, and interests (including intellectual property rights) in and to technology:

- (a) created by University employees in the course of their employment;
- (b) created by students or post-doctoral or other fellows in the course of their academic duties or appointments; or
- (c) created by individuals, including employees, students, or post-doctoral or other fellows, using substantial University resources.

Subd. 2. Assignment of Intellectual Property Rights. Inventors assign to the University all rights, titles, and interests, if any, in and to technology owned by the University.

Subd. 3. Ownership Under Third Party Agreements. Ownership of and rights in technology are subject to the terms of written agreements between the University and third parties under which the University, solely or in collaboration, conducts research or other activities. Under these agreements, the University may claim, disclaim, or otherwise grant or accept rights in technology as appropriate and desirable.

Subd. 4. Waiver of University Rights. Consistent with administrative policies and procedures, the president or delegate is authorized to waive or otherwise assign to an inventor all or part of the University's rights, titles, or interests in or to a technology created by the inventor.

Subd. 5. Rights to Publish. At the University's request, inventors shall delay the publication or public disclosure of any descriptions of technology for a brief period of time to permit the registration, application for, and protection of the intellectual property rights in the technology.

Subd. 6. Rights to Third Parties. The president or delegate may assign, license, or otherwise grant a third party the right to use technology royalty-free or in exchange for cash, stock or other securities, or other tangible or intangible property.

SECTION VI. DISTRIBUTION OF INCOME FROM COMMERCIALIZATION OF TECHNOLOGY.

The University shall share with inventors the net income from the commercialization of technology as follows:

- (a) thirty-three and one-third percent to the inventors;
- (b) twenty-five and one-third percent to the department, division, or center that supported the creation of the technology, to be spent in support of the inventor's research or directly related University work;
- (c) eight percent to the collegiate unit that supported the creation of the technology; and
- (d) thirty-three and one-third percent to the Office of the Vice President for Research, to be spent in support of the University's technology commercialization activities and to fund University research and scholarly activity.

The president or delegate may change the distribution to collegiate units or to departments, divisions, or centers if such amounts become disproportionate compared to their budgets or if there have been administrative organizational changes, including an inventor's movement among units or departments. The president or delegate also may distribute to inventors a portion of the net income from commercialization of technology in the form of a bonus or salary supplement.

SECTION VII. EQUITY, CONTROLLING INTERESTS, AND ASSISTANCE WITH COMMERCIALIZATION.

Subd. 1. Disposition of Equity Securities. The University shall sell the equity securities acquired under this policy as soon as prudent and in strict compliance with all applicable federal and state laws. The cash proceeds derived from the sale of equity securities shall be distributed in the same proportions as income derived from technology.

Subd. 2. Acquiring a Controlling Equity Interest in the Commercialization of Technology. In acquiring, as part of a transaction to commercialize technology, a majority or other equity interest in a company that grants the University the power to direct the company's management or the power to appoint a majority of the voting members of the governing body of the company, the following prohibitions shall apply:

- (a) Except as permitted under other applicable Board policies, the University shall not make a cash investment in, lend money to, or guarantee the obligations of the company; and
- (b) University officials shall not purchase or invest, directly or indirectly, in the equity securities of a licensee as long as the licensee is privately held, except that University employees who are not University officials may purchase or invest, directly or indirectly, in such equity securities if

permitted under Board of Regents Policy: Individual Business or Financial Conflict of Interest and other applicable Board policies.

Subd. 3. Appointment of Voting Members to Governing Bodies as Part of the Commercialization of Technology. The president shall appoint voting members to the governing bodies of privately held companies commercializing technology. A University-appointed member shall:

- (a) be a University employee with demonstrated experience and competence in technology commercialization and in the creation, management, and capitalization of privately held companies; and
- (b) be reasonably insured against liability arising from service on the governing bodies of such companies.

A University-appointed member:

- (a) shall not accept compensation for service as a member of the governing body of the company, but may accept reasonable reimbursement for service-related expenses;
- (b) shall comply with University policies and procedures;
- (c) shall discharge fiduciary and contractual responsibilities to the company, subject to the performance of University duties as provided in Board and other University policy and procedures; and
- (d) shall resign as a voting member of the governing body of the company prior to the company's becoming publicly held, unless the president or delegate approves an extension of the appointment.

Subd. 4. Use of Technology Commercialization Income to Assist Commercialization by Non-University Entities. The president or delegate may authorize non-University entities to use income the University earns from technology commercialization to directly encourage, promote, or assist with the commercialization and development of University intellectual property. The commitment of financial support for particular projects shall not exceed \$250,000, consistent with Board of Regents Policy: Reservation and Delegation of Authority.

#### SECTION VIII. REPORTING.

The president or delegate shall report annually to the Board on University activities under this policy.

#### SECTION IX. IMPLEMENTATION.

The president or delegate shall implement this policy and maintain appropriate policies and procedures to administer it.

SUPERSEDES: Educational Materials dated April 14, 1967, Patent and Technology Transfer dated October 10, 1986, Intellectual Property adopted October 8, 1999, Use of Royalty Income to Support Technology Commercialization adopted March 12, 2004, and Acquiring Controlling Equity Interests in Technology Licensees adopted December 8, 2006.

- c) Adoption of Board of Regents Policy: *Copyright*.

## **Copyright**

### SECTION I. SCOPE.

This policy applies to copyrighted works created by faculty; post-doctoral fellows, researchers, and scholars; students; and other employees of the University of Minnesota (University).

