Board Book
November 16, 2017

MISSISSIPPI BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
Board Meeting Outline
MISSISSIPPI BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

MEETINGS
SCHEDULE

Health Affairs Committee | November 15, 2017, 3:00p | IHL Board Room
IHL Board Meeting | November 16, 2017, 9:00a | IHL Board Room

CALL TO ORDER
INVOCATION
INTRODUCTION OF GUESTS
SPECIAL PRESENTATION

MINUTES
October 19, 2017 Regular Board Meeting Minutes

CONSENT AGENDAS | Trustee C.D. Smith

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2. SYSTEM – Approval of Degrees to be Conferred in December 2017 ................................................2

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18. USM – Request for Approval to Enter into a Lease Agreement with the University of Southern Mississippi Athletic Foundation ........................................................................................................34

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12. MSU – GS 105-355 – Exterior Design Approval of Engineering and Science Complex, Design Professional – Eley Guild Hardy Architects ........................................................................ 20
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3. UM & UMMC – Approval of Revisions to Mission Statement ..................................................................1
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REGULAR AGENDAS

FINANCE | Trustee Christy Pickering
1. UMMC – Request to Approve the Bond Resolution for $91 Million for Medical Center Educational Building Corporation for the Purpose of Expanding Children’s of Mississippi, and to Approve the Initiation and Bond Resolution of a Bond Refunding for $105,605,000 for the Medical Center Educational Building Corporation for the Purpose of Refunding Series 2009 Bonds to Achieve Net Present Value Savings .......................................................................................1
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9. MSU – Request for Approval for a Bond Resolution to Refund Series 2011 & 2013 Revenue Bonds in an Amount Not to Exceed $110,000,000 to Achieve Net Present Value Savings; to Review Financial Advisor’s Report; to Approve Other Bond Documents; and to Approve Bond Counsel, Financial Advisor, and Underwriters .................................................................................................................................................29
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2. UM – IHL 207-376 – STEM Building – Approval to Hire an Owner’s Representative, Design Professional – McCarty Architects .................................................................5
3. UMMC – Request to Approve the Phase II Contract for Construction Manager at Risk (CMAR) Services with Brasfield & Gorrie, LLC for the New Children’s of Mississippi Expansion Project ....6

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1. SYSTEM – Approval of Board Meeting Dates and Locations January Through December 2018 ......1

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ADDITIONAL AGENDA ITEMS IF NECESSARY
OTHER BUSINESS/ANNOUNCEMENTS
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ADJOURNMENT
Minutes

October 19, 2017, Regular Meeting Minutes
MINUTES OF THE BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
October 19, 2017

BE IT REMEMBERED, That the Mississippi Board of Trustees of State Institutions of Higher Learning
of the State of Mississippi met in a regular session at the Board Office in Jackson, Mississippi, at 9:00
a.m., and pursuant to notice in writing mailed by certified letter with return receipt requested on November
22, 2016, to each and every member of said Board, said date being at least five days prior to this October
19, 2017 meeting. At the above-named place there were present the following members to wit: Mr. Tom
Duff, Dr. Ford Dye, Mr. Shane Hooper, Ms. Ann H. Lamar, Dr. Alfred E. McNair, Jr., Mr. Chip Morgan,
Mr. Hal Parker, Mr. Alan Perry, Ms. Christine Pickering, Dr. Douglas Rouse, Mr. C.D. Smith and Dr. J.
Walt Starr. The meeting was called to order by C.D. Smith, President. Trustee Chip Morgan introduced
Dr. Al Rankins, President of Alcorn State University, to give the prayer.

INTRODUCTION OF GUESTS

- President C.D. Smith welcomed the Student Government Association Officers: Patrick Herbert,
SGA President at Alcorn State University; Ashley Griffin, SGA President at Delta State
University; Tyler McMurray, SGA President at Mississippi State University; Kamberlin King,
SGA President at Mississippi Valley State University; Dion Kevin, SGA President of the
University of Mississippi; Edgar Meyer, SGA President of the University of Mississippi Medical
Center; Cameron Cloud, SGA President at the University of Southern Mississippi; and McKenna
Stone, SGA Vice President at the University of Southern Mississippi.

APPROVAL OF THE MINUTES

On motion by Trustee Pickering, seconded by Trustee Perry, all Trustees legally present and participating
voted unanimously to approve the Minutes of the Board meeting held on September 21, 2017.

CONSENT AGENDAS

On motion by Trustee Rouse, seconded by Trustee McNair, all Trustees legally present and participating
voted unanimously to approve the following Consent Agendas.

ACADEMIC AFFAIRS

1. SYSTEM – Approved the following new academic programs:
   a. ASU - Bachelor of Science in Athletic Training degree (CIP 51.0913)
   b. ASU – Master of Arts in History degree (CIP 54.0101)
   c. UM – Bachelor of Science in Economics degree (CIP 13.1401)
   d. UM – Master of Science in Hospitality Management degree (CIP 52.0910)
   e. UM – Master of Science in Integrated Marketing Communication degree (CIP 09.0900)
   f. UM – Master of Accountancy and Data Analytics degree (CIP 52.0399)
   g. UM – Master of Taxation and Data Analytics degree (CIP 52.1601)
2. SYSTEM – Approved the following new academic unit: UM – Center for Graphene Research and
   Innovation.
3. **SYSTEM** – Approved the following academic unit modification: **UMMC** – Rename the Biochemistry Department to the Department of Cell and Molecular Biology.

4. **SYSTEM** – Approved the following academic program modifications:
   a. **UMMC** – Rename the Master of Science in Population Health to the Master of Science in Population Health Science.
   c. **UMMC** – Rename the Doctorate of Philosophy in Biochemistry to the Doctorate of Philosophy in Cell and Molecular Biology.
   d. **MUW** – Consolidate the Master of Education in Reading Literacy, the Master of Education in Gifted Studies, and the Master of Education in Education leadership degrees into the Master of Education in Education degree. (CIP 13.0101).

**FINANCE**

5. **MSU** – Approved the request for the MSU Extension Agricultural Communications to enter into a five-year copier lease agreement with Canon Solutions America for IMAGEPRESS C8000VP Digital Press Set, Prisma Direct, and Prisma Prepare, with annual recurring maintenance and support plus training on the IMAGEPRESS C8000VP Digital Press Set, Prisma Direct, Prisma Prepare and Oce 115vp. MSU is also seeking approval from the Mississippi Department of Information Technology Services (IT related contract over $250,000) and the Public Procurement Review Board (state contract over $500,000). The contract will not be signed until approval is received from each of these bodies. This rental is needed in order to increase and better integrate production capabilities to meet current and expanding needs for printing to support Extension personnel, programs, and outreach to clientele. The C8000vp will replace two Oce 110 VeroPrint copiers that are reaching the end of their lease. Prisma Prepare will replace a current version that is reaching the end of its lease. Prisma Direct will manage printing equipment and Prisma Prepare software. The contract will begin when the documentation is approved and continue for 60 months. There will be a monthly charge of $7,507.51 paid upon receipt of invoice. There will be additional payments for professional services at a state contract rate of $200 per hour. The total cost is $485,450.60. In addition, MSU will pay “click” charges as set forth in the State Contract. It is unknown exactly how many copies will be made over the five-year contract but it is estimated that there will be additional charges of up to $306,000, giving a total anticipate expenditure of around $791,450.60. The total cost of this contract will be paid with Agricultural Communications Print Shop Service Center funds. The agreement, which was reviewed and approved by the IHL Associate Commissioner of Legal Affairs prior to the Board’s approval of this item, is on file in the Board Office.

6. **MSU** – Approved the request to enter into a contract with Diversified Elevator Service & Equipment Co., Inc. to continue daily operation and maintenance on the 135 elevators on MSU’s Starkville campus. The contract will run for five years starting January 1, 2018 and expiring on December 31, 2022. The contract amount is $25,655.00 per month or $1.6 million over 5 years. Funds are available from MSU General Funds. The agreement, which was reviewed and approved by the IHL Associate Commissioner of Legal Affairs prior to the Board’s approval of this item, is on file in the Board Office.

7. **MSU** – Approved the request to amend the contract between MSU’s Office of Nutrition Education (ONE) and Frontier Strategies, LLC, for the purposes of making a no additional cost technical
change in the contract between the production budget and the placement budget. The original agreement provides for the design, production and implementation of an advertising and communications plan with key messages targeting SNAP-Ed recipients in the State of Mississippi promoting healthy eating, shopping and cooking choices to increase awareness and encourage healthy lifestyles. The original contract term is July 6, 2017 to September 30, 2017. The term of Amendment #1 is October 1, 2017 to September 30, 2018. The agreement may be renewed for a period of one (1) year upon agreement of both parties in writing. The total contract amount is $1,750,000. Payment will be issued on a monthly basis upon receipt of invoices based on actual services rendered. The contract and addendum are funded by a subgrant between the Mississippi Department of Human Services (MDHS) and Mississippi State University and the Office of Nutrition Education. The funding source for the subgrant is the United States Department of Agriculture (USDA). The funding for this agreement was approved by the USDA in May 2017 and the subgrant between MSU and MDHS was signed on July 5, 2017. The agreement, which was reviewed and approved by the IHL Associate Commissioner of Legal Affairs prior to the Board’s approval of this item, is on file in the Board Office.

8. MSU – Approved the request to enter into a three-year lease of a 5,409.1-square foot building and 1.2-acre parcel of land on Singing River Island, MS for the purpose of Unmanned Aircraft Systems (UAS) operations with the Department of Homeland Security. In accordance with Board Policy 707.03 Approval for Prepayment for Goods or Services, the Board approved the request to pay the quarterly rent in advance as is common in this industry. The agreement is for three years beginning October 1, 2017, and ending September 30, 2020. The contract may be renewed for up to five consecutive one-year periods upon written agreement of both parties. The Lessee will pay rent quarterly, in advance, in the amount of $8,523.88, totaling $34,095.52 annually. The rent is calculated as $5.00 per square foot for the building and $5,875 per acre for the ground lease ($5.00 x 5,409.1 square feet; $5,875 x 1.20 acres). The total rent amount for the 3-year lease totals $102,286.50. The lease will be funded under Task Order 03 of contract W56HZV-17-C-0095 between MSU and the US Army’s Tank Automotive Research, Development and Engineering Center. The agreement, which was reviewed and approved by the IHL Associate Commissioner of Legal Affairs prior to the Board’s approval of this item, is on file in the Board Office.

9. MSU – Approved the request to enter into a contract with STM Charters, Inc. for 9 round trip flights for the Men’s Basketball team during the winter of 2017-18 season. In accordance with Board Policy 707.03 Approval for Prepayment for Goods or Services, the Board approved the request to pay prior to the flights as is common in this industry. The contract shall commence on the date the contract is signed by both parties and terminate on the date of the last flight as set forth in the agreement. The total of all charters will be $354,206 to be paid with Athletic funds. The agreement, which was reviewed and approved by the IHL Associate Commissioner of Legal Affairs prior to the Board’s approval of this item, is on file in the Board Office.

10. MSU – Approved the request to enter into a contract with STM Charters, Inc. for 8 round trip flights for the Women’s Basketball team during the winter of 2017-18 season. In accordance with Board Policy 707.03 Approval for Prepayment for Goods or Services, the Board approved the request to pay prior to the flights as is common in this industry. The contract shall commence on the date the contract is signed by both parties and terminate on the date of the last flight as set forth in the agreement. The total of all charters will be $296,895 to be paid with Athletic funds. The agreement, which was reviewed and approved by the IHL Associate Commissioner of Legal Affairs prior to the Board’s approval of this item, is on file in the Board Office.
11. **UM** – Approved the request to enter into a contract with CodeLynx, Inc. to standardize pricing for software, hardware, and migration services as requested by the ID Center. The scope of work will be to migrate the ID Center’s current video management system (Qognify) to Avigilon Control Center (ACC). This includes the current cameras, both analog and digital. CodeLynx is to provide takeover licensing for the current 665 licenses, any hardware required for the migration, product training, and any additional licenses needed for future use. This contract includes a non-solicitation clause that is in effect during the contract and for the twelve months following unless one party has the prior written approval of the other party; this clause also extends to any subcontract resulting from this contract. This contract will be for a period of one year from the start date of the signed contract with an option to renew each year up to an additional four years pending mutual agreement by both parties. The Board approved the full five years. The contract amount is estimated at a total of $458,056.80. The initial migration and licensing cost for the first year will total $208,221.60. The remaining $249,835.20 will be spent on estimated future licenses for years 2-5. The total estimated cost of the video surveillance system project is $612,888.75, which includes this agreement for the migration, hardware, and software licenses estimated at $458,056.80 and the sister agreement with ESSC, Inc. for the installation of security cameras estimated at $154,831.95. Funds for this contract will come from self-generated funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

12. **UM** – Approved the request from the Office of the Provost and Research and Sponsored Programs to amend an existing contract with Parker Executive Search to include four additional national searches for key leadership positions. UM is seeking professional assistance to fill four positions: Dean of the Graduate School, Dean of the School of Applied Sciences, Assistant Vice Chancellor for Research and Sponsored Programs, and Director of the Center for Educational Research and Evaluation. The existing contract commenced upon signing by the University, and will continue until successful completion of the Scope of Work as modified by the addition of these four searches. This modification will add $270,000 for the professional services to the original contract, plus direct expenses (capped at 10% or $27,000), plus actual costs for advertising, background investigations, interviews, and committee and candidate travel expenses. The estimated total for this modification is $350,000. The funding source for this contract will be educational and general funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

13. **UM** – Approved the request to enter into a contract with STM Charters, Inc. for passenger charter air transportation and related services for the 2017/2018 men’s basketball season to be provided by Elite Aviation. In accordance with Board Policy 707.03 Approval for Prepayment for Goods or Services, the Board approved the request to pay prior to the flights as is common in this industry. The contract will begin on October 20, 2017 and end on February 27, 2018. The contract amount is $443,200 which is billed in two installments. The funding source for this contract is the Athletics Department Operating Funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

14. **UMMC** – Approved the request to enter into a new Solid Waste Services Agreement (Agreement) with BFI Waste Services, LLC d/b/a Republic Services of Jackson (Republic) to provide solid waste removal, disposal, and recycling services at all UMMC locations in the Jackson area and Lexington, Mississippi, as well as potential future services in Grenada, Mississippi. The term of the Agreement is for five (5) years, beginning December 1, 2017, and ending November 30, 2022.
The estimated cost of the contract is $2,720,595.20 for the five (5) year term. A breakdown of the cost is included in the bound October 19, 2017 Board Working File. The contract will be funded by general funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

15. UMMC – Approved the request to amend its Agreement No. 18863, Bioplex® 2200 System Rental Agreement Plan (Agreement) with Bio-Rad Laboratories, Inc. (Bio-Rad) for the rental of a Bio-Plex 2200 System, Evolis Microplate Processor, and related equipment, as well as the purchase of consumables and service for the systems. The Bio-Plex and Evolis system are utilized to provide diagnostic laboratory testing, including testing for Rubella, Lupus, Measles, Mumps, Varicella, and Herpes Simplex Virus. Additionally, the Evolis system is an open-channel testing equipment that can run assays from manufacturers other than Bio-Rad as needed. The amendment will reduce UMMC’s commitment to purchase certain tests, reduce the costs for tests, add new tests and assays currently performed on other platforms at UMMC or sent to outside reference laboratories, provide additional training of the Evolis system, and clarify the Agreement start date. The term of the original Agreement is one (1) year with four (4) automatic one (1) year renewals. The start date of the Agreement was upon the “go-live date,” which was the date that the equipment was installed, calibrated, and tested sufficiently for operation in accordance with federal regulations. UMMC originally anticipated the go-live date to be October 1, 2014; however, the actual go-live date was July 1, 2015. The amendment does not change the term of the Agreement, but it clarifies the start date as July 1, 2015. The expiration date of the amended Agreement will be June 30, 2020. The original Agreement amount was estimated to be $1,906,923.56. Upon amendment, the total amount of the Agreement will decrease to $1,506,055.13. The agreement will be funded by hospital patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

16. UMMC – Approved the request to enter into a Vizient Letter of Commitment agreement with Cardinal Health 200, LLC to access discount rate tiers and to participate in an agreement for freight management services. The purpose of this Agreement is to provide UMMC access to nationally negotiated shipping/freight pricing, the ability to deal directly with the shipping/freight companies, and complete visibility and transparency for UMMC’s incoming shipping/freight charges. The term of this agreement will be forty-nine (49) months, beginning on November 1, 2017, and ending conterminously with the Vizient Agreement on November 30, 2021. The estimated freight cost to be paid to Cardinal under the Agreement is $4,173,455.66, based on UMMC’s historical shipping costs. UMMC estimates approximately $1,937,632.64 in savings through the utilization of this program. The agreement will be funded by hospital patient revenues. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

17. UMMC – Approved an amendment to its current software license and service agreement with Corepoint Health, LLC in order to purchase additional integration/interface engine licenses, service and support to be used by UMMC and its Epic Community Connect (ECC) client, the Mississippi Department of Health (MDH). The original agreement provides the software license and support services for the enterprise integration/interface engine that allows for the integration of clinical and business systems at UMMC. The amendment will begin November 1, 2017, and end conterminously with the existing agreement on October 31, 2020. The total term of the amended agreement remains four (4) years, beginning November 1, 2016, and ending October 31,
20. **UMMC** – Approved Amendment 17 to its current license and support agreement with Epic Systems Corporation to add the program property listing. This module will provide UMMC the ability to oversee an individual patient or a specific patient population from a remote location, which acts as a safety net to detect patient health deterioration earlier. The term of Amendment 17 will begin on or about November 1, 2017, and is coterminous with the current Epic License and Support Agreement which remains in effect in perpetuity in regard to the licenses, and it is also coterminous regarding maintenance coverage which ends August 22, 2019. There is no new associated cost for Amendment Seventeen (17). The total estimated approved cost for the Epic agreement remains $67,359,789.01. The amendment cost will be funded by hospital patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.
21. **UMMC** – Approved the request to enter into a Lease Agreement with Golden Triangle Regional Airport Authority (Authority) for the lease of hangar space for use by UMMC medical helicopter personnel and adjacent ground space for the placement of a modular office facility. The Lease Agreement will allow UMMC to continue to operate AirCare 3 from Golden Triangle Regional Airport, which is used for transporting critical care patients to UMMC or other designated receiving facilities for treatment. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or Services, the Board approved the request to prepay the lease amount on the first day of each month. The term of the Lease Agreement is nine (9) years, beginning April 1, 2018, and ending March 31, 2027. The total cost of the Lease Agreement over the nine (9) year term is $324,000.00. The monthly rent of $3,000 includes hangar space, non-exclusive access to public parking, access to utilities, and signage. The agreement will be funded by hospital patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

22. **UMMC** – Approved the request to amend its agreement with Hologic (MA), LLC formerly known as Hologic Limited Partnership (Hologic) to reduce the commitment amount of ThinPrep pap reagents, as well as exchange existing equipment for new equipment at no additional cost. The purpose of the Agreement is to provide for the usage and maintenance of Papanicolaou anatomic preparation (pap) testing equipment and related testing supplies. In addition, Hologic will provide the ThinPrep Imaging System, a device that uses computer imaging technology to assist in primary cervical cancer screening. In return for the use and maintenance of the equipment, UMMC commits to purchase a minimum amount of ThinPrep pap reagents. The term of the amendment will begin November 1, 2017 and is coterminous with the original agreement which ends November 30, 2019. The total estimated cost of the amended Agreement over five (5) years is $2,136,876.06. The original Agreement cost was $2,276,511.70. With the reduction in committed purchases of ThinPrep pap reagents, UMMC expects to save approximately $139,635.64 in the final two (2) years of the amended Agreement. The agreement will be funded by hospital patient revenues. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

23. **UMMC** – Approved Amendment 2 to its current Master Services Agreement with Press Ganey Associates, Inc. to replace the Physician Quality Reporting System (PQRS) Consumer Assessment Healthcare Providers & Systems (CAHPS) Regulatory Survey with Merit-Based Incentive Payment System (MIPS) CAHPS Regulatory Survey. The term of amendment 2 will begin November 1, 2017, and is coterminous with the original agreement. The original agreement is for a period of five (5) years, beginning October 1, 2015, and continuing until September 30, 2020. There is no cost associated with Amendment 2. The total estimated cost of the contract over five (5) years remains $2,599,643.81. The contract will be funded by hospital patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

24. **UMMC** – Approved Amendment 3 to its current Master Services Agreement with Press Ganey Associates, Inc. to add the Neonatal Intensive Care Unit (NICU) eSurvey Blend methodology to UMMC’s existing survey services and to add the Outpatient and Ambulatory Surgery (OAS) Regulatory CAHPS Wave 2 surveys to UMMC’s current Ambulatory Surgery eSurvey Blend services. The current Pediatric Inpatient Survey is not applicable to the NICU setting.
specific surveys will provide more meaningful data to physicians and staff within the NICU. The OAS CAHPS collects information about patients’ experiences of care in hospital outpatient departments and ambulatory surgery centers. This survey will be required by CMS in the near future. Early adoption of the OAS CAHPS survey can help improve performance and put UMMC in a stronger position to succeed when CMS mandates implementation. The term of amendment 3 will begin November 1, 2017, and is coterminous with the original agreement. The original agreement is for a period of five (5) years, beginning October 1, 2015, and continuing until September 30, 2020. Amendment 3 adds an annual cost of $1,500 for the addition of the NICU eSurvey Blend methodology. However, UMMC’s original calculations of the estimated agreement cost include enough funds to cover this additional cost. Therefore, the total estimated cost of the amended agreement over five (5) years remains $2,599,643.81. The contract will be funded by hospital patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

25. UMMC – Approved the request to enter into an agreement with SG-2, LLC for the MarketEdge product and consulting services for benchmarking data and analytic capabilities to assist UMMC in its strategic planning for future growth and to improve quality of care provided to its patients. In accordance with Board Policy 707.03 Approval of Prepayment for Goods or Services, the Board approved the request to make annual prepayments for service. SG-2’s MarketEdge product and consulting services provide integrated data, analytic tools, implementation support, and advisory services to significantly enhance its provider service and marketplace planning and performance analysis capabilities. The term of this agreement is three (3) years beginning on or about November 1, 2017, and ending October 31, 2020. The estimated cost of this agreement over the three (3) year term is $925,000. A breakdown of costs is included in the bound October 19, 2017 Board Working File. The agreement will be funded by hospital patient revenues. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

26. UMMC – Approved the request to amend its Management Agreement with SP Plus Corporation formerly known as Central Parking of Mississippi LLC, to extend the agreement for one (1) year for continued parking staffing and management services for Parking Garages A and B, Parking Lots 17, 21, and the Pavilion Parking Lot on UMMC’s main campus. The Second Amendment also lowers UMMC’s monthly cost for the services provided. The amended Management Agreement has an initial term of three (3) years with the option to renew for two (2) consecutive one (1) year terms. The full (5) five-year term currently is effective from November 1, 2012, to October 31, 2017. The Second Amendment will extend the Management Agreement through October 31, 2018. The original agreement and First Amendment had a total estimated cost of $2,685,536.09 for the five (5) year term. Beginning in Year 2 of the original agreement, UMMC’s cost increased each year in an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, as released by the U.S. Labor Department, Bureau of Labor Statistics. The Second Amendment will lower the monthly cost to $39,250 per month, or $471,000 for the term extension. The new total cost of the amended agreement is $3,156,536.09. The agreement will be funded by general funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

27. UMMC – Approved the request to enter into an End User Agreement (Agreement) with Stryker Sustainability Solutions, Inc. (Stryker) for consulting and reprocessing services for medical
devices labeled as single use devices. Reprocessing services include cleaning, sharpening, functional testing, sterile packaging, sterilization, and high-level disinfection for the medical devices, and reprocessing allows the devices to be resold and used for multiple uses. The cost of reprocessed devices is discounted greatly from the original price as a new item. The consulting and reprocessing services also include disposal of devices that cannot be reprocessed, at no additional cost. Through this Agreement, UMMC expects to achieve a significant savings through reduced purchase pricing of reprocessed medical devices and a reduction in costs associated with the handling and disposal of contaminated medical waste. The term of the Agreement is two (2) years and six (6) months, beginning November 1, 2017, and continuing through April 30, 2020, which is coterminous with Stryker’s agreement with Vizient. The estimated total cost of the agreement over the two (2) year and six (6) month term is $849,134.52, including shipping costs. The estimated total cost is based upon historical spend on new medical devices used in the Perioperative Services, Procedural, and Patient Care hospital departments, as discounted at the reprocessing rate. The discounted pricing for purchase of reprocessed medical devices will be based upon the percentage of reprocessed devices purchased annually for each device category. The typical market purchase percentage of reprocessed devices ranges from 60% to 80%. This is due to clinical need for OEM support for certain devices, as well as the ongoing need to purchase new devices, as used devices may be damaged or have reached their end of life and cannot be reprocessed again. However, for calculation of the total potential cost of this Agreement, UMMC assumed it would purchase up to 100% of reprocessed medical devices for the Perioperative Services, Procedural, and Patient Care hospital departments. At a 60% purchase level, the Agreement would allow UMMC to recognize estimated potential savings of $1,184,558.22 over the term of the Agreement. This agreement will be funded by hospital patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

28. USM – Approved the Amended and Restated Lease with the University of Southern Mississippi Athletic Foundation (Foundation/Lessee). The premises involve approximately two acres of land known as the Payne Center parking lot located at 101 MK Turk Circle, Hattiesburg, MS 39406. The premises also include portions of the Reed Green Coliseum located adjacent to the proposed construction in the Payne Center parking lot. During the term of the Lease, the Foundation will construct a Wellness Center of approximately thirty thousand square feet in accordance with plans and specifications as approved by USM. The premises shall also include certain other under-utilized athletic space as agreed upon by the parties hereto. The Foundation intends to sublease the premises to a third party for prepaid rent in order to allow the Foundation to perform the construction to the premises. The purpose of the Lease Agreement is to provide the Foundation the right to utilize the premises as needed and agreed upon by the parties, including the right to construct and lease/sublease a new Wellness Center and/or other athletics related space, including but not limited to the Reed Green Coliseum. All construction of the facilities by the Foundation shall be in accordance with plans and specifications as approved by USM. The term of the Lease shall commence subsequent to IHL Board approval and full execution of the Lease and shall expire on July 31, 2022. The contract amount shall be $1.00 cash in hand. This lease and subsequent sublease are being funded through the lease of athletic department facilities by the Mississippi Community Education Center (MCEC), a SOI(c)3 organization designed to provide schools, communities and families with educational services and training programs in South Mississippi. MCEC will use the subject facilities to support their programming efforts for South Mississippi.
MCEC’s funding for this project is via a Block Grant from the Mississippi Department of Human Services. The funding from MCEC shall be prepaid rent to the Foundation in the amount of Five Million Dollars ($5,000,000) for the leasing of certain USM athletic facilities including but not limited to the to be constructed Wellness Center, Reed Green Coliseum and additional athletic space as agreed upon by USM and the Foundation. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

29. USM – Approved the Reimbursable Space Act Agreement between The National Aeronautics and Space Administration John H. Stennis Space Center (NASA) and the Mississippi Board of Trustees of State Institutions of Higher Learning for the Center of Higher Learning and Related University Activities (IHL). Under this Agreement, NASA provides space for IHL through the Center of Higher Learning (CHL) in order to facilitate the continued education of the NASA workforce. This Agreement further addresses the terms and conditions for non-academic activities which the IHL has authorized, pursuant to approval by NASA. The purpose of this Agreement is to define the relationship between NASA and CHL for the continued provision of academic and non-academic programs through the CHL at the John H. Stennis Space Center (SSC). Such programs, conducted by the CHL and associated institutions, are designed to meet the present and future higher education needs of SSC employees and persons from surrounding communities. The Stennis Space Center Policy Board on Higher Education is an advisory body appointed by the NASA / Stennis Center Director to provide broad oversight to CHL. The SSC Policy Board approves all new academic degree programs offered at the SSC by the CHL and their associated institutions; the list of proposed program offerings in Appendix A of this Agreement reflects previously-approved degree programs by the Policy Board. This agreement is a precursor to a Host-Tenant Agreement and Use Permit Agreement that will stipulate specifics as to pricing and space usage. This Agreement will be effective upon the date of the latest party’s signature and will expire five years from said date or until the completion of all obligations of the parties, whichever comes first. In accordance with the terms of the Agreement, IHL shall reimburse NASA an estimated cost totaling up to approximately $3,575,875 for NASA to carry out its responsibilities over the five-year term of the Agreement. This estimated total cost is based on the historical costs for the last five years of the Agreement and reflects expenditures by both the CHL and the USM Division of Marine Science. These expenditures are for floor space, utilities, badging and security, telecommunications and other costs associated with being a tenant at the SSC. A table of historical costs for the last five years is included in the bound October 19, 2017 Board Working File. This agreement will be funded by State of Mississippi Appropriations for Center of Higher Learning, Education and general funds for the Department of Marine Science. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

30. ASU – Exhibit 1 represents the approval of the Mississippi Information Technology Services (MS-ITS) Board to acquire Ellucian Technical Currency Services for Licensed Software for Alcorn State University (ASU). The Attorney General’s staff assigned to the MS-ITS reviewed this amendment prior to its execution. The supplement to the Master Agreement for software and services is between Ellucian Company, L.P. and MS-ITS behalf of ASU. (See Exhibit 1.)
REAL ESTATE

31. UMMC – Approved the initiation of IHL 209-561, Campus HVAC Upgrades FY 18, and the appointment of Engineering Resource Group, Inc. as the design professional. This project will replace the air handler serving the existing main operating rooms and the aging rooftop units on the Pavilion building. The proposed project budget is $2,750,000. Funds are available from UMMC Shared Services Administration (SSA) – Building Improvement Funds ($2,750,000).

32. UMMC – Approved the initiation of IHL 209-562, Re-Roof Pavilion, and the appointment of Dean & Dean Architects as the design professional. This project will replace the failing and deteriorating roof on the Pavilion. The proposed project budget is $1.6 million. Funds are available from UMMC Shared Services Administration (SSA) Funds ($1,600,000).

33. JSU – Approved the request to increase the budget for GS 103-286, Stewart Hall Renovations, from $200,000 to $602,739.56, for an increase of $402,739.56. The Board also approved the request to add SB 2851, Laws of 2013, and 2014 JSU Funds to the project as funding sources to allow for the project budget increase. This is the first budget increase request made for this project by the university. The increase will to allow the continuation of the project through the construction document phase. Stewart Hall is currently vacant and unusable as a residential facility due to the deteriorated condition of interior finishes and mechanical systems. This is a 37,033 gross square foot (GSF) five (5) story brick facility with 90 rooms designed for a total of 180 student beds. The university is pre-planning a comprehensive renovation which will include envelope restoration, substantial reconfiguration, interior upgrades, ADA compliance issues, asbestos abatement, as well as, major renovations of the mechanical, electrical, plumbing, and life safety systems. The facility will be repurposed to be a state-of-the-art residential hall. Funds are available from SB 2906, Laws of 2015 ($200,000); SB 2851, Laws of 2013/JSU ($128,023.97); SB 2851, Laws of 2013/IHL-CEF ($31,545.29); and 2014 JSU Discretionary Funds ($243,170.30).

34. UMMC – Approved the request to sole source the HVAC controls portion of GS 109-223, Clinical Research Unit. The Request for Qualifications method was used to select the Foil Wyatt Architects as design professional. The university determined that it would benefit to extend the existing Johnson Controls System as a sole source to insure the operational integrity of the existing building system. The estimated value of the existing Johnson Controls EMCS is approximately $1,500,000. The probable cost of the project EMCS modifications is $135,000 which is a 9.0% modification. According to IHL and Bureau of Building EMCS procurement protocol for existing systems, the EMCS can and should be procured by single source procurement since the portion of the work related to the new renovation is less than 25% of the existing system as long as approval is obtained prior to bidding. The total project budget is $7.5 million. Funds are available from UMMC SSA – Building Improvement Funds ($7,500,000).

35. USM – Approved the purchase of property located at 3403 Pearl Street in Hattiesburg, MS from Roderick T. Wells and Dorothy Wells in the amount of $126,000. The property borders university property and is critical to the long-range plans of the university due to its location to campus. Upon acquisition, the university intends to demolish the existing structure and grass the lot so that it can be used for future parking and/or expansion. The university received two independent property appraisals in the amounts of $137,000 and $120,000. The purchase price is $126,000 which is below the average of the property’s two appraised values. The closing shall be held at a location mutually agreeable to the parties on or before November 17, 2017 or upon such earlier or later date and time per agreement by the parties. A Phase I Environmental Site Assessment (ESA) has been
conducted on the property. Based on site available information, no recognized environmental conditions are evident at the subject property. A copy of the property description and all legal documentation are on file with the IHL Office of Real Estate and Facilities. The Attorney General’s Office has reviewed and approved this item.

LEGAL

36. ASU – Approved the contract with Ware Immigration, to provide services necessary in preparing labor certification documents on behalf of ASU for its employees who seek permanent residence status and related immigration matters. The contract term is one year beginning October 1, 2017. The fee schedule is as outlined below with a maximum amount payable of $20,000. The Attorney General’s Office has approved this request.

Schedule of Legal Fees for Academia

<table>
<thead>
<tr>
<th>Nonimmigrant Petitions and Processes</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>H-1B petition</td>
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</tr>
<tr>
<td>H-1B extension or amendment petitions</td>
<td>$1000.00</td>
</tr>
<tr>
<td>TN petition or border/consulate processing</td>
<td>$1500.00</td>
</tr>
<tr>
<td>TN extension petition</td>
<td>$1000.00</td>
</tr>
<tr>
<td>E-3 petition or consular processing</td>
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<tr>
<td>E-3 extension petition</td>
<td>$1000.00</td>
</tr>
<tr>
<td>O-1 petition</td>
<td>$4000.00</td>
</tr>
<tr>
<td>O-1 extension or amendment petition</td>
<td>$1500.00</td>
</tr>
</tbody>
</table>

Change of status or extension of status for dependents (I-539) no additional charge

| J-1 waiver (IGA or hardship)         | $6,000.00 |
| J-1 waiver (Conrad)                  | $6,000.00 |

Permanent Residence Process with Labor Certification: Faculty

| $2000.00 Special Handling labor certification |
| $1500.00 Additional fee if audited. |
| $2500.00 Immigrant petition |
| $1500.00 Adjustment of status and related applications (I-765, I-131, etc.) for employee, if handled together with I 140 |
| $2000.00 “Standalone” adjustment of status and related applications |
| $750.00 Adjustment of status and related applications, each spouse or child, if together with principal application and I 140 |
| $1000.00 “Standalone” adjustment of status and related, each spouse or child |

Permanent Residence Process with Labor Certification: Non-Faculty

| $4000.00 Labor certification |
| (500-$1500.00 Additional fee if audited) |
| (2500.00 Additional fee if subject to supervised recruitment) |
| $2500.00 Immigrant petition |
| $2000.00 Adjustment of status and related applications (I-765, I-131, etc.) for employee |
| $2500.00 Standalone AOS and related applications |
| $750.00 Adjustment of status and related applications, each spouse or child |
| $1000.00 Standalone AOS for each spouse or child |
MINUTES OF THE BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING
October 19, 2017

Permanent Residence Process: Outstanding Professors and Researchers
- $6000.00 Immigrant petition
- $1500.00 Adjustment of status and related applications for employee
- $2000.00 Standalone AOS and related
- $750.00 Adjustment of status and related applications, each spouse or child
- $1000.00 Standalone dependent AOS and related

Permanent Residence Process: National Interest Waiver
- $6000.00 Immigrant petition
- $1500.00 Adjustment of status and related applications by employee
- $2000.00 Standalone AOS and related
- $750.00 Adjustment of status and related applications each spouse or child
- $1000.00 Standalone AOS and related, dependents

Employment Authorization and Advance Parole Renewal
- $500 Employment Authorization Renewal per individual
- $500 Advance Parole Renewal per individual

General Legal Advice and Unusual Matters Which Fall Outside This Fee Schedule
Such matters will be billed at our hourly rates:
- David Ware $350 per hour billed.
- WI Partners $350 per hour billed.
- Associate Attorneys: $250 per hour billed.
- Paralegals: $175 per hour billed.

37. **MSU** – Approved the request to modify a contract with Butler Snow LLP, to provide services necessary in the practice areas of intellectual property and commercial matters; this representation does not and is not intended to include any representation by law firm for or on behalf of the University as bond counsel or in any related role in connection with any financing transaction undertaken by or for the University, including other matters which may concern advice in connection with indebtedness of the University. The initial contract entered into on October 17, 2013 was modified by Modifications 1-3, each extending the term for one year, with the current term expiring October 16, 2017. Modification #4 will extend the term of the contract for an additional year or through October 16, 2018. Blended hourly rate for all attorneys is increased from $240 per hour to $295 per hour. Rate for legal assistants shall remain at $95 per hour. Total amount payable during the extension period shall not exceed $75,000. All other provisions of the Agreement for Legal Services dated October 17, 2013 shall remain in effect. The Modification has been approved by the Office of the Attorney General.

38. **MSU** – Approved the request to modify a contract with the firm of Valauskas Corder, LLC located at 150 South Wacker Drive, Suite 620, Chicago, IL 60606, as outside counsel for the provision of services necessary in assisting the University with various patent applications, identification and forensic analysis of intellectual property, prosecution of patent applications, trademark registration applications, copyright registration applications, preparing and negotiating agreements and other related intellectual property and commercialization issues. The initial contract entered into on November 17, 2011 was modified by Modifications 1-5, each Modification extending contract terms for one (1) year. Modification #6 will extend the term until November 16, 2018. Current attorneys providing services are Charles Valauskas, Allison Corder, and Paul K. Judd. All other provisions of the Agreement for Legal Services dated November 17, 2011, shall remain in effect.
with hourly rates ranging from $225-$425, and total amount payable under this extension shall not exceed $100,000. This Modification has been approved by the Office of the Attorney General.

39. MSU – Approved the request to enter into a contract with The Winfield Law Firm, P.A. as outside counsel to provide legal services necessary in assisting the University in the areas of higher education law, employment law, real estate matters, compliance, and other local matters, at an hourly rate of $165.00. The contract will be effective November 1, 2017, for an initial term of one (1) year. The total amount payable during the contract shall not exceed $50,000. This request has been approved by the Office of the Attorney General.

PERSONNEL REPORT

40. EMPLOYMENT

Jackson State University
- Steven Smith, Interim Vice President for Enrollment Management, Institutional Research & Assessment; salary of $24,900 for 3 months; effective September 5, 2017 – November 30, 2017

Mississippi University for Women
- Rita C. Hinton; rehired retiree; reemployment position: Emerita Professor of Philosophy; salary of $29,155 per annum, pro rata; E&G Funds; reemployment period: August 21, 2017 – December 18, 2017

Mississippi Valley State University
- Chresteen Seals; rehired retiree; reemployment position: Site Coordinator at Coahoma Community College; salary of $20,000 per annum, pro rata; E & G Funds; reemployment period: July 1, 2017 - April 30, 2018

41. CHANGE OF STATUS

University of Mississippi
- Noel Wilkin; from Interim Provost and Executive Vice Chancellor for Academic Affairs, Professor of Pharmacy Administration and Research Professor in the Research Institute of Pharmaceutical Sciences; salary of $290,000 pro annum, pro rata; E&G Funds; to Provost and Executive Vice Chancellor of Academic Affairs, Professor of Pharmacy Administration and Research Professor in the Research Institute of Pharmaceutical Sciences; Ph.D.; salary of $385,000 per annum, pro rata; E&G Funds; 12-month contract; effective September 22, 2017

42. SABBATICAL

Jackson State University
- Mukesh Kumar; Associate Professor and Interim Program Director, Urban Planning-PH.D; salary of $69,904, this will be an unpaid leave; effective September 1, 2017 – May 31, 2018
43. **EMERITUS STATUS**

University of Southern Mississippi
- William W. Powell, Associate Professor Emeritus of TESOL & French; effective July 1, 2017

**ADMINISTRATION/POLICY**

44. **ASU** – Approved the university’s mission statement as follows:

   Alcorn State University, a Historically Black College and University, is a comprehensive land-grant institution that celebrates a rich heritage with a diverse student and faculty population. The University emphasizes intellectual development and lifelong learning through the integration of diverse pedagogies, applied and basic research, cultural and professional programs, public service and outreach, while providing access to globally competitive academic and research programs. Alcorn strives to prepare graduates to be well-rounded future leaders of high character and to be successful in the global marketplace of the 21st century.

45. **DSU** – Approved the revisions to the university’s mission statement as follows:

   As a regional Carnegie Master’s I university located in Cleveland, Mississippi, Delta State University serves as an educational and cultural center for the Mississippi Delta, emphasizing service to the Northern Delta and contiguous counties and its campus centers in Clarksdale and Greenville in traditional and distance education formats. The University offers undergraduate, graduate and continuing education programs of study leading to baccalaureate and master’s degrees in the Colleges of Arts and Sciences, Business and Aviation, Education and Human Sciences, and the School of Nursing, as well as the Educational Specialist degree and Doctorates in Education and Nursing Practice. Emphasis is placed on excellence in instruction, followed by service and research, in the creation of a community of scholars. With special attention to small classes, a friendly environment, and a broad liberal arts foundation, the University encourages significant student-faculty interactions. Delta State provides programs and services that promote intellectual, cultural, ethical, physical, and social development. Students from different cultural, socioeconomic, and ethnic backgrounds will develop the ability to respect and evaluate the thoughts of others; to develop, assess, and express their own thoughts effectively; and to use the techniques of research and performance associated with their disciplines.

46. **JSU** – Approved the university’s mission statement as follows:

   The university produces technologically advanced, diverse, ethical, global leaders who think critically, address societal problems, and compete effectively.

47. **MSU** – Approved the university’s mission statement as follows:

   Mississippi State University is a public, land-grant university whose mission is to provide access and opportunity to students from all sectors of the state’s diverse population, as well as from other states and countries, and to offer excellent programs of teaching, research, and service.

   Enhancing its historic strengths in agriculture, natural resources, engineering, mathematics, and natural and physical sciences, Mississippi State offers a comprehensive range of undergraduate and graduate programs; these include architecture, the fine arts, business, education, the humanities, the social and behavioral sciences, and veterinary medicine.
The university embraces its role as a major contributor to the economic development of the state through targeted research and the transfer of ideas and technology to the public, supported by faculty and staff relationships with industry, community organizations, and government entities.

Building on its land-grant tradition, Mississippi State strategically extends its resources and expertise throughout the entire state for the benefit of Mississippi’s citizens, offering access for working and place-bound adult learners through its Meridian Campus, Extension, and distance learning programs.

Mississippi State is committed to its tradition of instilling among its students and alumni ideals of diversity, citizenship, leadership, and service.

48. **MUW** – Approved the revisions to the university’s mission statement as follows:

Mississippi University for Women (MUW), a public institution since 1884, provides high-quality undergraduate and graduate education for women and men in a variety of liberal arts and professional programs, while maintaining its historic commitment to academic and leadership development for women. MUW emphasizes a personalized learning environment in all of its educational programs, which are offered through the College of Arts, and Sciences, and Education, College of Business and Professional Studies, College of Education and Human Sciences, and College of Nursing and Health Sciences Speech Language Pathology. MUW delivers selected programs and courses through distance education formats to provide educational opportunities throughout Mississippi and the United States, while addressing the unique educational and public service needs of northeast Mississippi and adjoining counties in northwest Alabama. MUW supports research, scholarship, and creativity to enhance faculty development and student learning and to advance knowledge in the disciplines offered by the university.

49. **MVSU** – Approved the university’s mission statement as follows:

Mississippi Valley State University, as a Carnegie Classified Master's University, provides comprehensive undergraduate and graduate programs in education, the arts and sciences, and professional studies. The University is driven by its commitment to excellence in teaching, learning, service, and research—a commitment resulting in a learner-centered environment that prepares critical thinkers, exceptional communicators, and service-oriented, engaged, and productive citizens. MVSU is fundamentally committed to positively impacting the quality of life and creating extraordinary educational opportunities for the Mississippi Delta and beyond.

50. **UM & UMMC** – Approved the revisions to the UM and UMMC vision and mission statements as follows:

**Vision Statement**

As a great American public university, The University of Mississippi will lead and excel by engaging minds, transforming lives, and serving others. Aspires to be a preeminent public international research university and a leading force for innovation and opportunity in Mississippi, the United States, and the world.

**Mission Statement**

As Mississippi’s flagship university and academic medical center, the University of Mississippi transforms lives, communities, and the world by providing opportunities for the people of Mississippi and beyond through excellence in learning, discovery, healthcare, and engagement.
The mission of the University of Mississippi is to create, evaluate, share, and apply knowledge in a free, open, and inclusive environment of intellectual inquiry. Building upon a distinguished foundation in the liberal arts, the state’s oldest, first comprehensive university serves the people of Mississippi and the world through a breadth of academic, research, and professional, and service programs. The University of Mississippi provides an academic experience that emphasizes critical thinking; encourages intellectual depth and creativity; promotes research and creative achievement to advance society; uses its expertise to engage and transform communities; challenges and inspires a diverse community of undergraduate, graduate, and professional students; provides opportunities for enriching opportunities outside the classroom; supports lifelong learning; and develops a sense of global responsibility.

The mission of the University of Mississippi Medical Center is to improve the health and well-being of patients and the community through excellent training for health care professionals, engagement in innovative research, and the delivery of state-of-the-art health care.

51. **USM** – Approved the university’s mission statement as follows:

The University of Southern Mississippi is a community of engaged citizens, operating as a public, student-centered, doctoral-granting research university serving Mississippi, the nation, and the world. The University is dedicated to scholarship and learning, integrating students at all levels in the creation and application of knowledge through excellence in teaching, research, creative activities, outreach, and service. The University nurtures student success by providing distinctive and competitive educational programs embedded in a welcoming environment, preparing a diverse student population to embark on meaningful life endeavors.

**ACADEMIC AFFAIRS**

Presented by Trustee Tom Duff, Chair

On motion by Trustee Duff, seconded by Trustee Parker, all Trustees legally present and participating voted unanimously to approve agenda item #1 as submitted on the Academic Affairs Agenda.

