

MEMORANDUM OF AGREEMENT BETWEEN
WASHINGTON STATE UNIVERSITY
AND
WASHINGTON STATE ACADEMY OF SCIENCES

1. **Parties:** This Memorandum of Agreement ("MOA") is between Washington State University, a land grant institution of higher education and an agency of the state of Washington located in Pullman, Washington ("WSU"), and the Washington State Academy of Sciences, a non-profit corporation with 501(c)(3) status created by and operating under authority provided by Washington State law, ("WSAS"), with its principal place of business in Seattle, Washington. This MOA sets forth the respective obligations and underlying objectives of WSU and WSAS with respect to WSU's administration and operation of state and private funding that is designated to the Washington State Academy of Sciences (WSAS). In this MOA, the above entities may be jointly referred to as Parties or individually as Party.
2. **Background and Purpose:** WSAS was created by the Washington Legislature in 2005 as a nonprofit entity independent of government, whose principal mission is to provide scientific analysis and recommendations on questions referred to the academy by the governor, the governor's designee, or the legislature. (RCW 70.220.010 et seq.)

The Presidents of WSU and the University of Washington ("UW") were the statutory co-chairs of the committee that organized WSAS. Beginning at WSAS's inception, WSU, at the Legislature's direction, provided administrative support to the co-chairs and the organizing committee, and after organization was complete it has continued to provide administrative support services to WSAS.

WSAS is currently funded through an annual state allocation to WSU as operating funds for WSAS. Initially, WSU and UW were each responsible for 50% of WSAS's allocation. In 2018, UW, WSU, and WSAS jointly determined it to be more beneficial for the funds and administrative duties to be consolidated at WSU. In FY 2018, UW granted its allocation to WSU. Going forward beginning in FY 2019, the entire state allocation for WSAS has been allocated directly to WSU so that said transfer was no longer necessary.

This MOA sets forth and confirms the terms and conditions pursuant to which WSU will continue to serve as the fiscal agent of WSAS and to provide other continued administrative support services to WSAS.

3. Responsibilities of the Parties:

3.1 WSU will:

- 3.1.1. Maintain at WSU the funds allocated to WSAS by Washington State Legislature.
- 3.1.2. Maintain at WSU any funds deposited by WSAS with WSU.
- 3.1.3. Pay vendors or other contractors in accordance with the terms of their contracts with WSAS, with funds designated for WSAS and as directed by WSAS.
- 3.1.4. Draft, negotiate, and approve contracts as the fiscal agent for funds designated for WSAS and deposited at WSU as requested by WSAS.
- 3.1.5. Provide monthly updates of fund balances and detail to WSAS.

3.2 WSAS will:

- 3.2.1. Pay for a fiscal employee to initiate all documents necessary for its operation within the WSU system.
- 3.2.2. Provide clear direction to WSU personnel regarding the tasks and timelines to be undertaken by WSU on WSAS's behalf.
- 3.2.3. Follow all WSU and granting agency policies and procedures on fiscal processes flowing through WSU.

4. **Effective Date:** Subject to its other provisions, this MOA will be effective when the last signatory executes this MOA ("Effective Date").

5. **Term:** Subject to its other provisions, this MOA will end on June 30, 2025, unless terminated sooner as provided in this MOA. The period between the Effective Date and the termination date set forth in this section will be called the "Term."

6. **Parties May Extend This MOA:** This MOA may be extended for each successive state fiscal biennium upon the mutual written consent of the Parties.

7. **Compensation:** The method for determining compensation under this MOA will be as follows:

7.1 **Payment of Staff Salaries:** WSAS will provide a minimum of a .5 FTE staff member at all times to provide support to the WSAS for all necessary fiscal and administrative functions within the WSU system. This staff member may be hired as a WSU staff member, however, will be funded from WSAS monies.

7.2 **Reimbursement of Expenses:** Expenses reimbursed under this MOA must be in accordance with WSU, State of Washington, and granting agency policies and procedures.

