



HUMBOLDT STATE UNIVERSITY

Office of the President

December 21, 2020

Dear University Center Board of Directors:

With authorization and concurrence from Chancellor Timothy White, I write on behalf of the CSU and Humboldt State University in response to the University Center's ("UC") December 9, 2020 response to the CSU's September 24, 2020 notice of termination ("Response"). After careful consideration of the UC's responses and proposed cures to the six breaches identified in the CSU's notice of termination ("Termination Notice"), the CSU accepts the proposed cures for Breaches I and IV, for the reasons discussed herein. However, as detailed below, the CSU finds that the UC's proposed cures for Breaches II, III, V, and VI are not acceptable.

Breach I. 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 Operating Agreement.

CSU's Determination on Proposed Cures: The CSU accepts the proposed cures as it pertains to the authorization of a line of credit to the NHRPD. However, as noted below, the cures are not sufficient to rectify the breaches (II and III) resulting from the transfers of funds made pursuant to the line of credit agreement.

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

CSU's Determination on Proposed Cures: While the CSU accepts the UC's proposed cures pertaining to the authorization of a line of credit to the NHRPD (Breach I), the CSU finds that the breaches pertaining to the UC's transfers of funds pursuant to that line of credit (Breach II/III) have not been cured.

The UC's proposed cures relating to Breach I appear to correct underlying compliance issues and business practices that resulted in the UC's misuse of University and auxiliary funds. However, those proposed cures do not rectify Breach II and Breach III, whereby the UC transferred \$150,000 to the NHRPD in violation of the Operating Agreement. Those expenditures did not further the CSU's educational mission, and the UC made those transfers without adequate documentation or controls (as required by the Operating Agreement), which allowed \$50,000 to be transferred to the NHRPD for a purpose contrary to the terms of the line of credit agreement.

The UC's agreement with the NHRPD expired on September 30, 2020. But, nearly three months later, the UC is still owed more than \$75,000 from the NHRPD, and the UC's response provides no assurances on when this amount will be repaid. The gaps in the UC's controls and questionable decision-making have put University and auxiliary funds at risk and irreparably harmed the CSU's trust and confidence in the UC. The UC's proposed cures fail to remedy these issues, and therefore,

the CSU finds that Breach II has not been cured.

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

CSU's Determination on Proposed Cures: For the reasons discussed under Breach II, the CSU finds that the proposed cures do not rectify Breach III, whereby UC transferred \$50,000 to the NHRPD for operating costs in violation of Section 2, Section 4, and Exhibit A of the Operating Agreement, as well as the line of credit agreement between the UC and NHRPD. Therefore, the proposed cures are not acceptable and do not rectify Breach III.

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

CSU's Determination on Proposed Cures: The CSU accepts these cures related to Breach IV. The 90-day termination notice given to the NHRPD is acceptable.

Breach 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 Operating Agreement.

CSU's Determination on Proposed Cures:

Quarterly Financial Statements: On November 19, 2020, the UC provided the CSU with quarterly financial statements from 2018 to the present. The CSU accepts this proposed cure with respect to the UC's obligation to submit quarterly financial statements.

Letters of Attestation: The Operating Agreement requires the UC to provide a "Letter of Attestation" that attests to the UC's compliance with Exhibits A and B of the Operating Agreement, "annually, on or before July 1st." On November 8, 2020, the Interim Executive Director submitted a Letter of Attestation for Fiscal Year 2020-21 stating that the "UC is in compliance" with the exhibits to the Operating Agreement. That letter also states:

In the event UC is not in compliance, please note those items and describe the action that will be taken to resolve those items.

UC is currently undergoing a CO Advisory Audit. UC management and the Board of Directors will be working to resolve any items that are identified to not be in compliance as a result of this audit as soon as possible.

While unclear, it appears that the UC proposes, for Fiscal Years ending July 1, 2019 and July 1, 2020, that the Interim Executive Director make a belated attestation "on information and belief" rather than first-hand knowledge, or that the CSU forgive that requirement for those years. The CSU cannot accept those proposed cures to the UC's failure to timely attest to its compliance with the Operating Agreement's exhibits when the UC is in breach of Exhibit A, as noted in the Termination Notice.

Review of Internal Controls and Proper Segregation of Duties: The UC's Response states that it "attached a document confirming that the University Center has reviewed its internal controls and segregation of duties" and that "this report is being submitted to the HSU President or designee and the University Center's Board of Directors for review and consideration." We did not locate said

document among the attachments sent with the Response.

