

#####NOT YET ADOPTED#####

Friday, July 29th, 2005 Governance Subcommittee Meeting

Cedars-Sinai Hospital

Educational Conference Center
Room C Plaza Level (North Tower)
8700 Beverly Blvd.
Los Angeles, CA 90048

UC Irvine

Room: NSI-3134 Administrative
Conference Room
Address: Natural Sciences I
Irvine, CA 92697

Burnham Institute

Building 4/Conference Room
Address: 10901 N. Torrey Pines
Road
La Jolla, CA 92037

Salk Institute

Room: The Trustees Room
Address: 1001 N. Torrey Pines Rd.
La Jolla, CA 92037

Sherry Lansing (Chair)	Present
Phil Pizzo	Present
Brian Henderson	Absent
Os Steward	Present
Claire Pomeroy	Absent
David Meyer (Designee for Keith Black)	Present
Jeannie Fontana (Designee for John Reed)	Present
Robert N. Klein	Present
Tina Nova (Vice Chair)	Present
Richard Murphy	Present

Agenda Item #3: President's Update and Introduction

Dr. Hall: Let me start with the organizational structure of the CIRM. As everybody knows, Proposition 71 specifies important and distinctive roles for both the chair of the ICOC and the president of the CIRM. The chair, assisted by the vice chair, directs and manages the work of the ICOC, manages bond financing, interfaces with the California legislature and other public bodies, and leads negotiations on intellectual property.

The president directs the work of the Institute, including the working groups, hires, directs, and manages the staff, is responsible for the budget, and manages compliance with ICOC policies, including intellectual policy agreements.

We have been extraordinarily busy so far in just getting our work done day to day; and under that stress, we have until now postponed consideration of the issues. I want to report, though, to the Governance Subcommittee that we are actively engaged in working on this issue. To aid us, I have engaged an experienced management consultant, Dr. Harold Goldstein, to help us with this process. To keep you fully informed, we have budgeted \$25,000 for expenses associated with this process. We have already begun to recruit for several important leadership positions on the administrative side.

The site is now settled, and we have a temporary reprieve financially through the generous Dolby gift. Thus, we are moving ahead rapidly and have posted several positions. Most important of these are Chief Finance Administration officer, Chief Legal Officer, IT Officer, and Chief Communications Officer.

Finally, let me report to you on our space. We have essentially completed the design development phase of planning for our new space and have reached essential agreement on the costs. We expect to sign off on those within the coming week. Work on the space is expected to start soon, and we're hoping for completion of the renovation to be the 1st of November.

Agenda Item #5: Consideration of CIRM contracts and contracts policy and processes

Mr. Barnes: Proposition 71 provides that the Institute will be governed by the competitive bidding and contract process followed by the University of California. Now that the Governance committee has been established, one of the charges is for the committee to establish and oversee contracting policies for the Institute using these as guidelines.

Also, at the last ICOC meeting, it was decided to reinstate a policy of requiring that all contracts in excess of \$100,000 be approved by the full ICOC. Just a point of information, we've talked about contracts, but there are actually two versions. There's what's called interagency agreements, and these are contracts between two state agencies. And then contracts, the term "contract", is usually limited to a description of an agreement between a state agency and a private third party. The difference, particularly with regard to state agencies, is these are not required to be bid. They are basically usually the ability to acquire services that are already available within state service.

Mr. Klein: It might be helpful to explain interagency agreements. An example would be the state Attorney General's office. When you say they're not subject to bid, it's because we have to use the Attorney General. As a state agency, there is not a choice, so we contractually don't have an opportunity to bid because under state law we're required to use the state Attorney General.

Mr. Barnes: The interagency agreement that we have with the State Controller's office was to acquire some assistance in supporting our procurement and contracting and some

of our personnel processes. We had an option to go to whichever state agency we wanted for that, but we selected the Controller's office.

Mr. Klein: Additionally, I think it would be important to note that the board early on discussed that fact that we wanted to work with the Controller's office because we wanted to create and audit policy and contracts policies that would be consistent with the controller's office's policies so that we would know that when we went through the audit process, we would have prepared a financial control system that would be consistent with what the audit system would be.

Mr. Barnes: We've laid out a definition of various types of contracts. Probably the ones that we're most likely to be using are common goods and services. The independent contractor services, independent consultant services, and legal services are the primary ones that we use, but we've given you examples of other contracts that we've used in the other categories.