7.3 **Direct Payment of Expenses:** WSAS may opt to have WSU direct pay vendors for expenditures by utilizing one of WSU's available purchasing methods. WSAS must conform to all WSU, State of Washington, and granting agency policies and procedures.

8. **Sources of Funds:** WSAS may deposit funds from other sources with WSU for WSAS. Sources may include grants from state and federal agencies, private foundations and individual donors.
9. **Payments:**
 - 9.1 **Fee Collection:** WSU will collect an administrative fee on any receipt of revenues received by WSU for or from WSAS, excluding state funds and grant funds, in accordance with its Business Policies and Procedures Manual.
 - 9.2 **Internal Service Provider:** WSAS will act as an Internal Service Provider and will assess a 15% Program Infrastructure Maintenance and Development charge on external non-federal grants to cover grant-related WSAS overhead costs. This revenue will be exempt from the standard WSU fee for Internal Service Providers.
 - 9.3 **Finance and Administration:** Grant funds will be subject to existing WSU policies, including standard WSU Facilities and Administrative Fees. The WSU Office of the Provost currently allows the WSAS to receive 100% of returned F&A funds that are generated by WSAS grants. This agreement is subject to annual review. When calculating WSU F&A rates, WSAS overhead (see 9.2) will be excluded from the calculation. Although the WSAS overhead is an indirect rate, it is not treated as F&A by WSU and therefore not subject to the usual F&A split.
10. **Independent Capacity:** The Parties to this MOA are independent contractors. This MOA does not create a partnership or joint venture between the Parties, and neither is liable for the debts or obligations of the other Party. The employees or agents of each Party engaged in the performance of this MOA will continue to be employees or agents of that Party and will not be considered for any purpose to be employees or agents of the other Party.
11. **No Discrimination:** There will be no discrimination in the performance of this MOA on the basis of race, religion, creed, color, national origin, sex, marital status, sexual orientation (including gender identity), age, genetic history, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability, or any other protected status, in compliance with applicable state and federal law.
12. **Act Consistent with Law:** The Parties will comply with all federal, state, and local laws applicable to their activities in the performance of this MOA.

13. **Records:**

13.1 **Retention:** The Parties will each maintain books, records, documents, and other evidence which sufficiently reflect all direct and indirect costs expended by either Party in the performance of this MOA. These records will be subject to inspection, review, or audit by authorized personnel of both Parties, other personnel authorized in writing by either Party, the Office of the State Auditor, and federal officials authorized by law. All books, records, documents, and other material relevant to this MOA will be retained for six (6) years after expiration or in accordance with any other applicable retention period imposed by any state or federal law, should any such law impose a retention period other than six (6) years. The Office of the State Auditor, federal auditors, and any persons authorized by the Parties will have full access and the right to examine any of these materials during the retention period.

13.2 **Disclosure to Third Parties:** Records and documents, in any medium, furnished by one Party to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. Except as required by law, the receiving Party will not disclose this material to a third party without first notifying the furnishing Party and giving it a reasonable opportunity to respond. Each Party will use reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to a third party.

13.3 **Disclosure through Public Records Request:** The Parties understand that WSU is a public entity subject to the Washington Public Records Act, RCW 42.56. This MOA and WSU records regarding it are public records and will be provided in response to a Public Records Act request. If WSU receives a Public Records Act request for WSAS's records provided under this MOA to WSU that have been marked by Contractor as proprietary or confidential, and WSU's Public Records Officer either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, WSU will notify WSAS of the request and the date that such records will be released to the requester unless WSAS obtains a court order enjoining that disclosure. If WSAS fails to obtain a court order enjoining disclosure, WSU hereby gives WSU full authority to release the records on the date specified, and WSAS understands it has thereby given up all rights to challenge the disclosure in any forum.