1. **SYSTEM** – Approved the following recommended actions based on the Academic Program Productivity Reviews:

   a. **Continue with stipulation** the following 20 academic programs (subject to additional review by the IHL Office of Academic and Student Affairs for two years to assess progress toward future productivity):

      - ASU – Bachelor of Arts in Sociology (CIP 45.1101)
      - ASU – Bachelor of Science in Computer Science (CIP 11.0101)
      - ASU – Bachelor of Science in Robotics and Automation Technology (CIP 15.0405)
      - DSU – Master of Science in Community Development (CIP 44.0201)
      - JSU – Bachelor of Science in Mathematics Education (CIP 13.1311)
      - JSU – Master of Education in Elementary Education (CIP 13.1202)
      - JSU – Master of Education in Secondary Education (CIP 13.1205)
      - JSU – Master of Science in Environmental Science (CIP 30.103)
      - JSU – Masters in Science and Mathematics Teaching (CIP 13.9999)
      - MUW – Bachelor of Arts in Music – (CIP 50.0901)
MVSU – Bachelor of Science in Computer Science (CIP 11.0101)
MVSU – Bachelor of Science in Elementary Education (CIP 13.1202)
MVSU – Bachelor of Arts in Art (CIP 50.0101)
USM – Bachelor of Science in Electronics Engineering Technology (CIP 15.0303)
USM – Bachelor of Arts in Philosophy (CIP 38.0101)
USM – Master of Science in Polymer Science and Engineering (CIP 14.3201)
USM – Master of Science in Forensics (CIP 43.0106)
USM – Doctorate in Kinesiology (CIP 31.0505)
USM – Doctorate in Criminal Justice (CIP 43.0104)
USM – Doctorate in Geography (CIP 45.0701)

b. **Delete** - DSU – Bachelor of Arts in Political Science (CIP 45.1001).

**FINANCE AGENDA**
Presented by Trustee Christy Pickering, Chair

Trustee Pickering removed agenda item #1 for further review. On motion by Trustee Pickering, seconded by Trustee McNair, all Trustees legally present and participating voted unanimously to approve agenda item #1 as submitted on the Finance Agenda. On motion by Trustee Pickering, seconded by Trustee McNair, all Trustees legally present and participating voted unanimously to approve agenda item #2. On motion by Trustee Pickering, seconded by Trustee McNair, all Trustees legally present and participating voted unanimously to approve agenda item #3. On motion by Trustee Pickering, seconded by Trustee Duff, all Trustees legally present and participating voted unanimously to approve agenda item #4. On motion by Trustee Pickering, seconded by Trustee McHooper, all Trustees legally present and participating voted unanimously to approve agenda item #5.

1. **SYSTEM** – Request approval for first reading of the revisions to Board Policy 906 Educational Building Corporations. *(See Exhibit 2.)* *(THIS ITEM WAS REMOVED FROM THE AGENDA FOR FURTHER REVIEW.)*

2. **UMMC** – Approved the request to enter into a Customer Agreement with CareFusion Solutions, LLC to purchase dedicated and non-dedicated intravenous (IV) disposable sets, including pump sets, gravity sets, extension sets, connectors, secondary sets, and accessories at a discount in exchange for a commitment to purchase at least $1,000,000 per year and 90% of UMMC’s total need for IV disposable sets. UMMC currently owns 1,996 CareFusion IV pumps that require use of dedicated CareFusion IV disposable sets due to compatibility. By combining the dedicated sets and non-dedicated sets under this agreement, UMMC qualifies for a higher discount on the products. The term of the agreement is for five (5) years – November 1, 2017 through October 31, 2022. The total estimated cost for the five (5) year contract term is $8,738,381.30. Beginning in Year 2, UMMC has calculated an annual increase of five and one-half percent (5.5%) for potential price increases and volume growth each year of the agreement. The agreement will be funded by patient revenue. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

3. **UMMC** – Approved Amendment 2 to its agreement with Crothall Healthcare, Inc. to add Statement of Work #4 to the agreement, which includes services for the remainder of UMMC’s facilities in Jackson, including its academic, research, and service department facilities. The original contract term for the master agreement is for five (5) years beginning November 1, 2015.
The Second Amendment will be effective November 1, 2017, with services commencing on or about December 1, 2017. The Second Amendment’s expiration will coincide with the original agreement on October 31, 2020. The total cost of Statement of Work #4 is $11,821,604.85, including all potential and variable costs. UMMC will pay semi-monthly fixed costs for housekeeping services. Beginning in Year 2, annual prices will increase by CPI or three percent (3%), whichever is less. Should UMMC terminate Statement of Work #4 prior to its expiration, UMMC will pay the unamortized balance for Crothall’s opening expenses, and UMMC will have the option to pay the unamortized balance for any equipment purchases made by Crothall. If Crothall’s costs to perform the services increases by more than fifteen percent (15%), UMMC and Crothall will renegotiate a new rate, and UMMC will present the amendment to the IHL Board for a request for the increase at that time. A breakdown of costs is available in the bound October 19, 2017 Board Working File. This agreement will be funded by general funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

4. **UMMC** – Approved the request to initiate the bond process for up to $91 million for the Medical Center Educational Building Corporation for the purpose of expanding Children’s of Mississippi, including a new tower with expanded neonatal intensive care unit (NICU), pediatric intensive care unit (PICU), new pediatric imaging center, new dedicated surgical suites, related infrastructure, outpatient clinics, clinics and parking garage. It should be noted that the original request was for bonds up to $132 million. After discussion within the Health Affairs Committee on October 18, 2017, the request was revised to $91 million with the understanding that should additional money be needed the University of Mississippi would loan the money to UMMC internally. The expansion will also include a new lobby with critical infrastructure (food/chapel/gift shop) and dedicated patient elevators. The building will double the size of pediatric clinical space at the Medical Center to meet existing and future patient needs. The Board approved the payment of costs of issuance, sale and delivery of the bonds and other necessary bond documents and the financial advisor’s report provided by Hilltop Securities. The Board approved the following professionals: Hilltop Securities as financial advisor; Butler Snow LLP as bond counsel; and JP Morgan, Morgan Stanley, and Raymond James as underwriters. Bond counsel has agreed to donate its fee up to $250,000 to the Children’s of Mississippi Expansion project. The expansion is needed to provide approximately 340,000 square feet of additional space to provide NICU, PICU, surgery, clinic and outpatient clinics and dedicated pediatric imaging space for its pediatric patients. Long-term and intermediate term fixed rate bonds will be issued with maturities up to thirty (30) years. UMMC is expecting to issue up to a maximum of $91,000,000 par value in tax-exempt, fixed rate bonds. Proceeds from the bond issue will support the project fund, capitalized interest, costs of issuance and the underwriter’s discount. Based on the Financial Advisor’s report dated September 21, 2017, the proposed debt amortization will have an annual debt payment as follows: FY 2019–2042 is $4,883,325; and FY 2043-2047 is $18,145,000. Funds are available from Patient Revenues, Development Funds.

5. **UMMC** – Approved the request to enter into a Service Agreement with ThyssenKrupp Elevator Corporation (ThyssenKrupp) to provide elevator maintenance service for 125 elevators located on UMMC’s main campus and new Belhaven facility, as well as facilities located in Lexington and Grenada, MS. The term of the Agreement is for five (5) years from November 1, 2017, through October 31, 2022. The total estimated cost of the Agreement over the five (5) year term is $3,602,804.87. Any price increases under the Agreement, including increased fuel costs and
elevator examiner rate charges, are capped at three and one-half percent (3.5%) increase per year and subject to approval by UMMC. The agreement will be funded by general funds. The agreement, which was reviewed and approved by the Attorney General’s Office prior to the Board’s approval of this item, is on file in the Board Office.

LEGAL AGENDA
Presented by Trustee Alan Perry, Chair

Trustee Perry moved agenda items #1 and #2 to the Executive Session Agenda for consideration.
1. MVSU – Request to settle the IHL Self-Insured Workers’ Compensation Program Claim No. 55-8703-1. (THIS ITEM WAS MOVED TO EXECUTIVE SESSION.)
2. UMMC – Request to settle Tort Claim number 3133. (THIS ITEM WAS MOVED TO EXECUTIVE SESSION.)

INFORMATION AGENDA
Presented by Commissioner Glenn F. Boyce

FINANCE
1. SYSTEM - In accordance with the Jake Ayers, Jr., et al. and United States of America v Ronnie Musgrove, Governor, State of Mississippi, et al. Settlement (aka: Ayers Settlement Agreement), the IHL Board, through its counsel, shall provide to lead counsel for the private plaintiffs and counsel for the United States an annual disclosure report reflecting specified line-item information. This document is due October 1 of each year and has been presented to the Court. Each member of the IHL Board is being provided a copy of the 2017 Ayers Accountability Manual as required by the Ayers Settlement Agreement. A copy is on file at the Board Office.

REAL ESTATE
2. SYSTEM – The Board received the Real Estate items that were approved by the Board staff subsequent to the August 17, 2017 Board meeting in accordance with Board Policy 904 Board Approval. (See Exhibit 3.)

LEGAL
3. SYSTEM – The Board received a report of the payment of legal fees to outside counsel. (See Exhibit 4.)

ADMINISTRATION/POLICY
4. SYSTEM – The following items have been approved by the Commissioner on behalf of the Board and are available for inspection at the Board Office.
   a. ASU - In accordance with Board Policy 707.01 Land, Property, and Service Contracts, “The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000.” On October 4, 2017, Commissioner Glenn F. Boyce approved the proposed Motor Vehicle License to Use Agreement
between the university and Toyota Motor Sales, U.S.A., Inc. for the use of a Toyota Rav4 vehicle by the ASU Athletic Department as part of a partnership between the SWAC and Toyota. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract document.

b. **MSU** – In accordance with Board Policy 707.01 Land, Property, and Service Contracts, "The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000." On October 4, 2017, Commissioner Glenn F. Boyce approved the Lease Agreement addendum #2 between the university and the MSU Research and Technology Corporation (MSU-RTC) for 352 square feet of office space located in the MSU-RTC Incubator Building in Starkville, MS. This is the 2nd renewal of an existing Lease that began on October 1, 2016, at an annual cost of $5,280. All provisions of the agreement remain unchanged. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract documents.

**ANNOUNCEMENTS**

- Commissioner Glenn Boyce noted that each trustee received a draft copy of the 2015-2016 Education Achievement Council (EAC) Report Card for each of the Mississippi public universities. These reports are required by law and will be provided to the EAC for approval next week.
- President C.D. Smith announced that the next scheduled Board meeting will be November 16, 2017 at the Board Office.
- President Smith invited the university presidents to report on current activities on their campuses.
- Trustee Walt Starr reported that Mr. David Buford, IHL Director of Risk Management, recently conducted a thorough review and assessment of each of the Mississippi public university’s procedures related to sexual assault complaints and whether counseling services are available for those involved in incidents. Mr. Buford was able to conduct a thorough review without contacting university staff because ample information was readily available through the internet. Students will likely use this method to educate themselves, in addition to what they remember from orientation and related past trainings. No two universities had the exact same policy, but it is apparent that all are following pertinent Title IX regulatory guidance. Trustee Starr thanked all eight universities for proactively working to prevent incidents, to educate the campus population, and to create safe environments for students.
- Chancellor Jeff Vitter introduced Dr. Noel Wilkin who was recently promoted to Provost and Executive Vice Chancellor of Academic Affairs, Professor of Pharmacy Administration and Research Professor in the Research Institute of Pharmaceutical Sciences.
- President Smith thanked the students representing the student government associations at the universities who took time from their busy schedules to participate in the Board meeting.
The meeting was called to order by Chairman Tom Duff at approximately 1:30 p.m. The following items were discussed.

1. On motion by Trustee Hooper, seconded by Trustee Dye, with Trustees Pickering and Smith absent and not voting, all Trustees legally present and participating voted unanimously to approve the authorization to plan an Executive Master of Science in Population Health Management degree program (CIP 51.2208) at the University of Mississippi Medical Center.

2. On motion by Trustee Rouse, seconded by Trustee Dye, with Trustees Pickering and Smith absent and not voting, all Trustees legally present and participating voted unanimously to approve the authorization to plan a Bachelor of Science in Health Sciences degree program (CIP 51.9999) at the University of Southern Mississippi.

3. By consensus, the Committee adjourned at approximately 1:50 p.m.

The following Committee members attended the meeting: Mr. Tom Duff (Chair), Dr. Ford Dye, Mr. Shane Hooper, Ms. Ann Lamar, Dr. Alfred McNair, Mr. Chip Morgan, Mr. Hal Parker, Mr. Alan Perry, Dr. Doug Rouse, and Dr. Walt Starr. Ms. Christy Pickering and Mr. C.D. Smith were absent.

The meeting was called to order by Chairman Ford Dye at approximately 2:00 p.m. The following items were discussed.

1. The Committee discussed the request by the University of Mississippi Medical Center to initiate the bond process for up to $132 million for Medical Center Educational Building Corporation for the purpose of expanding Children’s of Mississippi, including a new tower with expanded neonatal intensive care unit (NICU), pediatric intensive care unit (PICU), new pediatric imaging center, new dedicated surgical suites, related infrastructure, outpatient clinics, clinics, and parking garage. 

   **No action was taken.**

2. **By consensus, the Committee recessed at 4:00 p.m.** The following Committee members were present for the first half of the meeting: Dr. Ford Dye (Chair), Mr. Tom Duff, Mr. Shane Hooper, Ms. Ann Lamar, Dr. Alfred McNair, Mr. Chip Morgan, Mr. Hal Parker, Mr. Alan Perry, Ms. Christy Pickering, Dr. Doug Rouse, and Dr. Walt Starr. Mr. C.D. Smith was absent.

3. **Chairman Ford Dye reconvened the meeting at approximately 4:30 p.m.** The following Committee members were present for the remainder of the meeting: Dr. Ford Dye (Chair), Mr. Tom Duff, Mr. Shane Hooper (by phone), Ms. Ann Lamar, Dr. Alfred McNair, Mr. Chip Morgan, Mr. Hal Parker, Mr. Alan Perry, Ms. Christy Pickering, Dr. Doug Rouse, Mr. C.D. Smith, and Dr. Walt Starr.

4. The Committee continued its discussion of the bond issuance for the UMMC expansion of Children’s of Mississippi. **No action was taken.**

5. By consensus, the Committee adjourned at approximately 4:50 p.m.
The meeting was called to order by Chairman Shane Hooper at approximately 4:55 p.m. The following item was discussed.

1. Executive Session
   On motion by Trustee Perry, all Trustees legally present and participating voted unanimously to close the meeting to determine whether to declare an Executive Session. On motion by Trustee Dye, seconded by Trustee Rouse, all Trustees legally present and participating voted unanimously to enter into Executive Session for the reason reported to the public and stated in these minutes, as follows: Discussion of a personnel matter at Mississippi Valley State University.
   During Executive Session, the following matters was discussed:
   The Committee discussed a personnel matter at Mississippi Valley State University. No action was taken.
   On motion by Trustee Perry, seconded by Trustee Parker, all trustees legally present and participating voted unanimously to return to open session.

2. On motion by Trustee Smith, seconded by Trustee Perry, with Trustee Starr absent and not voting, all Trustees legally present and participating voted unanimously to adjourn the meeting.

The following Committee members attended the meeting: Mr. Shane Hooper (Chair), Mr. Tom Duff, Dr. Ford Dye, Ms. Ann Lamar, Dr. Alfred McNair, Mr. Chip Morgan, Mr. Hal Parker, Mr. Alan Perry, Ms. Christy Pickering, Dr. Doug Rouse, Mr. C.D. Smith, and Dr. Walt Starr.

EXECUTIVE SESSION

On motion by Trustee Hooper, seconded by Trustee Perry, all Trustees legally present and participating voted unanimously to close the meeting to determine whether to declare an Executive Session. On motion by Trustee Hooper, seconded by Trustee Perry, with Trustees Dye and Morgan absent and not voting, all Trustees legally present and participating voted unanimously to enter into Executive Session for the reasons reported to the public and stated in these minutes, as follows:

Discussion of two state university litigation matters and one state university personnel matter.

During Executive Session, the following matters were discussed and/or voted upon:

On motion by Trustee Hooper, seconded by Trustee Pickering, with Trustee Dye absent and not voting, all Trustees legally present and participating voted unanimously to approve the settlement of Tort Claim No. 3133, styled as Steve Wright vs. UMMC, et al., as recommended by counsel.
On motion by Trustee Hooper, seconded by Trustee McNair, with Trustee Dye absent and not voting, all Trustees legally present and participating voted unanimously to approve the settlement of IHL Self Insured Workers’ Compensation Claim No. 55-8703-1, styled as *Anthony McClung vs. MVSU, et al.*, as recommended by counsel.

On motion by Trustee Hooper, seconded by Trustee Pickering, with Trustee Dye absent and not voting, all Trustees legally present and participating voted unanimously to approve to utilize the expedited process as listed in the Board Policy 201.0509 Institutional Executive Officer/Commissioner of Higher Education Search Process and to waive any parts of such policy that are not consistent with the action taken by this Board, and to name Dr. Jerryl Briggs as president of Mississippi Valley State University with a state salary of $215,000 with a possible foundation supplement up to $10,000, and to provide reimbursement of up to $1,000 for moving expenses, effective October 19, 2017.

**On motion by Trustee Pickering, seconded by Trustee McNair, with Trustee Dye absent and not voting, all Trustees legally present and participating voted unanimously to return to Open Session.**

**ADJOURNMENT**

There being no further business to come before the Board, on motion by Trustee Pickering, seconded by Trustee Perry, with Trustee Dye absent and not voting, all Trustees legally present and participating voted unanimously to adjourn the meeting.

_____________________________________________________________
President, Board of Trustees of State Institutions of Higher Learning

_____________________________________________________________
Commissioner, Board of Trustees of State Institutions of Higher Learning
EXHIBITS

Exhibit 1  Approval of MS-ITS to acquire Ellucian Technical Currency Services for Licensed Software for ASU.

Exhibit 2  Request approval for first reading of the following revisions to Board Policy 906 Educational Building Corporations.

Exhibit 3  Real Estate items that were approved by the IHL Board staff subsequent to the August 17, 2017 Board meeting.

Exhibit 4  Report of the payment of legal fees to outside counsel.
ITS CONTRACT ACCEPTANCE  
Project Number 43900  
For Renewal of Banner License

TO:  
Felicia Harried  
ASU

RETURN TO:  
Paula Conn  
Dept. of Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
Phone: 601-432-6046  
Fax: 601-713-6380

DATE SENT:  
August 31, 2017

RETURN BY:  
September 14, 2017

INSTRUCTIONS:
Please review the attached contract forwarded to you by the ITS staff. If any material changes are needed to this contract, please mark all changes needed on the document and return to ITS for changes. You will be sent a revised copy to review before you sign this Contract Acceptance form. Otherwise, please select one of the options below and return this form to the address above.

Please initial the appropriate line to indicate the contract has been reviewed & is accepted by your agency/institution and that all reviews by your agency attorney and management are complete:

[ ] without changes
[ ] with the following corrections to format or syntax: (attach additional pages if needed)

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<th>Page Number</th>
<th>Correction Needed:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please list all names/titles, if any, who will sign this contract on behalf of your agency:

[ ] None; we accept the signature of the ITS Executive Director on our behalf

[ ] Please add a signature line for the following person(s) from our agency:

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<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

CONTRACT DELIVERY (SELECT ONE):

[ ] Send contracts to vendor via overnight delivery and bill our agency/institution.

[ ] Send contracts to vendor via regular United States Postal Service mail.

Alcorn State University

AUTHORIZED SIGNATURE / DATE  
AGENCY / INSTITUTION

My signature above indicates that my agency/institution is a full party to the above-referenced contract, with or without the signature of the agency executive on the body of the contract. My agency executive understands and agrees that: (1) by virtue of Section 25-59-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services, and, as contracting agent, must be a party to any amendments, change orders, or termination actions for the life of this contract; (2) ITS as contracting agent is not responsible or liable for the performance or non-performance of any of agency's contractual obligations, financial or otherwise, for this contract; and (3) my agency/institution is responsible for day-to-day management of the project and contract and all business decisions pertaining thereto and must initiate any actions regarding payments, changes in scope, early termination, and invocation of any penalties defined herein, providing appropriate notification to ITS when required.

Date Revised: 9/14/2017

Attachment 2
PROJECT NUMBER 43900  
SUPPLEMENT TO  
MASTER SOFTWARE LICENSE AND SERVICE AGREEMENT  
BETWEEN  
ELLUCIAN COMPANY L.P.  
(SUCCESSOR BY ASSIGNMENT TO SUNGARD HIGHER EDUCATION INC.  
AND ALSO FORMERLY KNOWN AS SUNGARD SCT, INC. AND  
SCT SOFTWARE & RESOURCE MANAGEMENT CORP)  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR  
ALCORN STATE UNIVERSITY

This document (hereinafter referred to as "Supplement") shall serve as a Supplement to the original Master Software License and Service Agreement (hereinafter referred to as "Master Agreement") executed on May 21, 1998, between Ellucian Company L.P., formerly known as "SunGard SCT, Inc." and SCT Software & Resource Management Corporation, and "SunGard" (hereinafter referred to as "Licenser" and/or "Ellucian"), and Mississippi Department of Information Technology Services (hereinafter referred to as "ITS"), as contracting agent for the agencies and Institutions of the State of Mississippi. It is understood by the parties that ITS is executing this Supplement on behalf of Alcorn State University (hereinafter referred to as "Licensee"). ITS and Licensee are sometimes collectively referred to herein as "State."

WHEREAS, the Licensee desires to acquire the Technical Currency Services as specified herein;

NOW THEREFORE, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

1) This Supplement will become effective on the date it is signed by all parties ("Effective Date") and will continue in effect until October 31, 2024 unless terminated pursuant to Article 14 of the Master Agreement. Licenser agrees to provide the Technical Currency Services in accordance with Article 32 of the Master Agreement.

2) Licenser agrees to provide Licensee with Technical Currency Services for the Licensed Software identified in the Licensee Order Form, which is attached hereto as Exhibit A and incorporated herein by reference, and at the fees and for the periods set forth therein.

3) Licenser represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Licenser agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Licenser further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licenser understands and agrees that any breach of these warranties may subject Licenser to the following: (a) termination of this Supplement and Ineligibility for any state or public contract in
Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

4) The parties understand and agree that all terms and conditions set forth in the Master Agreement are incorporated herein by reference and that this acquisition is subject to and controlled by the terms and conditions set forth in the Master Agreement.

5) All other provisions in the underlying Master Agreement shall remain unchanged.

For the faithful performance of the terms of this Supplement, the parties have caused this Supplement to be executed by their undersigned representatives.

State of Mississippi, Department of Information Technology Services, on behalf of Alcorn State University

By:__________________________________________

Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Title: Executive Director

Date: ________________________________

Ellucian Company L.P.

By:__________________________________________

Authorized Signature

Printed Name:______________________________

Title:________________________________________

Date:_______________________________________
EXHIBIT A  
MISSISSIPPI LICENSE ORDER FORM  
TECHNICAL CURRENCY SERVICES

Licensee: Alcorn State University ("Licensee")  
Delivery Address: 1000 ASU Drive, Alcorn State, MS 38696

Licensee is hereby obtaining Technical Currency Services for the Licensed Software listed below pursuant to the Master Software License and Services Agreement between Ellucian and ITS as Contracting Agent for the Agencies and Institutions of the State of Mississippi dated May 21, 1998 (the "Master Agreement"). The fees due hereunder shall be in addition to any fees due under any prior Order Form, Amendment or Agreement entered into between Ellucian and either ITS or the Board of Trustees of the Mississippi Institutions of Higher Learning.

TABLE 1: Technical Currency Services (Maintenance);  
Technical Currency Year Begin/Ends: November 1/October 31  
Technical Currency Expiration Date: October 31, 2024

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<td>November 1, 2019 to October 31, 2020</td>
<td>November 1, 2020 to October 31, 2021</td>
<td>November 1, 2021 to October 31, 2022</td>
<td>November 1, 2022 to October 31, 2023</td>
<td>November 1, 2023 to October 31, 2024</td>
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**Banner Document Management Suite**

- ApplicationXtender Desktop: $37,870.00
- ApplicationXtender Test Bundle: $1,192.00
- ApplicationXtender Web Access NET: $4,473.00
- DiskXtender Windows File System Manager Server: $1,357.00
- TouchNot Payment Gateway¹: $6,045.00
- TouchNet Webcheck¹: $3,318.00

**Oracle**

- Internet Appliance Enterprise Edition: $16,357.00
- Internet Developer Suite: $0.00
- Programmer: $0.00
- Relational Database System: $29,170.00

**Grand Total**: $236,545.00

**Total Maintenance Cost**: $1,871,463.00

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¹ Indicates the Component System is owned by a third party.
NOTES:

The hours during which Maintenance will be provided for each Component System, the targeted response times for certain defined categories of Maintenance calls for each Component System, and other details and procedures (collectively, the "Maintenance Standards") relating to the provision of Maintenance for each Component System are described in the applicable Maintenance Standards stated below.

The Technical Currency (Maintenance) amounts specified in Table 1 above will be reflected by Ellucian in annual invoices in arrears. Licensee will make payment for invoices in accordance with the terms of Article 10 of the Master Agreement and penalties for late payments shall be calculated in accordance with the terms of Article 10.2 of the Master Agreement. Following the Expiration Date of the final Technical Currency Year (i.e. October 31, 2024), Technical Currency Services may be extended upon mutual written agreement of the parties, in the form of an amendment to this Supplement signed by an authorized representative of each party hereto.

Notwithstanding anything in the Master Agreement to the contrary, except in the case of: (a) a termination for cause as described in Article 14.1 or 14.2 of the Master Agreement, or (b) as the result of mutual written agreement of the parties as described in Article 14.3, or (c) a lack of appropriation of funds as described in Article 27 of the Master Agreement, the Technical Currency Term as it applies to each Baseline Component System listed in Table 1 above is for the period beginning on the Commencement Date (i.e. November 1, 2017) and shall continue, and remain in full force and effect, until the Expiration Date of the final Technical Currency Year, in accordance with its terms.

Advantage Level Maintenance Standards

I. Defined Terms:

"Notification" means a communication to Ellucian's ActionLine by means of: (i) Ellucian's Customer Support Center; (ii) the placement of a telephone call; or (iii) the sending of an e-mail, in each case, in accordance with Ellucian's then-current policies and procedures for submitting such communications.

"Priority One Call" means a Notification that Licensee believes that a Documented Defect has caused: (i) a full failure (i.e., "crash") of its computer system; (ii) a full failure of the Licensed Software; or (iii) a failure of its computer system or the Licensed Software which, in either case, prevents Licensee from performing data processing which is critical to Licensee's operations on the day on which the alleged Documented Defect is reported.

"Priority Two Call" means a Notification that Licensee believes that a Documented Defect has caused a partial failure of Licensee's computer system or the Licensed Software which significantly hinders its ability to perform data processing which is critical to Licensee's operations on the day on which the alleged Documented Defect is reported.
"Priority Three Call" means a Notification that Licensee believes that a Documented Defect has caused an intermittent failure of, or problem with, its computer system or the Licensed Software that causes a significant delay in Licensee's ability to perform data processing on the day on which the alleged Documented Defect is reported, but where the processing is not critical to Licensee's operations.

"Priority Four Call" means a Notification that Licensee believes that a Documented Defect has caused a problem with its computer system or the Licensed Software that does not significantly affect critical processing.

II. Hours During Which Ellucian's "ActionLine" Telephone Support Will be Available to Licensee In Connection with the Provision of Maintenance: Five (5) days per week, Monday through Friday, excluding United States holidays and Ellucian-observed holidays, from 8:00 AM to 5:00 PM (Central US Time).

III. Targeted Response Times: With respect to Ellucian's Maintenance obligations, Ellucian will respond to Notifications from Licensee relating to the Baseline Component Systems identified in this Supplement in accordance with the following guidelines, with the time period to be measured beginning with Ellucian's receipt of the Notification:

- Priority One Calls – two (2) hours or less.
- Priority Two Calls – four (4) hours or less.
- Priority Three Calls – twenty-four (24) hours or less.
- Priority Four Calls – seventy-two (72) hours or less.

Notes: For purposes of these targets, a "response" will mean an initial contact from an Ellucian representative to Licensee to begin evaluation of the problem reported under one of the categories of calls identified above; (2) As a prerequisite to Ellucian's obligation to respond to Licensee, Licensee must follow the policies and procedures of Ellucian's ActionLine (such as the dialing of a particular phone number, the categorization of a particular problem, etc.) when submitting its Notification.
SYSTEM – REQUEST FOR APPROVAL FOR FIRST READING OF REVISIONS TO BOARD POLICY 906 – EDUCATIONAL BUILDING CORPORATIONS

906 – EDUCATIONAL BUILDING CORPORATIONS

Authority, Miss. Code Ann., Sections 37-101-61 and 37-101-63 (1972), as amended, grants the state institutions of higher learning the authority to form nonprofit corporations for the purpose of acquiring, or maintaining, equipping, improving or constructing facilities for use by the institution. These educational building corporations are granted the authority to issue bonds or other forms of debt obligations (if required for the type of debt to be issued) for the construction and renovation of facilities.

Financial Advisor. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation for the construction, maintenance, equipping, acquisition, and renovation of facilities or to refinance outstanding debt, Board staff, in conjunction with institutional staff, must select a financial advisor(s) to represent the interests of the Board, the educational building corporation and the institution. The financial advisor(s) shall meet such qualifications and perform such services as may be prescribed by the institution, the Board or its staff.

Financial Advisor. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation for the construction, maintenance, equipping, acquisition, and renovation of facilities or to refinance outstanding debt, the Commissioner shall designate a financial advisor(s) to advise the Board with respect to the likely impacts and the prudency of the proposed transaction. The Financial Adviser will provide advice to the Board -- which is independent of the advice provided by the institution or the educational building corporation - as to the anticipated effect of the proposed transaction on the institution and the entire IHL system. The Commissioner will not approve use of a financial adviser with respect to a transaction if the proposed advisor has or has had substantial other relationships with the institution to the extent that would cause its judgment or independence to be questioned by a disinterested observer. The financial advisor(s) shall meet such qualifications and perform such services as may be prescribed by the Board, and the Board will periodically approve a list of possible firms to provide those services from which the Commissioner may select when the necessity arises.

Payment to the financial advisor(s) shall be made by the institution, or the institution’s educational building corporation, without regard for whether the Board approves the construction or renovation or whether the institution or educational building corporation constructs the project, or in the case of refinancing, whether the debt is refinanced.

Financing Projects. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation for the construction, maintenance, equipping, acquisition or renovation of facilities, the financial advisor must provide the Board with an independent...
EXHIBIT 2
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analysis of the institution’s financial condition, to verify that proposed revenue stream(s) are sufficient to repay the debt service and to recommend the project’s viability. If the educational building corporation will issue commercial paper, the financial advisor shall also calculate an opinion of the breakeven interest rate to long term bonds to justify the use of commercial paper. The institution shall submit the report of the financial advisor(s) and the request for a project initiation to the Board for approval. The request must state the institution’s intent, justify the need for the project and give an estimate of the total construction budget. The request must also include naming the design professionals, bond counsel and senior underwriter(s) selected by the board of the educational building corporation.

Following the Board’s approval of the project initiation, the institution shall return to the Board at a subsequent meeting and present a resolution for Board approval granting permission for issuing bonds or other forms of debt obligations for the specific project. In no case shall the educational building corporation issue bonds or other forms of debt obligations without specific approval of the debt obligations from the Board for specific projects.

Refinancing or Defeasing of Outstanding Debt. Outstanding debt of the educational building corporation may be refinanced in accordance with the provisions of this policy. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, the financial advisor must provide the Board with an independent analysis showing potential net present value (NPV) savings based on current market conditions. The institution’s request must include naming the bond counsel and senior underwriter(s) selected by the board of the educational building corporation. After consideration of the financial advisor’s analysis and other factors that the Board deems material, the Board may approve the issuance of debt by the educational building corporation, in the discretion of the authorized representatives of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, which authorization may be conditioned on the specific level of NPV savings being achieved. Refinancing or defeasing of debt does not require a subsequent meeting of the Board of Trustees provided the financial advisor has provided a report demonstrating adequate net present value savings and the bond resolution and form of bond documents have been presented to and approved by the Board.

Review and Approval of Documents. In connection with the issuance of debt for any purpose, the institution shall present a resolution for Board approval granting permission for issuing bonds or other forms of debt obligations and for approval of the following documents to which the Board will be a party: the lease, the ground lease, the preliminary official statement (if required for the type of debt to be issued), and the continuing disclosure agreement (if required for the type of debt to be issued). The resolution shall also authorize representatives of the Board to execute such documents. Prior to the approval of the resolution by the Board, the educational
building corporation shall submit to the Board staff, for informational purposes only, the form of any documents that are to be entered into by the educational building corporation in connection with the issuance of bonds or other debt, but to which the Board is not a party.

Method of Sale. Unless the Board approves otherwise, obligations shall be offered and sold through a competitive sale process or, alternatively, on a negotiated basis to an underwriter, in the case of bonds, or a dealer, in the case of commercial paper.

Selection of Financial Institution Participants. Any selection of a financial institution to serve as trustee under a trust indenture, as escrow agent under an escrow agreement, or as a lender to an educational building corporation, either directly or through the purchase of obligations of the educational building corporation, shall be made by the educational building corporation in its sole discretion and shall not be subject to approval by the Board.

Continuing Disclosure Obligations. Securities and Exchange Commission Rule 15c2-12 generally provides that an underwriter cannot sell governmental bonds unless an “obligated person” with respect to the bonds enters into a “Continuing Disclosure Agreement” (CDA) agrees to submit annually audited financial statements of the obligated person and other information as set forth in the CDA and notices of specified material events. With respect to the issuance of bonds by educational building corporations, the Board is an “obligated person” and the CDA will typically require audited financial statements and operating data for the entire IHL system to be submitted annually, rather than information on individual institutions. The material events specified in the CDA also typically relate to the entire IHL system.

To facilitate uniformity, efficiency and timeliness in complying with the requirements of Rule 15c2-12 relating to bonds issued by an educational building corporation, the Board, rather than the educational building corporation, will enter into the CDA and undertake to provide the annual disclosures and material event notices. The Board will hire an independent agent to assist with compliance with its obligations under CDA(s), as well as, compliance by educational building corporations under CDA(s) entered into by educational building corporations prior to the adoption of this policy upon approval by the Board. The Board, and/or its dissemination agent, will also sign up for the EMMA tickler system reminders.
SYSTEM: REAL ESTATE ITEMS APPROVED SUBSEQUENT TO THE AUGUST 17, 2017 BOARD MEETING SUBMISSION DEADLINE

NOTE: THE FOLLOWING ITEMS WERE APPROVED BY THE BOARD'S REAL ESTATE AND FACILITIES STAFF ACCORDING TO BOARD POLICY §904 (A) BOARD APPROVAL.

Change Order Approval Note: No change orders approved by Board staff, as reflected within any of the following informational agenda items, increase the Board approved total project budget. The total project budget as approved by the Board provides for a contingency fund, which allows for an increase in the construction budget of between five and ten percent. Any increase in the total project budget caused by a change order, would require Board approval and could not be approved by Board staff until the budget increase is approved by the Board.

ALCORN STATE UNIVERSITY

1. **ASU- GS 101-297 – Technology Classroom Building**  
   NOTE: This is a Bureau of Building project  
   Approval Request #1: Contract Documents  
   Board staff approved Contract Documents as submitted by Allred Architectural Group  
   Approval Status & Date: APPROVED, August 29, 2017  
   Approval Request #2: Advertise  
   Board staff approved request to advertise for receipt of bids.  
   Approval Status & Date: APPROVED, August 29, 2017  
   Project Initiation Date: June 20, 2013  
   Design Professional: Allred Architectural Group  
   General Contractor: TBD  
   Total Project Budget: $16,500,000.00

2. **ASU- IHL 201-252 – Morris-Boykin Renovation**  
   Approval Request #1: Contract Documents  
   Board staff approved Contract Documents as submitted by Durrell Design Group  
   Approval Status & Date: APPROVED, August 14, 2017  
   Approval Request #2: Advertise  
   Board staff approved request to advertise for receipt of bids.  
   Approval Status & Date: APPROVED, August 14, 2017  
   Project Initiation Date: August 8, 2016  
   Design Professional: Durrell Design Group  
   General Contractor: TBD  
   Total Project Budget: $1,777,500.35
3. **ASU- IHL 201-255 – Water Treatment Facility Improvements**  
   **Approval Request #1 (INTERIM):** In accordance with Board Policy §904 (B) Board Approval, *Interim Chair Approval* was granted by Mr. Hal Parker, Chair of the Real Estate and Facilities Committee on August 24, 2017 to approve the initiation and appointment of the design professional for the Water Treatment Facility Improvements project.  
   **Approval Status & Date:** APPROVED, August 24, 2017  
   **Project Initiation Date:** February 18, 2016  
   **Design Professional:** M & G Enterprises, Inc., d/b/a Engineering Service  
   **General Contractor:** TBD  
   **Total Project Budget:** $3,311,592.00

DELTA STATE UNIVERSITY

4. **DSU– GS 102-260 – Zeigel Hall Renovation**  
   **NOTE:** This is a Bureau of Building project  
   **Approval Request #1: Change Order #1**  
   Board staff approved Change Order #1 in the amount of $250,141.80 and one hundred sixteen (116) additional days to the contract of Roy Collins Construction Co., Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.  
   **Approval Status & Date:** APPROVED, August 11, 2017  
   **Change Order Description:** Change Order #1 includes the following items: removal of existing trees; provide separate chill water valves from the existing campus loop; relocation of fiber optics; installation of a valve into the main gas line and tie into the main gas line directly and replacement of the existing gas valve; removal of asbestos containing concealed glue dots; cost associated with proposal for energy management & controls system to be deducted from the controls allowance; block the wall demo; new wall construction; and one hundred sixteen (116) days to the contract.  
   **Change Order Justification:** These changes were due to latent job site conditions; and additional days for work as indicated herein.  
   **Total Project Change Orders and Amount:** One (1) change order for a total amount of $250,141.80.  
   **Project Initiation Date:** October 16, 2014  
   **Design Professional:** Architecture South, Inc.  
   **General Contractor:** Roy Collins Construction Co., Inc.  
   **Total Project Budget:** $6,292,500.00

5. **DSU– GS 102-262 – Young Maulding Renovations**  
   **NOTE:** This is a Bureau of Building project  
   **Approval Request #1: Award of Construction Contract**  
   Board staff approved the Award of Contract in the amount of $8,095,000.00 to the apparent low bidder, Diversified Construction Services, Inc.  
   **Approval Status & Date:** APPROVED, July 18, 2017
EXHIBIT 3
October 19, 2017

Project Initiation Date:  October 16, 2014
Design Professional:  Burris/Wagnon Architects, P.A.
General Contractor:  Diversified Construction Services, Inc.
Total Project Budget:  $9,180,791.00

JACKSON STATE UNIVERSITY

6.  **JSU– GS 103-286 – Stewart Renovation Preplan**
    NOTE: This is a Bureau of Building project
    **Approval Request #1: Approval of Schematic Design Documents**
    Board staff approved the Schematic Design Documents as submitted by Foil Wyatt
    Architects & Planners, PLLC.
    Approval Status & Date:  APPROVED, August 21, 2017
    **Approval Request #2: Design Development Documents**
    Board staff approved the Design Development Documents as submitted by Foil Wyatt
    Architects & Planners, PLLC.
    Approval Status & Date:  APPROVED, August 21, 2017
    Project Initiation Date:  November 17, 2016
    Design Professional:  Foil Wyatt Architects & Planners, PLLC
    General Contractor:  TBD
    Phased Project Budget:  $200,000.00

MISSISSIPPI STATE UNIVERSITY

7.  **MSU– GS 105-351 – YMCA Renovation**
    NOTE: This is a Bureau of Building project
    **Approval Request #1: Change Order #2**
    Board staff approved Change Order #2 in the amount of $171,879.54 and eleven (11)
    additional days to the contract of Gregory Construction Services, Inc.
    Approval Status & Date:  APPROVED, August 25, 2017
    Change Order Description:  Change Order #2 includes the following items: roof
    investigation; asbestos abatement; electrical modifications; interior finish modifications;
    and eleven (11) days to the contract.
    Change Order Justification:  These changes were due to latent job site conditions; and
    additional days for work as indicated herein.
    **Approval Request #2: Change Order #3**
    Board staff approved Change Order #3 in the amount of $139,343.91 and twenty-one
    (21) additional days to the contract of Gregory Construction Services, Inc.
    Approval Status & Date:  APPROVED, August 25, 2017
    Change Order Description:  Change Order #3 includes the following items: steam tunnel
    removal; electrical changes; first floor ceiling & miscellaneous interior credits; and
    twenty-one (21) days to the contract.
Change Order Justification: These changes were due to latent job site conditions; and additional days for work as indicated herein.
Total Project Change Orders and Amount: Three (3) change orders for a total amount of $437,507.82.
Project Initiation Date: August 15, 2013
Design Professional: Belinda Stewart Architects, P.A.
General Contractor: Gregory construction Services, Inc.
Total Project Budget: $9,800,000.00

8. MSU– GS 113-136 – Meat Science Laboratory
NOTE: This is a Bureau of Building project
Approval Request #1: Change Order #3
Board staff approved Change Order #3 in the amount of $15,219.54 and sixteen (16) additional days to the contract of Construction Services, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.
Approval Status & Date: APPROVED, July 21, 2017
Change Order Description: Change Order #3 includes the following items: remove six (6) backflow preventers; provide weather proof GFCI with weather proof cover; provide Patriot “chair” in lieu of Fusion; install a handrail; re-configure the fire protection and domestic water connections; and sixteen (16) days to the contract.
Change Order Justification: These changes were due to errors & omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; and additional days for work as indicated herein.
Total Project Change Orders and Amount: Three (3) change orders for a total credit amount of $35,906.03.
Project Initiation Date: October 17, 2013
Design Professional: Pryor & Morrow, P.A.
General Contractor: Construction Services, Inc.
Total Project Budget: $8,200,000.00

9. MSU– IHL 205-271 – Robert L. Jones Circle Road and Utility Completion
Approval Request #1: Change Order #1
Board staff approved Change Order #1 in the amount of $9,090.75 and one hundred eighty-five (185) additional days to the contract of Mitchell Contracting, Inc.
Approval Status & Date: APPROVED, July 7, 2017
Change Order Description: Change Order #1 includes the following items: add an out flume; add striping; add a sewer manhole extension; add a concrete flume and riprap to the west end of the project; to raise a sewer manhole in the southeast portion of the project; add traffic striping; and one hundred eight-five (185) days to the contract due to weather delays.
Change Order Justification: These changes were due to latent job site conditions; user/owner requested modifications; and additional days for work as indicated herein.
Total Project Change Orders and Amount: One (1) change order for a total amount of $9,090.75.
Project Initiation Date: October 17, 2013
10. **MSU–IHL 205-278 – MSU nSPARC Data Center**
   **Approval Request #1: Change Order #3**
   Board staff approved Change Order #3 in the amount of $23,661.17 and fourteen (14) additional days to the contract of Burks-Mordecai Builders, Inc.
   **Approval Status & Date:** APPROVED, August 2, 2017
   **Change Order Description:** Change Order #3 includes the following items: re-routing site fiber; added a solid panel door; installed window shades in an office; add a raised laminate floor; changes to electrical and low voltage; add a card access to a door; add a grounding system to the computer room; and fourteen (14) days to the contract.
   **Change Order Justification:** These changes were due to latent job site conditions; user/owner requested modifications; and days for work as indicated herein.
   **Total Project Change Orders and Amount:** Three (3) change orders for a total amount of $238,222.88.

11. **MSU–IHL 205-279 – Addition & Renovation to Dudy Noble Field**
   **Approval Request #1: Change Order #1**
   Board staff approved Change Order #1 in the credit amount of $469,800.00 and zero (0) additional days to the contract of Jesco, Inc.
   **Approval Status & Date:** APPROVED, August 9, 2017
   **Change Order Description:** Change Order #1 includes the following items: insulation spec revision from ½” to 1” on chill water piping; delete roof drain where exposed to ambient temperatures; to apply 1” armaflex on heating water equipment in lieu of 3” fiberglass; change the outfield lounge rails from steel to aluminum; increase the mesh opening to 4”; to use Timber Tech composite decking in lieu of Trex decking at the outfield lounges; change out the existing two gas water heaters for Tricon water heaters; change out the existing water heater for the center field build and install a Rhee water heater; delete all domestic cold and hot water insulation on branch lines; change the domestic cold and hot recirculation pipe size 2” and below to PEX 8; omit the requirement for PVC coated galvanized steel elbow for underground 90’s; and omit the requirement for fire wrap.
   **Change Order Justification:** These changes were due to user/owner requested modifications.
   **Total Project Change Orders and Amount:** One (1) change order for a total credit amount of $469,800.00.
Total Project Budget: $55,000,000.00

12. **MSU - Demolition of Building #1132**
   
   **Approval Request #1 (INTERIM):** In accordance with Board Policy §904 (B) Board Approval, *Interim Chair Approval* was granted by Mr. Hal Parker, Chair of the Real Estate and Facilities Committee on July 26, 2017 to approve the removal from inventory and demolition of the existing small garage/storage building (Building #1132).
   
   **Approval Status & Date:** APPROVED, July 26, 2017

**MISSISSIPPI UNIVERSITY FOR WOMEN**

   
   **NOTE:** This is a Bureau of Building project
   
   **Approval Request #1: Contract Documents**
   
   Board staff approved Contract Documents as submitted by Durrell Design Group
   
   **Approval Status & Date:** APPROVED, August 14, 2017
   
   **Approval Request #2: Advertise**
   
   Board staff approved request to advertise for receipt of bids.
   