### SECTION II. DEFINITIONS.

Subd. 1. Copyright Protection. *Copyright protection* subsists in original works of authorship fixed in a tangible medium of expression, as defined by United States copyright law.

Subd. 2. Work. *Work* shall mean a work protected under United States copyright law.

Subd. 3. Academic Work. *Academic work* shall mean a scholarly, pedagogical, or creative work, such as an article, book, textbook, novel, work of visual art, dramatic work, musical composition, course syllabus, test, or class notes.

Subd. 4. Faculty. *Faculty* shall mean members of the faculty as defined by Board of Regents Policy: *Employee Group Definitions*, along with individuals who are not so defined but who are University employees holding faculty-like appointments (namely, University employees who teach or conduct research at the University with a level of responsibility and self-direction similar to that exercised and enjoyed by faculty in a similar activity). Post-doctoral fellows, researchers, and scholars shall have the same ownership rights as faculty and are covered under this policy.

Subd. 5. Student. *Student* shall mean a registered student at the University.

Subd. 6. Directed Work. *Directed work* shall mean a work agreed upon between the University and faculty creator(s), the creation of which is based on a specific request by the University and which is supported by substantial University resources beyond those customarily provided to faculty in the respective discipline and University unit.

### SECTION III. GUIDING PRINCIPLES.

- (a) The University's mission articulates a commitment to sharing knowledge through education for a diverse community and application of that knowledge to benefit the people of the state, the nation, and the world. In this spirit, the University encourages faculty and students to exercise their interests in ownership and use of their copyrighted works in a manner that provides the greatest possible scholarly and public access to their work.
- (b) The University shall maintain the strong academic tradition that vests copyright ownership of academic works in the faculty.
- (c) The University recognizes the importance of intellectual freedom and autonomy in the creation, use, and dissemination of scholarly works.
- (d) The University is committed to promoting a culture in which access, exchange, and lawful use of materials are regarded as fundamental to both the process and goals of scholarly inquiry.

### SECTION IV. COPYRIGHT OWNERSHIP.

Subd. 1. Ownership of Academic Works. Consistent with academic tradition, University faculty and students shall own the copyright in the academic works they create, except for academic works described below in Section IV, subd. 2(b)-(e), or unless otherwise provided in a written agreement between the creator(s) and the University.

Subd. 2. University Ownership. The University shall own the copyright in the following works created by University faculty, other employees, or students, acting individually or jointly with others:

- (a) works created by University employees acting within the scope of their employment, except for academic works created and owned by faculty under this policy;
- (b) directed works;
- (c) works specially ordered or commissioned by the University and for which the University has agreed, in writing, to specially compensate or provide other support to the creator(s);
- (d) works created in connection with the administration of the University; and
- (e) works created pursuant to a contract with an outside sponsor that provides University ownership of the copyright in the works.

Subd. 3. Written Acknowledgments. The University and University faculty, other employees, and students shall execute necessary or desirable written instruments or agreements to evidence and protect ownership of copyright and copyright licenses consistent with this policy.

Subd. 4. Ownership Under Sponsored and Other Outside Funded Agreements. The ownership of copyright in works created under an agreement with an outside sponsor shall be determined consistent with the terms of the agreement and applicable law.

Subd. 5. Works Created by Independent Contractors. Copyright ownership in works created by independent contractors shall be determined consistent with applicable law and the contract between the University and the independent contractor. In most instances, the University shall enter into appropriate written contracts with independent contractors before services are provided to the University that may result in the creation of copyrighted works.

#### SECTION V. EXCLUSIONS.

Nothing in this policy shall be construed to preclude the University and faculty and students from entering into written agreements governing the use, licensing, or sharing of licensing revenues with each other with respect to works, whether such works are owned by the University, the faculty, or students under this policy.

#### SECTION VI. IMPLEMENTATION.

The president or delegate shall implement this policy and maintain appropriate policies and procedures to administer it.

**SUPERSEDES:** Portions of *Intellectual Property* adopted October 8, 1999.

The Board of Regents voted unanimously to approve the recommendations of the Educational Planning & Policy Committee.

Larson reported that the committee also received an update on undergraduate initiatives.

#### **REPORT OF THE FACILITIES COMMITTEE**

Regent Metzen, Chair of the committee, reported that the committee voted unanimously to recommend:

- a) Schematic plans for the Civil Engineering Building, Duluth campus, as presented to the committee and described in the December 13, 2007 minutes.

The Board of Regents voted unanimously to approve the recommendation of the Facilities Committee.

Metzen reported that the committee also received an update on the Twin Cities Campus Master Plan.

## **REPORT OF THE FACULTY, STAFF & STUDENT AFFAIRS**

Regent Frobenius, Chair of the committee, reported that the committee voted unanimously to recommend:

- a) Approval of the Consent Report for the Faculty, Staff & Student Affairs Committee as presented to the committee and described in the December 13, 2007 minutes.

The Board of Regents voted unanimously to approve the recommendation of the Faculty, Staff & Student Affairs Committee.

Frobenius reported that the committee also received reports on future healthcare trends, and on the health of University students; and discussed a number of information items included in the docket materials.

## **REPORT OF THE AUDIT COMMITTEE**

Regent Cohen, Chair of the committee, reported that the committee did not meet this month.

## **REPORT OF THE LITIGATION REVIEW COMMITTEE**

Regent Baraga, Chair of the committee, reported that the committee met in closed session on December 13, 2007 and no actions were taken.

The meeting adjourned at 11:18 a.m.



**ANN D. CIESLAK**  
**Executive Director and**  
**Corporate Secretary**