Generally the use of a bid process under the UC system intends to ensure that goods and services acquired are at the lowest possible cost. With regard to specific requirements for common goods and services, there is a requirement that a competitive bid be conducted of the item to be purchased is more than \$50,000.

With regard to independent contractors and consultants, while the bid process is always recommended, these are not actually required to be competitively bid. Although our feeling is that if a service is needed for an extended period of time, bidding should be considered. We also provide information about the state what they call master services agreement program where the state has already pre-selected independent contractors or consultants.

We also have laid out the process with regard to negotiated contracts where a bid process is not required or necessary and the decisions that bids are not necessary and what are some of these examples.

We reference the contract formats and the need to have contracts drawn up in a specific form that is based on the UC process. The information for staff in terms of what do they need to get together to request a contract, basically a description of goods and services. The period over which the services are to be provided, the cost by category, estimated total cost, whether a bid will be used, the contract persons, and who is going to be the contract manager.

Essentially each of our contracts have a contract manager who is responsible for overseeing the contract and assuring that the work is provided and for approving payments under the contract.

I should say that this statement was developed with extensive input from James Harrison from Remcho, Johansen & Purcell consistent with the UC information. Our proposal

would be that the committee either adopt or recommend to the full ICOC that this policy and procedures statement, be adopted as a going-forward effort.

I should mention that while the authorization talked about \$100,000 of contracts, it didn't really address the issue of amendments to contracts because sometimes they're amended or extended or whatever. We have looked at other agency boards or commissions, and generally the oversight of these policies with regard to limits and approvals of contracts is designated to a Governance committee like this, particularly when the membership of a board or commission is large and/or when the primary mission is complicated.

What we're saying is the interagency agreement, both the initial amendments or extensions, since these are not covered by the UC board, they're not contracts with third parties, there's no bid process, and as Chairman Klein adequately pointed out, there are some cases where we have no authority at all, the recommendation would be to delegate approval of interagency agreements to the president of the institute. With regard to the ICOC, our feeling is that approval by the ICOC should be a higher level. We have suggested \$250,000 or when an amendment will cause a contract to exceed \$250,000. Currently, one is Edelman, and the other one is Remcho.

Chairperson Lansing: I'm interested in hearing from Zach and from Bob, can you function if you have to come to the full board every time it's above \$100,000? Can you hire the necessary people? Can you make the necessary decisions?

Mr. Klein: We now have a President, Controller, we will have our contract procedures in place, and we're looking to a budget coming back to the Governance committee in the next meeting in detail where we have a narrative budget statement in these documents that we have to look at today.

These limits of \$100,000 for the president and then a hundred to \$250,000 the governance committee need to be viewed as interim structure to have a very conservative level of assurances where on a longer term, as soon as we have a budget approved, most entities would operate where as long as the president's working within the budget or a reasonable 5% variance of such budget, the president can make decisions that balance items within that budget and operate. This is the kind of leadership role that Zach has been very effective at for many, many years.

Dr. Hall: It makes sense to foresee as best we can those expenses we have. My concern is twofold: 1) we're beginning to ramp up operations, meaning we will have to spend more money, and 2) we have had a lot of third-party arrangements to manage functions that we are now bringing in house. So we are in a state of flux. I agree we should adopt a \$100,000 limit for Governance Subcommittee approval and a \$250,000 limit for ICOC approval.

Dr. Meyer: Maybe we should put it in context of once there is a budget in place, then any exceptions to that in excess of \$100,000 or in excess of \$250,000 so it's very clear that it's already been scrutinized. No.2 If there is something that's over \$100,000 that needs

the Governance committee's approval, the question is do we need to have the full Governance committee meeting and then deciding on it, or is there some way that we can expedite the process short of having everyone assembled is my question.

Chairperson Lansing: This is an example of why we want to establish a clear policy; at least I'm in favor of raising the limits so that Zach and Bob don't have to come to us every time they wish to spend on critical items.

Mr. Klein: I have a suggestion. The proposal is that if we take the proposal and say that as soon as there's a budget in place that we'll come back with expectations of over \$100,000 to this committee beyond the 5% deviation from the budget. Is it appropriate, in the Chair's opinion, that we pass this resolution, limited as it is, but an informational report to the board that we're looking at bringing back to them a longer term policy that deals with the budget approval and a variance from the budget?