   **Approval Status & Date:** APPROVED, August 14, 2017
   
   **Project Initiation Date:** August 8, 2016
   
   **Design Professional:** Durrell Design Group
   
   **General Contractor:** TBD
   
   **Total Project Budget:** $1,777,500.35

14. **MUW – Memorandum of Agreement between MUW and the Mississippi Department of Archives and History (MDAH)**
   
   The Mississippi Archives and History (MDAH) Board of Trustees, MDAH staff, and Mississippi University for Women have agreed to a Memorandum of Agreement (MOA) that addresses the designation of three (3) new historical landmark buildings, thirteen (13) potential historical landmark buildings, and eleven (11) ineligible buildings for historical landmark designation on the MUW campus during a five (5) year time period beginning September 26, 2017 and ending September 26, 2022. At the end of the five (5) year time period, the MOA will be reassessed by MDAH and MUW. A copy of the MOA that details the designation of each building will be kept on file with the Office of Real Estate and Facilities at IHL.

**UNIVERSITY OF MISSISSIPPI**

15. **UM– IHL 107-308 – Union Addition & Renovation**
   
   **NOTE:** This is a Bureau of Building project
   
   **Approval Request #1: Change Order #8**
   
   Board staff approved Change Order #8 in the amount of $461,754.00 and sixty-five (65) additional days to the contract of Roy Anderson Corporation.
Approval Status & Date: APPROVED, July 14, 2017
Change Order Description: Change Order #8 includes the following items: removal and disposal of undocumented asbestos-contaminated material; add new water lines with Insterta-Valves; remove existing undocumented water lines and hydro-jet to locate other existing utilities to remain for construction of the new south porch; add an air handling unit with associated components including controls and painting at one of the buildings; add miscellaneous steel framing, plating & grating for floor openings & a sprinkler system at mechanical platforms; change the flooring in McAlister’s back-of-house kitchen areas from tile to fluid-applied flooring to match the rest of the kitchens; change the material of overhead doors at the loading dock from painted steel to stainless steel and add sensing edge slack retraction safety features at the food brand security grilles; add crack suppression membrane under the terrazzo flooring at the light-weight concrete floor slabs; and sixty-five (65) days to the contract.
Change Order Justification: This change was due to errors and omissions in the plans and specifications; latent jobsite conditions; user/owner requested modifications; and days for work as indicated herein.
Total Project Change Orders and Amount: Eight (8) change orders for a total amount of $1,369,865.00.

Project Initiation Date: August 18, 2011
Design Professional: Eley Guild Hardy Architects – Jackson, P.A.
General Contractor: Roy Anderson Corporation
Phased Project Budget: $58,580,565.32
Total Project budget: $58,900,000.00

16. UM – IHL 207-376.2R – STEM Building – Site Utilities Relocation REBID
Approval Request #1: Change Order #1
Board staff approved Change Order #1 in the amount of $485,148.07 and sixty (60) additional days to the contract of Eubank Construction Co., Inc.
Approval Status & Date: APPROVED, July 7, 2017
Change Order Description: Change Order #1 includes the following items: additional hot and cold water valves; extend the electrical bore; additional water lines added to the new waterline to Faser Hall; excavation to abandon two (2) existing water well casings discovered during construction; additional construction fencing; relocation of a communications manhole into the sidewalk; storm drainage modifications; sanitary sewer line repair; additional bores and wire; an additional post indicator valve for a fire protection line; add 1200 amp outdoor disconnect and relocate the underground feeder; raise the manhole tops to match the existing grade; installation of a domestic water service connection; relocation of a domestic water line; additional boring for the water line installation; replace two (2) manholes and a gravity sewer line on the north end of the new line; install electrical conduit for future use; and sixty (60) days to the contract.
Change Order Justification: These changes were due to errors and omissions in the plan & specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.
Total Project Change Orders and Amount: One (1) change order for a total amount of $485,148.07.
17. UM– IHL 207-389 – Vaught-Hemingway Stadium North End Zone
Approval Request #1: Change Order #11
Board staff approved Change Order #11 in the credit amount of $78,043.00 and zero (0) additional days to the contract of Roy Anderson Corporation.
Approval Status & Date: APPROVED, July 6, 2017
Change Order Description: Change Order #11 includes the following items: Credit due to silt and fiber damage.
Change Order Justification: These changes were due to errors and omissions in the plans and specifications; latent job site conditions; and user/owner requested modifications.
Total Project Change Orders and Amount: Eleven (11) change orders for a total amount of $2,524,973.28.
Project Initiation Date: August 21, 2014
Design Professional: AECOM
General Contractor: Roy Anderson Corporation
Total Project Budget: $30,593,713.00

18. UM – IHL 207-401 – Wastewater Treatment Facility Expansion
Approval Request #1: Change Order #5
Board staff approved Change Order #5 in the amount of $55,269.11 and eleven (11) additional days to the contract of Hemphill Construction Company, Inc.
Approval Status & Date: APPROVED, July 21, 2017
Change Order Description: Change Order #5 includes the following items: labor & material to pipe from clarifier to sludge drain; to extend electrical service for the new decant lift station; changes in the design of the cascade aerator structure; to fill the old degritter and headworks channel and cap with concrete in lieu of grating; change the type of vent louver in the headworks building from fixed to operable with associated electrical work; to locate and re-route unmarked water lines; to install additional probes & controllers and provide circuits to those locations; to modify a rotor access platform; and eleven (11) days to the contract due to weather delays.
Change Order Justification: These changes are due to errors and omissions in the plans and specifications; latent jobsite conditions; user/owner requested modifications; and days for work as indicated herein.
Total Project Change Orders and Amount: Five (5) change orders for a total amount of $121,747.04.
Project Initiation Date: February 18, 2015
Design Professional: Engineering Solutions, Inc.
General Contractor: Hemphill Construction Company, Inc.
Total Project Budget: $9,900,000.00
19. **UM – IHL 207-436 – Kinard Water Treatment Replacement**  
   **Approval Request #1: Approval of Schematic Design Documents**  
   Board staff approved the Schematic Design Documents as submitted by Engineering Solutions, Inc.  
   **Approval Status & Date:** APPROVED, August 16, 2017  
   **Approval Request #2: Waiver of Design Development Documents**  
   Board staff approved the Waiver of Design Development Documents as submitted by Engineering Solutions, Inc.  
   **Approval Status & Date:** APPROVED, August 16, 2017  
   **Project Initiation Date:** June 15, 2017  
   **Design Professional:** Engineering Solutions, Inc.  
   **General Contractor:** TBD  
   **Total Project Budget:** $1,100,000.00

20. **UMMC– IHL 209-544 – Translational Research Center**  
   **Approval Request #1: Change Order #6**  
   Board staff approved Change Order #6 in the amount of $57,867.53 and forty-one (41) additional days to the contract of Fountain Construction Company, Inc.  
   **Approval Status & Date:** APPROVED, July 27, 2017  
   **Change Order Description:** Change Order #6 includes the following items: added paint scope at various basement rooms; add five (5) pipe bollards at the fuel tank; add a quazite enclosure to raise the existing medium voltage pull box at south drive; add removable caps at the animal holding rooms; install lab sinks in millwork at the 1st floor area; relocate stair vestibule smoke detectors at all floors; add a generator Float; install air flow switches and high humidity duct-mounted devices on six (6) air handling units; add a transformer for the interconnection between the emergency generator and the temporary generator docking station; install gypsum board at two (2) floor service elevator vestibules; add a fire damper at the 4th floor where wet labs are located; add a duct detector at one air handling unit; add electrical for an instant hot water heater for two (2) sterilizers in the surgery suite; and forty-one (41) days to the contract due to weather delays.  
   **Change Order Justification:** These changes are due to errors and omissions in the plans & specifications; latent job site conditions; user/owner requested modifications and weather delays for work as indicated herein.  
   **Total Project Change Orders and Amount:** Six (6) change orders for a total credit amount of $609,616.70  
   **Project Initiation Date:** November 17, 2011  
   **Design Professional:** Foil Wyatt Architects & Planners, PLLC  
   **General Contractor:** Fountain Construction Company, Inc.  
   **Phased Project Budget:** $44,259,496.98  
   **Total Project Budget:** $50,572,743.00
EXHIBIT 3
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   Approval Request #1: Approval of Schematic Design Documents
   Board staff approved the Schematic Design Documents as submitted by Canizaro Cawthon Davis.
   Approval Status & Date: APPROVED, July 27, 2017
   Project Initiation Date: June 16, 2017
   Design Professional: Canizaro Cawthon Davis
   General Contractor: TBD
   Total Project Budget: $2,868,925.00

UNIVERSITY OF SOUTHERN MISSISSIPPI

22. USM– GS 108-279 – Lucas Administration Envelope Repairs
   NOTE: This is a Bureau of Building project
   Approval Request #1: Change Order #3
   Board staff approved Change Order #3 in the amount of $7,705.00 and zero (0) additional days to the contract of Finlo Construction Company, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.
   Approval Status & Date: APPROVED, July 21, 2017
   Change Order Description: Change Order #3 includes the following items: replace corroded cast iron pipe with PVC pipe at two (2) locations on the roof drains.
   Change Order Justification: This change is due to existing cast iron pipes that have deteriorated and are corroded.
   Total Project Change Orders and Amount: Three (3) change orders for a total credit amount of $112,935.00.
   Project Initiation Date: March 21, 2013
   Design Professional: Albert & Associates Architects, P.A.
   General Contractor: Finlo Construction Company, Inc.
   Total Project Budget: $3,300,000.00

   NOTE: This is a Bureau of Building project
   Approval Request #1: Award of Construction Contract
   Board staff approved the Award of Contract in the amount of $10,350,000.00 to the apparent low bidder, B. W. Sullivan Building Contractor, Inc.
   Approval Status & Date: APPROVED, August 29, 2017
   Project Initiation Date: September 18, 2014
   Design Professional: Allred Architectural Group
   General Contractor: B. W. Sullivan Building Contractor, Inc.
   Total Project Budget: $13,000,000.00
24. **USM–IHL 210-243 – Marine Education Center**  
   **Approval Request #1: Change Order #5**  
   Board staff approved Change Order #5 in the amount of $99,170.00 and thirteen (13) additional days to the contract of Starks Contracting Co., Inc.  
   **Approval Status & Date:** APPROVED, August 2, 2017  
   **Change Order Description:** Change Order #5 includes the following items: installation of a security camera and code blue rough-ins; additional communication fiber and wire to connect two buildings to the main hub in the visitors center; provide certified tested storefront door hardware on a building; relocate electrical transformers in two buildings; to replace a single wall exposed insulated duct with double wall insulated spiral duct in three buildings; additional communications fiber infrastructure; and thirteen (13) days to the contract.  
   **Change Order Justification:** This change is due to changes in requirements or recommendation by governmental agencies; user/owner requested modifications; and days for work as indicated herein.  
   **Total Project Change Orders and Amount:** Five (5) change orders for a total amount of $270,926.75.  
   **Project Initiation Date:** August 21, 2008  
   **Design Professional:** Lake Flato  
   **General Contractor:** Starks Contracting Co., Inc.  
   **Total Project Budget:** $16,115,659.75

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**EDUCATION AND RESEARCH CENTER**

25. **ERC–GS 111-052 – Structural & Subsurface Repair**  
   **NOTE:** This is a Bureau of Building project  
   **Approval Request #1: Change Order #4**  
   Board staff approved Change Order #4 in the amount of $230,975.00 and one hundred sixteen (116) additional days to the contract of Gregory Construction Services.  
   **Approval Status & Date:** APPROVED, August 31, 2017  
   **Change Order Description:** Change Order #4 includes the following items: removal of unsuitable soils & provide new backfill and lime stabilization to the north access drive; fire main relocation, additional parking, removal of north parking lot sidewalks & relocated electrical service at the north parking lot; seal the crawl space opening in the foundation wall, backfill the area, construct a new sidewalk to tie into the existing sidewalk, & asphalt paving replacement in the affected area at the crawl space access; delete seven (7) planters in the east and west plaza; delete eleven (11) trees for the planters; delete the irrigation lines to the planters; and twenty-one (21) days to the contract.  
   **Change Order Justification:** These changes are due to latent job site conditions; user/owner requested modifications; and additional days for work due to weather delays as indicated herein.  
   **Total Project Change Orders and Amount:** Three (3) change orders for a total amount of $500,983.50.
EXHIBIT 3
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Project Initiation Date: August 21, 2008
Design Professional: JBHM
General Contractor: Gregory Construction Services
Total Project Budget: $4,178,570.87
SYSTEM - REPORT OF PAYMENTS TO OUTSIDE COUNSEL

Legal fees approved for payment to outside counsel in relation to litigation and other matters:

Payment of legal fees for professional services rendered by Baker & Hostetler (statement dated 8/28/17) from the funds of Alcorn State University. (This statement, in the amount of $833.50, represents services and expenses in connection with general legal advice.)

TOTAL DUE………………………………………………$ 833.50

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 8/1/17 and 8/9/17) from the funds of Alcorn State University. (These statements, in the amounts of $1,000.00 and $2,435.00, respectively, represent services and expenses in connection with immigration/labor certification.)

TOTAL DUE………………………………………………$ 3,435.00

Payment of legal fees for professional services rendered by Brunini, PLLC (statements dated 7/25/17 and 8/21/17) from the funds of Mississippi State University. (These statements, in the amounts of $4,200.00 and $50.00, respectively, represent services and expenses in connection with general legal advice.)

TOTAL DUE………………………………………………$ 4,250.00

Payment of legal fees for professional services rendered by Butler|Snow (statement dated 8/11/17) from the funds of Mississippi State University. (This statement, in the amount of $9,888.00, represents services and expenses in connection with general legal advice.)

TOTAL DUE………………………………………………$ 9,888.00

Payment of legal fees for professional services rendered by Ware Immigration (statement dated 8/1/17) from the funds of Mississippi State University. (This statement, in the amount of $500.00, represents services and expenses in connection with immigration/labor certification.)

TOTAL DUE………………………………………………$ 500.00

Payment of legal fees for professional services rendered by Butler|Snow (statement dated 8/11/17) from the funds of the University of Mississippi. (This statement, in the amount of $1,475.00, represents services and expenses in connection with general legal advice.)

TOTAL DUE………………………………………………$ 1,475.00
Payment of legal fees for professional services rendered by Mayo|Mallette (statements dated 8/7/17 and 9/8/17) from the funds of the University of Mississippi. (These statements, in the amounts of $3,071.50 and $7,662.00, respectively, represent services and expenses in connection with general legal advice.)

TOTAL DUE.................................................$ 10,733.50

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 8/1/17, 8/1/17, 9/1/17, 9/1/17, 9/1/17 and 9/1/17) from the funds of the University of Mississippi. (These statements, in the amounts of $500.00, $24.64, $24.68, $47.26, $80.00 and $30.05, respectively, represent services and expenses in connection with immigration/labor certification.)

TOTAL DUE.................................................$ 706.63

Payment of legal fees for professional services rendered by Bradley|Arant (statements dated 6/23/17, 8/7/17, 8/7/17 and 8/7/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $6,177.88, $245.00, $4,195.30 and $3,260.20, respectively, represent services and expenses in connection with general legal advice.)

TOTAL DUE.................................................$ 13,878.38

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 7/12/17, 7/13/17, 7/13/17, 7/13/17, 7/17/17, 7/17/17, 7/17/17, 7/20/17, 7/24/17, 8/4/17, 8/10/17, 8/11/17, 8/15/17, 8/15/17, 8/15/17 and 8/17/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $122.50, $1,349.40, $10,048.00, $1,176.00, $343.00, $60.10, $2,548.00, $1,886.50, $8,302.50, $42,755.75, $23,189.81, $10,782.82, $9,972.60, $1,386.50, $88.50 and $6,287.70, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE.................................................$ 120,299.68

Payment of legal fees for professional services rendered by Hogan|Lovells (statements dated 7/31/17 and 8/22/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $17,422.50 and $7,312.70, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE.................................................$ 24,735.20

Payment of legal fees for professional services rendered by Hood|Bolen (statement dated 8/8/17) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $1,155.00, represents services and expenses in connection with legal advice.)

TOTAL DUE.................................................$ 1,155.00
Payment of legal fees for professional services rendered by Jones|Walker (statement dated 8/2/17) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $90.00, represents services and expenses in connection with legal advice.)

**TOTAL DUE**.................................$ 90.00

Payment of legal fees for professional services rendered by Watkins & Eager (statements dated 5/1/17, 5/16/17, 7/13/17, 8/29/17, 8/29/17, 8/29/17, 8/29/17 and 8/29/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $610.50, $123.75, $6,398.99, $297.00, $511.50, $222.75, $297.00 and $12,688.50, respectively, represent services and expenses in connection with legal advice.)

**TOTAL DUE**.................................$ 21,149.99

Payment of legal fees for professional services rendered by Whitfield Law Group (statements dated 6/26/17, 7/5/17, 7/5/17, 7/6/17, 7/6/17, 7/6/17, 8/4/17, 8/4/17, 8/4/17, 8/4/17, 8/4/17 and 8/9/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $1,359.00, $2,901.45, $973.00, $8,032.20, $6,313.20, $5,299.10, $4,781.70, $5,910.20, $2,139.50, $10,939.86, $2,070.00, $700.00 and $4,817.82, respectively, represent services and expenses in connection with legal advice.)

**TOTAL DUE**.................................$ 56,237.33

Payment of legal fees for professional services rendered by Bryan, Nelson, Schroeder, Castigliola & Banahan (statement dated 9/7/17) from the funds of the University of Southern Mississippi. (This statement, in the amount of $11,485.50, represents services and expenses in connection with general legal advice.)

**TOTAL DUE**.................................$ 11,485.50

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 2/3/17, 7/6/17, 7/7/17, 7/24/17, 7/24/17, 8/8/17, 8/8/17, 8/10/17, 8/11/17 and 9/7/17) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $552.00, $48.00, $1,397.65, $925.00, $2,112.00, $72.00, $1,327.50, $3,451.50, $816.00 and $955.50, respectively, represent services and expenses in connection with general legal advice.)

**TOTAL DUE**.................................$ 10,732.15

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 8/1/17, 8/1/17, 8/1/17, 8/1/17, 8/1/17, 9/1/17, 9/1/17, 9/1/17 and 9/1/17) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $287.50, $8.61, $49.63, $47.10, $8.61, $1,500.00, $3,000.00 and $2,500.00, respectively, represent services and expenses in connection with immigration/labor certifications.)

**TOTAL DUE**.................................$ 7,401.45
Legal fees approved for payment to outside counsel in relation to patent and other matters:

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 6/29/17, 6/29/17, 6/29/17, 6/29/17, 7/21/17 and 7/24/17) from the funds of Mississippi State University. (These statements represent services and expenses in connection with the following patents: “Micro-Fluidic Device for Measuring Osmotic Second Virial Coefficients” - $3,728.50; “Live Attenuated Catfish Vaccine and Method of Making” - $2,371.50; “Live Attenuated Catfish Vaccine and Method of Making” - $335.00; “Occidiofungin Patent Applications” - $65.00; “Cancer Therapeutic Use of Occidiofungin” - $5,315.89 and “Live Attenuated Edwardsiella Ictaluri Vaccine and Method of Using Same” - $1,416.00, respectively.)

TOTAL DUE…………………………………………………………$ 9,881.89

Payment of legal fees for professional services rendered by Mendelson|Dunleavy (statements dated 5/10/17 and 5/22/17) from the funds of Mississippi State University. (These statements represent services and expenses in connection with the following patents: “Engineering of the Production of a Conformational Variant of Occidiofungin that has Enhanced Inhibitory Activity against Fungal Species” - $1,998.75 and “Occidiofungin, A Unique Antifungal Glycopeptide Produced by a Strain of Burkholderia Contaminans” - $2,616.25, respectively.)

TOTAL DUE…………………………………………………………$ 4,615.00

Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 7/24/17, 7/25/17 and 8/25/17) from the funds of Mississippi State University. (These statements represent services and expenses in connection with the following patents: “Methods of Synthesizing Graphene from a Lignin Source” - $285.00; “Novel Catalysts and Process for Liquid Hydrocarbon Fuel Production” - $2,176.00 and “Novel Catalysts and Process for Liquid Hydrocarbon Fuel Production” - $575.90, respectively.)

TOTAL DUE…………………………………………………………$ 3,036.90

Payment of legal fees for professional services rendered by Armstrong|Teasdale (statements dated 5/19/17, 7/11/17, 7/11/17, 8/23/17 and 8/23/17) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Systems and Methods for Detecting Transient Acoustic Signals” - $87.64; “Microphone Array for Reducing the Effect of Atmospheric Turbulence” - $1,319.22; “Microphone Array for Reducing the Effect of Atmospheric Turbulence” - $1,109.06; “Systems and Methods for Detecting Transient Acoustic Signals” - $40.00 and “Systems and Methods for Detecting Transient Acoustic Signals” - $406.00, respectively.)

TOTAL DUE…………………………………………………………$ 2,961.92
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Payment of legal fees for professional services rendered by Butler|Snow (statements dated 5/19/17, 7/18/17 and 8/30/17) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Cache Mapping Technology Matter” - $2,728.50; “Cache Mapping Technology Matter” - $2,008.50 and “Cache Mapping Technology Matter” - $1,360.50, respectively.)

TOTAL DUE……………………………………………….………………$ 6,097.50

Payment of legal fees for professional services rendered by Hershkovitz & Associates (statements dated 5/1/17, 5/18/17, 7/18/17, 7/20/17, 8/8/17, 8/18/17, 8/9/17, 8/9/17, 8/10/17, 8/15/17, 8/15/17, 8/16/17, 8/17/17, 8/20/17, 8/23/17 and 8/23/17) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Cannabidiol Prodrugs with Improved Ocular Bioavailability” - $1,541.75; “Compositions Containing Delta-9-THC-Amino Acid Esters” - $1,881.50; “Potent Immunostimulants from Microalgae” - $820.00; “Potent Immunostimulants from Microalgae” - $1,110.00; “Potent Immunostimulants from Microalgae” - $1,568.04; “Potent Immunostimulants from Microalgae” - $1,452.40; “Potent Immunostimulants from Microalgae” - $1,233.76; “Potent Immunostimulants from Microalgae” - $1,181.80; “Potent Immunostimulants from Microalgae” - $1,184.22; “Highly Selective Sigma Receptor Radioligands” - $150.00; “Potent Immunostimulants from Microalgae” - $2,264.51; “Potent Immunostimulants from Microalgae” - $1,315.06; “Potent Immunostimulants from Microalgae” - $2,010.00; “Potent Immunostimulants from Microalgae” - $1,049.79; “Compositions Containing Delta-9-THC Amino Acid Esters” - $4,670.00; “Potent Immunostimulants from Microalgae” - $1,126.79 and “Potent Immunostimulants from Microalgae” - $1,871.25, respectively.)

TOTAL DUE……………………………………………….………………$ 27,060.87

Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 5/17/17, 5/17/17, 7/25/17, 7/25/17, 7/25/17, 8/24/17, 8/24/17, 8/24/17, 8/24/17 and 8/24/17) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Method of Detecting Humans” - $550.50; “Gas Separating Membranes” - $40.00; “Stabilized Formulation of Triamcinolone Acetonide” - $1,216.00; “Use of Trans-Gnetin H or Extracts Containing Genetic H” - $2,378.00; “High Photovoltage per Area by Sequential Series Tandem” - $5,000.00; “Stabilized Formulation of Triamcinolone Acetonide” - $360.00; “Stabilized Formulation of Triamcinolone Acetonide” - $1,061.50; “Longitudinal Gait Velocity Monitoring of Older Population” - $28.50; “High Photovoltage per Area by Sequential Series Tandem (SS)” - $234.50 and “Use of Transgnetin H or Extracts Containing Genetic H” - $748.00, respectively.)

TOTAL DUE……………………………………………….………………$ 7,432.50
EXHIBIT 4
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Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 7/24/17, 7/24/17, 7/24/17, 7/24/17, 7/25/17, 7/25/17, 7/25/17, 7/25/17, 7/25/17, 8/23/17, 8/23/17, 8/23/17, 8/23/17 and 8/24/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $47.50, $85.50, $133.00, $332.50, $416.00, $5,274.50, $2,008.00, $295.00, $397.50, $5,317.53, $38.00, $575.00, $755.00, $38.00 and $4,138.31, respectively, represent services and expenses in connection with intellectual property patents.)

TOTAL DUE..........................................................$ 19,851.34
Consent

Agendas
1. **MUW – APPROVAL OF NEW ACADEMIC PROGRAM**

In accordance with Board Policy 501: Academic Programs and Units “*All new curricula, departments, programs of study, organized research or services being proposed by any or all of the institutions must be submitted to the Board and must be approved by the Board before being initiated,*” Board approval is requested for establishing three new academic programs.

a. **Mississippi University Women** requests permission to offer the **Bachelor of Professional Studies** in Professional Studies (MUW Complete to Compete) degree.

- **CIP:** 24.0199
- **Hours to Degree:** 120 credit hours
- **State Need:** Currently, Mississippi’s higher education attainment rate is approximately 36.6%. Mississippi can make significant progress towards its college completion goals, strengthening its workforce, and improving the financial prospects for thousands of Mississippians.
- **Employment:** Unemployment rates are lower for Mississippian with a bachelor’s degree (3.4%) than high school graduates (9.6%) and those with some college or an associate’s degree (7.4%). Since this program is an Adult Degree Completion Program, the estimation of employment can be difficult without a clear connection to a specific profession.

- **Potential Earnings Range:** Individual salaries for Mississippi bachelor’s degree recipients range from $35,446 to $52,063. (1) This program is an Adult Degree Completion Program and an estimation of potential earnings can be difficult to determine without a clear connection to a specific profession.

- **Funding:** Because the program draws on existing curriculum, initial costs will be limited to market costs and the instructor salary (adjunct rate)

- **Enrollment:** The estimate of students expected to enroll and to graduate will differ within the institutions

- **Duplication:** All eight public universities will offer similar degrees

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(1) The range of individual income estimates are based on reported median values for Mississippi bachelor’s degree recipients in the 2015 U.S. Census ACS 5-year estimates. The figures represent the lowest and highest median values when examining the estimates by gender and age 25 and over. Estimated median salaries for the same period for individuals with less than a bachelor’s degree is $24,182 to $36,857 (some college or associate’s degree) and $20,148 to $31,565 (high school graduate).
2. SYSTEM – APPROVAL OF DEGREES TO BE CONFERRED IN DECEMBER 2017

Board Policy 510: Awarding of Degrees states that “Degrees granted by institutions under the governance of the Board are awarded by and with the consent of the Board and are countersigned by the President of the Board. Recommendations for the awarding of degrees to students by the various institutions must be made no later than the Board meeting prior to the commencement at which such awards will be made.”

In accordance with Board policy, the institutions below requests permission to award degrees at the following levels in December 2017 provided each candidate has met all requirements for the degree.

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<tr>
<th>Institution</th>
<th>Degree to be Conferred</th>
<th>Number</th>
<th>Subtotal</th>
<th>Total</th>
<th>System Total</th>
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**Mississippi University for Women**

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|                                     | Bachelor of Applied Science  | 14     |          |       |              |
|                                     | Bachelor of Fine Art         | 7      |          |       |              |
|                                     | Bachelor of Music            | 2      |          |       |              |
|                                     | Bachelor of Science          | 94     |          |       |              |
|                                     | Bachelor of Science in Nursing | 31  |          |       |              |
| <strong>Graduate</strong>                        |                             | 10     |          |       |              |
|                                     | Master of Art                | 2      |          |       |              |
|                                     | Master of Business Administration | 1 |          |       |              |
|                                     | Master of Education          | 2      |          |       |              |
|                                     | Master of Public Health      | 5      |          |       |              |</p>
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### Institution Degree to be Conferred | Number | Subtotal | Total | System Total
---|---|---|---|---
Bachelor of Arts | 23 | | | |
Bachelor of Science | 110 | | | |
Master of Arts | 1 | | | |
Master of Science | 32 | | | |
Doctor of Philosophy | 20 | | | |

**System Total** | 4663 |

Note: System Total for December 2016 was 4428

**Staff Recommendation:** Board staff recommends approval of this item.
1. **SYSTEM – ESCALATION OF *AYERS* ENDOWMENT BUDGET**

**Agenda Item Request:** Alcorn State University (ASU) and Jackson State University (JSU) request a budget escalation within their *Ayers* Endowment Diversity Program budget. These escalations are needed to cover increased costs associated with program operating costs. The original budgets were approved at the June 2017 Board meeting. At that time, estimates of available funding were used to build the budget for these programs. Actual funding is now known, and the institutions have requested to revise their budgets to equal actual sources as shown.

**Alcorn State University**

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<th>Current Budget FY 2018</th>
<th>Budget Revision</th>
<th>Revised Budget FY 2018</th>
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<td>Travel</td>
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<td>Commodities</td>
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<td>Student Aid</td>
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Jackson State University

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<td><strong>$ 611,730</strong></td>
<td><strong>$ 47,901</strong></td>
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**Funding Source for Budget Escalation:** All funds budgeted within these programs were generated from annual interest earnings of the Ayers Public and Private Endowment investments.

**Staff Recommendation:** Based on Board Policy 701.06, Budget Escalations and Revisions, all escalations of the several institutions and separately budgeted units must be submitted through the Commissioner to the Board of Trustees for approval prior to implementation. Board Staff recommends approval of this item.

2. **SYSTEM- REQUEST FOR APPROVAL TO MODIFY AGREEMENT WITH KPMG, LLP**

**Agenda Item Request:** The IHL System requests approval to modify the total expenditure amount applicable to its agreement with KPMG, LLP.

**Contractor’s Legal Name:** KPMG, LLP

**History of Contract:** In April 2014, the Board approved an agreement to secure audit services for the entire IHL System for a term of the four (4) annual reporting periods of Fiscal Years Ending June 30, 2014, 2015, 2016, and 2017. The total approved cost was $2,949,500.00.

**Specific Type of Contract:** Audit Services Agreement
Purpose: The purpose of this request is to increase the total expenditure amount applicable to the current audit services agreement. The original estimate did not include an estimate for major programs identified or existing programs that require audits more frequently, nor did it anticipate the increases related to implementation of GASB Standards No. 68 and No. 72, that have been agreed to in the annual engagement letters.

Scope of Work: The terms of the original agreement remain the same. KPMG agrees to perform an external audit examination of the IHL System’s records for four (4) annual reporting periods. All professional services will be performed in accordance with current applicable auditing standards and all deliverables will meet guidelines established by regulatory bodies. Annual reporting periods covered under this agreement include Fiscal Years Ending June 30, 2014, 2015, 2016 and 2017.

Term of Contract: The agreement became effective upon full execution of all parties, May 16, 2014. The agreement will expire 120 days after the conclusion of the last services performed.

Termination Options: The agreement may be terminated for the following:

- The IHL may terminate this agreement at any time by giving written notice to the vendor at least the (10) days before the effective date of such termination;
- In the event the vendor materially breaches the agreement, and such breach goes uncured for thirty (30) days following notice from the non-breaching party, the non-breaching party may terminate this Agreement, effective immediately, by written notice to the breaching party;
- In sufficient funds to pay the full contract from the State; and
- Failure by the vendor to comply with federal E-Verify program.

Contract Amount: The total estimated cost of the original contract was $2,949,500. The IHL System is requesting to add an additional $550,000 to the contract to pay for additional auditing services. The new total estimated cost for the agreement is $3,499,500.

Funding Source of Contract: Contractual costs will be share among the IHL institutions based upon each’s proportionate share of the worked audit hours. E&G funding sources will be the primary means for these payments.

Contractor Selection Process: N/A. This is a modification to an existing agreement.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Board staff recommends approval of this item. (As the Board is
being asked to provide approval to modify the total expenditure amount of the agreement, no additional approval by the Attorney General’s Office is required.)

3. **DSU – REQUEST FOR APPROVAL TO ENTER INTO AN OPERATING AGREEMENT WITH TOUCHNET INFORMATION SYSTEMS, INC.**

   **Agenda Item Request:** Delta State requests approval of an operating agreement with TouchNet Information Systems, Inc., for online payment processing. Pursuant to IHL policy 707.03 *Approval of Prepayment for Goods or Services*, DSU also requests a waiver to allow prepayment of the annual Application Subscription Program fee.

   **Contractor’s Legal Name:** TouchNet Information Systems, Inc.

   **History of Contract:** In 2007, TouchNet began providing online payment processing to the Delta State campus. An extension of this contract was executed in 2012 and the five-year agreement has ended. DSU is requesting a new agreement to be established with TouchNet.

   **Specific Type of Contract:** New Agreement

   **Purpose:** To extend the operating relationship between Delta State and TouchNet Information Systems, Inc., for the provision of online payment processing.

   **Scope of Work:** The agreement sets out the terms under which TouchNet Information Systems will provide TouchNet Bill + Payment (Student Account Center, eBills, eDeposits, eRefunds, Payment Plans, and Bill + Payment Client), TouchNet Payment Gateway (Credit Card and ACH), TouchNet U. Commerce Central/Dashboard, and PayPath Services.

   **Term of Contract:** The term of the agreement is five years upon signature. Access rights granted commence on November 1, 2017 and continue through October 31, 2022, in anticipation of contract being executed.

   **Termination Options:** A party has the right to terminate this Second ASP Agreement if the other party breaches a material provision of this Second ASP Agreement; further, this Agreement contains an “Availability of Funds” provision.

   **Contract Amount:** The estimated total cost over this period is $317,921.16. No training or implementation costs will be necessary.

   **Funding Source of Contract:** The annual fee will be paid by the Office of Information Technology with E&G funds.
Contractor Selection Process: ITS issued CP-1 2018007 allowing the University to release an RFP for the procurement of the payment processing system. The RFP was advertised, and responses were reviewed. DSU issued an RFP that evaluated vendors based on price, capabilities, ability of software to meet university needs and integration with other systems. Three employee reviewers evaluated the responses and weighted each based on these qualifications. It was determined that the system proposed by TouchNet better met these four categories.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

4. **MSU- REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH AMERICAN CHEMICAL SOCIETY**

Agenda Item Request: Approval for multi-year contract with the American Chemical Society (ACS) for access to the ACS Web Editions online journal package.

Contractor’s Legal Name: American Chemical Society (ACS)

History of Contract: MSU has had a one-year contract with the ACS for access to the ACS Web Editions online journal package since January 2001. The license agreement provides MSU faculty, staff and students with access to all electronic journals published by ACS. A multi-year contract lowers the annual increase percentage. Since FY05, the annual increase has been between 7% to 12%, which makes budgeting for this resource difficult. This multi-year contract provides an exact 6% increase for each year, allowing for accurate and lower budget projections. This will be the first ACS contract to be presented to the Board for approval.

Specific Type of Contract: This is a renewal contract for subscription services to library journals.

Purpose: This contract is needed to maintain the annual subscription of ACS journals for the MSU Libraries.

Scope of Work: The contractor (ACS) is responsible to provide online access to ACS journals. MSU is required to pay for that access.

Term of Contract: January 1, 2018 – December 31, 2020
Termination Options: Termination for Default: If either party breaches a term of this agreement, the other may send written notice of the breach, including a reasonable cure period of not less than seven (7) business days. If the breach is not cured within that time, or if the Parties do not reach a satisfactory agreement on extending the cure period, then the non-breaching party may terminate this Agreement effective immediately upon written notice. In the event Grantee wishes to restore access after a termination for default, if the reduced access period is less than ninety (90) days, there will be no reduction in Grantee’s current subscription price. If the Grantee is reinstated after ninety (90) days access cancellation, the Grantee shall be required to pay a $500 service charge prior to reinstatement. Once Grantee’s account is in good standing, ACS will provide Grantee with a prorated credit for its following year’s subscription fee equivalent to the reduced or terminated access period.

Termination for convenience: Either party may cancel this Agreement at any time by providing the other party with sixty (60) days prior written notice. In the event of such a termination by Grantee, Grantee shall not receive a pro-rated refund of the unused Access Fee, and in the event of such a termination by ACS, Grantee shall be entitled to receive a pro-rated refund of the unused Access Fee.

Contract Amount: The total amount of the three-year agreement is $319,747.00 to be paid as follows:

2017 $100,650  
2018 $106,466  
2019 $112,631

Funding Source for Contract: The contract will be funded by general funds.

Contractor Selection Process: Sole source provider; ACS is the publisher of the journals and no other entity has permission to offer these titles as a package.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

5. **MSU—REQUEST FOR APPROVAL TO AMEND A SOFTWARE AGREEMENT WITH ASSET WORKS, LLC**

Agenda Item Request: Mississippi State University requests approval to amend contract #012064 with AssetWorks LLC for annual software maintenance and support for their facilities and space management software system AiM to include annual maintenance costs for two recently purchased modules (Capital Planning & Project Management (CPPM) and
the CPPM Fire Mobile Application (Aim Fire) While the amount of this amendment is not in excess of $250,000, requiring IHL Board approval, this addendum does push the total expenditure under this contract over the $250,000 threshold. Approval is also requested to pay this contract in advance annually as payment at the beginning of the service year is standard procedure in this industry.

**Contractor’s Legal Name: AssetWorks LLC**

**History of Contract:** On September 7, 1995, MSU received an exemption from CDPA to bid and purchase a facilities maintenance management software system. AEC Data Systems was awarded the contract effective July 1, 1996, for their GUI-FM Facility Management System software. The company is now known as AssetWorks LLC and the software is called AiM.

Mississippi State University has successfully utilized this software over the past 20 years to manage operations and maintenance tasks for the main Starkville campus. This comprehensive software solution is used to manage the daily operations and maintenance needs to include: preventive maintenance, corrective maintenance, work planning and scheduling, alterations and renovations, capital projects, space management, supply management, facility inventory management, billing and invoicing, and customer service. AiM is also being leveraged for reporting and analysis of operational costs and space management for our facilities.

MSU has invested over $800K in this software system over the past 20 years and wishes to fully benefit from this investment by continuing to utilize the software. The software license will be voided if the annual maintenance and support costs are not continued.

**Specific Type of Contract:** This is an amendment to an existing software agreement contract to include software upgrades, maintenance, support and services for the Capital Planning & Project Management (CPPM) enterprise license and for the CPPM Fire Mobile application enterprise license for the period September 1, 2016 through August 31, 2021.

**Purpose:** The purpose of this addendum is to add annual maintenance costs for recently purchased licenses (CPPM and Aim Fire) to continue to pay annual software maintenance and support costs for the facilities and space management software system (AiM) through August 31, 2021.
Scope of Work: AssetWorks LLC is to provide software upgrades, maintenance, support and services for the existing software system (AiM) through August 31, 2021 upon payment of applicable fees by Mississippi State University.

Term of Contract: No change requested in term of contract – will remain September 1, 2016 through August 31, 2021. The Amendment will be effective the date first signed by both parties and will end on August 31, 2021.

Termination Options: As per MSU Mandatory Addendum Attachment 1 – The continuance of the Contract with MSU is based upon the availability of funds. Therefore, this contract can be cancelled by MSU with thirty (30) days’ notice to the Contractor at the end of the fiscal period in the event funds are not appropriated by the funding authority.

Contract Amount: The addendum requests approval to pay an additional $140,244 through 8/31/2021 for the CPPM and Aim Fire modules/licenses. Making the total due from the point of the amendment through 8/31/2021 $263,521.07. (see attached recap)

Funding Source for Contract: Annual maintenance and support will be funded by general funds.

Contractor Selection Process: On September 7, 1995, MSU received an exemption from CDPA to bid and purchase a facilities maintenance management software system. AEC Data Systems was awarded the contract effective July 1, 1996, for their GUI-FM Facility Management System software. The company is now known as AssetWorks LLC and the software is called AiM.

Staff Recommendation: Based on Board Policy 707.01, Land, Property, and Service Contracts, Board approval is required prior to execution of contracts for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. This agreement has been reviewed and approved by the the Attorney General’s Office. Board staff recommends approval of this item.

6. MSU – REQUEST FOR APPROVAL TO AMEND AN AGREEMENT WITH SIRSIDYNIX

Agenda Item Request: Mississippi State University requests approval to modify its current long-term agreement with SirsiDynix in order to migrating from a locally hosted server
environment to a vendor-hosted environment. After careful consideration, the MSU Libraries decided to move to a vendor-hosted environment for the remaining 2 years of its long-term agreement with SirsiDynix. SirsiDynix provides specialized library software and services for the members of the Mississippi Library Partnership. The SirsiDynix Library Automation System is the software used by the libraries to manage their collections including providing an online catalog, and the modules required to manage the collections (i.e. circulation, cataloging, acquisitions, serials control, reporting).

Contractor’s Legal Name: SirsiDynix

History of Contract: MSU entered into a 5-year agreement with SirsiDynix on December 22, 2009 and renewed the 4-year agreement in 2014. The current contract expires June 30, 2019.

Specific Type of Contract: This is an amendment to an existing agreement.

Purpose: The purpose of the agreement is to enter into an agreement with SirsiDynix to have the company host the software and databases for the library rather than the library maintaining its own server. Having a vendor-hosted server will provide stability, growth and ensure the databases are protected and the services provided by the MSU Library to the Mississippi Library Partnership are reliable. Members of the Mississippi Library Partnership include Mississippi State University, Mississippi University for Women; Tombigbee Regional Library System; East Mississippi Community College Library System; Starkville-Oktibbeha County Public Library System; Columbus-Lowndes Public Library System; Mid-Mississippi Regional Library System; First Regional Library System; and Lee-Itawamba Library System.

Scope of Work: SirsiDynix will continue to provide the member libraries with access to the Library Automation System software and additional enhancements and maintenance during the term of the agreement. SirsiDynix will migrate the data from the existing locally hosted server to a server hosted by SirsiDynix. SirsiDynix will maintain regular backups of the databases and perform system upgrades.

Term of Contract: Start date: July 1, 2014-June 30, 2019

Termination Options:

- Subject to Section 10.12 below, the term of this Master Agreement shall commence on the Effective Date and shall continue in full force and effect until the expiration or termination of all Quotes, unless otherwise terminated earlier as provided hereunder.
• The respective initial term of Software Maintenance, Hardware Maintenance, Subscriptions, and Subscription Software as applicable, is specified in the Quote (“Initial Term”). The Initial Term shall automatically renew for the same length as the Initial Term unless either party gives written notice 60 days prior to the end of any previous Term of its intention to terminate the Subscription or Maintenance service. The Initial Term and renewal terms are referred to as the “Term”.

• Either party may terminate the Master Agreement immediately upon written notice if the other party commits a non-remediable material breach of the Master Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach. Where the non-breaching party has a right to terminate the Master Agreement, the non-breaching party may at its discretion terminate the Master Agreement or the applicable Quote. Quotes that are not terminated shall continue in full force and effect under the terms of this Master Agreement.

• Following termination of the Master Agreement, Customer agrees to certify that it has returned or destroyed all copies of the applicable Product and Confidential Information and acknowledges that its rights to use the same are relinquished.

• SirsiDynix will be entitled to suspend any or all performance upon 10 days written notice to Customer in the event Customer is in breach of the Master Agreement. Further, SirsiDynix may suspend Customer’s use of and access to all or a portion of the Subscriptions if, and so long as, in SirsiDynix’s sole judgment, there is a security risk created by Customer that may interfere with the proper continued provision of services or the operation of SirsiDynix’s network or systems. SirsiDynix may impose an additional charge to reinstate service following such suspension.

**Contract Amount:** The new contract amount for FY18 will be $243,665.11 (previously $207,665.11) and FY19 will be $227,159.20 for a total of $470,824.31. This amount is within the Mississippi Department of Information Technology Services CP1 approved budget for the project.

**Funding Source for Contract:** Each member of the Mississippi Library Partnership pays Mississippi State University Libraries for a portion of their overall contract fee.

**Contractor Selection Process:** Renewal of existing contract.
Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

7. **MSU – REQUEST FOR APPROVAL TO AMEND A SUBSCRIPTION AGREEMENT WITH WILEY SUBSCRIPTION SERVICES, INC.**

**Agenda Item Request:** Mississippi State University (MSU) requests permission to amend a subscription agreement with Wiley Subscription Services, Inc. for access to electronic journals for education and research purposes. The amendment includes two prepayments for service.

**Contractor’s Legal Name:** Wiley Subscription Services, Inc. (Wiley)

**History of Contract:** MSU entered into an agreement with Wiley on January 1, 2012 and renewed with IHL’s approval for January 1, 2014 – December 31, 2014. For the past two years, IHL has approved amendments that extended the contract through 2017. The 2018 amendment adjusts the list of journals included in the contract and updates the total cost of the journals included.

**Specific Type of Contract:** Amendment to Subscription Agreement

**Purpose:** The purpose of the amendment is to extend the term of the license for two years, to adjust the journals in the subscription, to update the pricing for the coming year, and to cap the rate of price increase at 2% per year.

**Scope of Work:** Wiley will grant a license that allows authorized users to access information published by Wiley through its online delivery platform. This information consists of 154 journals that authorized users can access for education and research purposes.

**Term of Contract:** The amendment extends the term of the license for two years starting on January 1, 2018 and ending on December 31, 2019.

**Termination Options:** The amendment does not change the termination options of the agreement. Either party can terminate the agreement upon default by the other party if such default is not cured within sixty days of written notice.

**Contract Amount:** The total cost of the agreement is $942,050.96.
The cost of the agreement in Year 1 is $466,361.86 and the cost of the agreement in Year 2 is $475,689.10. The cost in Year 2 is capped at a 2% increase over the cost in Year 1. Adjustments to journals in the subscription may change the cost of the amendment. MSU will make a prepayment each January for access it will receive over the course of the year.

**Funding Source for Contract:** General Funds

**Contractor Selection Process:** The electronic journals to which authorized users will have access are published only by Wiley. Other vendors do not publish these electronic journals.

**Staff Recommendation:** Based on Board Policy 707.01, Land, Property, and Service Contracts, Board approval is required prior to execution of contracts for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. This agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

8. **UM – REQUEST FOR APPROVAL TO ENTER INTO CONTRACTUAL SERVICES AGREEMENT WITH SAP AMERICA**

**Agenda Item Request:** The University of Mississippi Office of Information Technology requests approval to enter into a contract with SAP America, Inc. (SAP) for SAP SuccessFactors Cloud Based Human Capital Management (HCM) Software. Additionally, in accordance with IHL Board Policy 707.03, approval of prepayment for goods or services, UM requests permission to prepay annual fees for the Cloud Service(s) on an annual basis.

