

MEMORANDUM

To Board of Regents
From: Board Office
Subject: Iowa State University Foundation Service Agreement
Date: October 8, 2001

Recommended Actions: Approve the service agreement between Iowa State University and the Iowa State University Foundation.

Executive Summary:Legal Status

- The Iowa State University Foundation (Foundation) was established in 1958 as an independent organization pursuant to Iowa Code Chapter 504 of the 1954 Acts: CORPORATIONS NOT FOR PECUINARY PROFIT (superceded by current Iowa Code Chapter 504A: IOWA NONPROFIT CORPORATIONS ACT).
- The Foundation is organized for educational, scientific and charitable purposes as a tax exempt organization pursuant to 501[c][3] of the Internal Revenue Service Code.

Purpose of Foundation

- The Foundation seeks to promote the welfare of ISU and the ISU community.
- The Foundation identifies, cultivates and solicits donors for gifts and grants.
- The Foundation uses its assets exclusively for the benefit of the ISU and its community.

Service Agreement

- This service agreement clarifies the working relationship between the Foundation and ISU in serving and managing private gifts and grants that support ISU in its goal to become the nation's premier land-grant university.
- The president of ISU will be a voting member of the Foundation Board of Directors and its Executive Committee.
- At the request of ISU, Foundation will provide management of gifts to ISU, separate from the Foundation.
- The Foundation will lease employees from ISU until it can complete its compensation package (not later than July 1, 2002) for its own employees, including retirement and other benefits. The Foundation pays ISU's full cost of such employees and no employees shall be leased by the Foundation from ISU after December 31, 2002.
- The Foundation will have access from ISU, for fee, to administrative tools (phones, campus mail, etc...).

- The Foundation and ISU agree to preserve the confidentiality of confidential records maintained by each entity and shared with one another in furtherance of the purpose of this agreement.
- For development and fund raising services provided to ISU by the Foundation, ISU will pay the Foundation \$750,000 per year. (See Attachment A, pp. 30-31.)

Review of Agreement

- The University and Board Office have reviewed the Service Agreement with the Board's legal counsel in the Office of the Attorney General and all recommend approval of the Service Agreement as in the best interests of the University and the Board of Regents for fund raising activities and management of those funds.

Link to Strategic Plan:

Key Result Area 4.0.0.0 – “Meet the objectives of the Board and institutional strategic plans and provide effective stewardship of the institutions’ state, federal, and private resources.” This service agreement will assist the university in meeting its strategic objectives in private fund raising.

Background:

Legal Status

- In May 1958 the Board received from Iowa State College President Hilton copies of Articles of Incorporation for an Iowa State College Foundation.
- In June 1958 the Board approved of President Hilton proceeding with establishment of the Iowa State College Foundation.
- The Foundation was incorporated pursuant to Iowa Code Chapter 504: CORPORATIONS NOT FOR PECUINARY PROFIT when the Articles of Incorporation were filed with the Secretary of State on July 15, 1958.
- The Office of the Secretary of State reports the Articles of Incorporation have been amended six times since their original filing, most recently in June 2001 (Attachment B).
- Because of the independent nature of the Foundation, approval of the Board was not required to amend the Articles of Incorporation.

Objectives and Purpose of the Foundation (Attachment B, pp. 32-33)

- To promote the welfare of ISU, its faculty, graduates, students and former students;
- To identify, to cultivate and to solicit donors for the purpose of securing gifts and grants exclusively for the benefit of ISU; and
- To raise, to administer, and to disperse for educational and scientific purposes gifts, grants, bequests, and devises for the benefit of ISU.

Analysis:

Legal Status

- The Foundation is a not for profit corporation incorporated pursuant to Iowa Code Chapter 504A: IOWA NONPROFIT CORPORATION ACT.
- Legal counsel at ISU, the Board's legal counsel in the Office of the

Attorney General, and Board Office staff reviewed the Foundation's Articles of Incorporation and find that the Foundation is a corporation independent of ISU.

- There are business services exchanged by ISU and the Foundation which are being separated and clarified as appropriate for distinct business entities.

Foundations Obligations Pursuant to Service Agreement (Attachment A) -

- Raise, receive, invest and administer funds for ISU for charitable, scientific, and educational purposes;
- Assist the University and colleges in their fundraising activities;
- Perform other mutually agreed upon acts as appropriate;
- Plan fundraising strategy with the ISU president;
- Conduct donor research;
- Accept gifts in accordance with donor requests (inconsistencies and concerns will be reconciled with ISU prior to acceptance) consistent with mutually agreed priorities and mutually agreed gift acceptance guidelines;
- Distribute gifts and endowments as appropriate (See detail, Attachment A, pp. 9-10);
- Maintain and keep confidential records of alumni and friends of ISU and data used by the Foundation in its fundraising activities;
- Maintain tax exempt status of the Foundation;
- Separately manage and account for funds held by ISU as donations to ISU, as requested by ISU;
- Apprise the ISU president of any changes in investment policy of the Foundation Board of Directors;
- Maintain general comprehensive liability insurance in the amount of \$5-million per occurrence and in the aggregate and auto insurance in the amount of \$1-million per occurrence;
- Provide each year written reports on or before September 1 on activities of the Foundation and on or before February 1 of activities contemplated in the ensuing fiscal year. Other reports and contents of reports will be provided as mutually agreed;
- Permit inspection of the books and records of the Foundation by the ISU president or his designee;
- Hold harmless ISU, its governing board, and others from claims, damage, liability, injury, expense, demands, and judgments, including courts costs and attorneys' fees, arising out of performance of this Agreement;
- Foster an atmosphere of openness in its operations, consistent with the prudent conduct of business by a private corporation; and
- Operate in compliance with federal, state, and local laws, including non-discrimination laws for protected classes of individuals.

ISU Obligations to Foundation Pursuant to Service Agreement (Attachment A) -

- Encourage and maintain the independence of the Foundation;
- Foster a cooperative relationship between ISU and the Foundation;
- Receive from the Foundation confidential information and protect its confidentiality, regardless of method of transmission;

- Designate certain gifts to ISU for management by the Foundation;
- Provide Foundation employees with staff identification cards, parking privileges; and access to campus facilities at the same cost as to University employees for such benefits;
- Permit use of the ISU name, logo and other identification belonging to ISU, consistent with the mission of the Foundation and ISU;
- Provide access to information and data files on demographics of the ISU community, to the extent permitted by law;

Costs of Services

- The Foundation will pay ISU the costs of services provided by ISU to the Foundation.
- ISU will pay the Foundation \$750,000 for the services provided by the Foundation to ISU.

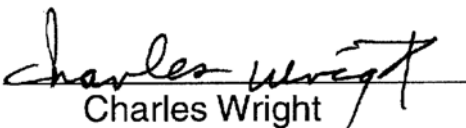
Duration of Agreement

- This agreement shall commence on July 1, 2001 and expire on June 30, 2004.
- If neither party gives notice of termination 90 days prior to expiration, the agreement will continue on an annual (fiscal year) basis.

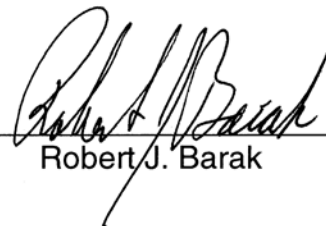
**Performance
Indicator Charts:**

Performance Indicator #33 requires the University to report annually to the Board the number of contributors and the dollars contributed to the University for the year. This agreement provides a vehicle for ensuring such contributions.

Approval of the service agreement is recommended.


Charles Wright

Approved: _____


Robert J. Barak