14. **Termination:**

14.1 **Termination for Convenience:** Either Party may terminate this MOA for any reason upon at least thirty (30) days prior written notification to the other Party. The Parties will be liable only for obligations incurred up to the date of such termination.

- 14.2 **Termination for Cause:** If either Party does not fulfill in a timely and proper manner its obligations under this MOA, or if either Party materially violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If the failure or violation is not corrected, this MOA may be terminated immediately by written notice of the aggrieved Party to the other Party. Such termination shall not relieve the defaulting Party of liability for damages caused by its default.
- 14.3 **Termination for Change in Funding or Law:** In the event funding or legal authority from state, federal, or other sources is withdrawn, reduced, or limited in any way after the Effective Date of this MOA and prior to normal completion, WSU or WSAS may terminate this MOA without advance notice, subject to renegotiation under those new limitations and conditions.
- 14.4 **Obligations On Termination:** Upon notice of termination, Parties will use reasonable best efforts to revoke any financial obligations incurred and will avoid incurring any additional costs in connection with this MOA. Parties will be compensated only for the deliverables or services actually performed, or reimbursed only for expenses actually and reasonably incurred, through the effective date of termination.
15. **Amendments:** This MOA may be amended by mutual agreement of the Parties. Such amendment will be binding only if it is in writing and signed by personnel authorized to bind each of the Parties.
16. **Dispute Resolution:** If a dispute arises under this MOA that the Parties cannot resolve, the dispute will be determined by a dispute panel in the following manner: each Party to this MOA will appoint one member to the dispute panel. The members so appointed will jointly appoint one additional member to the dispute panel to make a panel of three members. The dispute board so constituted will review the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute panel will be final and binding on the Parties. The Parties will share equally the costs, if any, for the services of the dispute panel. Each Party will be responsible for their own costs in engaging in the dispute resolution process, including reasonable attorney fees, if any.
17. **Hold Harmless:** Each Party to this MOA shall be responsible for its own acts and/or omissions and those of its officers, employees, and agents in the performance of this MOA. No Party to this MOA shall be responsible for the acts and omissions of those entities or individuals not a Party to this MOA.
18. **Governing Law and Venue:** This MOA will be governed by the laws of the State of Washington without regard to the conflict of law rules of any jurisdiction. Every dispute concerning this MOA that is not resolved as provided in Paragraph 15 above

may only be submitted to the Superior Court in Whitman County, State of Washington. The Parties agree to the exclusive personal jurisdiction, subject matter jurisdiction, and venue of this court.

19. **Notice:** Any Notice required under this MOA must be in writing, signed by the applicable Party, properly addressed to the contact person designated in this section, and: delivered in person, electronically or via facsimile to be effective upon receipt; delivered by recognized overnight courier service to be effective the next business day; or, deposited in the United States Postal Service mail, postage pre- paid, to be effective three (3) business days after mailing.

For WSU:

Name: Don Holbrook

College or Department: Office of the Provost & Executive Vice President

Address: PO Box 641046, Pullman, WA 99164-1046

E-mail Address: holbrook@wsu.edu

Telephone: 509-335-4517

For WSAS:

Name: Donna Gerardi Riordan

Organization: Washington State Academy of Sciences

Address: 415 1st Ave N, # 9293, Seattle, WA 98109

E-mail Address: donna.riordan@washacad.org

Telephone: 206-539-7453

20. **Force Majeure:** Neither Party will be considered in default or breach of this MOA due to a delay or failure in performance caused by an event beyond the Party's control, including, without limitation: an act of God; fire; war; flood; strike; riot; labor dispute; act of terrorism; national or public disaster; change in controlling law, order, or decree of governmental agency; or technical failure (including the failure of all or part of the equipment of others). If the delay continues for more than thirty (30) calendar days, or for such other period of time as the Parties shall agree in writing, the Party injured by the other's inability to perform may terminate this MOA with written notice.
21. **Severability:** If any provision of this MOA is held invalid, such invalidity will not affect the other provisions of this MOA which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this MOA, and to this end the provisions of this MOA are declared to be severable.
22. **Complete Agreement:** This MOA, and the documents expressly incorporated in this MOA, contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this MOA will be deemed to exist or to bind any of the Parties.