**Contractor’s Legal Name:** SAP America, Inc.

**History of Contract:** The University of Mississippi selected SAP as its Enterprise Resource Planning (ERP) software vendor in 1998. Over the past nineteen years, we have licensed numerous software modules that complement the ERP functionality that was provided through the original contract. This contract is a continuation of the “SAP and less” strategy employed by UM to license software modules that greatly enhance our operational efficiencies within our core business processes. The purpose of this contract is to license the Recruiting, Onboarding and Performance & Goals modules of SAP SuccessFactors, SAP’s cloud based HCM software. UM wishes to implement this software to transform its current processes in employee recruitment and onboarding from manual, paper based processes to digital, self-service processes. This software will also allow the UM Human Resources office to fully maintain UM’s performance appraisal process to take advantage of current industry trends such as multiple appraisals throughout the year, varying appraisal questions based on each department, and 180 degree reviews where employees can evaluate their manager. This contract is part of a larger project that includes (1) the SAP SuccessFactors
software (the subject of this request) and (2) the consulting services for implementation of
the software (a separate RFP/contract).

Specific Type of Contract: This contract is for a software license.

Purpose: This software will enhance UM’s employee recruitment, onboarding and
performance evaluation/goal setting processes.

Scope of Work: This contract provides licensing for the SAP SuccessFactors cloud
software.

Term of Contract: UM is requesting a contract term of five years beginning in November
of 2017.

Termination Options: UM may terminate the contract upon thirty (30) days written notice
of the other party’s material breach unless the breach is cured during that thirty-day period.
UM may also terminate the contract as permitted under sections 3.4(b) (modification by SAP
that materially reduces the Cloud Service), 7.3(b) (remedy of warranty), 7.4(c) (failure by
SAP to meet their SLA standards), 8.1(c) (claims brought against customer) of SAP’s
General Terms and Conditions for SAP Cloud Services (GTC). UM may terminate the
contract immediately if the other party files for bankruptcy, becomes insolvent, makes an
assignment for the benefit of creditors, or otherwise materially breaches Sections 11
(confidentiality) or 12.6 (assignment) of the GTC.

Contract Amount: The contract dollar amounts are $138,171 per year for five years. The
total contract value is $690,855. Note, however, that in the event of termination SAP will
refund UM a pro rata amount equal to the unused fees for that year.

Funding Source for Contract: Educational & General funds.

Contractor Selection Process: UM presented this project in its entirety and received
approval from the Mississippi Department of Information Technology Services (MSITS) at
their June 2017 Board meeting to manage the procurements locally using a competitive bid
process. MSITS approved UM’s total project budget of $1,500,000 and issued CP-1
#20170488. UM Request for Proposal #600 was issued and proposals were accepted from
any vendor interested in bidding on this project. The scoring criteria specified in the
proposal and used to score the applicants is listed below.

- Evidence of financial stability
- How well the proposal addresses the overall requirements and functionality
- Competitive Pricing
- Reference Checks
Five vendors submitted proposals, and when each vendor was evaluated using the criteria above, SAP SuccessFactors attained the highest score which was approximately 30 points higher than the second-place vendor.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

9. **UM- REQUEST FOR APPROVAL TO ENTER INTO CONTRACTUAL SERVICES AGREEMENT WITH SHORELIGHT EDUCATION, LLC AND SHORELIGHT-UM GLOBAL, LLC**

**Agenda Item Request:** The University of Mississippi requests permission to enter an Agreement for the Operation of International Student Recruitment and Retention Programs with Shorelight Education, LLC and Shorelight-UM Global, LLC.

**Contractor’s Legal Name:** Shorelight Education, LLC (“Shorelight”) and Shorelight-UM Global, LLC (“UM Global”)

**History of Contract:** Historically, the University of Mississippi has had limited success in recruiting international students. The market for international students has become much more competitive during the past decade, and universities are establishing intensive English (international accelerator) and pathways programs that involve both the recruitment and retention of full-fee paying international students. In 2016, the University issued an RFP, and Shorelight was selected to partner with the University to help the University compete for and retain international undergraduate and graduate students.

**Specific Type of Contract:** This is a service contract for the operation of International Student Recruitment and Retention Programs.

**Purpose:** Shorelight/UM Global will both recruit international students and, in cooperation with UM, operate an international accelerator language/pathways program. The purpose of these initiatives is to for international students to attain English proficiency standards, acculturate to the U.S. university setting, and acquire the tools (academic, social, and linguistic) to be successful in the university environment.
Scope of Work: The scope of work includes recruitment of international students and the operation of an international accelerator/pathway program in conjunction with the University of Mississippi.

Term of Contract: The contract is for a ten-year term, renewable for an additional ten years if the University receives at least $80,000,000 from tuition and fees related to the contract during the first nine years.

Termination Options: Either party may terminate the Agreement for default by the other party or because of a change in circumstances making the Agreement impossible or illegal to perform or resulting in the Agreement being a threat to the University’s funding or accreditation.

Contract Amount: This is a revenue contract. As additional international student tuition revenue is received, it will be allocated according to the schedule in the contract. Net revenue to the University is expected to be approximately $80,000,000 during the first nine years of the agreement.

Funding Source for Contract: International student tuition provides the funding of this contract. The University of Mississippi currently receives approximately $3.7 million annually in revenue from international student tuition. Shorelight/UM Global will not receive net revenue from international student tuition until the University’s minimum revenue threshold reaches $4,000,000.

Contractor Selection Process: The University released a Request for Proposals and Shorelight was one of the contractors responding. A University of Mississippi, faculty-led Committee reviewed the contractors’ proposals, interviewed four contractors, and made recommendations to the Chancellor. The Chancellor made the final selection of Shorelight.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommendation is pending.
10. UMMC – REQUEST FOR APPROVAL TO AMEND AGREEMENT WITH ABBOTT LABORATORIES, INC.

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to amend its agreement with Abbott Laboratories, Inc.

**Contractor’s Legal Name:** Abbott Laboratories, Inc. (Abbott)

**History of Contract:** At its August 2015 meeting, the Board approved a five (5) year Point of Care Agreement with Abbott for a total of $3,686,231.51 to purchase consumables for use in the Adult Emergency Department on one (1) i-STAT system that UMMC purchased separately via its group purchasing organization. The agreement for the purchase of consumables also covered the separately purchased i-STAT system regarding warranty and delivery terms.

**Specific Type of Contract:** Amendment to Point of Care Agreement.

**Purpose:** The purpose of the amendment is to increase the annual cartridge purchase commitment in exchange for fifteen (15) new i-STAT systems and lower cartridge pricing.

**Scope of Work:** Under the agreement, Abbott will:

- sell consumables used with the i-STAT Point of Care system,
- deliver and warranty UMMC’s existing owned i-STAT system,
- provide fifteen (15) i-STAT systems for use,
- transfer title of the i-STAT systems to UMMC upon purchase of 276,670 cartridges, and
- a reduced price for cartridges after satisfaction by UMMC of its purchase commitment.

UMMC will purchase an annual volume commitment of commodities.

**Term of Contract:** The term of the amendment will begin December 1, 2017 and is coterminous with the original agreement which ends August 31, 2020.

**Termination Options:** The agreement may be terminated for the following:

- upon the anniversary of the agreement, either party may terminate upon ninety (90) days written notice,
- by either party for a material breach of the agreement,
- Abbott may terminate the agreement immediately upon written notice if UMMC resells or distributes any products purchased under the agreement to a third party,
uses products after their expiration date, or uses any products in a manner inconsistent with its intended use,
- reduction of funds,
- by Abbott should UMMC fail to fulfill 90% of its purchase commitment in any four (4) consecutive quarters of the contract term; and
- failure by Abbott to comply with the federal E-Verify Program.

**Contract Amount:** The total amount of the amended agreement over five (5) years will be approximately $4,323,803.76. For the remainder of the agreement term, the Amendment will add $637,572.25 to the original approved cost of $3,686,231.51.

**Funding Source of Contract:** The agreement will be funded by patient revenues.

**Contractor Selection Process:** UMMC is currently under contract with Abbott.

**Staff Recommendation:** Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

11. UMMC-REQUEST FOR APPROVAL TO ENTER INTO AN END USER AGREEMENT WITH AIR PRODUCTS AND CHEMICALS, INC.

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into an End User Agreement with **Air Products and Chemicals, Inc.**

**Contractor’s Legal Name:** Air Products and Chemicals, Inc. (Air Products)

**History of Contract:** This is a new agreement

**Specific Type of Contract:** End User Agreement.

**Purpose:** The purpose of the agreement is to provide liquid oxygen for patient consumption in all inpatient and outpatient care areas at UMMC facilities in Jackson.

**Scope of Work:** Under the agreement, Air Products will:
- deliver and refill UMMC’s supply of bulk liquid oxygen both regularly and on an as needed basis,
- will supply oxygen that meets the high quality standard required for medical use,
- install, maintain, and repair oxygen tanks and other required piping, controls, and other devices,
• provide a certificate of analysis upon each delivery certifying the purity of the oxygen provided, and
• perform annual inspections.

UMMC will:
• purchase all of its need for liquid oxygen from Air Products,
• warrant that all purchased liquid oxygen is solely for UMMC’s use and consumption,
• furnish an area for installation of the tanks with unrestricted access,
• furnish any concrete pad or foundation, utilities, and fencing for operation of the tanks,
• install, maintain, and repair UMMC’s facilities that transport the oxygen from Air Products’ tanks to UMMC’s individual points of use, and
• monitor the inventory of oxygen in the tanks to provide Air Products with sufficient notice for replenishment as needed.

Term of Contract: The term of the agreement is sixty (60) months, beginning on the date of first delivery, which is expected to be on or about February 1, 2018. UMMC will provide an update to the IHL Staff as to the exact start date once it has been determined.

Termination Options: The agreement may be terminated for the following:
• by either party upon not less than 120 days’ prior written notice of termination,
• by either party for material breach by the other party that is not cured within 30 days of receipt of written notice thereof,
• immediately by UMMC if Air Products breaches its representations and warranties that Air Products, its officers, directors and employees, and
• for failure by Air Products to comply with the federal E-Verify program.

Contract Amount: The total estimated cost over the five (5) year term is $1,193,359.53, as broken down below. This total is based upon historical oxygen volume purchases plus potential volume growth, as well as potential price increases for the tank rental and the product spend in years 3 and 4.

<table>
<thead>
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<th>Year</th>
<th>Annual Tank Rental*</th>
<th>Annual Product Spend’</th>
<th>Annual Inspect</th>
<th>COA</th>
<th>Compliance Fee Del</th>
<th>Annual Deliveries</th>
<th>Annual Delivery Charges</th>
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* Includes delivery charges

** Year 3 includes estimated volume growth and potential price increases.
**Funding Source of Contract:** The agreement will be funded by patient revenue.

**Contractor Selection Process:** In September 2015, UMMC solicited competitive proposals from vendors contracted with the Group Purchasing Organizations (GPO) in which UMMC is a member. After in-depth review, the initial proposals received were not satisfactory, and UMMC again solicited competitive proposals in August 2016. UMMC received responses from Air Products, AirGas (f/k/a Air Liquide), Linde Gas, and Praxair. Due to staff and leadership changes, the selection of the vendor was not completed until June 2017. Air Products submitted the lowest and best proposal that met required specifications.

**Staff Recommendation:** Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

### 12. UMMC-REQUEST FOR APPROVAL TO ENTER INTO A PRODUCT SALE AGREEMENT WITH AIRGAS, LLC

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a Product Sale Agreement with Airgas, LLC.

**Contractor’s Legal Name:** Airgas USA, LLC (Airgas)

**History of Contract:** This is a new agreement

<table>
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<th>Year</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Total Cost</th>
</tr>
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<td>$1,006,069.85</td>
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<td></td>
<td>$70</td>
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<tr>
<td></td>
<td>$16,450.00</td>
<td>$16,450.00</td>
<td>$1,193,359.53</td>
</tr>
</tbody>
</table>

*Beginning in Year 1, UMMC has included an additional 13% each year for Annual Product Spend and Annual Deliveries for assumption of maximum capacity of existing UMMC beds. Historical usage is based on an average capacity of 87%.*

**Beginning in Year 3, UMMC has included an additional 5% each year for Annual Product Spend and Annual Deliveries to allow for additional beds that may be added at UMMC during the term of the agreement.**

```markdown
* Beginning in Year 4, UMMC has included an additional 3% for potential price increases of the Annual Tank Rental after 12/1/2021.
```

```markdown
```
*Beginning in Year 3, UMMC has included an additional 3% for potential price increases in the Annual Product Spend after 12/1/2020.*
Specific Type of Contract: Product Sale Agreement.

Purpose: The purpose of the agreement is to provide cylinder medical gases for patient consumption in all adult and pediatric inpatient and outpatient care areas at UMMC facilities in Jackson, Grenada, and Lexington.

Scope of Work: Under the agreement, Airgas will:

- provide industrial, specialty and/or medical gases to all UMMC locations,
- deliver cylinder medical gases during normal business hours and after hours on an as needed basis, and
- maintain records of cylinder deliveries and returns.

Term of Contract: The initial term of the agreement is for five (5) years – December 1, 2017 through November 30, 2022.

Termination Options: The agreement may be terminated for the following:

- by either party upon not less than three (3) months’ prior written notice prior to the end of the term,
- in the event of a reduction in funds,
- in the event Airgas fails to comply with the federal E-Verify Program,
- upon a material breach of the Agreement between Airgas and Vizient that is not cured within 30 days,
- immediately by Airgas or Vizient if the other breaches its representations and warranties regarding compliance with all applicable laws, that it is not excluded from participating in any federal healthcare program, or that it is not debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency,
- by Vizient in the event Airgas becomes bankrupt or insolvent, and
- by Airgas in the event UMMC becomes bankrupt or insolvent.

Contract Amount: The total estimated cost over the five (5) year term is $826,018.02, as broken down below. This total is based upon historical cylinder medical gas purchases plus potential volume growth, as well as potential price increases up to CPI or a maximum of three percent (3%) beginning in Year 2.

<table>
<thead>
<tr>
<th></th>
<th>Gases*</th>
<th>Rentals</th>
<th>Delivery</th>
<th>Total Annual Spend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$139,615.93</td>
<td>$3,888.34</td>
<td>$12,080.00</td>
<td>$155,584.27</td>
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<tr>
<td>Year 2</td>
<td>$143,804.41</td>
<td>$4,004.99</td>
<td>$12,442.40</td>
<td>$160,251.80</td>
</tr>
</tbody>
</table>
Year 3   $148,118.54   $4,125.14   $12,815.67   $165,059.35
Year 4   $152,562.10   $4,248.89   $13,200.14   $170,011.13
Year 5   $157,138.96   $4,376.36   $13,596.15   $175,111.47
Total Cost   $741,239.93   $20,643.73   $64,134.36   $826,018.02

*Beginning in Year 2, UMMC has included an additional 3% each year for potential price increases up to CPI or a maximum of 3%.

Funding Source of Contract: The agreement will be funded by patient revenue.

Contractor Selection Process: In September 2015, UMMC solicited competitive proposals from vendors contracted with the Group Purchasing Organizations (GPO) in which UMMC is a member. After in-depth review, the initial proposals received were not satisfactory, and UMMC again solicited competitive proposals in August 2016. UMMC received responses from AirGas and Linde Gas. Due to staff and leadership changes, the selection of the vendor was not completed until June 2017. Airgas submitted the lowest and best proposal that met required specifications.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

13. UMMC – REQUEST FOR APPROVAL TO AMEND DIALYSIS PRODUCTS PURCHASE AGREEMENT WITH BAXTER HEALTHCARE

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to amend its Dialysis Products Purchase Agreement with Baxter Healthcare Corporation (Baxter) for the rental of dialyzer equipment used by patients on Peritoneal Dialysis (PD), as well as the purchase of associated disposables and commodities. The Amendment will allow UMMC to replace thirty-two (32) Home Choice Pro dialyzers with thirty-two (32) AMIA 2.0 Automated PD dialyzers and lower the pricing of the commodities UMMC purchases. The AMIA dialyzers are the newer model of dialyzer cyclers, with automated functionality to advance home PD therapy.

Contractor’s Legal Name: Baxter Healthcare Corporation

History of Contract: In May of 2007, the Board approved UMMC to enter into a rental agreement for the PD equipment and purchases of associated commodities. The term of that
agreement was for three (3) years beginning December 1, 2007 and ending November 30, 2011. The total approved cost was $1,300,000.00.

On November 17, 2011 the Board approved UMMC to enter into a rental agreement with Baxter for the PD equipment and purchases of associated commodities. The term of that agreement was for three (3) years beginning December 1, 2011 and ending November 30, 2014. The total approved cost was $1,800,000.00. After the end of the contract, UMMC operated on a month-to-month invoice basis.

On January 21, 2016, the Board of Trustees approved a two (2) year and ten (10) month agreement with Baxter for the rental of PD equipment and the purchase of associated commodities for a total cost of $5,280,807.02. The current agreement will expire November 30, 2018. Although the upgraded equipment has a higher monthly rental cost, Baxter agreed to lower the pricing on UMMC’s commodities by twenty-five percent (25%) to offset the rental costs. Therefore, the proposed amendment will not cause an overall increase in the approved total cost.

Specific Type of Contract: This is the First Amendment to the Dialysis Products Purchase Agreement.

Purpose: The purpose of the Amendment is to replace thirty-two (32) Home Choice Pro dialyzers with thirty-two (32) AMIA 2.0 Automated PD dialyzers and lower the pricing of the commodities UMMC purchases. The AMIA dialyzers are the newer model of dialyzer cyclers, with automated functionality to advance home PD therapy.

Scope of Work: Baxter will provide the following:

- Sell to UMMC the associated disposables and commodities for use in the PD equipment;
- Provide the AMIA dialyzers for use in PD dialysis to patients home;
- Provide a reasonable amount (not to exceed a five (5) day supply) of supplies at no charge for patients and staff education purposes;
- Provide two (2) loaner PD systems for in-center patient education at no charge;
- Provide Renalsoft is 2.0 software at no additional charge.

UMMC agrees to the following:

- Under the Amendment:
  o Order thirty-two (32) AMIA dialyzers by December 31, 2017;
  o Convert at least thirty-two (32) patients currently utilizing Baxter’s Home Choice Pro dialyzers to AMIA dialyzers by March 1, 2018;
  o Maintain one hundred percent (100%) of the converted patients through the expiration of the agreement on November 30, 2018;
- Under the existing Agreement:
  o To purchase ninety percent (90%) of its total utilization of PD products during each twelve (12) month period from Baxter; and
To return any PD equipment upon discontinued use.

**Term of Contract:** The term of the existing agreement is two (2) years and ten (10) months, from February 1, 2016, through November 30, 2018. The Amendment will begin December 1, 2017, and end coterminous with the existing Agreement on November 30, 2018.

**Termination Options:** The existing agreement may be terminated as follows:
- If either party asserts that the other party committed a material breach of this agreement, then the non-breaching party must notify the breaching party in writing of the specific breach and request that it be cured. If the breaching party does not cure the breach within sixty (60) calendar days after receiving written notice, then the non-breaching party may terminate this agreement without penalty by sending written notice to the breaching party;
- In the event of any reduction in available funds to UMMC, the contract may be terminated without penalty to UMMC; and
- In the event Baxter fails to comply with the federal E-Verify Program.

**Contract Amount:** The approved total cost of the existing Agreement is $5,280,807.02 over the two (2) years and ten (10) month term. To date, UMMC has spent $1,550,294.97 under the Agreement. Although the upgraded equipment has a higher monthly rental cost, Baxter agreed to lower the pricing on UMMC’s commodities by twenty-five percent (25%) to offset the rental costs. Therefore, the proposed amendment will not cause an overall increase in the approved total cost.

**Funding Source for Contract:** This agreement will be funded by hospital patient revenue.

**Contractor Selection Process:** Under Section 31.7.13(l)(ii) of the MS Code of 1972 (as amended), contracts for the lease of hospital equipment necessary for patient care are exempt from bid requirements. UMMC chose Baxter Healthcare for use of the cyclers as they best meet the needs of its patient population. Although the commodities are now exempt as clinical commodities, in February 2016, UMMC received approval from the MS Department of Finance and Administration (DFA) to purchase the commodities as sole source, since they are solely made to fit the Baxter AMIA dialysis cycler cartridges.

**Staff Recommendation:** Based on Board Policy 707.01, *Land, Property and Service Contracts*, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.
14. UMMC- REQUEST FOR APPROVAL TO ENTER INTO A CUSTOMER OPTIMIZATION PLUS PROGRAM AGREEMENT WITH COVIDIEN SALES, LLC

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a Customer Optimization Plus Program Agreement with **Covidien Sales, LLC**, a Medtronic company

**Contractor’s Legal Name:** Covidien Sales, LLC, a Medtronic company (Covidien)

**History of Contract:** While this is a new agreement, UMMC had a previous agreement with Covidien for the same or similar purpose. On August 18, 2016, the Board of Trustees approved an eight (8) month agreement between UMMC and Covidien for the purchase and placement of commodities and equipment related to pulse oximetry monitoring, capnography, and cerebral/somatic monitoring. The agreement expired in April 2016. UMMC earned enough credits through purchase of the commodities to purchase the equipment at no additional cost. UMMC would like to enter into a new agreement with Covidien in order to purchase additional equipment through commodity purchase credits.

**Specific Type of Contract:** Customer Optimization Plus Program Agreement

**Purpose:** The purpose of this agreement is to allow UMMC to receive discounted pricing for Covidien commodities, to add equipment, and upgrade end-of-life capital equipment through a purchase commitment program. The commodities and equipment are related to pulse oximetry monitoring, depth of anesthesia monitoring, cerebral/somatic monitoring, and capnography.

**Scope of Work:** Covidien will:

- provide pulse oximetry sensors and accessories, capnography sensors and accessories and cerebral/somatic oximetry sensors and accessories to UMMC at the agreed upon contract price,
- provide equipment to UMMC that will replace patient equipment that has reached the end of its useful life,
- track purchases made by UMMC and apply purchases of consumables to awards credits program, and
- provide quarterly reports to UMMC of awards credits earned, issued, and applied to the cost of equipment.
UMMC will:

- maintain at least eighty-five percent (85%) of oximetry sites as Nellcor-compatible equipment and purchase of Nellcor-brand oximetry sensors and accessories,
- maintain at least eighty-five percent (85%) of cerebral/somatic oximetry sites as Covidien’s INVOS brand cerebral/somatic oximetry equipment and purchase of cerebral/somatic sensors and accessories, and
- maintain at least eighty-five percent (85%) of all capnography consumables as Covidien’s Oridion-brand consumables products. This does not include consumables purchased for use exclusively in the operating room or consumables used with existing pre-configured equipment where Covidien’s Oridion Microstream Capnography technology is not available.

**Term of Contract:** The term of this agreement is three (3) years - December 1, 2017 through November 30, 2020.

**Termination Options:** This agreement may be terminated as follows:

- by UMMC at any time upon thirty (30) days written notice,
- when the total award credit is reached,
- by Covidien in the event of UMMC’s failure to make a payment due, the insolvency of UMMC, the filing of a petition in bankruptcy of UMMC, the appointment of a receiver for UMMC, or an assignment for the benefit of creditors of UMMC, and
- reduction of funds.

**Contract Amount:** The estimated cost of the three (3) year Agreement is $7,346,446.71. This amount is based upon UMMC’s historical purchase volume for the consumables, plus twenty percent (20%) annual volume growth.

**Funding Source of Contract:** This agreement will be funded by hospital patient revenue.

**Contractor Selection Process:** The equipment and products offered under the agreement qualify as items for resale, which are excluded from the definition of "commodities" under Miss Code Ann §31-7-1(e) and exempted from procurement requirements under §31-7-13, as clarified by the Mississippi Attorney General (see MS AG Op., Boyce (May 15, 2015)). Additionally, Covidien is a contract provider with Vizient, UMMC’s primary Group Purchasing Organization (GPO).

**Staff Recommendation:** Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total
expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

15. **UMMC – REQUEST FOR APPROVAL TO ENTER INTO AN ENDOSCOPY COMMITMENT AGREEMENT AND EQUIPMENT SERVICE AGREEMENT WITH OLYMPUS AMERICA, INC.**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) is requesting approval to enter into a Endoscopy Commitment Agreement (ECA) and Equipment Service Agreement (ESA) with **Olympus America, Inc.**

**Contractor’s Legal Name:** Olympus America, Inc. (Olympus)

**History of Contract:** UMMC currently purchases of GI disposables from Olympus on an as-needed basis. UMMC recently opened its UP Belhaven facility where it performs certain GI procedures, which involve the use of endoscopy scopes. UMMC purchased the scopes used at UP Belhaven. In order to receive a discount on a service agreement for potential repairs of the scopes, UMMC is willing to commit to purchase a certain dollar amount of disposables for use at any UMMC facility.

**Specific Type of Contract:** Endoscopy Commitment Agreement and Equipment Service Agreement

**Purpose:** The purpose of ECA is for UMMC to purchase disposables used with endoscopy scopes used in gastrointestinal (GI) procedures at multiple UMMC locations. The purpose of the ESA is for Olympus to provide repair services for the endoscopy scopes that UMMC owns and utilizes at its UP Belhaven facility. Under the ECA, UMMC commits to purchase a certain amount of disposables in exchange for a discount of the fees charged under the ESA.

**Scope of Work:** Under the ESA,

- Olympus will:
  - Discount service pricing by $16,910.96 if UMMC meets it commitment under the ECA;
  - Provide unrestricted access to technical support 24 hours per day, 7 days per week;
  - Provide a telephone response to technical inquiries for repairs within four (4) hours;
  - Return repaired equipment to UMMC via next day freight;
  - Provide all parts and labor necessary to complete repairs;
Provide access to Olympus’s online service portal to enable management of various aspects of repairs;
Provide UMMC employees with access to Olympus University educational courses;
Provide temporary loaner units to be utilized while equipment is being repaired; and
Provide two (2) on-site back-up units for immediate use if UMMC equipment is not operable.

- UMMC will:
  - Open a return merchandise authorization (RMA) for each repair event;
  - Provide Olympus service personnel with reasonable assistance for diagnosing and correcting equipment problems by telephone;
  - Promptly return any loaner units provided by Olympus;
  - Follow appropriate operating, reprocessing, cleaning, and maintenance procedures for the equipment and/or loaner units;
  - Remove all protected health information (PHI) from equipment before sending it to Olympus for repair or otherwise.

Under the ECA, Olympus will provide a discount of the ESA up to $16,910.96 if UMMC meets its commitment under the ECA. UMMC agrees to purchase a minimum of $274,251.60 over the three (3) year term.

Term of Contract: The term of the agreement is thirty-six (36) months - December 1, 2017 through November 30, 2020.

Termination Options: Termination options include:
- Under the ESA:
  - By either party in the event of a breach of a material obligation under the agreement upon thirty (30) days’ written notice, and such breach is not cured during the thirty (30) day period;
  - By either party without cause upon ninety (90) days’ written notice to the other party;
  - By Olympus if UMMC does not issue payment timely, becomes insolvent or bankrupt, or does not comply with its obligations under the Agreement;
  - By UMMC if Olympus becomes insolvent or bankrupt or does not comply with its obligations under the Agreement;
  - By UMMC in the event Olympus assigns the Agreement to a third party without prior written consent;
  - By UMMC in the event Olympus or any of its employees are excluded or debarred from participation in any federal healthcare programs; and
  - In the event Olympus fails to comply with the federal E-Verify Program.
• Under the ECA:
  
  o By either party upon thirty (30) days’ written notice to the other party;
  o In the event of a reduction in funds;
  o By Olympus if UMMC does not issue payment timely, becomes insolvent, ceases to do business, makes an assignment for the benefit of creditors, sells or otherwise transfers to a third party more than 25% of its assets, has a bankruptcy proceeding, or does not comply with its obligations under the Agreement;
  o By UMMC if Olympus becomes insolvent, ceases to do business, makes an assignment for the benefit of creditors, sells or otherwise transfers to a third party more than 25% of its assets, has a bankruptcy proceeding, or does not comply with its obligations under the Agreement; and
  o In the event Olympus fails to comply with the federal E-Verify Program.

**Contract Amount:** The total combined amount of the ECA and ESA over three (3) years is $740,924.08. The total cost of the ESA is $169,342.48 over three (3) years. UMMC expects to purchase up to $571,581.60 in disposables.

**Funding Source of Contract:** This agreement will be paid for by hospital patient revenue.

**Contractor Selection Process:** The products offered under the agreement qualify as items for resale, which are excluded from the definition of "commodities" under Miss Code Ann §31-7-1(l)(e) and exempted from procurement requirements under §31-7-13, as clarified by the Mississippi Attorney General (see MS AG Op., Boyce (May 15, 2015)). Additionally, Olympus is a contract provider with Vizient, UMMC’s primary Group Purchasing Organization (GPO).

**Staff Recommendation:** Based on Board Policy 707.01, Personal Property and Service Contracts, Board approval is required prior to execution of leases in an amount greater than $100,000. However, Board approval is required prior to execution of all oil, gas and mineral leases, regardless of amount. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

16. **UMMC -REQUEST FOR APPROVAL TO ENTER INTO A LICENSE, CONSULTING SERVICES AND SUPPORT AGREEMENT WITH PRACTICE DIAGNOSTIC SYSTEMS, LLC**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a License, Consulting Services and Support Agreement with Practice Diagnostic Systems, LLC (PDS) to install, implement, and maintain the PDS iMPower Web-based Analytic software application that will allow UMMC to manage overall accounts...
receivable for the entire health system. The PDS iMPower application measures productivity, performance, and effectiveness of each department, location, billing area, and individual provider, as well as patterns of payers’ erroneous claims handling. This system also will allow UMMC to identify trending of denials, success of appeals, reconsiderations, and aging of accounts receivable. Finally, UMMC will have enhanced capability to customize reports in a more timely manner to manage all aspects of financial performance for UMMC’s ambulatory area. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or Services, UMMC also requests a waiver to allow prepayment of license fees.

Contractor’s Legal Name: Practice Diagnostic Systems, LLC

History of Contract: This is a new License, Consulting Services and Support Agreement for installation, implementation, and maintenance of the PDS iMPower Web-based Analytic software application. UMMC currently utilizes the PDS Cognos 7 system which, due to its age, is no longer serviceable for upgrades to be in line with current analytic technology. The PDS iMPower application will replace UMMC’s existing Cognos 7 system and provide more advanced functionality and scalability to analyze and evaluate revenue cycle data. The PDS iMPower application measures productivity, performance, and effectiveness of each department, location, billing area, and individual provider, as well as patterns of payers’ erroneous claims handling. This system also will allow UMMC to identify trending of denials, success of appeals, reconsiderations, and aging of accounts receivable. Finally, UMMC will have enhanced capability to customize reports in a more timely manner to manage all aspects of financial performance for UMMC’s ambulatory area.

Specific Type of Contract: This is a new License, Consulting Services and Support Agreement.

Purpose: The purpose of the Agreement is to provide the PDS iMPower software that serves as a data intelligence tool that allows UMMC to manage overall accounts receivable for the entire health system. The PDS iMPower application measures productivity, performance, and effectiveness of each department, location, billing area, and individual provider, as well as patterns of payers’ inappropriate and/or erroneous claims handling. This system also will allow UMMC to identify trending of denials, success of appeals, reconsiderations, and aging of accounts receivable. Finally, UMMC will be able to customize reports to manage all aspects of financial performance for UMMC’s ambulatory area.

Scope of Work: Under the Agreement, PDS will provide:
- PDS iMPower Analytics licenses for 1 Client Admin, 3 Professional Users, and 2 Analysts;
- PDS DASH enhanced version 3.5 License;
- PDS Portal server license;
- Implementation of the PDS iMPower software, PDS DASH, and PDS Portal to include upgrade;
- Migration of data from UMMC’s current Cognos7 system to the PDS iMPower application;
- Training on PDS iMPower Web Analytics and PDS Dash;
- Migration of PowerPlay or Improptu Reports;
- Migration from UMMC’s existing Cognos7 system to DASH;
- Consulting services in connection with implementation, installation, and customization of the PDS software system; and
- Remote support services for the PDS software system and its components.

UMMC will provide the following:
- A knowledgeable representative to serve as project manager to provide information to PDS and make decisions on behalf of UMMC;
- All peripheral equipment and software to support installation and implementation;
- Reasonable access to licensed servers, as may be required;
- Installation of necessary equipment and software at least 20 days prior to PDS installation of the iMPower application; and
- Validation of any and all UMMC and UMMC client data.

**Term of Contract:** The term of this agreement is five (5) years beginning on March 21, 2018 and ending on March 20, 2023.

**Termination Options:** The agreement may be terminated for the following:
- In the event of a material breach of the Agreement, the non-breaching party may terminate the Agreement by giving written notice to the breaching party, provided that the breaching party is given thirty (30) days from notification of the breach to remedy the breach;
- By PDS is the event that UMMC fails to pay any License Fees or Support Fees within forty-five (45) days of due date; and
- In the event of a deficiency or unavailability of funds, provided however that: (i) all license fees must have been paid in full at the time of execution of the Agreement; (ii) there will be no refund of license or other fees that have already been paid; and (iii) all other fees incurred through the date of termination must be paid within forty-five (45) days of the date of termination.
- Either party may terminate the End User Agreement immediately upon written notice to the other in the event of a material breach of the End User Agreement and failure to cure such breach within twenty (20) days following receipt of notice of such breach;
- End User Agreement will terminate automatically: (a) upon the termination of the PDS MicroStrategy Agreement; (b) upon the termination of the Agreement; (c) if
either party becomes the subject of a voluntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing;

- By either party at its convenience upon ninety (90) days prior written notice;
- By UMMC in the event that PDS improperly uses or discloses protected health information in breach of the Business Associate Agreement; and
- By PDS upon written notice if PDS makes a determination that a material condition of performance has changed under the Business Associate Agreement, or that UMMC has breached a material term of the Business Associate Agreement.

**Contract Amount:** The total estimated cost of the agreement over the five (5) year term is $462,152.41 with a breakdown provided below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$310,302.00*</td>
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<tr>
<td>Year 2</td>
<td>$35,518.90</td>
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<td>Year 3</td>
<td>$37,094.85</td>
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<tr>
<td>Year 4</td>
<td>$38,749.59</td>
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<td>Year 5</td>
<td>$40,487.07</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$462,152.41</td>
</tr>
</tbody>
</table>

NOTE: Years 2 through 5 include an annual price increase of five percent (5%) for Maintenance and Support. In addition, the totals for Years 2 through 5 include any associated costs for additional work as needed and any associated travel costs.

*The cost breakdown for Year 1 is provided as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Year 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Fees</td>
<td>$149,684.00</td>
</tr>
<tr>
<td>Implementation, Training, and Data Migration</td>
<td>$130,600.00</td>
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<td>Annual Maintenance and Support</td>
<td>$30,018.00</td>
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<tr>
<td>TOTAL</td>
<td>$310,302.00</td>
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</tbody>
</table>

**Funding Source for Contract:** The agreement will be funded by hospital patient revenue.

**Contractor Selection Process:** Practice Diagnostic Systems, LLC is an approved vendor contracted with Vizient, one of UMMC’s group purchasing organizations (GPO).
Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of leases in an amount greater than $100,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

17. **UMMC – REQUEST FOR APPROVAL TO ENTER INTO AN AMENDED MASTER PARTICIPANT ENROLLMENT AND LICENSE AGREEMENT WITH VIZIENT, INC. AND VIZIENT DATA SERVICES, LLC**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a Third Amendment to the Master Participant Enrollment and License Agreement with Vizient, Inc. and Vizient Data Services, LLC (collectively, Vizient). Vizient was formerly known as Vizient Data Services, LLC, which was formerly VHA-UHC Data NewCo, LLC, and prior to that, it was known as the University HealthSystem Consortium, or UHC. The third amendment would allow UMMC to extend the term of the existing agreement for the performance suite for an additional year.

**Contractor’s Legal Name:** Vizient, Inc. and Vizient Data Services, LLC

**History of Contract:** UMMC is required to utilize a third party vendor to generate and submit Core Measure Data to Centers of Medicare & Medicaid Services (CMS). UMMC has utilized the UHC Performance Accelerator Suite since 2006. From 2006 through 2009, the amount of the contract was below the IHL threshold; therefore, those agreements did not come before the Board. One year renewals of the agreement were approved by the Board in November 2010 for $257,000 and November 2011 for $286,000.

On November 15, 2012, the Board approved the current five (5) year membership and license agreement with University HealthSystem Consortium (UHC). The total approved estimated cost for the five-year contract term was $2,374,883.90. This amount includes the membership fees and subscriptions and licenses to Clinical Database with Core Measures, Clinical Resource Manager, and Operational Database. Access to these products allows UMMC to meet the Joint Commission’s requirement to have a third party vendor submit Core Measure data; to submit other data to CMS; to participate in a database to provide clinical, operational and resource management comparison with other academic medical centers; and to have a mechanism for staff to report occurrences. In November 2015, UHC merged with VHA Inc. and formed a new company initially known as VHA-UHC Alliance NewCo, Inc.

On May 21, 2015, the Board approved an amendment to add a license for Imperatives for Quality (IQ). IQ allows UMMC to pinpoint opportunities for improvement by integrating quality, safety, and cost-effectiveness data. This product was purchased through the Performance Package offered by UHC. The Performance Package includes the products UMMC was currently utilizing plus IQ at a lower cost than if we had added the IQ portion a-la-carte. UMMC savings is estimated to be $53,000.00 per year by electing the performance
package versus paying the a-la-carte fee. In 2015-16, VHA-UHC Alliance NewCo, Inc. subsequently changed its name to VHA-UHC Data NewCo, LLC, and again to Vizient Data Services, LLC. Vizient, Inc. is the parent company to Vizient Data Services, LLC.

On April 21, 2016, the Board approved a Second Amendment with Vizient, which allowed UMMC’s Grenada location to subscribe to and license the Clinical Database that UMMC’s main campus utilizes. The estimated approved cost of the amendment was $43,800.00, which brought the total approved cost of the agreement to $2,418,683.90.

**Specific Type of Contract:** This is the Third Amendment to the Master Participant Enrollment and License Agreement.

**Purpose:** The purpose of the Third Amendment is to extend the term of the Master Participant Enrollment and License Agreement to allow UMMC to continue using the performance package for one (1) additional year.

**Scope of Work:** Under this Third Amendment, Vizient will continue to allow UMMC use of the Performance Package that includes the Core Measures database and reporting services to CMS; Key Indicator Report; Quality and Safety Management Report; Clinical Outcomes Report; Hospital Quality Measures Report; and ongoing education and service.

**Term of Contract:** The term of the Third Amendment will begin on or about November 1, 2017, and will extend the current expiration date of the Master Participant Enrollment and License Agreement to December 31, 2018.

**Termination Options:** Termination options include the following:

- For convenience, by either party, upon sixty (60) days’ written notice;
- For cause, by either party, upon thirty (30) days’ written notice;
- By Vizient for dissolution, insolvency, appointment of a receiver, assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws against UMMC;
- By Vizient should UMMC violate any provisions of the agreement protecting Vizient’s intellectual property, proprietary information or other proprietary rights; or
- By UMMC should Vizient violate a material term of the Business Associate Agreement.

**Contract Amount:** The total cost of the Third Amendment is $356,250.70. This will bring the total cost of the Master Enrollment and License Agreement to $2,774,934.60.

**Funding Source for Contract:** The agreement will be funded by hospital patient revenue.
Contractor Selection Process: Vizient is UMMC’s Group Purchasing Organization (GPO) and is a unique provider of comparative databases for academic medical centers.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.

18. USM– REQUEST FOR APPROVAL TO ENTER INTO A LEASE AGREEMENT WITH THE USM ATHLETIC FOUNDATION

Agenda Item Request: The University of Southern Mississippi (USM/Lessor) requests the IHL Board approval of a Lease between the University and the University of Southern Mississippi Athletic Foundation (Foundation/Lessee). The premises involve approximately 150,195 square feet of the first and second floors of the Cook Library, located at 124 Golden Eagle Avenue Hattiesburg, MS 39406. During the term of the Lease, the Foundation will remodel and renovate the first and second floors of the Cook Library in accordance with plans and specifications as approved by USM. The renovations include the creation of the Bower Academic Center.

Contractor’s Legal Name: University of Southern Mississippi Athletic Foundation, Inc.

History of Contract: This is a new lease between USM and the USM Athletic Foundation.

Specific Type of Contract: This is a Lease Agreement.

Purpose: The purpose of the Lease Agreement is to provide the Foundation the right to utilize the premises as needed and agreed upon by the parties, including the right to remodel and renovate the premises, creating the Bower Academic Center. During certain times of the day and during periods of the year, portions of the Bower Academic Center will be available to the general student population. The design of the renovated space is such that the Bower Academic Center can be isolated and used by athletics for the majority of the time, but it can be utilized by other areas of the campus as shared space during other periods should the need arise. A card access system will be installed to allow this sharing of the premises. All construction of the facilities by the Foundation shall be in accordance with plans and specifications as approved by USM.
Scope of Work: The scope of work of the Foundation is to renovate the premises and to construct the new Bower Academic Center on the premises during the term listed herein. The renovations will provide for a classroom, a computer lab for approximately 40 student athletes, multiple offices, a conference room, several small group study rooms, multiple individual study rooms and tutoring rooms. USM shall accept the revised premises from the Foundation upon expiration of the term as consideration of the Lease herein. The portions of the Premises that are leased solely for renovating systems necessary for the completion of the Bower Academic Center will be released to USM when those systems are upgraded.

Term of Contract: The term of the Lease shall commence subsequent to IHL Board approval and full execution of the Lease and continuing through the earlier of (a) the date which is thirty days subsequent to the completion and acceptance of the completed Facilities as defined in the Lease or (b) June 30, 2020.

Termination Options: If Lessee defaults in its performance of any of the covenants, conditions, agreements or undertakings to be kept and observed by Lessee and such default continues for thirty (30) days, or if Lessee should vacate or abandon the leased Premises, the Lessor may exercise any rights or remedies it may have at law or in equity, including the termination of the lease. Also, since the lease is contingent upon Lessee beginning construction of the facilities within a reasonable time frame, if the Lessee has not begun construction of the Facilities in accordance with plans and specifications approved by the Lessor’s Physical Plant Department by December 31, 2018, the lease will be terminated.

Contract Amount: The contract amount shall be $1.00 cash in hand.

Funding Source of Contract: This lease is being funded through private funds.

Contractor Selection Process: N/A

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of leases in an amount greater than $100,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommends approval of this item.
Note: Project numbers beginning with the prefix "GS" designate projects that the Bureau of Building provides management oversight for and are funded partially or wholly with state Bureau of Building bond revenues. Project numbers beginning with the prefix "IHL" designate projects that are funded from university self-generated sources including but not limited to donations, fees, and grants.

Board Policy §902, Initiation of Construction Projects

The Board must approve the initiation of a project for the construction of new facilities, repairs and renovations to existing facilities and requests for a capital outlay with a total project budget exceeding $1,000,000 regardless of how the projects are financed. It is the intent of the Board that its appropriate staff under the direction of the Commissioner shall be involved in all phases of building projects requiring approval by the Board. All construction, repairs, and renovation projects with a total budget of $1,000,000 or less may be approved by the Institutional Executive Officer. However, all projects utilizing any state bond funds, including Ayers funds, must be initiated with STAFF approval from the Office of Real Estate and Facilities. No further approvals are required by IHL staff for projects of $1,000,000 or less unless the budget changes. All budget changes for these projects must be reported to the Office of Real Estate and Facilities.

Board Policy §904(A), Board Approval

When funding has been secured from whatever source, each institution shall bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects. This request shall include a detailed description of the work to be accomplished, the total budget, the funding source and the design professional recommended to the Board for approval.

After the Board has granted approval of both the initiation of a project and the appointment of a design professional, no further Board action or approval is required for the completion of the project if the following conditions are met:

1. The detailed description of the work to be accomplished, as specifically approved by the Board within the project initiation, has not changed.
2. The total project budget has not increased beyond the amount specifically approved by the Board as part of the project initiation;
3. The funding source has not changed from that specifically approved by the Board as part of the project initiation; and
4. The design professional previously approved by the Board has not changed.
If the above four conditions have been met, the Board’s Real Estate and Facilities staff, through the Commissioner, shall have the authority to approve any and all necessary documents related to the completion of the subject construction project, including the approval of construction documents, the advertisement and receipt of bids, the approval of a bid, the award of a contract and any change orders.

Prior to the commencement of construction, the Board must approve the exterior design of the major buildings that have aesthetic impact on the overall campus, regardless of the cost of the project. This requirement applies to all buildings and facilities on an institution’s property even if the land is leased to an institution’s affiliated entity or a private developer.

**Board Policy §905(A), Real Estate Management**

Prior Board approval is required for the execution of all leases, easements, oil and mineral leases, and timber sales. Board approval prior to the execution of a contract for the sale of real property is required for all land sales, regardless of the sale price. Prior Board approval is required for the execution of all leases, easements, oil and mineral leases, and timber sales. Request for approval of land contracts shall include property descriptions, terms of purchase, lease, or sale and intended use of the property. An institution acquiring or disposing of real property shall receive two independent appraisals. The purchase price of property to be acquired shall not exceed the average of the two appraisals. The sale price of real property shall be no less than the average of the two appraisals.

**Board Policy §905(B), Real Estate Management**

Prior to Board consideration of the purchase or acceptance of real estate from any source, a Phase I or more detailed Environmental Report shall be completed by qualified personnel and submitted to the Board’s Real Estate and Facilities Office. In the event hazardous substances are confirmed as having existed in the past or as presently existing, the Board reserves the right to cancel the transaction without liability, or to permit the other party or parties to remove the hazardous substances at its or their expense in a manner sufficient to receive a “no further action” letter from the State’s Department of Environmental Quality.

**Board Policy §917, Naming of Buildings and Facilities**

Board approval must be obtained prior to naming or re-naming any institutional building or facility. However, assigning generic names which are descriptive of the functions served by a building – such as “University Athletic Training Facility” or “Chemistry Building”— does not require Board approval, unless the building has an existing non-generic name which is to be changed or modified. Board approval must also be obtained prior to naming or re-naming any
building or facility built on university property leased to a university affiliated entity, a private
developer or any other individual or entity.