Nevertheless, by letter dated November 30, 2020, the UC described its review of the UC's internal controls and proper segregation of duties. While not clear from this letter, it appears that the UC performed this review "through its participation in the audit that is being conducted by the CSU." Although the review appears to have led the UC to address numerous underlying compliance issues and business practices, the UC's belated review and report do not rectify this breach. Indeed, while the UC has apparently instituted a new policy to prevent the types of transfers at issue in Breaches II and III from happening in the future, the fact remains that the UC allowed those transfers to occur via procedures that had not been properly reviewed during the term of the Operating Agreement, and the UC is still owed \$75,000 plus interest for those transfers.

The UC also cites to the fiscal year-end audit reports that purportedly "indicate that the University Center annually reviewed its internal controls and segregation of duties." Those reports were not among the attachments sent with the Response. However, the CSU did receive auditor management letters and communications relating to fiscal year-end audit reports and year-end reports on November 8, 2020 and November 19, 2020. Those submissions do not satisfy the UC's obligations under the Operating Agreement, as none of the documents provide any assurance regarding segregation of duties. Instead, the only document that appears to address segregation of duties—the 2020 Management Letter—notes that it "recommend[s] reviewing and policies in place to ensure segregation of duties remain intact" in light of turnover at the UC. Similarly, these reports do not constitute a review of internal controls. While the 2020 Management Letter offers suggestions for strengthening certain internal controls, the 2019 and 2020 auditor communications relating to the audit reports expressly state that the reports do not express "an opinion of the effectiveness of the University Center's internal control over financial reporting." In any event, the number of internal control issues within the UC lead to the conclusion that the UC has failed to adequately review its internal controls during the term of the Operating Agreement.

Therefore, the proposed cures are not acceptable and do not rectify Breach V.

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

CSU's Determination on Proposed Cures: The proposed cures do not rectify Breach VI, whereby the UC violated Sections 3 and 4 of the Operating Agreement when certain members of the Board refused to participate in the President's review of UC programs. Instead, the proposed cures, at best, merely restate the UC's obligations under the Operating Agreement.

Part of the President's review of UC programs consisted of a review by a third-party consultant. Despite being presented with the same authority supporting the President's program review as was presented in the Termination Notice, two Board Members refused to participate. The consultant was therefore unable to obtain the insight of these Board Members as part of its review. While the UC appears to dispute the relevancy of the Board Members to this review, the consultant noted in his report that the participating Board Members provided "ideas to advance and enhance student services," which strikes at the heart of the review's purpose. Rather than acknowledge the UC's shortcoming, the UC continues to dispute that the President had the authority to conduct this program review. *See* Response pp. 25-27.

The UC's proposed cures do not remedy this breach or provide any confidence that the UC understands its obligations under the Operating Agreement, such that this breach is capable of repetition in the future. Therefore, the proposed cures are not acceptable.

* * *

I hope the UC can appreciate that the CSU and HSU did not lightly send the Termination Notice or this letter. The CSU has carefully weighed the options available to it and considered the longstanding relationship between the UC, HSU, and the CSU. HSU has entrusted the UC to provide critical functions to the HSU community and its students, including dining, recreation and wellness services, and performing arts. The CSU regrets its conclusion that the requisite trust necessary between campus and auxiliary has been irreparably broken through the UC's breaches of the Operating Agreement, failure to cure, and failure to perform. These recent breaches also do not appear to be isolated incidents of mismanagement within the UC. The UC continues to suffer from a number of operational deficiencies that expose the UC, and by extension HSU, to potential liability. These gaps include control issues that have been raised with the UC in prior audits, yet remained unaddressed.

Due to these uncured contract breaches and the UC's continued operational challenges, the CSU no longer has confidence in the UC's performance of these critical campus functions at a time when our students need them most. Thus, the CSU has no other choice but to terminate the Operating Agreement. To facilitate the transition of services out of the University Center, the Operating Agreement will be terminated, **effective end of business January 8, 2021**. Over the next few weeks, the CSU will work with the UC on this transition to ensure that our students continue to receive these critical services following the Operating Agreement's termination.

We extend our deep and sincere gratitude to the University Center administrators, staff, student employees, vendors, and partners for their years of service, commitment, and dedication to the campus community and beyond.

Sincerely,



Tom Jackson, Jr., Ed.D.
President

Cc:

Timothy White, Chancellor, California State University
Dustin May, University Counsel, California State University
Sherie Gordon, Vice President for Administration and Finance, Humboldt State University
Jason Meriwether, Vice President for Enrollment Management, Humboldt State University
Wendy Sotomayor, University Center Director, Humboldt State University