

INFORMATION ITEM #2

Restatement and Renegotiation of Commercialization Contract for Cosmic Crisp® (Leslie Brunelli/Sharyl Kammerzell/Scot Hulbert/Jeremy Tamsen)

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Restatement and Renegotiation of Commercialization Contract for Cosmic Crisp®

SUBMITTED BY: Leslie Brunelli, Executive Vice President for Finance and Administration/CFO

SUPPORTING
INFORMATION:

WSU owns intellectual property rights to the patented apple cultivar, WA 38, and trademark rights in the Cosmic Crisp® brand. WSU licensed these intellectual property rights to a third-party commercialization agent to bring the apple to the marketplace and receives a share of royalty payments from each apple tree, box of apples, and processed goods sold under the Cosmic Crisp® brand name. This commercialization effort is key to capturing the value created through nearly 20 years of plant breeding at WSU. This value protection and recapture is made possible through WSU's commercial licensee, Proprietary Variety Management LLC (PVM). WSU's patent rights in the Cosmic Crisp® apple will expire in 2032, at which time the commercialization effort will rest entirely upon the trademark rights that can endure indefinitely.

In June 2014, the WSU Office of Commercialization signed a "Management Contract for the Commercialization of Washington State University Apple Cultivar, 'WA 38'," (Management Contract). Since then, the Management Contract has been amended six times (twice in March 2015, July 2015, September 2017, March 2019, and January 2023), and an MOU regarding the pursuit of infringing parties was also executed to support trademark enforcement activities (in May 2020). The Management Contract as it stood was difficult to read and interpret, given that the terms were spread across multiple addenda and the MOU. Additionally, it had become evident that certain terms should be renegotiated.

To begin this process, on March 1, 2024, WSU sent PVM a formal notice of non-renewal under the Management Contract, and a draft restated agreement for consideration by PVM and their counsel. The proposed new

agreement is intended to be effective for at least the remaining 8 years of patent protection WSU has remaining on the Cosmic Crisp apple; the expiration of the patent will trigger another restatement and renegotiation of this license to allow WSU to continue to capture value from the enduring trademark protection.

The anticipated value of the new contract during the 8-year remaining on the patent term will exceed the President or designee's delegated contract authority. Depending on when the parties reach agreement, we will either seek Board of Regents approval of the final contract or, alternatively, request that the President or designee execute the contract within the parameters of the delegation of authority to approve time-critical contracts.