**Board Policy §919, Pre-requisites for Building Modification or Demolition**

Prior to scheduling a building on an institution’s property for restoration, improvement,
construction, repair, renovation, rehabilitation, demolition or similar work, the institution
shall secure an inspection and approval from the Mississippi Department of Environmental
Quality and a permit or written permission from the Mississippi Department of Archives and
History authorizing the requested building action. After obtaining approval from these two
agencies, a request for the building modification or demolition shall be submitted to the Board
for approval. The request to the Board must include documentation evidencing approval by
the Department of Environmental Quality and the Department of Archives and History.

**APPROVAL OF INITIATIONS OF PROJECTS/APPOINTMENTS OF
PROFESSIONALS**

IHL PROJECTS .................................

1. **UM – IHL 207-433 – UM Master Plan -Utilities**

   **Project Request:** The University of Mississippi requests approval to appoint Burns &
   McDowell Engineering Company, Inc. as the design professional for the utilities
   component of the UM master plan.

   **Proposed Design Professional:** Burns & McDowell Engineering Company, Inc.

   **Selection Method:** The project budget is not anticipated to exceed $3M however the
   university used the RFQ method for the selection of the design professional.

   **Purpose:** The University of Mississippi is seeking to appoint the design professional
   for the utilities component of the master plan. Appointing the design firm will allow
   the university to proceed with the utilities phase of the master plan.

   **Project Scope:** This is an extension of the campus master plan and dovetails with it,
   but will be carried out by a different design firm with different areas of expertise. All
   utilities and plant buildings will be considered, where they should be placed, where
   they are deficient, and how improvements should be made. The results of the plan
   will form a road map for long-term growth. The planning firm will not be permitted
   to submit for any of the design work that results from the planning effort.
History: The University of Mississippi began its master plan in 2009 using the services of Sasaki, Inc. Recently, a comprehensive 5-year update of the original plan was completed. The scope of this work included data that took into account long-range enrollment predictions that were translated into the need for additional gross area. It also considered locations of new buildings and transportation networks within the special context of the UM campus. Having completed the study, the university administration is in a strong position to locate new buildings based on sound planning principles. UM would now like to move forward on the necessary and key next step which is to master plan all campus utilities.

The University of Mississippi is seeking to appoint the design professional in accordance with Board Policy §904(A), Board Approval, that requires each institution to bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects.

Project Initiation Date: April 20, 2017

Date of Original Construction: N/A

Date of Last Renovation: N/A

Proposed Project Budget: (Design Fees Only)

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<th>Architectural and Engineering Fees:</th>
<th>Misc. Project Costs:</th>
<th>Furniture &amp; Equipment Costs:</th>
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Total Project Budget $850,000.00

Proposed Funding Source(s): Internal R&R ($850,000)

Staff Recommendation: Board staff recommends approval of this item.
2. **UM – IHL 207-438 – Deaton and Hefley Hall Elevator Refurbishment**

**Project Request:** The University of Mississippi requests approval to initiate a project, Deaton and Hefley Hall Elevator Refurbishment, and to appoint Corbett Legge & Associates, PLLC as the design professional.

**Proposed Design Professional:** Corbett Legge & Associates, PLLC

**Selection Method:** The project budget does not exceed $3M so the university is not required to use the RFQ method for the selection of the design professional.

**Purpose:** The University of Mississippi is seeking to initiate the project and appoint the design professional, so the university can proceed with the needed replacement of the elevators in Deaton Hall and Hefley Hall.

**Project Scope:** The university will completely replace the elevators in Deaton Hall and Hefley Hall. The Deaton Hall elevator, which is currently out of service, was installed in 1951 with control modifications in 2003. Hefley Hall was originally installed in 1980 and has only had exterior signals upgraded in the late 1990’s. The project at Deaton Hall will plan on a full replacement of existing control systems, drive units, geared traction hoist machine, car frame, safety, platform, closed loop door operator, and fixtures. Hefley Hall will plan on full replacement of existing control systems, new submersible power unit, closed loop door operators, and fixtures. It will also look at replacing the hydraulic jack assembly.

The University of Mississippi is seeking to initiate the project and to appoint the design professional in accordance with Board Policy §904(A), Board Approval, that requires each institution to bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects.

**Project Initiation Date:** November 16, 2017

**Date of Original Construction:** Deaton (1952); Hefley (1959)

**Date of Last Renovation:** Deaton (2002); Hefley (2003)
Proposed Project Budget:

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<td><strong>Total Project Budget</strong></td>
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Proposed Funding Source(s): Student Housing Revenues and R&R Reserves ($1,150,000)

_Staff Recommendation:_ Board staff recommends approval of this item.

### 3. UM – IHL 207-439 – Crosby Hall HVAC Upgrades

**Project Request:** The University of Mississippi requests approval to initiate a project, Crosby Hall HVAC Upgrades, and to appoint Corbett Legge & Associates, PLLC as the design professional.

**Proposed Design Professional:** Corbett Legge & Associates, PLLC

**Selection Method:** The project budget does not exceed $3M so the university is not required to use the RFQ method for the selection of the design professional.

**Purpose:** The University of Mississippi is seeking to initiate the project and appoint the design professional, so the university can proceed with the HVAC upgrades in Crosby Hall.

**Project Scope:** The university will replace existing VAV boxes, supply and return grills and the control system of Crosby Hall HVAC system. These upgrades will necessitate replacement of the ceiling in areas impacted by the work.

The University of Mississippi is seeking to initiate the project and to appoint the design professional in accordance with Board Policy §904(A), Board Approval, that requires each institution to bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects.
Project Initiation Date: November 16, 2017

Date of Original Construction: 1971

Date of Last Renovation: N/A

Proposed Project Budget:

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Total Project Budget: $2,800,000.00

Proposed Funding Source(s): Student Housing Revenues and R&R Reserves ($2,800,000)

Staff Recommendation: Board staff recommends approval of this item.

4. UM – IHL 207-440 – New Band Practice Field

Project Request: The University of Mississippi requests approval to initiate a project, New Band Practice Field, and to appoint Holcombe Norton Partners, Inc. as the design professional.

Proposed Design Professional: Holcombe Norton Partners, Inc.

Selection Method: The project budget is not anticipated to exceed $3M so the university is not required to use the RFQ method for the selection of the design professional.

Purpose: The University of Mississippi is seeking to initiate the project and appoint the design professional, so the university can proceed with the design process of a new band practice field. The University of Mississippi expects the project cost to be in the range of $1,900,000.00 to $2,300,000.00. The design professional will proceed with schematic and design development documents in order to more accurately determine the final project budget. The University of Mississippi will then submit a
subsequent agenda item to the Board of Trustees to increase the budget as required to reflect the established scope of work and more refined costs.

**Project Scope:** The Ole Miss Pride of The South Band practice facilities have met their useful life. The field is often underwater and muddy after average rains. The director’s tower is approaching a condition where safety will soon be a concern. Access to the field is not sufficient and often causes damage to front ensemble instruments. The University of Mississippi intends to construct a new practice field with proper drainage structures and lights, a new director’s tower, small storage building, and proper field access.

The University of Mississippi is seeking to initiate the project and to appoint the design professional in accordance with Board Policy §904(A), Board Approval, that requires each institution to bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects.

**Project Initiation Date:** November 16, 2017

**Date of Original Construction:** N/A

**Date of Last Renovation:** N/A

**Proposed Project Budget: (Design Fees Only)**

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**Total Project Budget** $ 65,000.00

**Proposed Funding Source(s):** Private Gifts and Internal R&R ($65,000)

*Staff Recommendation: Board staff recommends approval of this item.*
5. **UMMC – IHL 209-563 – Campus Emergency Systems Upgrades**

**Project Request:** The University of Mississippi Medical Center requests approval to initiate a project, Campus Emergency Systems Upgrades, and to appoint Cooke Douglass Farr Lemons (CDFL) Architects + Engineers, P.A. as the design professional.

**Proposed Design Professional:** Cooke Douglass Farr Lemons Architects + Engineers, P.A.

**Selection Method:** The project budget exceeds $3M so the university used the RFQ method for the selection of the design professional.

**Purpose:** The University of Mississippi Medical Center is seeking to initiate the project and appoint the design professional, so the university can proceed with the needed campus emergency systems upgrades.

**Project Scope:** The university will remove selected generators in the subbasement and install new generators at ground level on the exterior of the building. The project will allow the university to provide connectivity for portable generators that would be able to provide power to the chillers and cooling towers during a power outage.

The University of Mississippi Medical Center is seeking to initiate the project and to appoint the design professional in accordance with Board Policy §904(A), Board Approval, that requires each institution to bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects.

**Project Initiation Date:** November 16, 2017

**Date of Original Construction:** N/A

**Date of Last Renovation:** N/A
Proposed Project Budget:

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Total Project Budget: $3,500,000.00

Proposed Funding Source(s): UMMC SSA (Shared Services Administration) – Building Improvements ($3,500,000)

Staff Recommendation: Board staff recommends approval of this item.

6. UMMC – IHL 209-564 – Sterile Processing Relocation

Project Request: The University of Mississippi Medical Center requests approval to initiate a project, Sterile Processing Relocation, and to appoint Canizaro Cawthon Davis Architects as the design professional.

Proposed Design Professional: Canizaro Cawthon Davis Architects

Selection Method: The project budget does not exceed $3M so the university is not required to use the RFQ method. However, UMMC used the RFQ method for the selection of the design professional.

Purpose: The University of Mississippi Medical Center is seeking to initiate the project and appoint the design professional, so the university can proceed with the relocating the central sterile processing.

Project Scope: The university will relocate the central sterile processing from the current location in the basement of the adult hospital to the basement of the north wing where materials management is currently located. A separate project will relocate materials management.

The University of Mississippi Medical Center is seeking to initiate the project and to appoint the design professional in accordance with Board Policy §904(A), Board Approval, that requires each institution to bring all new projects to the Board for the
approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects.

**Project Initiation Date:** November 16, 2017

**Date of Original Construction:** N/A

**Date of Last Renovation:** N/A

**Proposed Project Budget:**

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**Proposed Funding Source(s):** UMMC SSA (Shared Services Administration) – Building Improvements ($2,000,000)

**Staff Recommendation:** Board staff recommends approval of this item.

**APPROVAL OF BUDGET INCREASES AND/OR CHANGES OF SCOPE/FUNDING SOURCE(S)**

IHL PROJECTS .................................................................

7. **UM – IHL 207-421 – Jackson Avenue Center Safe Room**

**Project Request:** The University of Mississippi requests approval to increase the budget for the Jackson Avenue Center Safe Room project. The budget will increase from $1,100,000.00 to $1,300,000.00, for an increase of $200,000.00.

**Project Phase:** Design Phase

**Design Professional:** Shafer & Associates Architects

**General Contractor:** TBD
Prior Budget Increases: The project was initiated with the Board in August of 2016 with a project budget of $983,500. This is the first budget escalation request made for this project by the university.

Purpose/Justification: The University of Mississippi is requesting to increase the project budget in response to recent bids coming in higher than anticipated.

Project Scope: The University of Mississippi will construct an independent 2,500 square foot MEMA compliant safe room structure to hold 306 occupants. The safe room will be able to withstand winds up to 250 mph and will be located adjacent to the existing Jackson Avenue Center.

The University of Mississippi is acting in accordance with Board Policy §904(A), Board Approval, that requires each institution to submit all project budget increases and changes in funding sources to the Board for approval.

Project Initiation Date: August 18, 2016

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<td>$ (68,734.00)</td>
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<td>$ 1,100,000.00</td>
<td>$ 1,300,000.00</td>
<td>$ 200,000.00</td>
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Proposed Funding Source(s): Mississippi Emergency Management Agency (MEMA) – ($730,158); Internal R&R ($569,842)

Staff Recommendation: Board staff recommends approval of this item.
8. **UMMC – IHL 209-555 – Children’s of Mississippi Expansion**

**Project Request:** The University of Mississippi Medical Center requests approval to increase the budget for the Children’s of Mississippi Expansion project and establish the funding sources for the project. The budget will increase from $6,000,000.00 to $180,000,000.00, for an increase of $174,000,000.00. In addition, UMMC is requesting approval of the exterior design of the Children’s of Mississippi Expansion. *(Seeing Rendering on Page 14)*

**Project Phase:** Design Phase

**Design Professional:** HDR Architecture

**General Contractor:** CMAR – Brasfield & Gorrie

**Prior Budget Increases:** The project was initiated with the Board in April of 2016 with a project budget of $6,000,000. This is the first budget escalation request made for this project by the university.

**Purpose/Justification:** The University of Mississippi is requesting to increase the project budget in order to reflect more accurate project costs and update the funding sources for the project.

**Project Scope:** The project will include an expansion with a new diagnostic and treatment podium, clinics, and bed tower adjacent to the existing UMMC Batson Children’s Hospital. The expansion will be approximately 340,000 square feet. Of the 340,000 square feet, 285,300 (+/-) will be Hospital finish out space, 4,200 (+/-) shell space for future hospital finish out, 31,750 (+/-) square feet of completed outpatient clinic space, and 18,800 (+/-) square feet of shell space for future clinics.

The expansion will include NICU (88 Patient rooms / 92 beds), PICU (32 Beds with shell space), Lobby, Imaging, Materials, EVS, Surgery (10 OR’s + 1 shell), 3 minor procedure rooms, and 1 Cath lab with another shelled, Pre Admit testing, gift shop, grab n go, conference center, and registration. A new service elevator connection will be made between the new bed tower and existing Batson Children’s Hospital.

The project will include site and infrastructure improvements, including parking for approximately 300-500 cars. The University of Mississippi is acting in accordance with Board Policy §904(A), Board Approval, that requires each institution to submit all project budget increases and changes in funding sources to the Board for approval.

**Project Initiation Date:** April 21, 2016
Proposed Project Budget:

<table>
<thead>
<tr>
<th></th>
<th>Current Budget</th>
<th>Proposed Budget</th>
<th>Amount (+/-)</th>
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<tr>
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<td>$ 142,171,085.00</td>
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<td>Contingency</td>
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<tr>
<td><strong>Total Project Budget</strong></td>
<td>$ 6,000,000.00</td>
<td>$ 180,000,000.00</td>
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</table>

Proposed Funding Source(s): EBC Bonds ($89,682,294); SB 2906, Laws of 2015 ($6,000,000); Pledges Received ($16,271,290); Committed Future Pledges ($28,046,416); Intermediate Loan ($40,000,000)

Staff Recommendation: Board staff recommends approval of this item.

Rendering: New Addition to Children’s of Mississippi
APPROVAL OF OTHER REAL ESTATE REQUESTS

9. ASU – Naming of the University Track as the “Mildrette Netter White Track”

Project Request: Alcorn State University requests permission to name the University Track on the ASU campus as the “Mildrette Netter White Track”.

Purpose: Alcorn State University is requesting to name the track for former ASU track athlete Mildrette Netter White.

Mildrette Netter White’s Bio: Born July 15, 1948, the second oldest of five children born to J. W. and Cora V. Netter in the small Delta town of Rosedale, MS. She was invited by the track coach at Tennessee State University in Nashville, TN, to participate in his summer training camp for high school girls during the summer of her junior and senior year of high school in hopes of getting a track scholarship. At that time, Tennessee State was the nearest University to her that had a women track program. None of the Colleges and Universities in Mississippi had women track programs. After she was rejected, basically because of her height and being from Mississippi, she thought her track career and her chance to go to college was over.

After graduating from high school in May, 1967, Mildrette entered Alcorn State University in the fall as a freshman on a Work Study Program where she was assigned to work in the gym. Growing up in the Mississippi Delta in the sixties wasn't easy and she was determined to get an education to make a better life for herself, her family and become a productive citizen in society.

Alcorn's men track coach took a chance and gave Mildrette the opportunity to prove herself. She finally earned a track scholarship by training and traveling with the men's track team to other states and competing in individual events only. During the process she qualified for the 1968 Nationals and Olympic trials. That was the beginning of a long and successful collegiate track career. She received numerous accolades, honors and awards to include: three time All-SWAC and All NAIA; AAU International Track Team that competed in Norway and Poland; U.S. Olympic Track and Field team (68,72); Gold medal winner, 4X100 meter relay, Mexico City Summer Olympics (68); U.S. European Track and Field Tour; Held the third best 100-meter time in the world (68) and selected Female of the year, 100% Wrong Club of Atlanta (69).

The experience, education, exposure and extensive travel, (nationally and internationally) received while attending Alcorn, prepared Mildrette to be successful in her careers as an athlete, classroom teacher, track coach and athletic director. After
graduating from Alcorn in May, 1972 with honors and a Bachelor of Science degree in Health and Physical Education, Mildrette began a (28) twenty-eight year teaching and coaching career in the state of Mississippi. Some of the honors and accomplishments achieved were: Delta Valley Conference Coach of the year five times; U.S. Southeast Region High School Coach of the year (79); Six District Titles; two South State Titles; Two Big Eight Eastern Zone Titles; and District Five Coach of the Year (88). During her coaching career, a number of Mildrette’s athletes were able to earn track scholarships to go to college.

After retiring from teaching and coaching in 2002, Mildrette served as Athletic Director of the Tutwiler Community Education Center for six years. A key part of the mission was to make a difference in the community in which they served. Some of the organizations and community involvements she currently participates in are: President of the Mass Choir and Hospitality Ministry of the Greater Pleasant Grove Church, Delta Sigma Theta Sorority, Inc., Alcorn State University National Alumni, ASU Athletic Club, Montgomery-Carroll-Grenada County ASU Alumni Chapter, Grenada Smile Team, Grenada Area Chamber of Commerce Leadership Committee member and the Finch-Henry Job Corps Center Community Relations Council.

Alcorn State University is acting in accordance with Board Policy §917 Naming of Buildings and Facilities, that requires Board approval to be obtained prior to naming or re-naming any institutional building or facility.

**Staff Recommendation:** Board staff recommends approval of this item.

10. **MSU – Award of Timber Sales – Coastal Plain Branch Experiment Station, Newton County, Mississippi**

**Project Request:** Mississippi State University requests approval to advertise and award the sale to the highest and best bid for timber sales 17-05PT from the Coastal Plain Branch Experiment Station in Newton County, Mississippi.

**Timber Sale No. 17-05PT, Coastal Plain Branch Experiment Station** -
The sale area is approximately 181 acres in size and is located in a portion of the N ½ and a portion of the SE ¼ of Section 21 in Township 6 North, Range 12 East in Newton County, Mississippi. This sale contains an estimated volume of 117,240 board feet of pine pole timber, 2,743,720 board feet of pine sawtimber, 884 tons of pine chip-n-saw, 354 tons of pine pulpwood, 181,140 board feet of hardwood sawtimber, and 1,822 tons of hardwood pulpwood. All trees must be cut and removed by December 31, 2019.
Timber Sale Process: The timber sale process on the Coastal Plain Branch Experiment Station, and other Mississippi State University owned lands, begins with the identification of the particular timber stand in need of thinning or a final harvest cut. This is identified by various means but mostly by directions taken from the Forest Management Plan. Other specific site characteristics may also dictate the need for the sale of timber. After the stand has been identified, the process of tree marking and sale identification begins. Once that is completed, the sale is computed and a bid prospectus is prepared and approved by the Dean of the College of Forest Resources and the Vice President of Agriculture, Forestry, and Veterinary Medicine. A request is made to the President of the university to advertise the timber sale for bid and to award the sale to the highest bidder who also satisfies all additional bid requirements. If/when the Board of Trustees approve that the sale may be advertised and awarded appropriately, a prospectus is sent to potential bidders with the vital details of the stand. Once the bids have been received in the Director of Purchasing office, a recommendation is made by the department to the President of the university to either accept or reject the bids. This recommendation has the approval of the Dean of the College of Forest Resources and the Vice President of Agriculture, Forestry, and Veterinary Medicine. If/when the President of the university concurs with the department’s recommendation to accept the bid, a contract is executed between the university and the highest and best bidder for that sale. This process continues obtaining the Director of Purchasing’s signature on the contract and then contacting the high bidder to set the closing. Finally, a meeting is set with the winning bidder to close the sale and to collect the remaining funds less the bid deposit amount.

Mississippi State University is acting in accordance with Board Policy §905(A), Real Estate Management, which requires prior Board approval for the execution of all leases, easements, oil and mineral leases, and timber sales.

Staff Recommendation: The Attorney General’s Office has reviewed and approved this time contingent upon submission to the Office of Attorney General the final executed agreement. Board staff recommends approval of this item.
11. **MSU – Exterior Design Approval of Left Field Lofts at Dudy Noble Field-Polk DeMent Stadium**

**Project Request:** Mississippi State University requests approval of the exterior design of the Left Field Lofts at Dudy Noble Field-Polk DeMent Stadium. *(See Renderings on Page 19)*

**Design Professional:** Wier Boerner Allin *(Contract with the Bulldog Club)*

**Purpose:** Mississippi State University is seeking approval of the exterior design of the Left Field Lofts at Dudy Noble Field-Polk DeMent Stadium. This project is fully funded by the Bulldog Club but the lofts will be constructed on leased land from the university and therefore requires Board approval of the exterior design. No state or university funds are being expended on this project.

**Project Scope:** The Left Field Lofts will include twelve (12) total units, four (4) units per level. The units will be leased out either per game or per season by the Bulldog Club. The rooftop of the Left Field Lofts is a terrace for invited fans to watch the game.

Mississippi State University is seeking approval of the exterior design of the building in accordance with Board Policy §904(A), Board Approval, that requires the Board to approve the exterior design of the major buildings that have aesthetic impact on the overall campus, regardless of the cost of the project.

*Staff Recommendation:* Board staff recommends approval of this item.
Rendering 1: South Rendering Facing Dudy Noble Field

Rendering 2: North Elevation of Building Facing Toward MSU Track
12. MSU – GS 105-355 – Exterior Design Approval of Engineering and Science Complex (Engineering Building)

**Project Request:** Mississippi State University requests approval of the exterior design of Engineering and Science Complex. *(See Rendering on Page 21)*

**Design Professional:** Eley Guild Hardy Architects

**Purpose:** Mississippi State University is seeking approval of the renderings for GS #105-355 Engineering and Science Complex (Engineering Building)

**Project Scope:** The project shall consist of approximately 70,000 square feet of new construction, which will house classrooms, offices, teaching labs, research labs, two general chemistry labs, support space and high bay areas. This facility is the first building for the proposed Engineering and Science Complex.

Mississippi State University is seeking approval of the exterior design of the building in accordance with Board Policy §904(A), Board Approval, that requires the Board to approve the exterior design of the major buildings that have aesthetic impact on the overall campus, regardless of the cost of the project.

**Project Budget:**

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<tr>
<td>Construction Cost:</td>
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**Proposed Funding Source(s):** SB 2906, Laws of 2015 ($13,000,000); SB 2844, Laws of 2015 ($1,000,000); MSU Foundation Funds ($12,000,000); MSU Funds ($4,000,000); EBC Funds ($4,000,000)

**Staff Recommendation:** Board staff recommends approval of this item.
13. UM and UMMC – Naming of the Medical Education Building as the “Phil Bryant Medical Education Building”

**Project Request:** The University of Mississippi and The University of Mississippi Medical Center requests permission to name the Medical Education Building on the UMMC campus as the “Phil Bryant Medical Education Building”.

**Purpose:** The University of Mississippi and The University of Mississippi Medical Center requests to name the Medical Education Building on the UMMC campus for Governor Phil Bryant. The 151,000 square foot facility had its groundbreaking in January 2013 and opened in August 2017.

**Governor Phil Bryant Bio:** In honor of the extraordinary leadership of Governor Phil Bryant that led to the construction of a state-of-the-art medical education facility, the University of Mississippi and University of Mississippi Medical Center request approval to name the facility in honor of Governor Bryant.

Mississippi is the most medically underserved state in the nation. Governor Bryant’s commitment to bringing more physicians to Mississippi and to growing the state’s
health care economy extends back to his term as Lt. Governor. His commitment to increasing the number of physicians serving Mississippi was a focal point of his 2013 State of the State address.

He was instrumental in securing funding for the building project, including $10 million in Community Development Block Grant funding from the Mississippi Development Authority to launch the effort as well as $64 million in bonds.

The larger class sizes accommodated by the new facility will generate about $1.7 billion in economic impact in Mississippi by 2025 and the additional physicians trained will support more than 19,000 new jobs by the same year.

The University of Mississippi and The University of Mississippi Medical Center are acting in accordance with Board Policy §917 Naming of Buildings and Facilities, that requires Board approval to be obtained prior to naming or re-naming any institutional building or facility.

**Staff Recommendation:** Board staff recommends approval of this item.
AFFILIATION AGREEMENTS

IHL Board Policy 301.0806 University Foundation/Affiliated Entity Activities requires that each University enter into a formal contractual Affiliation Agreement with its development foundations, research foundations, athletic foundations, alumni associations and any other similar university affiliated entity in a form approved by the Board. This Affiliation Agreement shall be reviewed for approval by the Board at least every five (5) years or anytime there are substantive changes made to an Agreement. The Board of Trustees has granted extensions on affiliation agreements approved by the Board in 2010. At this time, the various universities are seeking Board approval of the below agreements in order to comply with IHL policy.

1. ASU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE ALCORN STATE UNIVERSITY A-CLUB ALUMNI ASSOCIATION, INC.

Alcorn State University requests Board approval of the below proposed affiliation agreement between the University and the Alcorn State University A-Club Alumni Association, Inc. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Alcorn State University
and
The Alcorn State University A-Club Alumni Association, Inc.

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between Alcorn State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and Alcorn State University A-Club Alumni Association, a non-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Association”). This Agreement is designed to govern the relationship between the University and the Association by setting forth the terms and conditions under which the University will provide certain support and services for the Association and the Association will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Association has been established as a non-profit, educational and charitable organization, for the purposes outlined in its Charter of Incorporation dated December 29, 1995;
WHEREAS, the University has the authority and right to enter into agreements with affiliated non-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Association provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Association has the responsibility under its mission statement and as a non-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Association maintains offices located in the Alumni House, which is a part of the campus of the University in Lorman, Mississippi.

Whereas, the University has an active fund-raising and development program and wishes to utilize staff, office space, enhanced computer capabilities and assistance in the identification of donors, solicitation of donations, acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Association can provide;

WHEREAS, the University and the Association anticipate that the Association will provide the University with specified services and facilities in carrying out its mission; and

WHEREAS, the University and the Association desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Association do hereby agree as follows:

ARTICLE 1. LEASE OF FACILITIES

1.1 The University shall provide the Association with office space in the Alumni House, as well as reserved parking privileges for University employees performing work on behalf of the Association or the University’s fund-raising activities. The rental fee charged the Association for this office space shall include the cost of all utilities other than cellular telephone service charges, which charges shall be paid
separately by the Association. The parties agree at this time that this charge will be a total sum of $1 per year. The University agrees to maintain the leased premises, to include equipment provided by the Association, in reasonable repair. All additions and improvements made to the leased premises which are not firmly affixed to a structure shall remain the property of the University and may be removed by the University at any time.

1.2 The University shall permit the Association to use the Alumni House for appropriate University functions consistent with the terms set forth in this Agreement. A separate contract is to be executed for official use of any other University facilities. The Association serves as host for many functions sponsored by the University and will continue to do so.

ARTICLE 2. UNIVERSITY PERSONNEL AND SERVICES

2.1 The Association may utilize, with the approval of the University President, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the purposes of the Association.

2.2 The Association and the University agree that the portion of the cost incurred by utilizing University employees for Association operational activities shall be reimbursed annually by the Association to the University. The reimbursement shall be based on the University employee’s annual compensation including benefit costs.

2.3 The Association shall reimburse the University for expenses the University incurs as a result of Association operations, if those expenses would not otherwise have been incurred by the University, specifically including cellular telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

2.4 The University shall provide support services to the Association of the type provided to University departments including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

2.5 The University shall provide Association employees staff identification cards, parking privileges, admittance to athletics and entertainment events, health services benefits and access to the University’s library and to its recreation and fitness programs, at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.
2.6 The University designates the Association as the primary entity for receipting, acknowledging, accounting for and managing its funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors. The University and the Association agree that the annual sum of $0 is a fair and appropriate amount for the University to pay to the Association for the performance of these services. Adjustments to this sum in future fiscal years are to be agreed upon by the University Vice President for Finance and the Association President. The University shall also reimburse the Association for the cost of any donations received for items such as wire fees and credit card fees on gifts received.

2.7 The President of the University shall serve *ex officio* as a non-voting member of the Association’s Board of Directors. No other University Employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Association’s Board of Directors.

2.8 Annually, the President of the University shall certify to the Association a list of University employees who are authorized to request disbursements from the Association. Request by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Association shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.

2.9 The President of the University shall submit a request to the Association for utilization of University unrestricted gifts received by the Association in the following fiscal year. The Association shall, consistent with the goals and priorities established by the University, incorporate the University’s request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the University Vice President for Institutional Advancement (or equivalent position), shall routinely update key Association personnel on the University initiatives involving private support to ensure that Association and University personnel are informed of fund raising needs and objectives.

2.10 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Association shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University and the Director of the University’s Licensing Program. To assist the Association in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University grants the Association the following rights:
2.10 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Association.

2.10 (b) An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Association.

2.10 (c) The designation of the Association as a University affiliated entity.

2.10 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Association in discharging its obligations under this Agreement.

ARTICLE 3. ASSOCIATION OBLIGATIONS

3.1 The Association’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its charitable, scientific and educational purposes.

3.2 The Association, acting through its Board of Directors and staff, shall assist the University’s Office of Institutional Advancement in its fund-raising activities and development programs with individuals, corporations, Associations, governmental and other external organizations.

3.3 The Association, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting gifts on behalf of the University, the Association shall accept only such gifts that are consistent with the University’s missions, goals and obligations.

3.4 The Association shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Association, and shall keep accurate and current records of all such contributions made directly to the University or to the Association. Assets of the Association shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent
Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The Association shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Association. The University shall have rights of inspection of Association records. Such rights shall be afforded to the IHL, if so desired.

3.5 The Association may enter into contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed four (4) years.

3.6 The Association shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Association must cause to be prepared annual financial statements of the condition of the Entity, which shall include such detail as IHL may from time to time require. The Association must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Association’s annual financial statements, and the Association shall submit the audited financial statements, along with a list of its officers, directors or trustees, to the President of the University and to IHL within five months following the completion of the Association’s fiscal year or by October 15 of each year, whichever is earlier. The CPA firm to be utilized by the Association must be approved by the IHL, and the Association must request such approval not later than three months prior to the end of the Association’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firms must be submitted on an annual basis. Should the Association request a waiver of the annual audit requirement, it shall follow the process set forth in IHL Board Policy 301.0806. In the event the Association is notified by the IHL that its audited financial statements will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR), then the Association shall cooperate as set forth in IHL Board Policy 301.0806.

3.7 The Association acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Association, including all such trademarks, service marks and trade names historically associated with the Association.

3.8 The Association shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.
3.9 The Association shall immediately deposit into the appropriate University account any funds which are sent to the Association but which are clearly intended to be funds designated for a University account. In such an instance, the Association shall issue, on behalf of the University, a university development receipt.

3.10 The Association shall perform any and all other acts and activities on behalf of the University, as the Association deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Association.

3.11 The Association President shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Association has materially breached any of its contractual obligations under the Agreement;
2. The Association has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Association has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Association or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Association;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Association or upon its status as a tax exempt organization; or
6. The Association has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Association, or any Association controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Association to report any such transactions are either prohibited or permitted.

3.12 If requested by the University, the Association shall provide any and all information and allow inspection of all records relating to the operation or management of the Association or any funds contributed to, received by, expanded by or managed by the Association. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to any information relating
to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 4. COMPLIANCE

4.1 The Association shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 5. INSURANCE

5.1 The Association shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

5.2 The Association shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property to insure against the loss of the real property and any improvements associated with the insured premises.

5.3 The Association shall provide for the bonding of its officers and employees and shall maintain Directors and Officers Liability Insurance on members of its Board of Directors and officers, while performing as such.

5.4 The Association shall maintain Commercial Excess or Umbrella Coverage of $4,000,000 in additional coverage in excess or over and above the basic coverage set forth above.

5.5 The Association shall maintain Worker’s Compensation insurance, if required to so by applicable law, or such other insurance coverage as may be required by applicable law.
ARTICLE 6. REPORTING

6.1 The Association shall, each year during this Agreement, submit to the University Vice President for Finance and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 3.6 of this Agreement. Such submission shall also include a list of Association officers, directors or trustees. The Association shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University’s payroll system and with President approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Association shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the President’s salary.

6.2 In order to facilitate transparency, the Association shall also maintain on its website, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Charter, listing of the members of its Board of Directors, its conflict of interest policy and its investment policy.

6.3 The Association President shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Association has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Association President shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Association President will immediately notify, in writing, the President of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

7.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Association and with the prior approval of the IHL, acting upon its minutes.

7.3 The University may terminate this Agreement for cause, without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its
minutes. The Association may not terminate this Agreement without the prior approval of
the University President and the IHL.

7.4 Upon termination and non-renewal of this Agreement, (1) the Association
shall cease to use and shall not assign or delegate the authority to use the University’s
name or registered marks or logos to any person or entity without the written approval of
the President, (2) the Association shall remit any and all unrestricted funds held for the
benefit of the University to such entity as designated in writing by the President on behalf
of the University (3) the Association shall work in concert with its donors, to the extent
practicable and allowed by law, to move any restricted funds held for the benefit of the
University to such entity as designated in writing by the Chancellor on behalf of the
University, (4) the Association shall work in concert with persons or entities with which
it had contractual relations to the extent practical and allowed by law, to assign any
contracts to such entity as designated by the University President; and (5) the Association
shall work in concert with the University at provide the University or its designee with
records and materials of the Association as are necessary to continue the business and/or
wind up the affairs of the Association.

7.5 The Association agrees to cease using University’s name, marks, and
logos in the event that the Association dissolves or ceases to be a non-profit corporation.

7.6 The University and Association expect there to exist a cooperative
relationship between them. In the event that the University President determines that such
cooperation is not in place and is thus, in the President’s view, detrimental to the well-
being of the University, the President shall notify the IHL to allow the IHL to intervene
to reconcile the parties. However, if the IHL determines and notifies the President that it
is in the best interest of the University to substitute new members of the Board of
directors of the Association, the President may direct that at the expiration of a ninety-
day period, the terms of office of 100% of the total number of Directors shall be deemed
to have expired. Upon such event, a five-person Commission shall be selected as follows:
(1) one member appointed by the President, (2) one member appointed by the IHL, (3)
one member appointed by a majority vote of the Board of Directors of the ASU A-Club
Alumni Association, (4) one member appointed by a majority vote of the Board of
Directors of Alcorn State University National Alumni Association, and (5) one member
appointed by a majority vote of the Board of Directors of the Alcorn State University
Foundation; however, such donor groups may not appoint as a member of the
Commission anyone who at the time of such appointment is serving as an employee,
officer, trustee, or director of any University affiliated support organization or
Association. The Commission shall during the ninety day period appoint, by majority
vote, members to the Board of Directors to replace Directors whose term shall be deemed
to have expired. The Reconstituted Board of Directors shall then elect new officers of the
Association.
7.7 In the unlikely event that the Commission, as described in 7.6 above, shall appoint a new Board of Directors for the Association, it is expressly understood that any, or all, of the previous Association board members may be reelected by this Commission to serve.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Association is not the agent or employee of the University, and nothing in this Agreement creates and employment or other agency relationship between the parties.

8.3 Neither the University nor the Association shall have any liability for the obligations, acts, or omissions of the other party.

8.4 The parties agree that the Association is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts for omissions.

8.5 The University and Association agree that the Association’s donor and giving records and any other financial or commercial information possessed by the Association or provided by the Association to the University concerning individuals or corporations that provide Association financial support are confidential and proprietary. Except as otherwise provided in Section 3.12 above, unless required to disclose such information by applicable law, the University and Association agree not to disclose the third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Association.

8.6 In the performance of this Agreement, the Association shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Association agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.
8.8  The provisions of this Agreement are severable, and in the event that any provision of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provision hereof.

8.9  The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

8.10  This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.11  The Association’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.

ARTICLE 9. NOTICE

9.1  Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:
Dr. Alfred Rankins, Jr.  
President  
Alcorn State University  
1000 ASU Drive #359  
Lorman, MS 39096

To the Association:
Mr. Cedric Bush  
President  
ASU A-Club Alumni Association  
1000 ASU Drive # 809  
Lorman, MS 39096

Or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Association, acting through the President of the University and the President of the Association, respectively, execute this Agreement on this the ___ day of ________, 20__.
STAFF RECOMMENDATION: Board Staff recommends approval of this item.

2. ASU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE ALCORN STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION, INC.

Alcorn State University requests Board approval of the below proposed affiliation agreement between the University and Alcorn State University National Alumni Association, Inc. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Alcorn State University
and
Alcorn State University National Alumni Association, Inc.

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between Alcorn State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and Alcorn State University National Alumni Association, a non-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Association”). This Agreement is designed to govern the relationship between the University and the Association by setting forth the terms and conditions under which the University will provide certain support and services for the Association and the Association will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Association has been established as a non-profit, educational and charitable organization for the purposes outlined in its Charter of Incorporation dated November 4, 2015;

WHEREAS, the University has the authority and right to enter into agreements with affiliated non-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Association provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Association has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective
manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Association maintains offices located in Alumni House, which is a part of the campus of the University in Lorman, Mississippi.

WHEREAS, the University has an active fund-raising and development program and wishes to utilize staff, office space, enhanced computer capabilities and assistance in the identification of donors, solicitation of donations, acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Association can provide;

WHEREAS, the University and the Association anticipate that the Association will provide the University with specified services and facilities in carrying out its mission; and

WHEREAS, the University and the Association desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Association do hereby agree as follows:

ARTICLE 1. LEASE OF FACILITIES

1.1 The University shall provide the Association with office space in the Alumni House, as well as reserved parking privileges for University employees performing work on behalf of the Association or the University’s fund-raising activities. The rental fee charged the Association for this office space shall include the cost of all utilities other than cellular telephone service charges, which charges shall be paid separately by the Association. The parties agree at this time that this charge will be a total sum of $1 per year. The University agrees to maintain the leased premises, to include equipment provided by the Association, in reasonable repair. All additions and improvements made to the leased premises which are not firmly affixed to a structure shall remain the property of the University and may be removed by the University at any time.

1.2 The University shall permit the Association to use the Alumni House for appropriate University functions consistent with the terms set forth in this Agreement. A separate contract is to be executed for official use of any other University facilities. The
Association serves as host for many functions sponsored by the University and will continue to do so.

ARTICLE 2. UNIVERSITY PERSONNEL AND SERVICES

2.1 The Association may utilize, with the approval of the University President, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the purposes of the Association.

2.2 The Association and the University agree that the portion of the cost incurred by utilizing University employees for Association operational activities shall be reimbursed annually by the Association to the University. The reimbursement shall be based on the University employees annual compensation including benefit costs.

2.3 The Association shall reimburse the University for expenses the University incurs as a result of Association operations, if those expenses would not otherwise have been incurred by the University, specifically including cellular telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

2.4 The University shall provide support services to the Association of the type provided to University departments including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

2.5 The University shall provide Association employees staff identification cards, parking privileges, admittance to athletics and entertainment events, health services benefits and access to the University’s library and to its recreation and fitness programs, at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.

2.6 The University designates the Association as the primary entity for receipting, acknowledging, accounting for and managing its funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors. The University and the Association agree that the annual sum of $0 is a fair and appropriate amount for the University to pay to the Association for the performance of these services. Adjustments to this sum in future fiscal years are to be agreed upon by the University Vice President for Finance and the Association President.

2.7 The President of the University shall serve ex officio as a non-voting member of the Association’s Board of Directors. No other University Employee or other
persons directly or indirectly employed by the IHL shall serve as a voting member of the
Association’s Board of Directors.

2.8 Annually, the President of the University shall certify to the Association a
list of University employees who are authorized to request disbursements from the
Association. Request by a duly certified University employee shall constitute a
representation or certification by the University employee that the disbursement being
requested has been approved in accord with established University procedures. The
Association shall be relieved of any liability arising from a disbursement made pursuant
to the provisions of this Section of the Agreement.

2.9 The President of the University shall submit a request to the Association
for utilization of University unrestricted gifts received by the Association in the following
fiscal year. The Association shall, consistent with the goals and priorities established by
the University, incorporate the University’s request into its operating budget and may
allocate unrestricted gifts accordingly to the extent funds are available. In addition to
unrestricted funds, the University President and/or the University Vice President for
Institutional Advancement (or equivalent position), shall routinely update key
Association personnel on the University initiatives involving private support to ensure
that Association and University personnel are informed of fund raising needs and
objectives.

2.10 The University’s name and registered marks and logos have great
economic and public relations value to the University, its faculty, staff, alumni and
students. The Association shall not assign or delegate the authority to use University’s
name or registered marks or logos to any person or entity without the written approval of
the President of the University and the Director of the University’s Licensing Program.
To assist the Association in discharging its obligations under this Agreement and in
soliciting, developing and generating private and corporate support for the University
grants the Association the following rights:

2.10 (a) A non-exclusive, non-transferable license to use University
trademarks, service marks and logos consistent with University policy, including
but not limited to a license to use marks developed by the University for use by
the Association.

2.10 (b) An exclusive, transferable license to use University trademarks,
service marks and trade names historically associated with the Association.

2.10 (c) The designation of the Association as a University affiliated
entity.
2.10 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Association in discharging its obligations under this Agreement.

ARTICLE 3. ASSOCIATION OBLIGATIONS

3.1 The Association’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for an administering funds for the University to use for its charitable, scientific and educational purposes.

3.2 The Association, acting through its Board of Directors and staff, shall assist the University’s Office of Institutional Advancement in its fund-raising activities and development programs with individuals, corporations, Associations, governmental and other external organizations.

3.3 The Association, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting gifts on behalf of the University, the Association shall accept only such gifts that are consistent with the University’s missions, goals and obligations.

3.4 The Association shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Association, and shall keep accurate and current records of all such contributions made directly to the University or to the Association. Assets of the Association shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The Association shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Association. The University shall have rights of inspection of Association records. Such rights shall also be afforded to the IHL, if so desired.
3.5 The Association may enter into contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed four (4) years.

3.6 The Association shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Association must cause to be prepared annual financial statements of the condition of the Entity, which shall include such detail as IHL may from time to time require. The Association must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Association’s annual financial statements, and the Association shall submit the audited financial statements, along with a list of its officers, directors or trustees, to the President of the University and to IHL within five months following the completion of the Association’s fiscal year or by October 15 of each year, whichever is earlier. The CPA firm to be utilized by the Association must be approved by the IHL, and the Association must request such approval not later than three months prior to the end of the Association’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firms must be submitted on an annual basis. Should the Association request a waiver of the annual audit requirement, it shall follow the process set forth in IHL Board Policy 301.0806. In the event the Association is notified by the IHL that its audited financial statements will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR), then the Association shall cooperate as set forth in IHL Board Policy 301.0806.

3.7 The Association acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Association, including all such trademarks, service marks and trade names historically associated with the Association.

3.8 The Association shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

3.9 The Association shall immediately deposit into the appropriate University account any funds which are sent to the Association but which are clearly intended to be funds designated for a University account. In such an instance, the Association shall issue, on behalf of the University, a university development receipt.

3.10 The Association shall perform any and all other acts and activities on behalf of the University, as the Association deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Association.
3.11 The Association President shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Association has materially breached any of its contractual obligations under the Agreement;
2. The Association has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Association has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Association or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Association;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Association or upon its status as a tax exempt organization; or
6. The Association has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Association, or any Association controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Association to report any such transactions are either prohibited or permitted.

3.12 If requested by the University, the Association shall provide any and all information and allow inspection of all records relating to the operation or management of the Association or any funds contributed to, received by, expanded by or managed by the Association. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any
information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 4. COMPLIANCE

4.1 The Association shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 5. INSURANCE

5.1 The Association shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

5.2 The Association shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property to insure against the loss of the real property and any improvements associated with the insured premises.

5.3 The Association shall provide for the bonding of its officers and employees and shall maintain Directors and Officers Liability Insurance on members of its Board of Directors and officers, while performing as such.

5.4 The Association shall maintain Commercial Excess or Umbrella Coverage of $4,000,000 in additional coverage in excess or over and above the basic coverage set forth above.

5.5 The Association shall maintain Worker’s Compensation insurance, if required to so by applicable law, or such other insurance coverage as may be required by applicable law.

ARTICLE 6. REPORTING

6.1 The Association shall, each year during this Agreement, submit to the University Vice President for Finance and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 3.6 of this Agreement. Such submission shall also include a list of Association officers, directors or trustees. The Association shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University’s payroll
system and with President approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Association shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the President’s salary.

6.2 In order to facilitate transparency, the Association shall also maintain on its website, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Charter, listing of the members of its Board of Directors, its conflict of interest policy and its investment policy.

6.3 The Association President shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Association has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Association President shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Association President will immediately notify, in writing, the President of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

7.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Association and with the prior approval of the IHL, acting upon its minutes.

7.3 The University may terminate this Agreement for cause, without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Association may not terminate this Agreement without the prior approval of the University President and the IHL.

7.4 Upon termination and non-renewal of this Agreement, (1) the Association shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Association shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University (3) the Association shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the
University, (4) the Association shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Association shall work in concert with the University to provide the University or its designee with records and materials of the Association as are necessary to continue the business and/or wind up the affairs of the Association.

7.5 The Association agrees to cease using University’s name, marks, and logos in the event that the Association dissolves or ceases to be a non-profit.

7.6 The University and Association expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well being of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of directors of the Association, the President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the President of the University, (2) one member appointed by the IHL, (3) one member appointed by a majority vote of the Board of Directors of the ASU A-Club Alumni Association, (4) one member appointed by a majority vote of the Board of Directors of Alcorn State University National Alumni Association, and (5) one member appointed by a majority vote of the Board of Directors of the Alcorn State University Foundation; however, such groups may not appoint as a member of the Commission anyone who at the time of such appointment is serving as an employee, officer, trustee, or director of any University affiliated support organization or Association. The Commission shall during the ninety day period appoint, by majority vote, members to the Board of Directors to replace Directors whose term shall be deemed to have expired. The Reconstituted Board of Directors shall then elect new officers of the Association.