Chairperson Lansing: I personally think it's great that the whole Governance committee has to be aware of something that's over that amount, and that we bring it back to the full board when it's at the \$250,000 level. It's full disclosure to the public, its full disclosure to the board, and it does not inhibit either of Zach or Bob's ability to do their jobs.

Dr. Nova: In the definition of contract, does that include the hiring of personnel? If it doesn't include the hiring of personnel, I think it makes it a lot easier.

Mr. Barnes: It does not include the hiring of personnel.

Mr. Klein: It does not include interagency agreements.

Dr. Meyer: Just a quick clarification. Is that \$100,000 per year or \$100,000 total because it should say so one way or the other?

Mr. Barnes: I think the intent of this is for \$100,000 as an item, as a contract, even if it is multiyear. Then again, to a certain extent, if you have a multiyear contract, it probably will hit the \$100,000 mark fairly quickly unless it's some of the things like our maintenance contracts and things like that where we're talking a couple of thousand dollars a year. That's why I suggested that we add in something about the amendment process so that we can start off low, and allow us to extend as necessary, with approvals.

Member of the Public, Ms. Fogel: I just want to echo the concern about accountability and transparency. The public expects that the budget is going to be prepared and discussed in public and continue to be public and transparent. Once there's a budget in place, there's an expectation that we will live within that budget. I think it's really important that the public always do know how this money is being spent.

Mr. Harrison: I just want to make one clarification. The jurisdiction of this subcommittee at this point in time is to make recommendations to the ICOC, so the policies that you're adopting are a recommendation to the ICOC.

Motion:

- **Chairperson Lansing: Moves “To recommend to the ICOC the contracts policy and procedures”**

Vote:

- **All in favor; no opposition.**
- **Motion carried**

Mr. Barnes: The last item is the format for a regular contract report, which gives you the status of contracts and interagency agreements that are executed at this time. We also give you a list of new amended interagency amendments that we’re working on right now. As it happens, both of these are amendments.

Currently our contract with Remcho, Johansen & Purcell is a six-month contract that expires in August. What we’re proposing to do is to make a four-month extension of this current contract. Based on the current level of expenditures, the extension would be for about \$200,000 and would raise the total amount in contract to \$520,000. They provide consultation on the bond financing, on the conflicts of interest, on all of the litigation matters which are expected to continue for the coming year. That is why we’re only asking for a four-month extension.

Under the policy that you’ve adopted to recommend to the ICOC, this is one that basically would fall to the ICOC. The action that you would need to take is to recommend to the ICOC that this extension be approved.

Mr. Klein: I would also say that we need to remember that in drafting process for the initiative, James Harrison was the lead attorney of the five attorneys that I worked with in this process.

Dr. Murphy: Will Remcho be our litigating counsel as these suits go forward, or do you expect that we would be bringing in new counsel to handle the actual litigation?

Mr. Harrison: The Attorney General represents the CIRM and the ICOC on all of the litigation. We play a consulting role, but the Attorney General actually represents the Institute and the ICOC in court.

Mr. Klein: To augment: James Harrison was also the lead Special Counsel on Proposition 10, which faced very similar constitutional arguments to those Proposition 71 is facing. We developed Proposition 71 with a checklist of the relevant case law in mind.

Mr. Barnes: If I could also add on, my experience in other state agencies is that while the Attorney General acts as the litigator for the state, they rely very heavily upon attorneys in each one of the state agencies that have the specific information about the programs and responsibilities both at the sometimes Federal law or state law, that the Attorney General needs to rely upon.

Member of the Public, Ms. Fogel: Given the enormous legal fees that are being racked up, I wanted to know how do you decide which things the Attorney General's office does and which things Harrison's office does because the list of his tasks includes travel expenses and per diems. I'm wondering if there is not a process for delegating more of the routine operational questions to the Attorney General's office and only spending the money on outside counsel for the things that the initiative specifically speaks to.

Mr. Klein: Actually, the Attorney General's office has the delegation of two or three attorneys that travel together. We've found that on a comparative basis, the charges, including their travel and other expenses, is actually greater than having the Remcho firm present.