23. **Waiver:** A failure by either Party to exercise its rights under this MOA will not preclude that Party from subsequent exercise of such rights and will not constitute a waiver of any other rights under this MOA unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original MOA.
24. **Survivability:** The sections in this MOA that would, by their nature, survive the termination of this MOA shall so survive.
25. **Counterparts:** Upon agreement by the Parties, (a) this MOA may be executed in any number of counterparts which taken together will constitute a single instrument, and (b) execution and delivery of this MOA may be evidenced by facsimile transmission, electronic transmission, transmission by mail, or transmission in person.

Amendment A to the signed Memorandum of Agreement (MOA) (WSU Contract No. CCN004294, WSU Legacy Contract #25902)

This amendment documents guidelines for financial actions and funding for the Washington State Academy of Sciences (WSAS), reporting up through the WSU Provost's office.

The MOA between the two parties, initially signed in June 2018, lays out a high-level agreement between WSAS and WSU including the responsibilities of the parties, the processes for making payments, and designation of both parties as independent contractors. WSAS was designated as an independent entity when formed by the state legislature in 2005, followed by establishment as a 501 (c) 3 organization in 2008.

Specific guidelines for funding on an annual basis are as follows:

- General budget reductions by the WSU do not apply to WSAS as an independent entity. The funding for WSAS comes directly as core annual and supplemental funding from the state legislature. If the State of Washington requires a budget reduction, the WSAS will take budget reductions at the percentage level determined by the state.
- Grants that are managed through WSU will include the off-campus F&A charge and the WSAS overhead charge, unless specifically excluded by the granting agency.
- WSU mass salary increase funding will be allocated to WSAS at the same percentage level that is funded by the State of Washington. If WSU chooses to give raises at a different level than the state funds, the WSAS employees on WSU payroll will receive the same percentage of salary increase as WSU employees, and the WSAS will pay the difference, if the increase is greater than the state allocated, or will receive the difference, if the increase is less than the state allocated.
- All fringe benefits for current WSAS employees being paid through WSU are covered by WSAS funds. These costs are allocated to the central benefits pool from the state allocation to WSAS and allocated back to WSAS as they are accrued. WSAS is responsible for benefits costs over the amount allocated to the central benefits pool. If WSAS underspends the benefit amount in the annual pool, WSAS will be allocated the underrun from the central benefits pool.
- Any annual or sick leave costs that are paid for retirees or employees that separate from WSU / WSAS are to be covered through WSAS funding, with the exception of the Retirement Supplemental Program that WSU will cover, if the employee qualifies.

Washington State University

Recommended by:



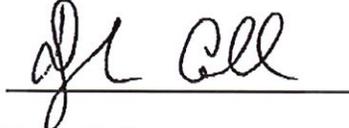
Don Holbrook

Title: Executive Director

Date:

Washington State University

Recommended by:



Doug Call

Title: Senior Vice Provost

Date:

Washington State University

Approved By:



Matt Skinner

Title: Senior Associate Vice President and Deputy CFO

Date: 10/18/2024

Washington State Academy of Sciences

Donna Gerardi Riordan

Title: Executive Director

Date:

Washington State University

Recommended by:



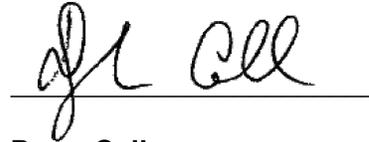
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Date:

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Matt Skinner

Title: Senior Associate Vice President and Deputy CFO

Date:

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Donna Gerardi Riordan

Title: Executive Director

Date: October 18, 2024