7.7 In the unlikely event that the Commission, as described in 7.6 above, shall appoint a new Board of Directors for the Association, it is expressly understood that any, or all, of the previous Association board members may be reelected by this Commission to serve.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.
8.2 The parties agree that the Association is not the agent or employee of the University, and nothing in this Agreement creates and employment or other agency relationship between the parties.

8.3 Neither the University nor the Association shall have any liability for the obligations, acts, or omissions of the other party.

8.4 The parties agree that the Association is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts for omissions.

8.5 The University and Association agree that the Association’s donor and giving records and any other financial or commercial information possessed by the Association or provided by the Association to the University concerning individuals or corporations that provide Association financial support are confidential and proprietary. Except as otherwise provided in Section 3.12 above and IHL Board Policy 301.0806, unless required to disclose such information by applicable law, the University and Association agree not to disclose the third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Association.

8.6 In the performance of this Agreement, the Association shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Association agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

8.8 The provisions of this Agreement are severable, and in the event that any provision of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provision hereof.

8.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.
8.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.11 The Association’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:
Dr. Alfred Rankins, Jr.
President
Alcorn State University
1000 ASU Drive #359
Lorman, MS 39096

To the Association:
Mr. James C. Stubbs
President
ASU National Alumni Association
1000 ASU Drive #809
Lorman, MS 39096

Or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Association, acting through the President of the University and the President of the Association, respectively, execute this Agreement on this the ___ day of __________, 201_.

STAFF RECOMMENDATION: Board Staff recommends approval of this item

3. ASU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE ALCORN STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION FOUNDATION, INC

Alcorn State University requests Board approval of the below proposed affiliation agreement between the University and Alcorn State University National Alumni Association Foundation, Inc. The proposed affiliation agreement meets the requirements
of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Alcorn State University
and
Alcorn State University National Alumni Association Foundation, Inc.

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between Alcorn State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and Alcorn State University National Alumni Association Foundation, Inc., a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated August 10, 2004;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501 (c)(3) not-for-profit organization, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promoted, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;
WHEREAS, the Foundation maintains offices located in Vicksburg, Mississippi, which is not a part of the campus of the University.

WHEREAS, the University has an active fund-raising and development program and wishes to utilize staff, office space, enhanced computer capabilities and assistance in the identification of donors, solicitation of donations, acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Foundation can provide;

WHEREAS, the University and the Foundation anticipate that the Foundation will provide the University with specified services and facilities in carrying out its mission; and

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. LEASE OF FACILITIES

1.3 The University does not provide the Foundation with any office space or facilities.

ARTICLE 2. UNIVERSITY PERSONNEL AND SERVICES

2.1 The Foundation does not utilize any University administrative, professional or other employees.

2.2 The President of the University shall serve ex officio as a non-voting member of the Foundation’s Board of Directors. No other University Employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation’s Board of Directors.

2.3 Annually, the President of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Request by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.
2.4 The President of the University shall submit a request to the Foundation for utilization of University unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, incorporate the University’s request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the University Vice President for Institutional Advancement (or equivalent position), shall routinely update key Foundation personnel on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fund raising needs and objectives.

2.5 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University and the Director of the University’s Licensing Program. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University grants the Foundation the following rights:

2.5 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.

2.5 (b) An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Foundation.

2.5 (c) The designation of the Foundation as a University affiliated entity.

2.5 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 3. FOUNDATION OBLIGATIONS

3.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for an administering funds for the University to use for its charitable, scientific and educational purposes.

3.2 The Foundation, acting through its Board of Directors and staff, shall assist the University’s Office of Institutional Advancement in its fund-raising activities
and development programs with individuals, corporations, Foundations, governmental and other external organizations.

3.3 The Foundation, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting gifts on behalf of the University, the Foundation shall accept only such gifts that are consistent with the University’s missions, goals and obligations.

3.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired.

3.5 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed four (4) years.

3.6 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of the condition of the Entity, which shall include such detail as IHL may from time to time require. The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Foundation’s annual financial statements, and the Foundation shall submit the audited financial statements, along with a list of its officers, directors or trustees, to the President of the University and to IHL within five months following the completion of the Foundation’s fiscal year or by October 15 of each year, whichever is earlier. The CPA firm to be utilized by the Foundation must be approved by the IHL, and the Foundation must request such approval not later than three months prior to the end of the Foundation’s fiscal year for which the audit will be conducted. Unless
approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firms must be submitted on an annual basis. Should the Foundation request a waiver of the annual audit requirement, it shall follow the process set forth in IHL Board Policy 301.0806. In the event the Foundation is notified by the IHL that its audited financial statements will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR), then the Foundation shall cooperate as set forth in IHL Board Policy 301.0806.

3.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation.

3.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

3.9 The Foundation shall immediately deposit into the appropriate University account any funds which are sent to the Foundation but which are clearly intended to be funds designated for a University account. In such an instance, the Foundation shall issue, on behalf of the University, a university development receipt.

3.10 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation.

3.11 The Foundation President shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or

6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Foundation to report any such transactions are either prohibited or permitted.

3.12 If requested by the University, the Foundation shall provide any and all information and allow inspection of all records relating to the operation or management of the Foundation or any funds contributed to, received by, expanded by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 4. COMPLIANCE

4.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 5. INSURANCE

5.1 The Foundation shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.
5.2 The Foundation shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property to insure against the loss of the real property and any improvements associated with the insured premises.

5.3 The Foundation shall provide for the bonding of its officers and employees and shall maintain Directors and Officers Liability Insurance on members of its Board of Directors and officers, while performing as such.

5.4 The Foundation shall maintain Commercial Excess or Umbrella Coverage of $4,000,000 in additional coverage in excess or over and above the basic coverage set forth above.

5.5 The Foundation shall maintain Worker’s Compensation insurance, if required to so by applicable law, or such other insurance coverage as may be required by applicable law.

ARTICLE 6. REPORTING

6.1 The Foundation shall, each year during this Agreement, submit to the University Vice President for Institutional Advancement and the University Vice President for Finance and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 3.6 of this Agreement. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University’s payroll system and with President approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the President’s salary.

6.2 In order to facilitate transparency, the Foundation shall also maintain on its website, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Charter, listing of the members of its Board of Directors, its conflict of interest policy and its investment policy.

6.3 The Foundation President shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable
Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Foundation President shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Foundation President will immediately notify, in writing, the President of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

7.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

7.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Foundation may not terminate this Agreement without the prior approval of the University President and the IHL.

7.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Foundation shall work in concert with the University at provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

7.5 The Foundation agrees to cease using University’s name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501 (c)(3) of the Internal Revenue code.

7.6 The University and Foundation expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well being of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the President that it
is in the best interest of the University to substitute new members of the Board of
directors of the Foundation, the President may direct that at the expiration of a ninety-day
period, the terms of office of 100% of the total number of Directors shall be deemed to
have expired. Upon such event, a five-person Commission shall be selected as follows:
(1) one member appointed by the President, (2) one member appointed by the IHL, (3)
one member appointed by a majority vote of the Board of Directors of the ASU National
Alumni Association, (4) one member appointed by a majority vote of the Board of
Directors of Alcorn State University National Alumni Association Foundation, and (5)
one member appointed by a majority vote of the Board of Directors of the Alcorn State
University A-Club Alumni Association. However, such group may not appoint as a
member of the Commission anyone who at the time of such appointment is serving as an
employee, officer, trustee, or director of any University affiliated support organization or
Foundation. The Commission shall during the ninety day period appoint, by majority
vote, members to the Board of Directors to replace Directors whose term shall be deemed
to have expired. The Reconstituted Board of Directors shall then elect new officers of the
Foundation.

7.7 In the unlikely event that the Commission, as described in 7.6 above, shall
appoint a new Board of Directors for the Foundation, it is expressly understood that any,
or all, of the previous Foundation board members may be reelected by this Commission
to serve.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in
accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Foundation is not the agent or employee of the
University, and nothing in this Agreement creates and employment or other agency
relationship between the parties.

8.3 Neither the University nor the Foundation shall have any liability for the
obligations, acts, or omissions of the other party.

8.4 The parties agree that the Foundation is a private, independent entity and,
as such, is not governed by the IHL, but rather has its own governing Board of Directors.
Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to
a public institution of higher learning, each party to this Agreement shall be responsible
for its own obligations, acts for omissions.

8.5 The University and Foundation agree that the Foundation’s donor and
giving records and any other financial or commercial information possessed by the
Foundation or provided by the Foundation to the University concerning individuals or
corporations that provide Foundation financial support are confidential and proprietary.
Except as otherwise provided in Section 3.12 above, unless required to disclose such information by applicable law, the University and Foundation agree not to disclose the third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

8.6 In the performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

8.8 The provisions of this Agreement are severable, and in the event that any provision of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provision hereof.

8.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

8.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.11 The Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls), with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended, If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service
first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: To the Foundation:
Dr. Alfred Rankins, Jr. Dr. John E. Walls, Jr.
President Chairman
Alcorn State University ASU National Alumni Association
Foundation, Inc.
1000 ASU Drive #359 107 Colonial Drive
Lorman, MS 39096 Vicksburg, MS 39180

Or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the President of the University and the President of the Foundation, respectively, execute this Agreement on this the — day of __________, 201_.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

4. ASU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE ALCORN STATE UNIVERSITY FOUNDATION

Alcorn State University requests Board approval of the below proposed affiliation agreement between the University and Alcorn State University Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Alcorn State University
and
Alcorn State University Foundation

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between Alcorn State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and The Alcorn State University Foundation, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.
PREAMBLE

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated August 27, 1973;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c) (3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the University has an active development program and wishes to utilize enhanced computer capabilities and assistance in the identification, solicitation and stewardship of donors (current or prospective), acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Foundation can provide;

WHEREAS, the University and the Foundation anticipate that the Foundation, as the primary entity for receiving philanthropic support designated for the benefit of the University, will provide the University with specified services in carrying out its mission, and the University will provide the Foundation facilities in carrying out its mission;

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:
ARTICLE 1. UNIVERSITY OBLIGATIONS AND SERVICES

1.1 The Foundation may utilize, with the approval of the University, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the mission and purposes of the Foundation.

1.2 The Foundation and the University agree that the portion of the cost incurred by utilizing University employees for Foundation operational activities will be reviewed annually. The Foundation shall reimburse the University for expenses the University incurs as a result of the Foundation’s operations if those expenses would not otherwise have been incurred by the University.

1.3 The University shall provide office space, utilities and other support for the Foundation as needed and appropriate for work on-site within the University, adequate for the performance of the services required hereunder. The Foundation shall reimburse the University for expenses the University incurs as a result of the Foundation’s operations if those expenses would not otherwise have been incurred by the University.

1.4 The University shall provide support services to the Foundation of the type provided to University departments including printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

1.5 The University shall provide Foundation employees staff identification cards, parking privileges, admittance to university events, housing and dining services, health services benefits and access to the University’s library and to its recreation and fitness programs, at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.

1.6 The University designates the Foundation as the primary entity for receipting, acknowledging, accounting for, managing and investing its endowment funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors.

1.7 The President of the University shall serve ex officio as a non-voting member of the Foundation’s Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation’s Board of Directors.

1.8 Annually, the President of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a
representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.

1.9 The President of the University shall submit a request to the Foundation for utilization of unrestricted and temporarily restricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, consider the University’s request and may allocate unrestricted and temporarily unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the Vice President for Institutional Advancement shall routinely update key Foundation personnel on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fund raising needs and objectives.

1.10 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

1.10 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.
1.10 (b) An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Foundation.
1.10 (c) The designation of the Foundation as a University affiliated entity.
1.10 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 2. FOUNDATION OBLIGATIONS

2.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, serving as the entity researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its educational, research and service missions.

2.2 The Foundation, acting through its Board of Directors and staff, shall assist the University’s Division of Institutional Advancement in its fund-raising activities
and development programs with individuals, corporations, foundations, and other external organizations.

2.3 The Foundation, acting through its Board of Directors and staff, shall solicit, accept and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and/or improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, athletic, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University’s missions, goals and obligations.

2.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records upon request. Such rights shall also be afforded to the IHL, if so desired. The Foundation must manage all funds in its control in a fiscally sound and prudent manner under generally accepted accounting policies and procedures. The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation.

2.5 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 5 years.

2.6 The Foundation shall maintain its financial and accounting records separate from the University and in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of the condition of the Foundation, which shall include such detail as the IHL Board may from time to time require; The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Foundation’s annual financial statements; The Foundation shall submit the audited financial statements, along with a list of Foundation officers, directors or trustees, not later than five (5) months following the completion of the Foundation’s fiscal year, to the affiliated university’s IEO and to IHL; However, the annual audited financial statements of some of the state institutions’ affiliated entities will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR); Those Entities which
will be required to submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Deputy Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the affiliated university’s IEO and to the IHL, along with a list of Foundation officers, directors or trustees, by October 15 of each year; The IHL Board’s Deputy Commissioner of Finance and Administration shall notify each such Foundation of the applicability of the October 15 deadline to such Foundation as far in advance of the deadline as possible each year; The CPA firm to be utilized by the Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL for approval not later than three months prior to the end of the Foundation’s fiscal year for which the audit will be conducted; Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis; However, at the request of the Foundation, the IEO of a university, with the approval of the IHL Board, may grant a request of the Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Foundation are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Foundation and unnecessary; Such a waiver may be conditioned upon such other review of the financial records of the Foundation in lieu of an audit as the University and the IHL may deem feasible; Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements; The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board; Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the University.

2.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.9 All gifts received by the Foundation shall be receipted and deposited in a
timely manner in accordance with the directive of the donor. All gifts received by the University shall be immediately forwarded to the Foundation for acknowledgment to ensure proper receipting and recording of all gifts. Gifts made to the University shall be accounted for and ownership maintained by the University; gifts made to the Foundation shall be accounted for and ownership maintained by the Foundation. However, checks made payable to the University will be transferred to the Foundation if a gift agreement, pledge, or expectancy exists between the donor and the Foundation. If a check is made payable to the University and no gift agreement, pledge, or expectancy exists between the Foundation and the donor, the donor will be contacted to clarify his/her intent. It will be explained that, in most situations, it is the University’s desire to have funds held within the Foundation. The intent of the donor will then control the delivery and ownership of the funds. If a situation exists where the Foundation has deposited a gift directly intended solely for the University, the Foundation shall immediately deposit into the appropriate University account funds designated for such account.

2.10 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation and IHL Board Policy. In order to perform duties herein this agreement, the Foundation may use a reasonable percentage of the annual restricted funds, assess fees for services, or impose charges against managed funds to support its operations. The Foundation shall inform the University of the implementation of, or changes to, any assessment of fees at least annually and more often if requested by the President of the University.

2.11 The President or Chairman of the Foundation shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation.
or upon its status as a tax exempt organization; or

6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.12 If requested in writing by the University, the Foundation shall provide any and all relevant information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the University President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes with thirty (30) days’ notice to the Foundation prior to release.

ARTICLE 3. COMPLIANCE

3.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

3.2 The provisions of the affiliation agreement shall apply to any and all entities owned or controlled by the Foundation, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a subsidiary or a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special entity would then be required to comply with any and all provisions of the affiliation agreement.
between the University and any Entity which owns or controls the special purpose entity.

ARTICLE 4. INSURANCE

4.1 The Foundation shall maintain insurance coverage as deemed appropriate by the Foundation’s Board of Directors, including the bonding of its officers and employees and shall maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

ARTICLE 5. REPORTING

5.1 As set forth in Section 2.6 of this Agreement, the Foundation shall, by December 1 of each year during this Agreement, submit to the University’s President and chief financial officer and to the IHL its annual audited financial statements for the prior fiscal year. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University employees, it being agreed that any such payments shall only be made through the University’s payroll system and with University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL Board approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the University President or provided to the University for purposes of supplementing the President’s salary.

5.2 In order to facilitate transparency, the Foundation shall also maintain on its website, for public and University inspection, a copy of this Agreement along with its annual report and other documents related to the Foundation’s mission and operations.

5.3 The President or Chairman of the Foundation shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The President or Chairman of the Foundation shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the President or Chairman of the Foundation will immediately notify, in writing, the President of the University.

ARTICLE 6. TERMINATION AND RENEWAL

6.1 This Agreement shall expire on December 31, 2022, if not renewed by
mutual consent of the parties before that date.

6.2 The University’s President may terminate this Agreement without cause with thirty (30) days’ written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

6.3 The University’s President may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL Board, acting upon its minutes. The Foundation has no right to terminate this Agreement without the consent of the University President and the IHL Board.

6.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

6.5 The Foundation agrees to cease using University’s name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation, ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, or this Agreement is terminated.

6.6 The University and the Foundation have a long history of mutual cooperation and support. To further this relationship, the University President will recommend nominations to the Foundation’s Board of Directors. In addition, Foundation Board Members shall be elected to terms not to exceed three years and no less than one-third of the Board Members shall be elected in a single year. Although a director may be elected to more than one term, the approval process and rotation required shall work to maintain alignment between the Foundation and the mission of the University. If the University President determines that the cooperation between the University and the Foundation is not in place and is, as a result, detrimental to the best interests of the University, the President shall notify the Commissioner of Higher Education. The IHL shall attempt to reconcile the parties, including mediation if advisable. If, however, the IHL determines and notifies the University President that it is in the best interests of the University to substitute new members of the Board of Directors of the Foundation, the
University President may direct that, at the expiration of a ninety-day period, the terms of office of 100% of the Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the majority vote of the Board of Directors of the ASU A-Club Alumni Association acting upon it minutes, (4) one member appointed by majority vote of the Alcorn State University Foundation Board of Directors acting upon its minutes, and (5) one member appointed by a majority vote of the Board of Directors of the Alcorn State University National Alumni Association acting upon its minutes; however, no person may be appointed a member of the Commission who at the time of such appointment is serving as an employee, officer, trustee, or director of any University affiliated support organization or Foundation. The Commission shall then appoint, within the ninety-day period, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Foundation.

6.7 In the unlikely event that the Commission, as described in 6.6 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation board members may be reelected by this Commission to serve.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi and IHL Board Policy.

7.2 The parties agree that the Foundation is not an agent or employee of the University, and nothing in this Agreement creates an employment or other agency relationship between the parties.

7.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.

7.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.

7.5 The University and Foundation agree that the Foundation’s donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Except for the provisions of Section 2.12 above and as required by IHL Board Policy,
unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

7.6 In the performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

7.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

7.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

7.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

7.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

7.11 The Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of University auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the University and the Foundation.

ARTICLE 8. NOTICE

8.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service
first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:  
Alfred Rankins, Jr.  
President  
Alcorn State University  
1000 ASU Drive #359  
Lorman, MS 39096

To the Foundation:  
Robert D. Gage, IV  
Chair, Board of Directors  
ASU Foundation  
1000 ASU Drive #810  
Lorman, MS 39096

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the President of the University and the Chair of the Board of Directors of the Foundation, respectively, execute this Agreement on this the ________ day of_______ to be effective on January 1, 2018.

STAFF RECOMMENDATION:  Board staff recommends approval of this item.

5. DSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH DELTA STATE UNIVERSITY FOUNDATION, INC.

Delta State University requests Board approval of the below proposed affiliation agreement between the University and the Delta State University Foundation, Inc. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement  
Between  
Delta State University  
and the  
Delta State University Foundation, Inc.

This Agreement is made and entered into effective as of the 1st day of January, 2018 (the effective date) by and between Delta State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and the Delta State University Foundation, Inc., a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the
Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Foundation was organized and incorporated in 1967 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others, to the benefit of the University;

WHEREAS, the Foundation is a not-for-profit corporation exempt from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation filed February 21, 1967, a copy of which is attached to this Agreement as Exhibit A;

WHEREAS, the University has the authority and right to enter into agreements with affiliated Section 501(c)(3) not-for-profit organizations, subject to the Board of Trustees of State Institutions of Higher Learning (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a tax-exempt not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Foundation aspires to assist the University in the building of endowments and in addressing (through financial support) the long-term academic priorities of the University;

WHEREAS, the Foundation is responsible for identifying potential donor and nurturing the relationships of such persons, solicitation of cash, real and intellectual property; securities and other forms of direct support for the University, and the acknowledging of gifts and all ongoing responsibilities related to such gifts;

WHEREAS, the Foundation, in connection with its fundraising and asset management activities, retains personnel experienced in the planning for and management of private contributions and works with the University to assist and advise in such activities;
WHEREAS, the University owns certain real property situated at 1003 West Sunflower Road, Cleveland, Mississippi. The offices of the Foundation are located in this facility which is part of the campus of the University;

WHEREAS, the University and the Foundation anticipate that the Foundation will provide the University with specified services and facilities in carrying out its mission;

WHEREAS, the University and the Foundation anticipate that the University will provide the Foundation with specified services and facilities in carrying out its mission;

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement; and

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. UNIVERSITY OBLIGATIONS AND SERVICES

1.1 Pursuant to Section 2.2 hereof, the Foundation shall be responsible, for and on behalf of the University, for all fundraising efforts and for the management and investment of funds that originate with those activities. The University shall cooperate with the Foundation in the development of the University’s fundraising programs, including providing information, data, plans, speakers and facilities for meetings on the University campus, and such other materials and services that may reasonably be necessary for the successful conduct of such programs and capital campaigns.

1.2 The President of the University may provide to the Foundation annually a list of private gift funding priorities for consideration by the Foundation in its fundraising efforts. The Foundation is authorized to accept designated-use or restricted gifts from donors on behalf of the University as well as undesignated or unrestricted funds.

1.3 The University shall provide to the Foundation offices and utilities adequate for the performance of the obligations and services of the Foundation.

1.4 The University shall provide full accounting services for related services agreed to by the University, which approval shall not be unreasonably withheld.

1.5 The University shall provide to the Foundation technology support services, including but not limited to, telephone, fiber optic internet cable connection, as well on line access to such University files as are relevant to the business and purpose of the Foundation.
1.6 The University shall provide support services to the Foundation of the type provided to University departments on a cost reimbursement basis (where applicable) including, but not limited to, custodial services, printing and publication services, audiovisual, event-scheduling, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

1.7 The Foundation may utilize, with the approval of the University, which approval shall not be unreasonably withheld, such University administrative, professional and other employees as are needed to carry out the purpose of the Foundation. The University shall provide payroll services, including the allocation of related employee benefits.

1.8 Foundation staff shall be employees of the University and eligible for all University employment benefits.

1.9 The President and Vice President, Finance and Administration of the University shall serve ex officio as non-voting members of the Foundation's Board of Directors. Also seated will be a faculty representative who is to be appointed by the Foundation’s Board of Directors as an ex-officio, non-voting member of the Foundation’s Board of Directors. No University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation's Board of Directors.

1.10 Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.

1.11 The President of the University shall submit a request to the Foundation for utilization of University unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, incorporate the University's request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. The University President shall routinely update the Foundation on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fundraising needs and objectives.

1.12 To assist the Foundation in discharging its services and obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

a. A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not
limited to a license to use marks developed by the University for use by the Foundation;

b. An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Foundation;

c. The designation of the Foundation as a University affiliated entity; and

d. Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its services and obligations under this Agreement.

1.13 The University's name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University's name or registered marks or logos to any person or entity without the written approval of the University.

ARTICLE 2. FOUNDATION OBLIGATIONS AND SERVICES

2.1 The Foundation's primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation, which support includes, but is not limited to, receiving, soliciting, accepting, holding, administering, investing, and disbursing funds for the University to use for its educational purposes.

2.2 The Foundation shall be responsible, for and on behalf of the University, for all fundraising efforts and for the management and investment of funds that originate from those activities. The Foundation may accept undesignated or unrestricted funds and designated-use or restricted funds from donors on behalf of the University or the Foundation. The Foundation shall be responsible for receipting, acknowledging, accounting for, managing and investing these funds, as well as for researching, identifying and maintaining biographical and gifting records of potential and actual donors to the University and the Foundation. The Foundation shall assist the University in its fundraising activities and development programs with individuals, corporations, foundations, governmental and other external organizations. The Foundation shall perform the following:

a. Coordinate the Foundation’s annual giving program with the University's alumni office;

b. Coordinate all organized fundraising projects with the University;

c. Provide expertise, assistance, and training for the University's administration, faculty, and staff for development and fundraising task;
d. Conduct its public relations and publication program in coordination with the University's office of public relations; and

e. Maintain a well-coordinated donor relations program in an effort to minimize overlap and over-solicitation of current and prospective donors.

2.3 In accord with the provisions of its Charter of Incorporation, the Foundation shall solicit and transfer funds to the University for educational, research, cultural, scientific, literary, public service and charitable programs and activities; for the support of scholarships, endowments, research, professorships, fellowships and lectureships; for improving and enlarging the educational facilities and activities of the University; to acquire specialized laboratory equipment; to erect buildings; to supplement building construction funds; and for the support of similar and related purposes. When soliciting funds, the Foundation agrees to accept only those gifts that are consistent with the University's missions, goals and obligations and in accordance with the Foundation’s Charter of Incorporation.

2.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The Foundation shall manage all funds under its control in a fiscally sound and prudent manner. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired.

2.5 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed two (2) years.

2.6 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles.

2.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation.

2.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.9 The Foundation shall deposit into the appropriate University account any funds which are received by the Foundation designated for a University account. The
Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation.

2.10 The Foundation is authorized and may commingle for investment purposes undesignated or unrestricted funds with designated-use or restricted funds. However, the Foundation shall separately account for the income and expenses of the undesignated or unrestricted funds and the designated-use or restricted funds.

2.11 The Foundation is authorized and may commingle for investment purposes University funds with Foundation funds. However, the Foundation shall separately account for the income and expenses of the University funds and the Foundation funds.

2.12 Distributions from the designated-use or restricted endowment funds, at the payout established by the Foundation and the University, shall be transferred to the University, at an agreed-upon time, depending on the nature of the purpose to be funded. Distributions of current (custodial) designated-use or restricted funds will be made on an on-demand basis following a formal requisition request and verification that funds are available in the respective department's account.

2.13 Distributions of unrestricted funds which have been approved and budgeted by the Foundation and the University shall be made in a fashion identical to that described Section 2.12 above. Any request for items to be paid from unrestricted funds for and above budgeted items is to be approved by the Foundation.

2.14 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation.

2.15 The Foundation Executive Director shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

a. The Foundation has materially breached any of its contractual obligations under the Agreement;

b. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

c. The Foundation has engaged in any conduct that is prohibited or subject to
sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

d. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;

e. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or

f. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year. The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that any such transaction is either prohibited or permitted.

2.16 If requested by the University, the Foundation shall provide any and all information and allow inspection of all records relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes; however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. The Foundation, in its discretion, may notify a donor whose information is being requested by the University or the IHL and inform them of the request.

ARTICLE 3. CONSIDERATION

3.1 The University and the Foundation agree that the services and obligations
provided for by the University in Article 1 hereof are fair and appropriate in exchange for the services and obligations provided for by the Foundation in Article 2 hereof.

3.2 The Foundation shall assess a management fee on funds it manages and shall retain the short-term interest earned on deposited current-use funds.

3.3 Adjustments to the services and obligations in future fiscal years may be made as agreed to by the University and the Foundation.

ARTICLE 4. COMPLIANCE

4.1 Notwithstanding any other terms and conditions contained herein, the Foundation shall comply with the following:

a. Any and all federal and state laws and regulations, including but not limited to the Internal Revenue Code of 1986, as amended, laws relating to disclosure of personal, private, or confidential information, and all laws relating to any rights thereto;

b. Its Charter of Incorporation so as to maintain its exemption from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

c. Any compliance and regulatory guidelines as may be required by the Board which are not inconsistent with the preceding provisions of this Section 4.1.

ARTICLE 5. INSURANCE

5.1 The Foundation shall maintain general liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

5.2 The Foundation shall maintain property insurance in an amount sufficient to provide full replacement of all insured property to insure against the loss of the real property and any improvements associated with the insured premises.

5.3 The Foundation shall maintain directors and officers liability insurance on members of its Board of Directors and officers, while performing as such.

ARTICLE 6. REPORTING

6.1 The Foundation shall prepare annual financial statements of its condition which shall include such detail as the IHL Board may from time to time require. The
Foundation shall engage a Certified Public Accounting (CPA) firm to perform annual audits of the Foundation’s annual financial statements. The Foundation shall submit its audited financial statements, along with a list of Foundation officers, directors or trustees, not later than five (5) months following the completion of the Foundation’s fiscal year, to the President of the University and to the IHL.

6.2 The IHL Board's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit shall determine if the Foundation is required to submit annual audited financial statements for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR). If the annual audited financial statements of the Foundation are required to be included in the CAFR, the Foundation shall submit its annual audited financial statements to the President of the University and the IHL, along with a list of Foundation officers, directors or trustees, by October 15 of each year. The IHL Board's Associate Commissioner of Finance and Administration shall notify the Foundation of the applicability of the October 15 deadline as far in advance of the deadline as possible each year.

6.3 The CPA firm to be utilized by the Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Foundation’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis.

6.4 At the request of the Foundation, the President of the University, with the approval of the IHL Board, may grant a request of the Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Entity are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Foundation and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Foundation in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

6.5 The Foundation shall submit an annual report providing a detailed list of any
supplemental compensation provided to administrators, faculty, athletic staff, and other University employees, provided however that there may be appropriate exceptions made for such compensation by the University out of funds routinely provided to the University to be included in its budget, and it being agreed that any such payments shall only be made through the University’s payroll system and with the University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President of the University or provided to the University for purposes of supplementing the President’s salary. Other than funds provided through endowed faculty chairs or funded faculty and/or staff positions, no salary supplements for University administrators, faculty, staff and employees unless specifically approved by the Foundation, are to be underwritten and paid by the Foundation.

6.6 In order to facilitate transparency, the Foundation shall also maintain on its website, as soon as reasonably possible after the execution of this Agreement, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Charter, listing of the members of its Board of Directors, its conflict of interest policy and its investment policy.

6.7 The Foundation Executive Director shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of the Foundation Executive Director’s knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Foundation Executive Director shall re-affirm that, in the event the Foundation Executive Director becomes aware of any such Reportable Events, the Foundation Executive Director will immediately notify, in writing, the President of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement is for a five (5) year term ending December 31, 2022 and shall automatically renew for successive five (5) year terms unless terminated as provided for herein.

7.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

7.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its
7.4 The following shall occur upon termination of this Agreement:

a. The Foundation shall cease to use and shall not assign or delegate the authority to use the University's name or registered marks or logos to any person or entity without the written approval of the President;

b. The Foundation shall remit any and all undesignated or unrestricted funds held for the benefit of the University to the University upon written notice from the President of the University and said funds shall become and be the property of the University for the use and benefit of the University, provided, however, that said funds shall be held by the University for perpetual use by the University for the purposes set forth in the Foundations’ Charter of Incorporation filed February 21, 1967, as amended.

c. The Foundation shall work in concert with its donors, to the extent practical and allowed by law, to move any designated-use or restricted funds held for the benefit of the University to the University upon written notice from the President of the University and said funds shall become and be the property of the University for the use and benefit of the University, provided, however, that said funds shall be held by the University for perpetual use by the University for the purposes set forth in the Foundation’s Charter of Incorporation filed February 21, 1967, as amended.

d. The Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President;

e. The Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation; and

f. The Foundation shall retain sufficient funds or assets to pay all claims on liabilities of the Foundation which are not assigned or assumed by the University or another entity.

7.5 The Foundation agrees to cease using University's name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, as amended.
7.6 The University and Foundation expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well-being of the University, the President shall notify the IHL in order that the IHL may intervene to reconcile the differences between the University and the Foundation. However, if the differences cannot be reconciled and the IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of Directors of the Foundation, the University President may direct the appointment of a five-person Commission whose members shall be selected as follows:

a. One member appointed by the President of the University;

b. One member appointed by the IHL;

c. One member appointed by the Board of Directors of the Foundation;

d. One member appointed by the Board of Directors of the Delta State University Alumni Association; and

e. One member appointed by a majority vote of the then living members of the James Broom Society, or the then existing equivalent donor group with a lifetime giving of $1,000,000.00 or greater; however, such donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as an employee, officer, trustee, or director of any University affiliated support organization or foundation.

After the appointment of the Commission, the University President shall notify in writing each member of the Board of Directors of the Foundation that the member’s membership on the Foundation’s Board of Directors shall terminate within ninety (90) days of receipt of the written notice, or as soon thereafter as reasonably possible, and upon the appointment by the Commission of his/her successor to the Board of Directors who is duly elected and qualified by the Commission. The Commission shall during the ninety (90) day period following the President’s written notice of termination to each Foundation Board of Director, elect by majority vote, successor members to the Board of Directors of the Foundation to replace the Board of Directors of the Foundation. The newly elected Board of Directors shall then elect new officers of the Foundation in accordance with the Foundation’s Bylaws.

7.7 In the event that the Commission, as described in Section 7.6 above, appoints a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation Board of Directors may be reelected by the Commission to serve as Board of Directors of the Foundation.
ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Foundation is not the agent or employee of the University, and nothing in this Agreement creates an employment or other agency relationship between the University and the Foundation.

8.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.

8.4 The University and the Foundation agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, the University and the Foundation shall be responsible for its own obligations, acts or omissions as they relate to this Agreement.

8.5 The University and the Foundation agree that the Foundation's donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Unless required to disclose such information by applicable law, the University and the Foundation agree not to disclose to third parties and to keep confidential the gifting records, gifting history and financial or commercial information of individuals, corporations and other entities that provide financial support to the Foundation.

8.6 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the University and the Foundation as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the University and the Foundation.

8.7 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

8.8 The failure of the University or the Foundation to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other.
8.9 This Agreement shall not be assigned or otherwise transferred by the University or the Foundation without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.10 The provisions of this Agreement shall apply to any and all entities owned or controlled by the Foundation, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of University auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement between the University and the Foundation which owns or controls the special purpose entity.

ARTICLE 9. NOTICE

9.1 Any notice to either the University or the Foundation hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or hand-delivered, when addressed as follows:

To the University:  
William N. LaForge  
President  
Delta State University  
P.O. Box A-1  
Cleveland, MS 38733

To the Foundation:  
Patrick Hundley  
Interim Executive Director  
Delta State University Foundation  
P.O. Box 314  
Cleveland, MS 38733

With a Copy to:

Glover A. Russell, Jr., J.D.  
Glover Russell, P.A.  
120 N. Congress Street, Suite 600  
Jackson, MS 39201

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the President of the University and the President of the Foundation, respectively, execute this Agreement as of the 16th day of November, 2017.

STAFF RECOMMENDATION:  Board staff recommends approval of this item.
6. **JSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH JACKSON STATE UNIVERSITY DEVELOPMENT FOUNDATION**

Jackson State University requests Board approval of the below proposed affiliation agreement between JSU and the Jackson State University Development Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement**  
**Between**  
**Jackson State University**  
**and the**  
**Jackson State University Development Foundation**

This Agreement is made and entered into effective this _____ day of __________, 2017 (the effective date) by and between Jackson State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and the Jackson State University Development Foundation, Inc., a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.

The provisions of this Agreement shall apply to any and all entities owned or controlled by the Foundation, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use or purpose of any such special purpose entity ever materially changes, the special purpose entity would then be required to comply with any and all provisions of the Agreement between the University and Foundation which owns the special purpose entity.

**PREAMBLE**

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation and Bylaws.

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c) (3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);
WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Foundation, in connection with its major gift fundraising and asset management activities, utilizes personnel experienced in both planning and management of solicitation of private contributions and the investment, accounting and disbursement of these assets;

WHEREAS, the University and the Foundation anticipate that the Foundation will provide the University with specified services and facilities in carrying out its mission;

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement; and

WHEREAS, the President of the University (hereinafter referred to as the "President") believes that it is in the best interest of the University for fund raising to be coordinated through the Foundation to increase efficiency and to expand the current sources of support for the University and desires to engage the services of the Foundation in accordance with the terms and conditions more fully set forth herein below;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. UNIVERSITY PERSONNEL AND SERVICES

1.1 The Foundation may utilize, with the approval of the University President, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the purposes of the Foundation. Specifically, the University President, and the Foundation agrees, that the JSU Office of Institutional Advancement shall serve the management purposes for the Foundation, subject to available funding.

1.2 The Foundation shall reimburse the University for expenses the University incurs as a result of Foundation operations, if those expenses would not otherwise have
been incurred by the University, specifically including telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

1.3 The University shall provide support services to the Foundation of the type provided to University departments on a cost reimbursement basis including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the Department of Public Safety.

1.4 In exchange for the benefits/consideration received by the University from the Foundation, the University shall provide Foundation employees staff identification cards, parking privileges, admittance to athletics and entertainment events, health services benefits and access to the University’s library and to its recreation and fitness programs, at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.

1.5 The University designates the Foundation as the primary entity for receipting, acknowledging, accounting for and managing its funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors. The Foundation must manage all funds under its control in a fiscally sound and prudent manner. In consideration for these services being provided by the Foundation, the Foundation, with the consent of the University, which consent shall not be unreasonably withheld, may use a percentage of the annual unrestricted funds, assess fees for services, or impose charges against managed funds to support its operations. The University shall also reimburse the Foundation for the cost of any donations received for items such as wire fees and credit card fees on gifts received. Additionally, the University will provide, as consideration for services provided, personnel necessary for the performance of the Foundation’s duties, which personnel shall be selected, hired, or fired by the University. Such personnel shall include the JSU Division of Institutional Advancement, which shall serve as the management entity of the Foundation. If the Foundation is unable to financially operate based upon the funding stated above, the University and Foundation agree to negotiate in good faith for additional consideration, whether in kind or otherwise, subject to available University funding and for an amount not to exceed the value of services.

1.6 The University President shall serve ex officio as a non-voting member of the Foundation’s Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation’s Board of Directors.

1.7 Annually, the University President shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or
certification by the University employee that the disbursement being requested has been approved in accord with established University procedures.

1.8 The University President shall submit a request to the Foundation for utilization of University unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, incorporate the University’s request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the Executive Director of the Foundation and the Vice President of JSU's Division of Institutional Advancement shall routinely update key Foundation personnel on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fund-raising needs and objectives. The Foundation will not solicit or accept gifts which are inconsistent with the University’s mission, goals, or objectives.

1.9 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University or the JSU Department of Contractual Services, if delegated by the President. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

1.9 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.

1.9 (b) A non-exclusive, non-transferable license to use University trademarks, service marks and trade names historically associated with the Foundation.

1.9 (c) The designation of the Foundation as a University affiliated entity.

1.9 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 2. FOUNDATION OBLIGATIONS

2.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing,
accounting for and administering funds for the University to use for its charitable, scientific and educational purposes.

2.2 The Foundation, acting through its Board of Directors and/or staff, shall assist the University’s Division of Institutional Advancement in its fund-raising activities and development programs with individuals, corporations, foundations, governmental and other external organizations. The Foundation will coordinate management and recognition of scholarship programs with JSU offices, including Student Financial Aid, the Registrar’s Office, the Honors Program Office, the Provost Office and other University Colleges or departments as necessary.

2.3 The Foundation, acting through its Board of Directors and/or staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University’s missions, goals and obligations.

2.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired.

2.5 The Foundation may enter into contracts for professional, advisory or other personal services necessary to accomplish its duties, but such contracts shall not exceed two (2) years. The Affiliation Agreement between the University and Foundation must be approved by the Board at least every five (5) years, and whenever amended.

2.6 The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation.

2.7 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of the
condition of the Foundation, which shall include such detail as the IHL Board may from
time to time require. The Foundation must also engage a Certified Public Accounting
(CPA) firm to perform annual audits of its annual financial statements. The Foundation
shall submit the audited financial statements, along with a list of its officers, directors or
trustees, not later than five months following the completion of the Foundation’s fiscal
year, to the University’s President and to IHL. However, the annual audited financial
statements may be required for inclusion in the State of Mississippi’s Comprehensive
Annual Financial Report (CAFR). If required to submit the annual audited financial
statements for inclusion in the CAFR, as determined by the IHL Board’s Associate
Commissioner of Finance and Administration and the external auditing firm hired to
perform the annual IHL system audit, the Foundation must submit the annual audited
financial statements to the President and IHL, along with a list of its officers, directors or
trustees, by October 15 of each year. The IHL Board’s Associate Commissioner of
Finance and Administration shall notify the Foundation of the applicability of the
October 15 deadline as far in advance of the deadline as possible each year. The CPA
firm to be utilized must be approved by the IHL Board and all requests for approval of
the CPA firm must be submitted to the IHL Board for approval not later than three
months prior to the end of the Foundation’s fiscal year for which the audit will be
conducted. Unless approval is specifically granted for multiple years, approval of a firm
by the IHL Board for one year does not constitute approval for other years, and requests
for approval of the CPA firm must be submitted on an annual basis. However, at the
request of the Foundation, the President of the University, with the approval of the IHL
Board, may grant a request of the Foundation to waive the requirement of an annual audit
by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the
Foundation are so limited as to make the expense of engaging a CPA firm to perform an
audit financially burdensome and unnecessary. Such a waiver may be conditioned upon
such other review of the financial records of the Foundation in lieu of an audit as the
University and the IHL may deem feasible. Such a request for a waiver must be
accompanied by (a) the most recent annual audited financial statements of the Foundation
(if any exist), (b) the financial statements of the most recently completed fiscal year, (c) a
written description of how the Foundation anticipates that the year-end financial
statements for the current year will differ from the financial statements as of the end of
the most recently completed fiscal year, and (d) a good faith estimate of the cost of
engaging an auditor with respect to the statements. The granting of any request to waive
the requirement of an annual audit by a CPA firm approved by the IHL is within the sole
discretion of the University and the IHL Board. Any waiver of the audit requirement will
apply only for one year, and any request to waive the requirement for the next year
should be submitted as outlined above.

2.8 The Foundation acknowledges and agrees that the University owns all
copyright, interest in and right to all trademarks, trade names, logos and service marks
developed by the University for use by the Foundation, including all such trademarks,
service marks and trade names historically associated with the Foundation.
2.9 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.10 The Foundation shall immediately deposit into the appropriate University account, or at a minimum notify the chief financial officer of the University in regard to, any funds which are sent to the Foundation but which are clearly intended to be funds designated for a University account. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Foundation.

2.11 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation and not in conflict with any provision of this Agreement.

2.12 The Foundation Executive Director shall promptly notify the University President and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

   a. The Foundation has materially breached any of its contractual obligations under the Agreement;

   b. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

   c. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

   d. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;

   e. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or

   f. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for
payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.13 If requested by the University, the Foundation shall provide any and all information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the University President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall only be made by the IHL acting upon its minutes.

2.14 The Foundation shall provide such other services as may be reasonably requested by the University to effectively conduct the programs and provide the services contemplated herein, provided such other duties shall not conflict with the Foundation’s mission or applicable laws.

ARTICLE 3. COMPLIANCE

3.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 4. REPORTING

4.1 The Foundation shall, by December 1 of each year during this Agreement, submit to the University President, the chief financial officer of the University, and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.6 of this Agreement. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made
through the University’s payroll system and with the University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the University President’s salary.

4.2 In order to facilitate transparency, the Foundation shall also maintain, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Charter, a listing of the members of its Board of Directors, its conflict of interest policy, and its investment policy.

4.3 The Foundation’s Executive Director or the Foundation’s Chairman of the Board of Directors shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Foundation Executive Director shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Foundation Executive Director will immediately notify, in writing, the President of the University.

4.4 The IHL Board may require the Foundation to provide information or allow inspection of its records as required by the Board to determine that the Foundation is in compliance with the Affiliation Agreement and that the funds held for the institution or for its benefit are appropriately utilized and protected. No such request for information will be made by individual Board members to the Foundation or the University President.

As a matter of general policy, the Board will attempt, when appropriate, to resolve any issues or concerns about the activities of any Foundation informally. The Board may determine by appropriate action, at a duly called meeting of the Board, that informal measures are or will be untimely, insufficient, or inappropriate to secure information necessary to allow the Board to determine that the Foundation is appropriately complying with the Affiliation Agreement and that funds intended to be used for the benefit of the institution are appropriately maintained and expended. If the Board makes such a finding, the Foundation will permit an audit, inspection or review of the financial and other records of the entity by persons selected by the Board, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined, and that the Foundation will fully cooperate with any such inquiries.
As noted above, it is the policy of the Board that it will not unnecessarily disclose or disseminate any information relating to the Foundation, and in particular, any information related to donors to the Foundation. However, the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the Board. No individual Board member or employee of the IHL will release information which identifies any particular donor without authorization from the Board.

ARTICLE 5. TERMINATION AND RENEWAL

5.1 This Agreement shall expire on December 31, 2019. The Agreement will automatically renew for an additional two (2) year term if notice of intent not to renew is not provided by at least one party within thirty (30) days of the end of the term. However, the Agreement may only be renewed at the end of said additional two year period with the prior approval of the IHL Board.

5.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

5.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Foundation may not terminate this agreement without the consent of the University President and the IHL Board, as required by IHL Bylaw 301.0806 (H).

5.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

5.5 The Foundation agrees to cease using University’s name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.
5.6 The University and Foundation expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well being of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the University President that it is in the best interest of the University to substitute new members of the Board of Directors of the Foundation, the President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the JSU Development Foundation, (4) one member appointed by a majority vote of the Board of Directors of the JSU National Alumni Association, and (5) one member appointed within and by the group of donors to the University whose lifetime total giving to the University exceeds $25,000; however, this donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as (i) a University employee or (ii) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall during the ninety day period appoint, by majority vote, members to the Board of Directors of the Foundation to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Foundation.

5.7 In the unlikely event that the Commission, as described in 5.6 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation board members may be reelected by this Commission to serve.

ARTICLE 6. MISCELANEOUS PROVISIONS

6.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

6.2 The parties agree that the Foundation is not the agent or employee of the University, and nothing in this Agreement creates an employment or other agency relationship between the parties.

6.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.