Mr. Barnes: I think that in a sense you are going to pay no matter which way you go. The Attorney General really does rely heavily upon the input from the agency's attorney in order to be able to do their job as well.

Motion:

- **Chairperson Lansing: Moves "To recommend to the ICOC that the contract for Remcho, Johansson & Purcell be extended for four months"**
- **Klein Seconds**

Vote:

- **All in favor; no opposition.**
- **Motion carried**

Agenda Item #4: Consideration of CIRM Communications Team Plan and budget

Dr. Hall: We began working with Edelman in April, 2005. At the time, we interviewed several firms. It was clear to us that Edelman was able to offer us a variety of services, that they were the most flexible, and the most experienced of the firms that we talked to, and they also had a clear commitment to our mission. We have, in general, been very pleased with the quality of work, which has been quite high.

We are beginning to lay more careful plans for our communication function. We have composed a mission statement and have also posted a job for the Chief Communications Officer. When we hire a Chief Communications Officer, we will work with that person to develop a comprehensive communications program for the institute. We imagine that we will continue to use Edelman, but that our need for them will diminish. We also expect that we will use their expertise on an as-needed basis for some time until the communications office is fully staffed.

We have completed negotiations for a contract with them. It's a contract that allows us to continue to work with them on a changing needs basis. We have defined a set of priorities for Edelman in this interim period that center on our core mission. We have asked, for example, that all on-site help be discontinued, which will represent a cost

savings. They will continue to do media work for us, as well as to work with us on press releases and press advisories.

Dr. Nova: Could you just comment a little bit on what they've done thus far in the last few months that have made you really happy with their performance?

Dr. Hall: They have worked with us in arranging media interviews, of which we have many more than any single person can deal with. They've provided background information for those interviews, which has often been tremendously useful. They've arranged meetings working with Nicole Pagano, our in-house person, for editorial board meetings, of which we've had several. They have worked with us on press advisories, on press releases and have helped us with our website. They also have helped us write some background material as we have needed that to be ready. We have worked with them on occasion to help arrange OP ED pieces that might appear in the newspaper.

Dr. Steward: I think I heard you say that in effort to reduce cost, you're planning to eliminate the on-site operations of Edelman. I'm just actually a little bit concerned that that might make your life more difficult in terms of being able to keep in touch with all this.

Dr. Hall: We have eliminated that already, and we think it's working satisfactorily. That is, we do have a morning call every morning, which we go over whatever communications issues there are. We'll bring it in-house. I think what the usefulness thing is we'll have a full-time person who will then develop with us a comprehensive program. We will continue to consult with Edelman. Particularly bringing in one person is not going to solve this.

Dr. Steward: I remember several discussions that we've had at the full ICOC meetings about the need for educational outreach. What I would actually hope to see is that with the establishment of a communications office, we would begin to be a little more active instead of reactive and really start to get some of these programs in place.

Dr. Murphy: I think that the communications office is going to want to have people that are capable of doing the things you said, Zach. As the in-house capability builds, I think there will be less of a dependence on the outside people. My advice would be, as we go through the transition, we keep a constant look at budget and what the inside people will do and what the outside people will do. My hope would be as we build internal capability, our reliance on external sources will diminish.

Mr. Barnes: I mentioned that during March there were three companies that were interviewed to assess their capabilities for assuming the work that Redgate was performing. That included Weber Sandwick Worldwide, Edelman, and Burnson-Marsteller.

There was general agreement by the people that interviewed these agencies that Edelman was the best qualified for the job because of their demonstrated interest and familiarity

with Proposition 71. They have extensive experience in health matters from a communications standpoint, and they have the commitment of the leading members of the firm to support the institute and its goals and operations. They agreed to begin immediately given that there were several issues that required communications expertise, and those included the headquarters search, the various litigation matters, and the legislative actions at the state and federal levels that could affect the CIRM's mission.

We have the Edelman contract ready for execution. The total cost is budgeted at \$378,000 for a 12-month period beginning in April of 2005. This is based on two separate calculations. The first has to do with the actual cost of professional fees and what they call 3% for internal expenses. The total monthly cost under this contract for these particular costs will not exceed \$27,500, which comes to a maximum of \$33,000; \$333,000 for the 12 months of contract.