6.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.
6.5 The University and Foundation agree that the Foundation’s donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Notwithstanding Section 2.12 above, unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

6.6 In the performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

6.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

6.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

6.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

6.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

6.11 The Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, including any subsidiary entities to the Foundation.

6.12 The parties agree to amend their Bylaws or policies as necessary to conform with the requirements of this Agreement.

6.13 If there is an act of God prevents the parties to complete an activity related to the Agreement as written, the parties will be excused from the specific obligation that
was hampered by the act of God. However, be aware that this does not terminate the Agreement in its entirety unless the parties agree to do so in writing.

6.14 If University’s performance under this agreement depends upon the appropriation of funds by the Mississippi legislature, and if the Legislature fails to appropriate or reduces the funds necessary for performance, then University may provide written notice of such nonappropriation or reduction and cancel this Agreement without further obligation of University. Appropriation is a legislative act and is beyond the control of the University.

ARTICLE 7. NOTICE

7.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:  
William B. Bynum  
President  
Jackson State University  
P.O. Box 17390  
Jackson, MS 39217

To the Foundation:  
Dr. Alfred L. Martin  
Chairman of the Board of Directors  
JSU Development Foundation  
P.O. Box 17144  
Jackson, MS 39217

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the President of the University and the Chairman of the Board of Directors, respectively, execute this Agreement on this the_______ day of _________________, 2017.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

7. **JSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH JACKSON STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION, INC.**

Jackson State University requests Board approval of the below proposed affiliation agreement between the University and the Jackson State University National Alumni Association, Inc. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.
Affiliation Agreement between Jackson State University and the Jackson State University National Alumni Association, Inc.

1. AGREEMENT

THIS AGREEMENT is made and entered into this the _____ day of ______ 2017, and by and between Jackson State University (Hereinafter “JSU”) and the Jackson State National Alumni Association, Inc. (hereinafter referred to as the “Alumni Association” or “JSUNAA”); JSU and the Alumni Association will collectively be referred to as the “parties.” The Alumni Association, under the terms of its operating by-laws will apply or distribute the available net income from activities and special investment funds for the benefit of JSU and the JSU will provide support services for the Alumni Association. Further, the parties believe it important to more clearly state the relationship of the parties.

This Agreement is to memorialize the understanding of the parties concerning the relationship of the parties. As a result, this Agreement is to be considered a complete and exclusive agreement between the parties that will supersede any prior contracts or agreements, whether written or oral, that may have existed between the parties.

The provisions of this Agreement shall apply to any and all entities owned or controlled by the Alumni Association, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use or purpose of any such special purpose entity ever materially changes, the special purpose entity would then be required to comply with any and all provisions of the Agreement between the University and Alumni Association which owns the special purpose entity.

2. PURPOSE

The Parties agree and covenant that the purpose of this Agreement is to provide the framework for establishing a cooperative relationship between the parties and the respective rights and duties of the parties with respect to fundraising, business operations, and asset management and enhancement of JSU.
3. **TERM**

This agreement shall have a term of two (2) years, beginning on the date of execution of this agreement and ending on the same date in two years. The Agreement will automatically renew for an additional two (2) year term if notice of intent not to renew is not provided by at least one party within thirty (30) days of the end of the term. However, the Agreement may only be renewed at the end of such two year period with the prior approval of the IHL Board. The University may terminate this Agreement without cause with thirty (30) days written notice to the Association and with prior approval of IHL acting upon its minutes. In the event the agreement is terminated and either party elects to disassociate itself from the other, the assets of the Alumni Association shall be transferred to the University or to another 501 (c)(3) approved by the University for the benefit of the University.

4. **RELATIONSHIP OF THE PARTIES**

The parties understand and agree the relationship of the parties is a cooperative one, entered into freely between two independent entities, one a not-for-profit corporation organized and existing under the laws of the State as an education and charitable corporation, and the other as an organized education entity and existing under the laws of the State of Mississippi as an institution of higher education. To encourage, nurture, and maintain the cooperative relationship, the parties agree that:

A. The Executive Committee of the Alumni Association and the Director of Institutional Advancement shall meet at least annually to review and coordinate economic development, fundraising, community development, and technology plans of the university and the Alumni Association. The plans shall be submitted by the respective committees to both for approval at the annual meetings.

B. The Chief Executive Offices of the parties agree to periodically meet with Institutions of Higher Learning (IHL) Board members, and the IHL Commissioner at a mutually convenient time.

C. If the University incurs expenses as a result of the Alumni Associations operations, the Alumni Association shall reimburse the University for those expenses, unless the University determines it would be bearing the expense in the absence of the Alumni Association.

5. **ALUMNI ASSOCIATION**

The Alumni Association is organized for the support and advancement of JSU as well as support of charitable, scientific, literary, and educational purposes of JSU; it shall accordingly maintain a mission statement consistent with the general mission of JSU. The Alumni Association must manage all funds in a fiscally sound and prudent manner.
To achieve this mission, the Alumni Association shall assist the University with the following:

A. Managing contributions
B. Handling transfers of funds or property
C. Holding such property, real or personal wherever applicable
D. Performing any acts deemed appropriate by the Board of Directors.
E. Promoting and conducting alumni and public relations activities
F. Obtaining public and private support
G. Recruitment and retention of students
H. Developing career opportunities for students
I. Communicating with alumni and friends in support of JSU

6. UNIVERSITY SUPPORT

In consideration of the valuable support services provided to JSU, and to assist the Alumni Association in providing support to the University for the performance of its mission, its students, and staff, the University agrees and covenants that it shall:

A. COMMUNICATE NEEDS. The University shall communicate with the Alumni Association to make the Association aware of University needs and priorities. The Alumni Association, in return, agrees to communicate to the University its ability and plans to fund such needs and priorities as well as the acceptance or solicitation of gifts.
B. LICENSE FOR LOGOS/TRADemarks. The University shall grant the Alumni Association a non-exclusive, non-transferable license to use of the University’s logo, seal, and other symbols or marks of the University in conjunction with University sanctioned economic/community development projects. The Alumni Association shall not have the right or authority to delegate or assign the use of any such University marks or symbol without the express written consent of the University’s President. Further, the Alumni Association shall not represent that it is authorized to speak on behalf of the University or in any way bind the University to any enforceable obligation. Upon the termination of this agreement, the Alumni Association shall be prohibited from using the name, symbols, or trademarks of the University unless authorized by the University.
C. MAINTENANCE AND JANITORIAL SERVICES. The University shall pay costs associated maintenance and janitorial services for the office space allocated to the Alumni Association.
D. OFFICE SPACE. The University shall provide office space to the Alumni Association, subject to availability.
E. RECOGNITION. The University agrees to designate the Association as an official affiliated entity of the University.
F. UNIVERSITY FACILITIES. The University will provide the Alumni Association, with proper identification cards, access to parking, the University’s libraries, and other University facilities.

G. UNIVERSITY SERVICES. The University will provide computing systems and support services to the Alumni Association, through its President, on a cost reimbursement basis including, but not limited to, access to the University’s telephone, campus mail system, printing services, and copying services.

If the University incurs expenses as a result of the Alumni Association operations, including the provision of the above services, the Alumni Association shall reimburse the University for those expenses, unless the University determines it would be bearing the expense in the absence of the Alumni Association.

7. GENERAL MANAGEMENT OF FUNDS

The Association shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Association.

8. MANAGEMENT OF ENDOWMENT FUNDS

The University agrees that it shall invest and manage endowment funds from the Alumni Association that are placed with it in a manner that conforms to applicable state laws relating to investments by a fiduciary. However, the parties acknowledge the primacy of the Foundation as the University’s endowment fund manager, and that Alumni Affairs will not be managing institutional assets.

9. FUNDING OF THE ALUMNI ASSOCIATION

The University and Alumni Associations agree that funding for the operation of the Alumni Association shall come from the resources of the Alumni Association and may also come from funds donated to the University for the specific purpose of support for the Alumni Association and its activities.

10. CONFIDENTIALITY

The University and Alumni Association agree that sensitive information related to each other and/or data will not be shared with outside parties. This clause includes sharing confidential information with parties that the University or the Alumni Association may be in a third-party contract with. If the Agreement between the parties is terminated, this
clause is still in effect. This disclosure restriction is not applicable where operation of law requires disclosure or in such instances where disclosure is expressly authorized in this Agreement.

11. FUNDRAISING ACTIVITIES - RECEIPT OF RESTRICTED GIFTS

   a. The parties agree that the priorities for fund solicitations shall be established by the Office of Institutional Advancement and communicated at least annually, on or before 12/31 of each year by the University’s President. The Alumni Association understands that the University has entered into an agreement with the Foundation, which authorizes said Foundation to support and engage in fundraising activities for the benefit of the University. Said agreement authorizes the Foundation to solicit funds, contributions, and donations according to the priorities established by the University. Moreover, the Alumni Association’s Board may authorize fundraising priorities for economic development, research, and technology objectives not included in the University’s Office of Institutional Advancement priorities but not in conflict with them. To the extent necessary to minimize conflict, the Alumni Association will consult with the Office of Institutional Advancement with paragraph 9.b. (below) regarding fundraising efforts.

   b. The Alumni Association understands that the University has designated the Office of Institutional Advancement as coordinator for all fund-raising activities for the benefit of the University, its academic areas, and departments. The Alumni Association will coordinate with the Office of Institutional Advancement to support the University’s interests with respect to economic and community development, education, and other objectives of the Alumni Association.

   c. The parties agree that prior to accepting gifts of tangible personal property to be placed on the University’s campus, or gifts of real estate or tangible personal property to be used directly for University programs, the Alumni Association will obtain the written approval of the University.

   d. Gifts made to the University must be accounted for and ownership maintained by the University. Gifts made to the Alumni Association must be accounted for and ownership maintained by the Alumni Association as long as this Agreement is in effect. Any institutional assets authorized to be managed by the Alumni Association must be subject to inspection and auditing by IHL and other appropriate state officials.

   e. The Alumni Association shall not accept any gift, donation, grant or enter into any transaction that creates any liability for the University, without advance written approval of the institutional executive officer.

12. LIMITATION ON PAYMENT TO UNIVERSITY EMPLOYEES

Implementation of economic and community development projects sponsored by the
Alumni Association may be more effective if University faculty, staff and/or students are involved. However, the Alumni Association agrees it shall make no payment to any University employee in connection with economic/community development, education, or other projects sponsored by the Alumni Association unless it first shall have obtained the University’s consent for the employees’ and/or students’ participation and remuneration. The Alumni Association agrees to pay stipends to staff/students that have been approved by the University or the Alumni Association agrees to reimburse the University for utilization of staff/students services. The University agrees and covenants that it shall not unreasonably withhold such approval. Compensation will not be made to the University President or an IHL office employee without the consent of IHL.

13. AUDITS AND REPORTING

The Alumni Association must cause to be prepared annual financial statements of the condition of the Alumni Association, which shall include such detail as the IHL Board may from time to time require. The Alumni Association must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. The Alumni Association shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Alumni Association’s fiscal year, to the University’s President and to IHL. However, the annual audited financial statements may be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If required to submit the annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, the Alumni Association must submit the annual audited financial statements to the President and IHL, along with a list of its officers, directors or trustees, by October 15 of each year. The IHL Board’s Associate Commissioner of Finance and Administration shall notify the Alumni Association of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Alumni Association’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of the Alumni Association, the President of the University, with the approval of the IHL Board, may grant a request of the Alumni Association to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Alumni Association are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Alumni Association in lieu of an audit as the University and the IHL may deem feasible. Such a request for a
waiver must be accompanied by (a) the most recent annual audited financial statements of the Alumni Association (if any exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Alumni Association anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

An annual report must be submitted to the University President providing a detailed list of any supplemental compensation which was submitted to the University for purposes of providing additional compensation to administrators, faculty, athletic staff, or other employees. The parties recognize that any form of compensation provided by the Alumni Association to the University’s President must first be requested through the Commissioner of the IHL Board and then approved by the IHL Board prior to such payment being made.

The Alumni Association cannot present any form of additional compensation for the institutional executive officer (“IEO” or “University President”) or IHL system office employee without prior approval of the Board. The request for approval shall come through the Commissioner to the IHL Board; As to other University employees, the Affiliation Agreement provides that no form of additional compensation may be provided or paid by the Alumni Association without the prior approval by the IEO; All such approvals by the IEO must be reported to the Board of Trustees at its next official meeting; This provision does not apply to transfers from the Entity to the supported university for items such as professorships, chairs, and other programmatic support that are paid directly to the University and included in its annual budget;

The Association shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Association has materially breached any of its contractual obligations under the Agreement;
2. The Association has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Association has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Association or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Association;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Association or upon its status as a tax exempt organization; or

6. The Association has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Association, or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Association to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

The Alumni Association’s President shall submit to the University President and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Alumni Association has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL. In this certification the Association’s chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Alumni Association chief executive officer will immediately notify, in writing, the President of the University.

The Alumni Association is required to submit the annual audited financial statements to the IEO and agrees that such information will be forwarded by JSU to the IHL by each December 1 [to allow compliance with Governmental Accounting Standards Board (GASB) 39] along with a list of Alumni Association offices, directors, or trustees. The Alumni Association must furnish to the IEO or JSU, any and all information relating to operation or management of the JSUNAA and any funds contributed to, received by, expended by, or managed by JSUNAA.

Ordinarily, the Board will not request information from JSU and will allow the IEO to oversee the compliance by JSU with the Affiliation Agreement and to determine that funds are being appropriately received, managed, and expended. In some circumstances, however, the Board may determine it to be necessary to secure additional information from the Entity or to review appropriate records of JSU. The parties hold funds that are intended to benefit the institutions of the state, and the Board has an interest in the proper administration of those funds. Thus, the Affiliation Agreement will provide that the Board may require the Entity to provide information or allow inspection of its records as required by the Board to determine that JSU is in compliance with the Affiliation Agreement and that the funds held for the institution or for its benefit are appropriately utilized and protected. No such request for information will be made by individual Board members to JSU or the IEO.
14. RECORDS

The Alumni Associations records shall be maintained separately from the records of JSU per Board Policy 301.0806.

15. CONFLICT OF INTEREST POLICY

The Alumni Association shall adopt a conflict of interest policy, which applies to all directors, officers, and staff members. The Conflict of Interest Policy or Policies shall comply with all legal requirements for such policies as applicable to organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Additionally, said policy shall require the following: that at least thirty (30) days before the annual meeting, all directors, officers and staff members shall be notified of their obligations to agree to abide by the Conflict of Interest Policy; all directors shall have the continuing responsibility to bring all related material facts concerning a potential or real conflict of interest promptly and completely to the Board; a director shall not vote or participate in the deliberation of a matter in which such director has a conflict of interest, nor shall such director use his/her personal influence, directly or indirectly in the matter, or be counted in determining the existence of a quorum for the purposes of any action of the Board.

16. INDEPENDENT ENTITY

The Alumni Association acknowledges that it is an independent entity, separate and distinct from the University, and hereby agrees that neither the University nor the State shall be liable for (1) the Alumni Association’s contracts, torts, or other acts or omissions, or (2) those of the Alumni Association’s trustees, directors, officers, members, staff, or activity participants. Further, the University or the IHL Board does not govern the Alumni Association, as an independent entity. To ensure the independence of the Alumni Association, no IHL employee (including University employees) shall hold a voting position on the Alumni Association’s Board unless special exception is made through the IHL Board. Current senior University administrators should only participate on the Alumni Association’s Board in an ex-officio, non-voting capacity. Less senior administrators or personnel may serve on the Alumni Association’s Board without restriction.

If the Alumni Association, from time to time and in its best interests, needs to rely on senior University administrators to serve as Board members of the Alumni Association, the Parties agree to request that IHL waive this Section 16 separation requirement as between the Parties so as to allow no more than two (2) senior administrators of the University to serve as Board members of the Alumni Association. Should this occur, the University shall notify IHL in writing of the details of any such instances (including the
names of the senior administrators, the time period of their Board terms, and whether the administrators are also officers of the Alumni Association).

17. NONDISCRIMINATION

The parties agree that neither shall discriminate upon the basis of race, color, sex, religion, creed, handicap/disability, national origin, sexual orientation, or upon any other basis as may be proscribed by federal, state, or local law. Further, the Alumni Association agrees and covenants that it shall comply with all non-discrimination laws to which the University is, or may become, subjected.

18. FAILURE OF LEGISLATURE TO APPROPRIATE

If University’s performance under this agreement depends upon the appropriation of funds by the Mississippi legislature, and if the Legislature fails to appropriate or reduces the funds necessary for performance, then University may provide written notice of such reduction or nonappropriation and cancel this Agreement without further obligation of University. Appropriation is a legislative act and is beyond the control of the University.

19. MISSISSIPPI LAW

This contract shall be governed by Mississippi law. Neither party has waived any rights to legal or equitable remedies. All limitation of liability provisions are specifically not agreed to, whether or not they have been lined out or otherwise stricken from original Agreement.

20. FORCE MAJEURE (ACTS OF GOD)

If there is an act of God prevents the parties to complete an activity related to the Agreement as written, the parties will be excused from the specific obligation that was hampered by the act of God. However, be aware that this does not terminate the Agreement in its entirety unless the parties agree to do so in writing.

21. AMENDMENT TO THE AGREEMENT

The parties of this Agreement shall conduct an annual review of the contractual agreement to discuss and/or propose the manner in which improvements in the relationship or the contract between them may be made. Further, the parties understand and agree that this Agreement may be amended by the mutual written agreement of the parties.
22. TERMINATION OF AGREEMENT

The parties understand and agree that this Agreement may be terminated by the University with 30 days’ notice in advance of the proposed termination date. The University may also terminate this Agreement immediately For Cause and without Notice provided that IHL has granted its prior agreement. Although the JSUNAA cannot terminate the Agreement prior to its term without the consent of the University’s President and the IHL Board, it may exercise its option to not renew the Agreement for an additional term.

23. NOTICE

The parties agree that notices to either party relating to this agreement must be in writing and signed by the party giving it. Further, such notice shall be deemed given and received when mailed via postage prepaid by U.S. Postal Service, registered or certified mail, with signed return receipt or express, or accomplished by hand delivery to the following:

If to the University: Office of the President
Jackson State University
9th Floor Administration Tower
1400 J. R. Lynch Street
P.O. Box 17390
Jackson, MS 39217-0280

If to the Alumni Association: President JSU National Alumni Association - Alumni Affairs
101 Building-Downtown Campus
1400 J.R. Lynch Street
P.O. Box 17820
Jackson, MS 39217-0520.

24. LEGAL COMPLIANCE AND SEVERABILITY

The parties agree to comply with all applicable state and federal laws as well as valid regulations. If any provision of this agreement is determined to be in violation of an applicable law, then the unlawful portion of that provision shall be considered void without any effect on the continuing validity of other provisions or of the entire agreement.

25. MODIFICATIONS

The parties agree that no changes or modifications to this Agreement shall be made without the written consent and approval of each of the parties.
26. LIMIT ON CONTRACT LENGTH

The Alumni Association may enter into contracts for professional, advisory or other professional services necessary to accomplish its duties, but such contracts shall not exceed 2 years.

27. IRRECONCILABLE DIFFERENCES

Upon termination and/or non-renewal of this Agreement, (1) the Alumni Association shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Alumni Association shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (3) the Alumni Association shall work in concert with its members and/or donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Alumni Association shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Alumni Association shall work in concert with the University to provide the University or its designee with records and materials of the Alumni Association necessary to continue the business and/or wind up the affairs of the Alumni Association.

The Alumni Association agrees to cease using the University’s name, marks, and logos in the event the Association dissolves, ceases to be a non-profit corporation, ceases to be recognized as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, or this Agreement is terminated.

The University and the Alumni Association expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the wellbeing of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of Directors of the Alumni Association, the President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member shall be the President or his designee, (2) one member shall be the University’s Executive Director of Alumni Affairs, (3) one member shall be the President of the Association, (4) one member shall be the president-elect of the Alumni Association, and (5) one member appointed within and by the group of donors to the University whose lifetime total giving to the University exceeds $25,000;
however, this donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as (i) a University employee or (ii) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall then appoint, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. However, nothing in this Agreement shall preclude or require the Commission from appointing prior members of the Association’s Board. The Alumni Association agrees to amend its Bylaws as necessary to comply with this provision regarding the expiration and appointment of Board members in the unlikely event of an irreconcilable relationship.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

8. **JSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE MISSISSIPPI E-CENTER FOUNDATION**

Jackson State University requests Board approval of the below proposed affiliation agreement between the University and the Mississippi e-Center Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement between Jackson State University and the Mississippi e-Center Foundation**

THIS AGREEMENT is entered into as of this ___ day of ____________ 20__, by and between the Jackson State University (the “University”) and the Mississippi e-Center Foundation (e-Center). This Agreement must be approved by the Board of the Mississippi Institutions of Higher Learning (IHL), and must be reviewed for approval by IHL, at a minimum, once every five (5) years, and prior to any substantive changes.

The provisions of this Agreement shall apply to any and all entities owned or controlled by the e-Center, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use or purpose of any such special purpose entity ever materially changes, the special purpose entity would then be required to comply with any and all provisions of the Agreement between the University and e-Center which owns the special purpose entity.
PREAMBLE

The e-Center was organized and incorporated on December 8, 2000 for the purpose of providing physical and fiscal support from renters, corporations, foundations, and others for the benefit of Jackson State University.

The e-Center exists to manage the Mississippi e-Center (1230 Raymond Road, Jackson Mississippi 39204) and raise private resources to support the mission and priorities of Jackson State University (JSU), and provide a margin of institutional excellence unavailable with state funds to JSU faculty and students.

The e-Center is dedicated to assisting the University in the building of its endowment and in addressing, through financial support, the long-term academic and other priorities of the university.

As stated in its articles of incorporation, the e-Center is a separately incorporated 501 (c) (3) organization and is responsible for identifying and nurturing relationships with tenants and potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such resources and gifts in accordance with supporter's intent and its fiduciary responsibilities.

Furthermore, in connection with its asset-management activities, the e-Center employs or retains personnel experienced in managing the e-Center.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1: Use of Name, Seal, and Logotype

1.1 Name and Trademarks of the University. The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. To assist the e-Center in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the e-Center the following rights:

(a) A non-exclusive, non-transferable license to use the name “Jackson State University” and “JSU” consistent with University policy. The e-Center shall not assign or delegate the authority to use University’s name to any person or entity without the written approval of the President of the University or the JSU Office of Contractual Services, if delegated from the President; and
(b) The designation of the e-Center as a University affiliated entity.
(c) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the e-Center in discharging its obligations under this Agreement.

1.2 Name and Trademarks of the e-Center. The e-Center will operate under its own seal and logotype and shall not use the University seal or other identifying marks in the promotion of its business and activities. The e-Center does not transfer ownership to its name and marks by virtue of this Agreement.

ARTICLE 2: Governance

2.1 The Mississippi e-Center Foundation Governing Board (e-Center Board) is responsible for overseeing the mission, leadership, and operations of the e-Center.

2.2 The e-Center Board is responsible for setting priorities and long-term plans for the e-Center.

2.3 The e-Center Board is legally responsible for the performance and oversight of all aspects of e-Center operations.

2.4 The e-Center Governing Board is responsible for the employment, compensation, and evaluation of all e-Center employees, including the executive director.

2.5 To ensure the independence of the e-Center, no member or employee of the Board of Trustees of State Institutions of Higher Learning (IHL Board) shall hold a voting position on the e-Center’s Board. The IHL Board may allow exceptions to this restriction if needed to comply with NCAA requirements or other proper purposes. Senior administrators of the institution will only participate on the e-Center’s board in an ex-officio capacity.

ARTICLE 3: Relationship Between Jackson State University and the e-Center

3.1 The e-Center is a separately incorporated 501 (c) (3) nonprofit organization created to raise, manage, distribute, and steward resources to support the various missions of the University.

3.2 The e-Center Board is responsible for the control and management of all assets of the e-Center. JSU recognizes that the e-Center is a private corporation with the authority to keep all records and data confidential to the extent permitted by law. The e-Center’s records shall be maintained separately from the records of the University.
3.3 The e-Center is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the e-Center Board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

3.4 The e-Center is responsible for the employment, compensation, and evaluation of all its employees, including its chief executive.

3.5 The President of the University is responsible for communicating University needs, priorities, and long-term plans to the e-Center. The e-Center, in concert with donor intent or directives, if any, agrees to consider and communicate to the University its ability and plans to fund University needs and priorities. JSU shall include the e-Center as an active and prominent participant in the strategic planning for the University.

3.6 In consideration for the e-Center services including but not limited to management of the e-Center, JSU will provide the e-Center with fair and reasonable compensation or payment for services including the leasing of space at the e-Center for use by the University. The amount of compensation will be negotiated on an annual basis by December 15th of the preceding year. In consideration of e-Center services, JSU will also provide in-kind support as is consistent with the terms of this Agreement.

ARTICLE 4: The Mississippi e-Center’s Responsibilities

4.1 The e-Center in consultation with the University President, is responsible for planning and executing comprehensive revenue-raising programs in support of the institution's mission.

4.2 The e-Center will receive, hold, manage, invest, and disperse funds. The e-Center will establish, adhere to, and periodically audit revenue-management policies. It will promptly acknowledge and issue receipts for all support on behalf of the e-Center and provide appropriate recognition and stewardship of such funds. The e-Center will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Management of Institutional Funds Act (UMIFA). The e-Center shall manage all funds in its control in a fiscally sound and prudent manner;

4.3 The e-Center shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the e-Center, and shall keep accurate and current records of all such contributions made directly to the University or to the e-Center. The University shall have rights of inspection of e-Center records. Such rights shall be afforded to the IHL, if so desired. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they
wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall only be made by the IHL acting upon its minutes. The e-Center will develop methods and procedures, with the approval of the University President, will be utilized in determining how the income related to its assets is to be computed and distributed to the University, and the terms and conditions under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the e-Center. These procedures will delineate the terms upon which the e-Center is authorized to accept gifts, restricted and unrestricted, on behalf of or for the benefit of the University, and such terms will not conflict with, and shall be subject to, the terms in this Agreement. The e-Center may only accept gifts for the benefit of the University that are consistent with the University’s mission, goals, or objectives;

4.4 The e-Center shall immediately deposit into the appropriate University account, or at a minimum notify the chief financial officer of the University in regard to, any funds which are sent to the e-Center but which are clearly intended to be funds designated for a University account. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the e-Center. To the extent the assets of the University itself are to be managed by the e-Center, such management must only be in a sound a prudent manner as authorized by the express permission of the University President.

4.5 The e-Center will engage an independent accounting firm annually to conduct an audit of the e-Center's financial and operational records and will provide the e-Center’s Board with a copy of the annual audited financial statements, including management letters.

4.6 The financial and accounting records of the e-Center shall be maintained separately from the University and shall be in accordance with generally accepted accounting principles applicable for its industry. The e-Center must cause to be prepared annual financial statements of the condition of the e-Center, which shall include such detail as the IHL Board may from time to time require. The e-Center must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. The e-Center shall submit the audited financial statements, along with a list
of its officers, directors or trustees, not later than five months following the completion of the e-Center’s fiscal year, to the University’s President and to IHL. However, the annual audited financial statements may be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If required to submit the annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, the e-Center must submit the annual audited financial statements to the President and IHL, along with a list of its officers, directors or trustees, by October 15 of each year. The IHL Board’s Associate Commissioner of Finance and Administration shall notify the e-Center of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the e-Center’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of the e-Center, the President of the University, with the approval of the IHL Board, may grant a request of the e-Center to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the e-Center are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the e-Center in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the e-Center (if any exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the e-Center anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

4.7 No form of additional compensation for a University executive officer any IHL system office employee will be underwritten or increased by the e-Center without the prior approval of the Board; The request for approval shall come through the Commissioner to the IHL Board; As to other university employees, no form of additional compensation may be provided or paid by the e-Center without the prior approval by the University President; All such approvals by the University President must be reported to the Board of Trustees at its next official meeting; This provision does not apply to transfers from the e-Center to the University for items such as professorships, chairs, and
other programmatic support that are paid directly to the University and included in its annual budget;

4.8 The e-Center's disbursements on behalf of the University must be reasonable business expenses that support the University and do not conflict with the law.

4.9 The e-Center will comply with all state and federal laws applicable to its organization.

4.10 The e-Center may enter into contracts for professional, advisory, or other personal services, although the term for such contracts shall not exceed two (2) years. The exception to this contracting limitation is this Agreement, which must be approved at least every five (5) years by IHL, or before any substantive amendments or changes.

ARTICLE 5: The e-Center Funding and Administration

5.1 The e-Center has the right to use a reasonable percentage of the annual unrestricted funds to support its operations.

5.2 The e-Center, at its own expense, will provide office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.

5.4 The e-Center shall establish and maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972) as amended.

5.5 The e-Center shall submit to the IHL an annual report providing a detailed list of supplemental compensation provided to administrators, faculty, athletic staff, and other employees. Additionally, the e-Center’s CEO/Executive Director shall promptly notify the University President and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

(a) The e-Center has materially breached any of its contractual obligations under the Agreement;
(b) The e-Center has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
(c) The e-Center has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
(d) There has been a failure by the e-Center or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the e-Center;
(e) Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the e-Center or upon its status as a tax exempt organization; or

(f) The e-Center has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the e-Center, or any entity controlled directly or indirectly by the e-Center board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; the previous sentence creates a duty for the e-Center to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

5.6 The chief executive officer of the e-Center shall submit to the University President and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Entity has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the University President and the IHL as required above. The chief executive officer of the e-Center shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the chief executive officer will immediately notify, in writing, the President of the University.

5.7 The e-Center, through its Executive Director, will furnish to the University President, or such person as the University President may designate, any and all information relating to the operation or management of the e-Center or any funds contributed to, received by, expended by, or managed by the e-Center. As with the University, the Board shall have the right to require information from the e-Center, or to examine its records.

Ordinarily, the Board will not request information from an affiliated entity and will allow the University President to oversee the compliance by such entity with the Affiliation Agreement and to determine that funds are being appropriately received, managed, and expended. In some circumstances, however, the Board may determine it to be necessary to secure additional information from the e-Center or to review appropriate records of that entity. Because the e-Center holds funds that are intended to benefit the University, the Board has an interest in the proper administration of those funds. Thus, this Agreement provides that the Board may require the e-Center to provide information or allow inspection of its records as required by the Board to determine that the e-Center is in compliance with this Agreement and that the funds held for the institution or for its benefit are appropriately utilized and protected. No such request for information will be made by individual Board members to the e-Center or to the University President.

As a matter of general policy, the Board will attempt, when appropriate, to resolve any issues or concerns about the activities of the e-Center informally. Examples of such informal methods include responses by the e-Center to requests from the auditors
employed by the Board or a report from an accounting firm approved by the Board to review records related to the matters at issue. The decision of the e-Center as to whether and how to comply with such informal requests is within the discretion of the governing authorities of the e-Center. The Board anticipates that, normally, any questions related to the e-Center can be resolved through such informal procedures.

As noted above, it is the policy of the IHL Board that it will not unnecessarily disclose or disseminate any information relating to the e-Center, and in particular, any information related to donors to the e-Center. However, the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the Board. No individual Board member or employee of the IHL will release information which identifies any particular donor without authorization from the Board.

**ARTICLE 6: Term, Termination and Irreconcilable Differences**

6.1 This Agreement shall expire on December 31, 2019. The Agreement will automatically renew for an additional two (2) year term if notice of intent not to renew is not provided by at least one party within thirty (30) days of the end of the term. However, the Agreement may only be renewed at the end of said additional two year period with the prior approval of the IHL Board.

6.2 This Agreement may be terminated by the University President, with the prior approval of the IHL, for cause with no notice or without cause upon thirty (30) days notice. Upon termination, (1) the e-Center shall cease to use and shall not assign or delegate the authority to use the respective university’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the e-Center shall remit any and all unrestricted funds held for the benefit of the University to the University as designated in writing by the University President on behalf of the University, (3) the e-Center shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (4) the e-Center shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to the University as designated by the University President; and (5) the e-Center shall work in concert with the University to provide the University or its designee with records and materials of the e-Center as are necessary to continue the business and/or wind up the affairs of the e-Center. Because the e-Center may hold assets intended to benefit the University, the e-Center may not terminate this Agreement without the consent of the President and the IHL Board, as required by IHL Bylaw 301.0806 (H).

6.3 Consistent with provisions appearing in the e-Center's bylaws and its articles of incorporation, should the e-Center cease to exist or cease to be an Internal Revenue Code §501(c)(3) organization, the e-Center will transfer its assets and property to JSU to be
reincorporated in a successor e-Center, or for such purpose as is in accordance with the law and donor intent.

6.4 The IHL Board, the University and the e-Center expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well being of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of Directors of the e-Center, the President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the e-Center, (4) one member appointed by the JSU Development Foundation, and (5) one member appointed within and by the group of donors to the University whose lifetime total giving to the University exceeds $25,000; however, this donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as (i) a University employee or (ii) an employee, officer, trustee, or director of any University affiliated support organization or e-Center. The Commission shall during the ninety day period appoint, by majority vote, members to the Board of Directors of the e-Center to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the e-Center.

6.5 In the unlikely event that the Commission, as described in 6.4 above, shall appoint a new Board of Directors for the e-Center, it is expressly understood that any, or all, of the previous e-Center board members may be reelected by this Commission to serve. However, if the e-Center qualifies as a university research foundation formed pursuant to Miss.Code § 37-147-15, the new e-Center board members would be selected by the University President in accordance with Mississippi law. In the event of a potential conflict between 37-147-15 and any provision of this Agreement, the parties agree that this Agreement should be construed so as to not conflict with such statute, or the Agreement shall be amended accordingly.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

7.2 The parties agree that the e-Center is not the agent or employee of the University, and nothing in this Agreement creates an employment or other agency relationship between the parties.
7.3 The parties agree that the e-Center is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.

7.4 The University and e-Center agree that the e-Center’s donor and giving records and any other financial or commercial information possessed by the e-Center or provided by the e-Center to the University concerning individuals or corporations that provide e-Center financial support are confidential and proprietary. Notwithstanding Section 3.2 above, unless required to disclose such information by applicable law, the University and e-Center agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the e-Center.

7.5 In the performance of this Agreement, the e-Center shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The e-Center agrees to comply with all non-discriminatory laws and related policies.

7.6 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

7.7 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

7.8 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

7.9 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

7.10 The e-Center’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, including any subsidiary entities to the e-Center.
7.11 The parties agree to amend their Bylaws or policies as necessary to conform with the requirements of this Agreement.

7.12 If there is an act of God prevents the parties to complete an activity related to the Agreement as written, the parties will be excused from the specific obligation that was hampered by the act of God. However, be aware that this does not terminate the Agreement in its entirety unless the parties agree to do so in writing.

7.13 If University’s performance under this agreement depends upon the appropriation of funds by the Mississippi legislature, and if the Legislature fails to appropriate or reduces the funds necessary for performance, then University may provide written notice of such nonappropriation or reduction and cancel this Agreement without further obligation of University. Appropriation is a legislative act and is beyond the control of the University.

ARTICLE 8. NOTICE

8.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: To the e-Center:
University President Dr. William McHenry
Jackson State University Executive Director
1400 J. R. Lynch St. Mississippi e-Center Foundation
P.O. Box 17390 1230 Raymond Road
Jackson, MS 39217 Jackson, MS 39204

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the parties have caused this Affiliation Agreement to be executed by their duly authorized officers as of the day and date first above written.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

9. JSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE JSU TIGER FUND ATHLETIC FOUNDATION

Jackson State University requests Board approval of the below proposed affiliation agreement between the University and the JSU Tiger Fund Athletic Foundation. The proposed affiliation agreement meets the requirements of Boar25,
policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
between
Jackson State University
and the
JSU Tiger Fund Athletic Foundation

This Agreement is made and entered into effective this __ day of__________, 2017 (the effective date) by and between Jackson State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and the JSU Tiger Fund Athletic Foundation d.b.a. the Tiger Fund, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Tiger Fund”). This Agreement is designed to govern the relationship between the University and the Tiger Fund by setting forth the terms and conditions under which the University will provide certain support and services for the Tiger Fund and the Tiger Fund will provide certain support and services for and on behalf of the University.

The provisions of this Agreement shall apply to any and all entities owned or controlled by the Tiger Fund, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use or purpose of any such special purpose entity ever materially changes, the special purpose entity would then be required to comply with any and all provisions of the Agreement between the University and Tiger Fund which owns the special purpose entity.

PREAMBLE

WHEREAS, the Tiger Fund has been established as a not-for-profit, educational and charitable organization under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, for purposes outlined in its Articles of Incorporation and Bylaws.

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c) (3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Tiger Fund provides flexibility to the University in fiscal management and responsiveness;
WHEREAS, the Tiger Fund has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate for the benefit and support of JSU’s Athletics and educational services provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Tiger Fund, in connection with its major gift fundraising and asset management activities, utilizes personnel experienced in planning and management of solicitation of private contributions and the investment, accounting and disbursement of these assets;

WHEREAS, the University and the Tiger Fund anticipate that the Tiger Fund will provide the University with specified services and facilities in the accomplishment of its mission; and

WHEREAS, the University and the Tiger Fund desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement; and

WHEREAS, the President of the University (hereinafter referred to as the "President") believes that it is in the best interest of the University for fund raising to be coordinated through the Tiger Fund to increase efficiency and to expand the current sources of support for the University and desires to engage the services of the Tiger Fund in accordance with the terms and conditions more fully set forth herein below;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Tiger Fund do hereby agree as follows:

ARTICLE 1. UNIVERSITY PERSONNEL AND SERVICES

1.1 The Tiger Fund may utilize, with the approval of the University President, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the purposes of the Tiger Fund.

1.2 The Tiger Fund shall reimburse the University for expenses the University incurs as a result of Tiger Fund operations, if those expenses would not otherwise have been incurred by the University, specifically including telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

1.3 The University shall provide support services to the Tiger Fund of the type provided to University departments on a cost reimbursement basis including, but not
limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the Department of Public Safety.

1.4 The University designates the Tiger Fund as the primary entity for receipting, acknowledging, accounting for and managing its funds in regards to JSU Athletics, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors. The Tiger Fund must manage all funds under its control in a fiscally sound and prudent manner. In consideration for these services being provided by the Tiger Fund, the Tiger Fund, with the consent of the University, which consent shall not be unreasonably withheld, may use a percentage of the annual unrestricted funds, assess fees for services, or impose charges against managed funds to support its operations. The University shall also reimburse the Tiger Fund for the cost of any donations received for items such as wire fees and credit card fees on gifts received. Additionally, the University will provide, as consideration for services provided, personnel necessary for the performance of the Tiger Fund’s duties, which personnel shall be selected, hired, or fired by the University. If the Tiger Fund is unable to financially operate based upon the funding stated above, the University and Tiger Fund agree to negotiate in good faith for additional consideration, whether in kind or otherwise, subject to available University funding and for an amount not to exceed the value of services.

1.5 The University President shall serve ex officio, or designee as a non-voting member of the Tiger Fund’s Board of Directors. However, no other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Tiger Fund’s Board of Directors.

1.6 Annually, the University President shall certify to the Tiger Fund a list of University employees who are authorized to request disbursements from the Tiger Fund. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures.

1.7 The University President shall submit a request to the Tiger Fund for utilization of University unrestricted gifts received by the Tiger Fund in the following fiscal year. The Tiger Fund shall, consistent with the goals and priorities established by the University, incorporate the University’s request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the Executive Director of JSU’s Development Foundation shall routinely update key Tiger Fund personnel on the University initiatives involving private support to ensure that Tiger Fund and University personnel are informed of fund-raising needs and objectives. The Tiger Fund will not solicit or accept gifts which are inconsistent with the University’s mission, goals, or objectives.
1.8 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Tiger Fund shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University or the JSU Department of Contractual Services, if delegated by the University President. To assist the Tiger Fund in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Tiger Fund the following rights:

(a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Tiger Fund.

(b) A non-exclusive, non-transferable licenses to use University trademarks, service marks and trade names historically associated with the Tiger Fund.

(c) The designation of the Tiger Fund as a University affiliated entity.

(d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Tiger Fund in discharging its obligations under this Agreement.

ARTICLE 2. TIGER FUND OBLIGATIONS

2.1 The Tiger Fund’s primary purpose is to provide support to the University’s Athletic Department in accordance with the provisions of its Articles of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its Athletic Department.

2.2 The Tiger Fund shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Tiger Fund, and shall keep accurate and current records of all such contributions made directly to the University or to the Tiger Fund. Assets of the Tiger Fund shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Tiger Fund records. Such rights shall be afforded to the IHL, if so desired.

2.3 The Tiger Fund may enter into contracts for professional, advisory or other personal services to accomplish its duties, but such contracts shall not exceed two
(2) years. The Affiliation Agreement between the University and Tiger Fund must be approved by the Board at least every five (5) years and whenever amended.

2.4 The Tiger Fund shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Tiger Fund.

2.5 The Tiger Fund shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Tiger Fund must cause to be prepared annual financial statements of the condition of the Tiger Fund, which shall include such detail as the IHL Board may from time to time require. The Tiger Fund must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. The Tiger Fund shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Tiger Fund’s fiscal year, to the University’s President and to IHL. However, the annual audited financial statements may be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If required to submit the annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit; the Tiger Fund must submit the annual audited financial statements to the President and IHL, along with a list of its officers, directors or trustees, by October 15 of each year. The IHL Board’s Associate Commissioner of Finance and Administration shall notify the Tiger Fund of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Tiger Fund’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of the Tiger Fund, the President of the University, with the approval of the IHL Board, may grant a request of the Tiger Fund to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Tiger Fund are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Tiger Fund in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Tiger Fund (if any exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Tiger Fund anticipates that the year-end financial statements for the current
year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.6 The Tiger Fund acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Tiger Fund, including all such trademarks, service marks and trade names historically associated with the University.

2.7 The Tiger Fund shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.8 The Tiger Fund shall perform any and all other acts and activities on behalf of the University, as the Tiger Fund deems appropriate, to accomplish the purposes and mission of the University, so long as consistent with the governing documents of the Tiger Fund and not in conflict with any provision of this Agreement.

2.9 All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the JSU Tiger Fund Athletic Foundation.

2.10 The Tiger Fund President shall promptly notify the University President and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

a. The Tiger Fund has materially breached any of its contractual obligations under the Agreement;

b. The Tiger Fund has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

c. The Tiger Fund has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

d. There has been a failure by the Tiger Fund or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Tiger Fund;
e. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Tiger Fund or upon its status as a tax exempt organization; or

f. The Tiger Fund has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Tiger Fund, or any Tiger Fund controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Tiger Fund to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.11 If requested by the University, the Tiger Fund shall provide any and all information relating to the operation or management of the Tiger Fund or any funds contributed to, received by, expended by or managed by the Tiger Fund. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall only be made by the IHL acting upon its minutes.

2.12 The Tiger Fund shall provide such other services as may be reasonably requested by the University to effectively conduct the programs and provide the services contemplated herein, provided such other duties shall not conflict with the Tiger Fund’s mission or applicable laws.

ARTICLE 3. COMPLIANCE

3.1 The Tiger Fund shall comply with any and all federal and state laws and regulations, the University’s policies and procedures, the National Collegiate Athletic Association - NCAA Division 1 Bylaws, and with any compliance and regulatory guidelines as may be required by the IHL Board.
ARTICLE 4. REPORTING

4.1 The Tiger Fund shall, by December 1 of each year during this Agreement, submit to the University President, the chief financial officer of the University, and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.5 of this Agreement. Such submission shall also include a list of Tiger Fund officers, directors or trustees. The Tiger Fund shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University’s payroll system and with the University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Tiger Fund shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the President’s salary.

4.2 In order to facilitate transparency, the Tiger Fund shall also maintain, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Constitution, Charter, a listing of the members of its Board of Directors, current members, its conflict of interest policy, and its investment policy.

4.3 The Tiger Fund President shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Tiger Fund has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Tiger Fund President shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Tiger Fund President will immediately notify, in writing, the President of the University.

4.4 The IHL Board may require the Tiger Fund to provide information or allow inspection of its records as required by the Board to determine that the Tiger Fund is in compliance with the Affiliation Agreement and that the funds held for the institution or for its benefit are appropriately utilized and protected. No such request for information will be made by individual Board members to the Tiger Fund or the University President. As a matter of general policy, the Board will attempt, when appropriate, to resolve any issues or concerns about the activities of any Tiger Fund informally. The Board may determine by appropriate action, at a duly called meeting of the Board that informal measures are or will be untimely, insufficient, or inappropriate to secure information necessary to allow the Board to determine that the Tiger Fund is appropriately complying with the Affiliation Agreement and that funds intended to be used for the benefit of the
institution are appropriately maintained and expended. If the Board makes such a finding, the Tiger Fund will permit an audit, inspection or review of the financial and other records of the entity by persons selected by the Board, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined, and that the Tiger Fund will fully cooperate with any such inquiries. As noted above, it is the policy of the Board that it will not unnecessarily disclose or disseminate any information relating to the Tiger Fund, and in particular, any information related to donors to the Tiger Fund. However, the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the Board. No individual Board member or employee of the IHL will release information which identifies any particular donor without authorization from the Board.

ARTICLE 5. TERMINATION AND RENEWAL

5.1 This Agreement shall expire on December 31, 2019. The Agreement will automatically renew for an additional two (2) year term if notice of intent not to renew is not provided by at least one party within thirty (30) days of the end of the term. However, the Agreement may only be renewed at the end of said additional two year period with the prior approval of the IHL Board.

5.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Tiger Fund and with the prior approval of the IHL, acting upon its minutes.

5.3 The University may terminate this Agreement for cause, without notice to the Tiger Fund but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Tiger Fund may not terminate this agreement without the consent of the President and the IHL Board, as required by IHL Bylaw 301.0806 (H).