I mentioned that the fees already take into account a 10% discount. In addition, Edelman had agreed to contribute additional pro bono hours to this effort. I should say that during initial discussions, the monthly estimates were as high as \$65,000 per month. I feel that this is an indication of the fact that we have negotiated a very economical arrangement with an agency that, as Zach has pointed out, has delivered highly competent services to us.

The second part of the costs are what's called out-of-pocket and travel costs. Under the contract they would get reimbursed for the actual cost of these types of things. Total estimate for these costs, which is based on the monthly average during the first three months, is \$4,000 per month. The total estimate is \$48,000, which together with fees add up to you \$378,000. I want to emphasize that while the total costs will not exceed \$378,000, there's every reason to believe that the actual costs associated with this contract will be less. We are working together through the daily meetings and a weekly and monthly meeting to make sure that it never goes over that amount.

We think this is a very economical contract given the services and expected performance that will be delivered, and our recommendation is that the Governance committee recommends to the ICOC that they approve execution of this contract.

Chairperson Lansing: I hope that they're following the state requirements for travel expenses as the rest of us are; is that correct?

Mr. Barnes: That's correct.

Dr. Murphy: I think one of the responsibilities of the Communications Director should be to keep account of the commitment of Edelman and how many hours they're putting in, etcetera, because that person is going to be closest to the action. I think that that would not be an inappropriate function of that office to perform on behalf of the president and the ICOC.

Mr. Barnes: We're working with Edelman right now on their billing process. Keep in mind we haven't paid them anything because the contract isn't executed, and we're going to have them develop a billing that tells us the exact number of hours that are provided, less the pro bono, less the 10% discount so that we get down to the amount that's there so that we'll get a full accounting of all of the services that we receive, whether paid for or not.

Chairperson Lansing: For my personal comment, it is vital and important that we move forward and get the public as much information as we can and keep them apprised of everything we're doing.

Motion:

- **Dr. Reed: Moves "To approve the recommendation to take this contract to the full ICOC"**
- **Klein Seconds**

Vote:

- **All in favor; no opposition.**
- **Motion carried**

Agenda Item #6: Consideration of third-party personnel salary survey
(Informational Update)

Mr. Barnes: We're in the process of completing our survey with regard to the institutions that are benchmarked for compensation under Proposition 71, now being conducted by Dee DiPietro. We have hired, through a six-month agreement with the University of California San Francisco, the services of Alexandra Campe Degg. She has an extensive background in human services work with UCSF and has been acting as our Human Resources Officer.

Our expectations are that the information that we've asked for from the UC Medical Centers and the additional private research institutes through this survey will be coming in. We'll get the remaining data and basically be able to come to CIRM at the next meeting and actually present the full results and recommendation at that time.

Mr. Klein: In helping advance the mission of the Institute, neither Ed Penhoet nor I are going to be part of any salary survey because we are not going to be treated as employees. We're not seeking any compensation and so you won't see a survey on our positions.

Agenda Item #7: Consideration of CIRM budget and budget processes

Mr. Barnes: We're on a fiscal year basis, which is from July 1st to June 30th. The financial operations are maintained on an accrual method of accounting and budgeting, which means the cost for goods and services paid or received during a year are charged to that year even though the payment may not be paid until a subsequent fiscal year.

There are three basic categories in each agency's budget. The first is personal service, which is the salary and wages and benefits for state employees of the agency, including the per diem that's paid to ICOC members. There are office expenses and equipment, and these are the non-personnel operating costs associated with conducting a state agency's business. This is where contracts, telephones, equipment, supplies, training, all of those things are included. Then there's a category called local assistance. This is for funding that is paid out to local public and private agencies. In the case of CIRM, this will be where the research grant funding programs will be budgeted.

We have the results of the fiscal year 2004-2005. The final costs associated for personal services are only actually \$19,000 less than estimated in the May 6th document. That's because most of our hiring has not changed and any new hiring is taking place during the current fiscal year. The final costs for contracts and interagency agreements is \$642,000 greater than that estimated in the May 6th document; but if you recall, that document assumed that expenditures for contracts and interagency agreements, specifically the Remcho contract payments, the Attorney General payments, and the State Controller's office payments, would be deferred in the interest of trying to help us get as far under our \$3 Million loan as possible.

After the receipt of the Dolby funding, we made a decision to pay the deferred amounts. We've assumed that the Edelman contract will be approved and the cost for the three months of 2003-04 will be paid as well. Final cost for all the other expenditures categories are \$84,000 greater than estimated. Most of this is due to some increases in general expense for supplies, temporary help, and transcriptions. The expenditures that are listed in 2004-05 are the actual payments made as of June 30th, which is about \$1.5 Million, and accrued expenses of close to a million dollars. Most of these accruals are for contracts and the interagency agreements. These financial statements will be subject to an audit by an independent CPA firm as required by Proposition 71.

With regard to fiscal year 2005-06, we are in the process of trying to put together a proposed budget. We're actually going to be putting together two budget proposals. Right now the financial statements for the last year show that about \$430,000 is left from the \$3 Million loan once all accrued bills are paid. Together with the \$5 Million Dolby grant, the available funding for operations for the current fiscal year would be about \$5.4 Million.

\$200 Million of proceeds from bonds or bond anticipation notes are projected to be received during the year. Up to \$11.6 million would be available to cover the administrative cost to operate the institute and oversee nearly \$188.4 Million in grants that could be issued. We're currently developing an operations budget for both of these funding alternatives, and we will be ready to present that for review by the Governance committee at the next meeting.

It's important to remember that some costs are just going to increase this year no matter which funding level is available. For Instance, during the previous year, we hired 13 persons and we incurred personal services costs of \$737,000. Most of the 13 positions

were hired in January, so their costs were only for a half year. Those will be doubled in the current year, and the additional hires will basically incur cost for a full year. We're also going to be doing a scientific conference, and we're starting our working groups. We've estimated that the first Grants Working Group meeting is going to cost us about \$55,000.

There will also be a budget for 2005-07. In personal services, we're going to have to start paying for contributions, retirement contributions, to CALpers for staff who have been employed for two years. We're also working on two other related projects. One has to do with the Dolby funding because we have to provide a separate annual report of all expenditures from this funding to show that we've complied with limitations tied to the funding.

In addition, Proposition 71 allows up to 3% of all bond proceeds to be used for cost for general administration and up to 3 % of the remainder of bond proceeds used for grants management administration. In total this is about 5.8% of the proceeds.

Dr. Murphy: When you think of what has been accomplished in the last year with that small group of staff, I think it's remarkable. I'd just like to put in the record that I, for one, am just delighted with the progress that's been made.

Member of the Public, Ms. Fogel: If the actual bonds are not sold, but the bond anticipation notes are sold, do the CAPS still apply?

Mr. Klein: Yes

Member of the Public, Ms. Fogel: About the Dolby grant, will you make the approval letter that talks about what the limitations that are tied to funding public?

Mr. Klein: It's all open to the public. There is a complicated dual budgeting here again for the next year in that they are doing the budget based upon known funds in the bank as a conservative approach, but they will do another budget that projects when the funds are available from those bond anticipation notes so that that budget won't go into effect until those funds are in the bank.

Closed Session

Agenda Item #8: Discussion of Personnel (Government Code section 11126, subdivision (a); Health & Safety Code section 125290.30(d)(3)(D)).

Open Session

Agenda Item #9: Public report of any action taken, if necessary, during closed session.

Dr. Hall: We're not required for formal approval, nor was there a formal motion. As a point of information, we wanted to bring to this Governance committee a recommendation for a change in two salaries based on change in duties for the original description. One was Jennifer Rosaia, who is the Events Coordinator, and who was originally hired to be actually a receptionist, but who has been the person who coordinates the logistics for all of our ICOC Meetings and subcommittee meetings and has done so since January and well in that. So this change for her, and we're recommending a change in her salary from \$42,000 to \$47,500.

The second is Dr. Arlene Chiu. At the time she was hired, we were unsure at that time if we would also have a Chief Scientific Officer, who would essentially be between the President and her position, which was Director of Scientific Review and Programs. Although we're not changing her title, in fact, she has taken on additional responsibility that was planned to report to that intermediate person. That is the responsibility for the Grants management program, which is to say all of the accounting and financial matters and administrative matters associated with grants will be done out of grants management office, which will now report to her.

We are proposing a 10% increase in her salary from \$165- \$181,500.

Chairperson Lansing: There was no vote taken on this. This is just getting a sense of what the Governance committee felt and the sense was that this is something that we wanted to recommend back to the full ICOC board.

Following a request for public comment at each location, the meeting was adjourned.