5.4 Upon termination and non-renewal of this Agreement, (1) the Tiger Fund shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Tiger Fund shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Tiger Fund shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Tiger Fund shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Tiger Fund shall work in concert with the University to provide the University or its designee with records and materials of the Tiger Fund as are necessary to continue the business and/or close the affairs of the Tiger Fund.
5.5 The Tiger Fund agrees to cease using University’s name, marks, and logos in the event that the Tiger Fund dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

5.6 The University and the Tiger Fund expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well being of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the University President that it is in the best interest of the University to substitute new members of the Board of Directors of the Tiger Fund, the President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the JSU Development Foundation, (4) one member appointed by a majority vote of the Board of Directors of the JSU National Alumni Association, and (5) one member appointed within and by the group of donors to the Tiger Fund Athletic Foundation whose lifetime total giving to the Tiger Fund Foundation exceeds $10,000; however, this donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as (i) a University employee or (ii) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall during the ninety-day period appoint, by majority vote, members to the Board of Directors of the Tiger Fund to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Tiger Fund.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

6.2 The parties agree that the Tiger Fund is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

6.3 Neither the University nor the Tiger Fund shall have any liability for the obligations, acts, or omissions of the other party.

6.4 The parties agree that the Tiger Fund is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible
for its own obligations, acts or omissions.

6.5 The University and Tiger Fund agree that the Tiger Fund’s donor and giving records and any other financial or commercial information possessed by the Tiger Fund or provided by the Tiger Fund to the University concerning individuals or corporations that provide Tiger Fund financial support are confidential and proprietary. Notwithstanding any language stated above, unless required to disclose such information by applicable law, the University and Tiger Fund agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Tiger Fund.

6.6 In the performance of this Agreement, the Tiger Fund shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Tiger Fund agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

6.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

6.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

6.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

6.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

6.11 The Tiger Fund’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, including any subsidiary entities to the Tiger Fund.

6.12 If there is an act of God prevents the parties to complete an activity related to the Agreement as written, the parties will be excused from the specific obligation that was hampered by the act of God. However, be aware that this does not terminate the
Agreement in its entirety unless the parties agree to do so in writing.

6.13 If University’s performance under this agreement depends upon the appropriation of funds by the Mississippi legislature, and if the Legislature fails to appropriate or reduces the funds necessary for performance, then University may provide written notice of such nonappropriation or reduction and cancel this Agreement without further obligation of University. Appropriation is a legislative act and is beyond the control of the University.

6.14 The parties agree to amend their Bylaws or policies as necessary to conform to the requirements of this Agreement.

ARTICLE 7. NOTICE

7.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: To the Tiger Fund:

University President President of the Tiger Fund Athletic
Jackson State University Foundation
1400 J. R. Lynch St. P.O. Box 17390
P.O. Box 17390 Jackson, MS 39217
Jackson, MS 39217

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Tiger Fund, acting through the President of the University and the President of the Tiger Fund, respectively, execute this Agreement on this the ___ day of ____________, 2017.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

10. JSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE BLUE BENGAL ATHLETIC ASSOCIATION, INC.

Jackson State University requests Board approval of the below proposed affiliation agreement between the University and The Blue Bengal Athletic Association, Inc. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.
Affiliation Agreement
between
Jackson State University
and
The Blue Bengal Athletic Association, Inc.

This Agreement is made and entered into effective this ___ day of ___ , 2017 (the effective date) by and between Jackson State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and THE BLUE BENGAL ATHLETIC ASSOCIATION, INC. d.b.a. the Blue Bengals, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Blue Bengals”).

This Agreement is designed to govern the relationship between the University and the Blue Bengals by setting forth the terms and conditions under which the Blue Bengals Athletic Association, Inc. will provide certain support and services for and on behalf of the University.

The provisions of this Agreement shall apply to any and all entities owned or controlled by the Blue Bengals.

PREAMBLE

WHEREAS, the Blue Bengal Athletic Association, Inc. is a non-profit organization, educational and charitable organization under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, existing to help enhance, enrich and ensure the continuous growth of Jackson State University Athletic Programs, for both men and women, in accordance and compliance with the National Collegiate Athletic Association (NCAA), Southwestern Athletic Conference (SWAC) and University rules and regulations.

WHEREAS, the University has the authority and right to enter into agreements with affiliated entities, and 501(c) (3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the University and the Blue Bengals Blue Bengals Athletic Association, Inc. desire to define the arrangement and guidelines concerning booster club support services and fund raising activities in support of each other as set forth in this Agreement; and
NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Blue Bengals do hereby agree as follows:

ARTICLE 1. SUPPORT SERVICES

1.1 The University designates the Blue Bengals Athletic Association as a booster club and fund raising entity for the University and JSU Athletics.

1.2 The Blue Bengals Athletic Association may utilize, with the approval of the University President, which approval shall not be unreasonably withheld, such University facilities from time to time as is needed to carry out the purposes of the Blue Bengals.

1.3 The Blue Bengals Athletic Association shall reimburse the University for expenses the University incurs as a result of Blue Bengals Athletic Association operations, if those expenses would not otherwise have been incurred by the University, specifically including telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

1.4 The University President may serve ex officio, or designee as a non-voting member of the Blue Bengals Athletic Association’s Board of Directors. However, no IHL Board member or employee shall serve as a voting member of the Blue Bengals Athletic Association’s Board of Directors.

1.5 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Blue Bengals shall not use, assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University or JSU’s Department of Contractual Services, if delegated by the University President. To assist the Blue Bengals in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University and JSU Athletics, the University grants the Blue Bengals the following rights:

(a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Blue Bengals.
(b) A non-exclusive, non-transferable licenses to use University trademarks, service marks and trade names historically associated with the Blue Bengals.

(c) The designation of the Blue Bengals as a University affiliated entity.

(d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Blue Bengals in discharging its obligations under this Agreement.

ARTICLE 2. THE BLUE BENGALS ATHLETIC ASSOCIATIONS’ OBLIGATIONS

2.1 The Blue Bengals Athletic Association’s primary purpose is to provide support to the University and JSU’s Athletic Department in accordance with the provisions of its Articles of Incorporation, By-laws, and Constitution, which support includes, but is not limited to, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its Athletic Department.

2.2 The Blue Bengals shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Blue Bengals, and shall keep accurate and current records of all such contributions made directly to the University or to the Blue Bengals. Assets of the Blue Bengals shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Blue Bengals records. Such rights shall be afforded to the IHL, if so desired.

2.3 The Blue Bengals may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 2 years. The Affiliation Agreement between the University and the Blue Bengals must be approved by the Board at least every five (5) years and whenever amended.

2.4 The Blue Bengals shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Blue Bengals.

2.5 The Blue Bengals shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Blue Bengals must cause to be prepared annual financial statements of the
condition of the Blue Bengals, which shall include such detail as the IHL Board may from time to time require. The Blue Bengals must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. The Blue Bengals shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Blue Bengal’s fiscal year, to the University’s President and to IHL. However, the annual audited financial statements may be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If required to submit the annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit; the Blue Bengals must submit the annual audited financial statements to the President and IHL, along with a list of its officers, directors or trustees, by October 15 of each year. The IHL Board’s Associate Commissioner of Finance and Administration shall notify the Blue Bengals of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Blue Bengal’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of the Blue Bengals, the President of the University, with the approval of the IHL Board, may grant a request of the Blue Bengals to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Blue Bengals are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Blue Bengals in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Blue Bengals (if any exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Blue Bengals anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.6 The Blue Bengals acknowledge and agree that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University. Upon written request by Blue Bengal, the University may extend to Blue Bengals a license to use certain University marks, including all such
trademarks, service marks and trade names historically associated with the University. The Blue Bengals shall cease to use and shall not assign or delegate the authority to use the respective university’s name or registered marks or logos to any person or entity without the written approval of the President, his designee, or the Department of Contractual Services.

2.7 The Blue Bengals shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.8 The Blue Bengals shall perform any and all other acts and activities on behalf of the University, as the Blue Bengals deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Blue Bengals and not in conflict with any provision of this Agreement.

2.9 All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by The Blue Bengal Athletic Association, Inc.

2.10 The Blue Bengals’ President shall promptly notify the University President and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

   a. The Blue Bengals has materially breached any of its contractual obligations under the Agreement;
   b. The Blue Bengals has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
   c. The Blue Bengals has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
   d. There has been a failure by the Blue Bengals or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Blue Bengals;
   e. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Blue Bengals or upon its status as a tax exempt organization; or
   f. The Blue Bengals has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Blue Bengals, or any Blue Bengals controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any
calendar year; The previous sentence creates a duty for the Blue Bengals to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.11 If requested by the University, the Blue Bengals shall provide any and all information relating to the operation or management of the Blue Bengals or any funds contributed to, received by, expended by or managed by the Blue Bengals. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall only be made by the IHL acting upon its minutes.

2.12 The Blue Bengals shall provide such other services as may be reasonably requested by the University to effectively conduct the programs and provide the services contemplated herein, provided such other duties shall not conflict with the Blue Bengal’s mission or applicable laws.

ARTICLE 3. COMPLIANCE

3.1 The Blue Bengals shall comply with any and all federal and state laws and regulations, the University’s policies and procedures, the National Collegiate Athletic Association - NCAA Division 1 Bylaws, and with any compliance and regulatory guidelines as may be required by the IHL Board.

ARTICLE 4. REPORTING

4.1 The Blue Bengals shall, by December 1 of each year during this Agreement, submit to the University President, the chief financial officer of the University, and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.5 of this Agreement. Such submission shall also include a list of Blue Bengals officers, directors or trustees. The Blue Bengals shall submit an annual report providing a detailed list of any supplemental compensation which was provided to
the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University’s payroll system and with the University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Blue Bengals shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the President’s salary.

4.2 In order to facilitate transparency, the Blue Bengals shall also maintain, for public and University inspection, a copy of this Agreement along with copies of the most recent annual audited financial statements, Form 990, By-laws, Constitution, Charter, a listing of the members of its Board of Directors, current members, its conflict of interest policy, and its investment policy.

4.3 The Blue Bengals President shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Blue Bengals has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Blue Bengals President shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Blue Bengals President will immediately notify, in writing, the President of the University.

4.4 The IHL Board may require the Blue Bengals to provide information or allow inspection of its records as required by the Board to determine that the Blue Bengals is in compliance with the Affiliation Agreement and that the funds held for the institution or for its benefit are appropriately utilized and protected. No such request for information will be made by individual Board members to the Blue Bengals or the University President. As a matter of general policy, the Board will attempt, when appropriate, to resolve any issues or concerns about the activities of any Blue Bengals informally. The Board may determine by appropriate action, at a duly called meeting of the Board that informal measures are or will be untimely, insufficient, or inappropriate to secure information necessary to allow the Board to determine that the Blue Bengals is appropriately complying with the Affiliation Agreement and that funds intended to be used for the benefit of the institution are appropriately maintained and expended. If the Board makes such a finding, the Blue Bengals will permit an audit, inspection or review of the financial and other records of the entity by persons selected by the Board, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined, and that the Blue Bengals will fully cooperate with any such inquiries. As noted above, it is the policy of the Board that it will not unnecessarily disclose or disseminate any information relating to the Blue Bengals, and in particular,
any information related to donors to the Blue Bengals. However, the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the Board. No individual Board member or employee of the IHL will release information which identifies any particular donor without authorization from the Board.

ARTICLE 5. TERMINATION AND RENEWAL

5.1 This Agreement shall expire on December 31, 2019. The Agreement will automatically renew for an additional two (2) year term if notice of intent not to renew is not provided by at least one party within thirty (30) days of the end of the term. However, the Agreement may only be renewed at the end of said additional two year period with the prior approval of the IHL Board.

5.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Blue Bengals and with the prior approval of the IHL, acting upon its minutes.

5.3 The University may terminate this Agreement for cause, without notice to the Blue Bengals but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Blue Bengals may not terminate this agreement without the consent of the President and the IHL Board, as required by IHL Bylaw 301.0806.

5.4 Upon termination and non-renewal of this Agreement, (1) the Blue Bengals shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Blue Bengals shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Blue Bengals shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Blue Bengals shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Blue Bengals shall work in concert with the University to provide the University or its designee with records and materials of the Blue Bengals as are necessary to continue the business and/or close the affairs of the Blue Bengals.

5.5 The Blue Bengals Athletic Association agrees to cease using University’s name, marks, and logos in the event that the Blue Bengals Association dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

5.6 The University and the Blue Bengals expect there to exist a cooperative
relationship between them. In the event that the University President determines that such cooperation is not in place and is thus, in the President’s view, detrimental to the well being of the University, the President shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the University President that it is in the best interest of the University to substitute new members of the Board of Directors of the Blue Bengals Association, the President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the JSU Development Foundation, (4) one member appointed by a majority vote of the Board of Directors of the JSU National Alumni Association, and (5) one member appointed within and by the group of donors to the University whose lifetime total giving to the University exceeds $25,000; however, this donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as (i) a University employee or (ii) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall during the ninety-day period appoint, by majority vote, members to the Board of Directors of the Blue Bengals to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Blue Bengals Athletic Association.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

6.2 The parties agree that the Blue Bengals Association is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

6.3 Neither the University nor the Blue Bengals Association shall have any liability for the obligations, acts, or omissions of the other party.

6.4 The parties agree that the Blue Bengals Athletic Association is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.

6.5 The University and The Blue Bengals Athletic Association agree that the Blue Bengal Association’s donor and giving records and any other financial or commercial information possessed by the Blue Bengals Association or provided by the
Blue Bengals Association to the University concerning individuals or corporations that provide Blue Bengals Association financial support are confidential and proprietary. Notwithstanding any language stated above, unless required to disclose such information by applicable law, the University and Blue Bengals agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Blue Bengals.

6.6 In the performance of this Agreement, the Blue Bengals Association shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Blue Bengals agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

6.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

6.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

6.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

6.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

6.11 The Blue Bengal Athletic Association’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, including any subsidiary entities to the Blue Bengals Association.

6.12 If there is an act of God prevents the parties to complete an activity related to the Agreement as written, the parties will be excused from the specific obligation that was hampered by the act of God. However, be aware that this does not terminate the Agreement in its entirety unless the parties agree to do so in writing.

6.13 If University’s performance under this agreement depends upon the
appropriation of funds by the Mississippi legislature, and if the Legislature fails to appropriate the funds or reduces funds necessary for performance, then University may provide written notice of such reduction or nonappropriation and cancel this Agreement without further obligation of University. Appropriation is a legislative act and is beyond the control of the University.

6.14 This contract shall be governed by Mississippi law. Neither party has waived any rights to legal or equitable remedies. All limitation of liability provisions are specifically not agreed to, whether or not they have been lined out or otherwise stricken from original Agreement. The parties agree to amend their Bylaws or policies as necessary to conform to the requirements of this Agreement.

ARTICLE 7. NOTICE

7.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: University President
                Jackson State University
                1400 J. R. Lynch St.
                P.O. Box 17390
                Jackson, MS 39217

To the Blue Bengals: Joanne Jones, President
                     Blue Bengals Athletic Association, Inc.
                     P. O. Box 17810
                     Jackson, MS 39217

With copy to: Division of General Counsel
              Jackson State University
              Post Office Box 17239
              Jackson, MS 39217-0239

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Blue Bengals Athletic Association, Inc., acting through the President of the University and the President of the Blue Bengals, respectively, execute this Agreement on this the _____ day of __________, 2017.

STAFF RECOMMENDATION: Board staff recommends approval of this item.
11. **MSU - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH MISSISSIPPI STATE UNIVERSITY ALUMNI, INCORPORATED**

Mississippi State University requests Board approval of the below proposed affiliation agreement between the University and Mississippi State University Alumni, Incorporated. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement**  
**Between**  
**Mississippi State University**  
and  
**Mississippi State University Alumni, Incorporated**

THIS AFFILIATION AGREEMENT ("Agreement") is entered into as of the 1st day of January, 2018, by and between MISSISSIPPI STATE UNIVERSITY ("University") and MISSISSIPPI STATE UNIVERSITY ALUMNI, INCORPORATED ("Alumni") A.K.A. MISSISSIPPI STATE UNIVERSITY ALUMNI ASSOCIATION.

WHEREAS, the University is an institution of higher education and an agency of the State of Mississippi; and

WHEREAS, the Alumni is a Mississippi non-profit corporation which is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code and which has the purpose of maintaining records on and keeping in touch with University alumni and friends, facilitating communication with those persons, and generating and retaining support for the educational, research and service missions of the University; and

WHEREAS, the President of the University ("President") believes that it is in the best interest of the University for all alumni relations and record-keeping to be coordinated through the Alumni to increase efficiency and to expand the alumni support for the University and desires to engage the services of the Alumni in accordance with the terms and conditions more fully set forth herein below;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c)(3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereby agree as follows:

**Relationship of Parties.** The Alumni is a not-for-profit corporation, organized under the laws of the State of Mississippi. In accordance with its Articles of Incorporation, the
Alumni is to be administered and operated exclusively for the benefit of the University and its alumni and friends. However, the Alumni is not a subsidiary or affiliate of the University and is not directly or indirectly controlled by the University or the Board of Trustees of State Institutions of Higher Learning. The independent Board of Directors of the Alumni is entitled to make all decisions regarding the business and affairs of the Alumni. Moreover, the assets of the Alumni are the exclusive property of the Alumni and do not belong to the University. The resources of the Alumni are committed and disbursed at the discretion of the Alumni's Board of Directors in accordance with donor directions and with Alumni policy developed and updated as needed in cooperation with the University. No University employee or other persons directly or indirectly employed by IHL shall serve as a voting member of the Board of Directors of the Alumni, but may serve as an ex-officio non-voting member.

Alumni Services. During the term of this Agreement, the services to be performed by the Alumni hereunder shall include, but not be limited to:

Maintaining address and other necessary digital records on University alumni and friends;

Establishing and maintaining contact with University alumni and friends, keeping them informed of and involved in University and alumni activities;

Developing and coordinating effective programs to strengthen the relationship between alumni and friends of the University, resulting in the generation of financial and other support for the University;

Assisting the University, after seeking its input, in activities, events, projects and programs which involve University alumni or in which the University requests to have alumni involvement;

Promoting the University to outside constituencies through the publication of the Mississippi State Alumnus magazine;

Rendering reports to University IEO upon reasonable request regarding alumni, the alumni activities including financial statements, and the activities of the Alumni in performing any and all of the duties described herein or duties otherwise requested by the University;

Complying with applicable state and federal laws;

Adopting and maintaining a conflict of interest policy;
Adopting and maintaining a mission statement consistent with some aspect of the mission and priorities of the University; and

Performing such other duties as the University may reasonably request as necessary or desirable related to alumni of the University.

University Obligations. For all services rendered by the Alumni under this Agreement, and in consideration of the agreements of the Alumni contained herein, the University shall, at no additional cost to the Alumni, during the term of this Agreement:

Provide to the Alumni all personnel necessary for the performance of its duties under this Agreement; such personnel shall be selected, hired, and discharged by the University in cooperation with the Alumni; the compensation of such personnel, together with all fringe benefits, employment taxes, and other costs thereof, shall be set and paid by the University; all such personnel shall be under the full supervision and control of the University and shall for all purposes be considered employees of the University.

Keep, through its president, the Alumni apprised of the University’s needs and priorities.

Reimburse the Alumni for certain reasonable business expenses, which the Alumni may incur on the University's behalf.

Financial Statements. The Alumni shall maintain financial and accounting records which shall include such detail as the IHL may require in accordance with Generally Accepted Accounting Principles, which records shall be maintained separately from the records of the University. These financial records shall be audited annually by a Certified Public Accounting firm engaged for that purpose by the Alumni and approved by the IHL. The Alumni shall submit annual audited financial statements for inclusion in the State of Mississippi's Comprehensive Annual Financial Report ("CAFR") as determined by the IHL Board's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit to the President and to the IHL, along with a list of Alumni officers and directors by October 15 of each year. A request for approval of the CPA firm shall be submitted to the IHL Board on an annual basis not later than three months prior to the end of the Alumni's fiscal year for which the audit will be conducted unless approval is specifically granted for multiple years.

Confidential Records. The Alumni is not engaged in the solicitation or management of gifts for or on behalf of the University. If requested by the University, the Alumni shall provide any and all information and allow the inspection of all records relating to the operation or management of the Alumni or any funds received by, expended by or managed by the Alumni. To the extent that information is inspected, reviewed, or received by the President or his designee with respect to the mutual covenants and agreements outlined in royalty contracts negotiated with Alumni affinity partners shall be
treated as confidential by the President and any designee who may acquire such information. The University shall take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes; however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release the contents of Alumni affinity partner contracts shall be made by IHL, acting upon its minutes.

Certain information maintained in furtherance of the Alumni’s activities is recognized to be the property of the Alumni and, as such, is confidential, whether in paper or electronic format. The parties acknowledge that the Alumni’s records are the exclusive property of the Alumni, regardless of the file, server or computer in which the records reside. To the extent information shared with the University may be protected from disclosure, the University will take all necessary action to protect such information under available statutory exceptions if disclosure would result in a breach of confidence by the Alumni or public disclosure of private information.

Communications. The President of the University shall be responsible for communicating to the Alumni priorities and long-term plans of the University. The parties shall work together to encourage communications between members of the Board of Trustees of Institutions of Higher Learning and the Board of Directors of the Alumni to include periodic meetings between the members of the Board of Trustees, the President of the Alumni, and the President of the University.

To provide the Directors with the appropriate information to assist them in the proper execution of their duties and responsibilities as the Board of Directors of the Alumni, the University shall furnish the Alumni reports, schedules and records as may be requested by the Alumni, and the Directors of the Alumni will seek input from the President of the University in defining major needs and priorities.

University Trademarks. The Alumni may use the name, symbols and trademarks of the University only with prior written permission of the University Trademark Licensing Program office. Upon termination of this agreement, the Alumni shall be prohibited from using the name, symbols or trademarks of the University. The Alumni agrees to cease using the University’s name, symbols and logos in the event the Alumni dissolves, ceases to be a non-profit corporation, or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 510(c)(3) of the Internal Revenue code.

Independent Contractor. It is understood and agreed that the Alumni, its officers, employees, and agents, if any, shall act solely in the capacity of an independent contractor and not as employees of or agents for the University.
Term of Agreement and Termination. Subject only to the provisions for termination as hereinafter set forth, the initial term of this Agreement shall begin on January 1, 2018, and end on December 31, 2022, if not renewed by mutual consent of the parties before that date.

The University may terminate this Agreement without cause with thirty (30) days written notice to the Alumni and with the prior approval of the IHL, acting upon its minutes. The University may terminate this Agreement for cause, without notice to the Alumni but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Alumni may not terminate this Agreement without the prior approval of the University President and the IHL.

Upon termination or non-renewal of this Agreement, (1) the Alumni shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Alumni shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (3) the Alumni shall work in concert with its donors, to the extent practical and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Alumni shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowable by law, to assign any contracts to such entity as designated by the President; and (5) the Alumni shall work in concert with the University to provide the University or its designee with records and materials of the Alumni as are necessary to continue the business and/or wind up the affairs of the Alumni.

In the event that the President notifies IHL that the relationship between the President and the Alumni is detrimental to the well being of the University, IHL shall attempt to reconcile the parties, including through mediation if advisable. However, if the IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of Directors of the Alumni, the President may direct that at the expiration of a ninety-day period, the terms of office of up to 100% of the total number of Directors shall be deemed to have expired. Upon such event a five person Commission shall be selected as follows: (A) one member appointed by the Institutional Executive Officer, (B) one member appointed the IHL, (C) one member appointed by the Board of Directors of the Mississippi State University Foundation, Inc., and (D) the two most recent living National Alumnus of the Year award winners. The Commission shall then appoint, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired which may include former National Alumni Board Members. The reconstituted Board of Directors shall then elect new officers of the Alumni.
Notices. Any notice, request, demand, or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to the National President or Executive Director of the Alumni or the President of the University, as the case may be, when delivered by electronic mail, or when deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the Alumni and the University as shown below, or to such other address as either party shall designate by written notice to the other:

As to the University:
President
Mississippi State University
P. O. Box 6018
Mississippi State, MS 39762

As to the Alumni:
Executive Director
Mississippi State University Alumni, Incorporated
P. O. Box AA
Mississippi State, MS 39762

Assignment. Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.

Applicable Law. This Agreement shall be construed, interpreted and the rights and duties of the parties determined in accordance with the laws of the State of Mississippi.

Reportable Events and Notices

The Alumni shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur: investigations under the Agreement; The Alumni has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds; The Alumni has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations; There has been a failure by the Alumni or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Alumni; Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Alumni or upon its status as a tax exempt organization; or The Alumni has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Alumni, or any entity controlled directly or indirectly by
the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Alumni to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted. The President of the Alumni shall submit to the President and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Alumni has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President and the IHL, as required above. The President of the Alumni shall re-affirm that, in the event he/she becomes aware of such Reportable Events, the Alumni President will immediately notify, in writing, the President of the University.

Miscellaneous.

The President of the University shall make all necessary reports to the Commissioner of Higher Education concerning supplemental compensation or salary supplements made by the Alumni to administrators, faculty, athletic staff, and other employees of the University. No form of additional compensation for the President or any IHL system office employee be underwritten or increased by the Alumni without the prior approval of the IHL. The request for approval shall come through the Commissioner to the IHL Board. As to other University employees, no form of additional compensation may be provided or paid by the Alumni without the prior approval by the President. This provision does not apply to transfers from the Alumni to the University for items such as professorships, chairs, and other programmatic support that are paid directly to the University and included in its annual budget.

A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

Should the Alumni cease to exist, any remaining assets of the Alumni must be transferred to another non-profit, tax exempt organization in support of the University or the University itself. Compliance with this provision must be in compliance with applicable IRS regulations. This Agreement constitutes the basic agreement between the parties with respect to the services of the Alumni. This Agreement may be amended only by an instrument in writing specifically referring to this Agreement and executed by duly authorized representatives of both parties to this Agreement. This Agreement supersedes the Fourth Amended Relationship Agreement between the Alumni and the University dated March 2011. If any provision(s) of this Agreement shall, for any reason, be held violative of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision(s) shall not be held to
invalidate any other provisions, which shall remain in full force and effect, unless the absence of such invalidated provision(s) would materially alter the purpose and intent of this Agreement. The parties acknowledge that the Alumni has, and the Alumni agrees to keep in effect, a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended, entitles “Conflict of Interest Transaction”.

After the execution of this Agreement, the maximum period of time for which the Alumni shall enter into contracts for professional, advisory, or other personal services shall be two (2) years. The headings of the several Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Affiliation Agreement shall also extend, as applicable, to any entity owned or controlled by the Alumni which holds funds or other assets for the benefit of the University.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

12. MSU - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH MISSISSIPPI STATE UNIVERSITY FOUNDATION, INC.

Mississippi State University requests Board approval of the below proposed affiliation agreement between the University and Mississippi State University Foundation, Inc. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Mississippi State University
and
Mississippi State University Foundation, Inc.

THIS AFFILIATION AGREEMENT ("Agreement") is entered into as of the 1st day of January, 2018, by and between MISSISSIPPI STATE UNIVERSITY ("University") and MISSISSIPPI STATE UNIVERSITY FOUNDATION, INC. ("Foundation").

WHEREAS, the University is an institution of higher education, and an agency of the State of Mississippi; and

WHEREAS, the Foundation is a Mississippi non-profit corporation, recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code, the purpose of which
is to solicit, invest, manage, administer and recognize private gifts which support the educational, research and service missions of the University; and

WHEREAS, the Foundation, in connection with its major gift fund-raising and asset management activities, utilizes personnel experienced in both planning and management of solicitation of private contributions and the investment, accounting and disbursement of these assets; and

WHEREAS, the President of the University (hereinafter referred to as the "President") believes that it is in the best interest of the University for fund raising to be coordinated through the Foundation to increase efficiency and to expand the current sources of support for the University and desires to engage the services of the Foundation in accordance with the terms and conditions more fully set forth herein below; and

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c)(3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the "Board" or "IHL") Policy 301.0806 (the "Policy");

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. **Relationship of Parties.** The Foundation is a not-for-profit corporation, organized under the laws of the State of Mississippi. In accordance with its Articles of Incorporation, the Foundation is to be administered and operated exclusively for the benefit of the University. However, the Foundation is not a subsidiary of the University and is not directly or indirectly controlled by the University. The independent Board of Directors of the Foundation is entitled to make all decisions regarding the business and affairs of the Foundation. Moreover, the assets of the Foundation are the exclusive property of the Foundation and do not belong to the University. The resources of the Foundation are committed and disbursed at the discretion of the Foundation's Board of Directors in accordance with donor directions and with Foundation policy, developed and updated as needed in cooperation with the University. No University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Board of Directors of the Foundation, but may serve as an ex-officio non-voting member.

2. **Foundation Services.** During the term of this Agreement, the Foundation shall be responsible for conducting on behalf of the University, as specifically requested by the University, goal-specific fund-raising activities, campaigns and development initiatives (collectively, the "Programs") for the purpose of securing financial support from the general public for the benefit of the University. The Foundation shall consult and coordinate with the University regarding the
Foundation's means and methods for conducting the Programs. In its operations and in performing services for the University, the Foundation shall comply with all applicable state and federal law. The services to be performed by the Foundation hereunder shall include, but not be limited to:

A. Planning and coordinating fund-raising activities, including major gift campaigns, annual giving campaigns, and fund-raising initiatives as requested by the President, with the various colleges, schools, departments, and operating units within the University.

B. Notifying all designated University beneficiaries of gifts and contributions to the Foundation for their benefit, including the terms of any restrictions on such gifts, and making regular reports of fund balances and expenditures available to account administrators and department administrators.

C. Receiving all gifts and contributions to the University for necessary and appropriate acknowledgment, as required by the Internal Revenue Code, and delivery to the Chief Financial Officer of the Foundation for recording and deposit. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi.

D. Planning, supervising, and directing fundraising and donor stewardship programs specified by the University including coordination with various groups at the University.

E. Directing the services of a professional staff for major gift, gift planning and corporate and foundation development activities, prospect research, donor stewardship, investments, accounting and disbursement.

F. Working where appropriate with the designated offices of the University to arrange press conferences, press releases, and radio and television communications to acknowledge significant gifts.

G. Maintaining records concerning charitable pledges, gifts, and contributions to the University.

H. Providing the services of trained development professionals (the "Directors of Development") to the various Colleges of the University (collectively, the "Colleges"), as appropriate, subject to approval by the President of the University and the College represented and the continued availability of funds. The addition of a Director of Development
dedicated to support of a College of the University will be by agreement with the President of the University in consideration of the Foundation’s budget and need based upon analysis of the College’s potential for increased success. The services to be performed by the Foundation shall include, but not be limited to, management of fund-raising Programs of the specific Colleges, through the following activities:

(i) Researching individuals, foundations, and corporations to determine qualification as prospective donors;

(ii) Planning and advising the University on the best strategy for approaching each potential donor;

(iii) Arranging for the preparation and dissemination of necessary and appropriate materials for the Programs, including, without imitation, brochures, slide presentations, pledge forms, and funding proposals;

(iv) Soliciting major gifts for the benefit of the College and the University; and

(v) Coordinating all follow-up activities after each solicitation and fund-raising event.

I. Coordinating with Student Financial Aid, the Office of Enrollment Services, the Honors Program Office, the Provost Office, and University Colleges or departments in the management and recognition of all scholarship programs.

J. Providing University-wide recognition of major donors and deferred gift donors through the formal stewardship programs established by the Foundation and advising and coordinating with College-based stewardship activities.

K. Providing access for University personnel to in-house fund-raising training by outside professionals.

L. Providing office space in the Foundation's building for the University Vice President for the Division of Development and Alumni, and his immediate staff.

M. Providing timely transfer for funds, reimbursement of expenses or payment of vouchers approved in accordance with Foundation policy.
N. Providing supplemental compensation to certain university employees at the discretion of the President of the University and the Foundation's Board of Directors.

O. Managing assets of the University, upon request of the University, in accordance with the Joint Venture Agreement, as amended from time to time, a copy of which is attached hereto as Exhibit "A". The IHL shall have the right to inspect and audit such funds.

P. Such other duties as the University may reasonably request as necessary or desirable to effectively conduct the Programs and provide the Services.

3. University Obligations. For all services rendered by the Foundation under this Agreement, and in consideration of the agreements of the Foundation contained herein, the University shall, at no additional cost to the Foundation, during the term of this Agreement:

A. Provide to the Foundation all personnel necessary for the performance of its duties under this Agreement; such personnel shall be selected, hired and discharged by the University; the compensation of such personnel, together with all fringe benefits, employment taxes, and other costs thereof, shall be set and paid by the University; all such personnel shall be under the full supervision and control of the University and shall for all purposes be considered employees of the University.

B. Provide offices, utilities, and other support for the college or unit Directors of Development as necessary and appropriate for work on-site within the Colleges, adequate for the performance of the services required hereunder.

C. Reimburse the Foundation for certain reasonable business expenses, which the Foundation may incur on the University's behalf.

4. Determination of Needs for Solicitation of Private Funds. It is understood and agreed that Foundation shall look to the University for a determination of specific needs and programs for which the Foundation shall plan and manage as a part of its fund-raising programs. However, the University understands the importance of long-range planning in fund solicitation and agrees to involve the Foundation in the process of determining the specific needs and programs as well as the planning for the Programs themselves. The President of the University shall be responsible for planning for these specific needs and Programs.

5. Financial Statements. The Foundation shall maintain financial and accounting records which shall include such detail as the IHL may require in accordance with Generally Accepted Accounting Principles, which records shall be maintained...
separately from the records of the University. These financial records shall be audited annually by a Certified Public Accounting firm engaged for that purpose by the Foundation and approved by the IHL. The Foundation shall submit annual audited financial statements for inclusion in the State of Mississippi's Comprehensive Annual Financial Report ("CAFR") as determined by the IHL Board's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit to the President and to the IHL, along with a list of Foundation officers and directors by October 15 of each year. A request for approval of the CPA firm shall be submitted to the IHL Board on an annual basis not later than three months prior to the end of the Foundation's fiscal year for which the audit will be conducted unless approval is specifically granted for multiple years.

6. Confidential Records. Certain donor and fund information maintained in furtherance of the Foundation’s fundraising activities is recognized to be the property of the Foundation and as such is confidential whether in paper or electronic format. The parties acknowledge that the Foundation's electronic donor records, including, but not limited to related biographical, pledge, and gift records, are the exclusive property of the Foundation, regardless of the server or computer on which the records reside. To the extent information shared with the University may be protected from disclosure, the University will take all necessary action to protect such information under available statutory exceptions if disclosure would result in a breach of confidence by the Foundation or public disclosure of private information. In particular, the University will actively pursue the protection of the identity of donors and any information the Foundation may collect about the donors and shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.

If requested by the University, the Foundation shall provide any and all information and allow inspection of all records relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President or his designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University shall take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes; however, it is understood that the appropriate
extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial or proprietary information or to release any information that would identify any particular donor shall be made by the IHL, acting upon its minutes.

7. Communications. The President of the University shall be responsible for communicating to the Foundation priorities and long-term plans of the University. The parties shall work together to encourage communications between members of the Board of Trustees of Institutions of Higher Learning and the Board of Directors of the Foundation to include periodic meetings between the members of the Board of Trustees, the President of the Foundation, and the President of the University. To provide the Directors with the appropriate information to assist them in the proper execution of their duties and responsibilities as the Board of Directors of the Mississippi State University Foundation, Inc., the University shall furnish the Foundation reports, schedules and records as may be requested by the Foundation, and the Directors of the Foundation will seek input from the President of the University in defining major needs and priorities.

8. Gift Receipting and Ownership. All gifts received by the University shall be immediately forwarded to the Foundation for acknowledgment in accordance with (2)(C) of this Agreement to ensure proper receipting and recording of all gifts into a common record. Gifts made to the University shall be accounted for and ownership maintained by the University; gifts made to the Foundation shall be accounted for and ownership maintained by the Foundation. However, checks made payable to the University will be endorsed and transferred to the Foundation if a gift agreement exists between the donor and the Foundation. If a check is made payable to the University and no gift agreement exists between the Foundation and the donor, the donor will be contacted to clarify his intent. It will be explained that, in most situations, it is the University's desire to have funds held within the Foundation. The intent expressed by the donor will then control the delivery and ownership of the funds.

9. Independent Contractor. It is understood and agreed that the Foundation, its officers, employees, and agents, if any, shall act solely in the capacity of an independent contractor and not as employees of or agents for the University.

10. Foundation Funding. The Foundation, with the consent of the University, which consent shall not be unreasonably withheld, may use a percentage of the annual unrestricted funds, assess fees for services, or impose charges against managed funds to support its operations.

11. Term of Agreement and Termination. Subject only to the provisions for termination as hereinafter set forth, the initial term of this Agreement shall begin
on January 1, 2018, and end on December 31, 2022, if not renewed by mutual consent of the parties before that date.

A. The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

B. The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Foundation may not terminate the Agreement without the prior approval of the University President and the IHL.

C. Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the President; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

D. The Foundation agrees to cease using University’s name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation, or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

E. In the event that the President notifies IHL that the relationship between the President and the Foundation is detrimental to the well being of the University, IHL shall attempt to reconcile the parties, including through mediation if advisable. However, if the IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of Directors of the Foundation, the President may direct that at the expiration of a ninety-day period, the terms of office of up to 100% of the total number of Directors shall be deemed to have expired. Upon such event a five person Commission shall be selected as
follows: (1) one member appointed by the President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the Mississippi State University Alumni Association, and (4) two members appointed by a majority vote of the then living and competent individuals (not including entities such as corporations or foundations) who are members of the Zacharias Roundtable, McComas Benefactors, and Giles Partners donor groups as the Foundation, or the then existing equivalent donor groups with a lifetime giving of Five Million Dollars ($5,000,000) or greater, by whatever name. The Commission shall then appoint, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. It is expressly understood that any, or all, of the previous members of the Board of Directors of the Foundation may be re-appointed by this Commission. The reconstituted Board of Directors shall then elect new officers of the Foundation which may include former officers or Board Members.

F. The Foundation may not terminate this Affiliation Agreement without the consent of the President and the IHL.

12. Notices. Any notice, request, demand, or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to an officer of the Foundation or the President of the University, as the case may be, when delivered by electronic mail, or when deposited in the United States mails, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the Foundation and the University as shown below, or to such other address as either party shall designate by written notice to the other:

As to the University: President
Mississippi State University
P. O. Box 6018
Mississippi State, MS 39762

As to the Foundation: Chairman of the Board
Mississippi State University Foundation, Inc
P. O. Box 6149
Mississippi State, MS 39762

13. Assignment. Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.
14. **Applicable Law.** This Agreement shall be construed, interpreted and the rights and duties of the parties determined in accordance with the laws of the State of Mississippi.

15. **Reportable Events and Notices.**

   A. The Foundation Chair of the Board shall promptly notify the President and the IHL, in writing, if any of the following events (“Reportable events”) occur:

      (i) The Foundation has materially breached any of its contractual obligations under the Agreement;

      (ii) The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

      (iii) The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

      (iv) There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;

      (v) Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or

      (vi) The Foundation has contracted with or entered into any business or pecuniary relationship with any of its Board members, other than a full time employee of the Foundation, or any entity controlled directly or indirectly by the Board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of Fifty Thousand Dollars ($50,000) in any calendar year; The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

   B. The President of the Foundation shall submit to the President and the signed certification statement annually, before January 31 of each year,
which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President and the IHL, as required above. The President of the Foundation shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Foundation President will immediately notify, in writing, the President of the University.

16. **Miscellaneous**

A. The Foundation agrees to perform major gift fund-raising activities as requested by the University and shall not hold an exclusive right to other activities such as solicitation for support of athletic programs as currently performed by the Bulldog Club and the Bulldog Foundation, Inc. However, the University shall not make any contract or commitment with any other individual, corporation, association, or partnership concerning such activities without first notifying the Foundation.

B. The parties acknowledge that the Foundation has, and the Foundation agrees to keep in effect, a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended, entitled "Conflict of Interest Transaction".

C. The President of the University shall make all necessary reports to the Commissioner of Higher Education concerning supplemental compensation or salary supplements made by the Foundation to administrators, faculty, athletic staff, and other employees of the University. No form of additional compensation for the President or any IHL system office employee be underwritten or increased by the Foundation without the prior approval of the IHL. The request for approval shall come through the Commissioner to the IHL Board. As to other University employees, no form of additional compensation may be provided or paid by the Foundation without the prior approval by the President. This provision does not apply to transfers from the Foundation to the University for items such as professorships, chairs, and other programmatic support that are paid directly to the University and included in its annual budget.

D. After the execution of this Agreement, the maximum period of time for which the Foundation shall enter into contracts for professional, advisory, or other personal services shall be two (2) years.
E. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

F. This Agreement constitutes the basic agreement between the parties with respect to the services of the Foundation concerning the Programs. This Agreement may be amended only by an instrument in writing specifically referring to this Agreement and executed by duly authorized representatives of both parties to this Agreement.

G. This Agreement replaces and supersedes all similar agreements between the Foundation and the University.

H. If any provisions of this Agreement shall, for any reason, be held violative of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provisions, which shall remain in full force and effect.

I. The headings of the several Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

J. This Affiliation Agreement shall also extend, as applicable, to any entity owned or controlled by the Foundation which holds funds or other assets for the benefit of the University.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

13. MSU - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE BULLDOG CLUB

Mississippi State University requests Board approval of the below proposed affiliation agreement between the University and the Bulldog Club, Inc. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General has approved this request.
THIS AGREEMENT ("Agreement") is entered into as of the 1st day of January, 2018, by and between MISSISSIPPI STATE UNIVERSITY ("University") and THE BULLDOG CLUB, INC. ("Club").

WHEREAS, the University is an institution of higher education, and an agency of the State of Mississippi; and

WHEREAS, the Club is a Mississippi non-profit corporation, recognized as tax exempt under Section 501(c) (3) of the Internal Revenue Code, the purpose of which is to support athletic programs (the "Programs") of the University by raising funds to support athletics in all of its aspects as may be requested by the University; and

WHEREAS, the Club has the obligation and the ability to use its resources in a responsible and effective manner to operate exclusively for the benefit of University athletics by providing certain services and funding to support the various needs of University’s athletics programs; and

WHEREAS, the University has determined that it is in its best interest for athletic fund raising and other services to be coordinated through the Club to increase efficiency and to expand the current sources of support for the Programs and desires to engage the services of the Club in accordance with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Relationship of Parties. The Club is a not-for-profit corporation, organized under the laws of the State of Mississippi. In accordance with its Articles of Incorporation, the Club is to be administered and operated exclusively for the benefit of the Programs of the University. However, the Club is not a subsidiary of the University and is not directly controlled by the University. The independent Board of Directors of the Club is entitled to make all decisions regarding the business and affairs of the Club. Moreover, the assets of the Club are the exclusive property of the Club and do not belong to the University. The resources of the Club are committed and disbursed at the discretion of the Club's Board of Directors in accordance with donor directions and with Club policy developed and updated as needed in cooperation with the University. No university employee or other persons directly or indirectly employed by IHL shall serve as a voting member of the Board of Directors unless approved by IHL, but
may serve as an ex-officio non-voting member. No member of the IHL Board shall hold a voting position.

2. **Club Services.** The services to be performed by the Club hereunder shall include, but not be limited to:

   A. Planning and coordinating fund-raising activities, annual giving campaigns, fund-raising initiatives, making capital improvements, entering into contracts in its discretion as requested by the President, in cooperation with the MSU Foundation, Inc., and the University Athletics Department. The Club shall operate and perform services in compliance with all applicable state and federal laws.

   B. Notifying the Director of Athletics of all designated gifts and contributions to the Club for the benefit of Athletics, including the terms of any restrictions on such gifts, and making regular reports of fund balances and expenditures available to appropriate University administrators.

   C. Receiving all gifts and contributions to the Club for necessary and appropriate acknowledgment, as required by the Internal Revenue Code, and delivery to the chief financial officer of the Club for recording and deposit. Assets of the Club shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi.

   D. Directing the services of a professional staff for campaigns, planning, and corporate and Club development activities, prospect research, donor stewardship, investments, accounting, and disbursement.

   E. Working where appropriate with the designated offices of the University to arrange press conferences, press releases, and radio and television communications to acknowledge significant gifts.

   F. Maintaining records concerning charitable pledges, gifts, and contributions to the Club.

   G. Coordinating with appropriate university officials in the management and recognition of all scholarship programs.

   H. Providing timely transfer for funds, reimbursement of expenses or payment of vouchers approved in accordance with Club policy.
I. Manage, control, market, and sell seating and parking, as designated by the University, for athletic events.

J. Manage, plan, design, fund, and oversee construction of athletic facilities as designated by the University for the Athletic Department.

K. Provide supplemental compensation to certain University athletics employees as requested by and at the discretion of the President of the University and as approved by the Club’s Board of Directors.

L. Provide vehicles for use by coaches, assistants and other university employees as requested by the University and determined to be beneficial by the Club.

M. Administer, including marketing, production and distribution of, (1) radio and television networks and programming, and (2) publications for appropriate University Athletics programs; sell all advertising and sponsorships for such broadcasting, programming and publications, and receive revenues, if any, derived therefrom.

N. Administer, including marketing and selling, all corporate advertisements and sponsorships for University Athletics events and venues within guidelines agreed to by the University and receive all revenues, if any, derived therefrom.

O. Administer all athletic team apparel and footwear uses and sponsorships and receive all revenues, if any, derived therefrom.

P. Such other duties as the University may reasonably request as necessary or desirable to effectively conduct the programs and services of the University’s Department of Athletics.

Q. University assets shall not be managed by the Club or its voting Directors.

3. University Obligations. For all services rendered by the Club under this Agreement, and in consideration of the agreements of the Club contained herein, the University shall, at no additional cost to the Club, during the term of this Agreement:

A. Provide to the Club all personnel necessary for the performance of its duties under this Agreement; such personnel shall be selected, hired, and discharged by the University; the compensation of such personnel, together with all fringe benefits, employment taxes, and other costs thereof, shall be set and paid by the University; all such personnel shall be
under the full supervision and control of the University and shall for all purposes be considered employees of the University.

B. Provide offices, furnishing and equipment, utilities, and other support for the Club as necessary and appropriate for the performance of the services required hereunder.

C. Reimburse the Club for certain reasonable business expenses, which the Club may incur on the University's behalf.

D. Grant the Club exclusive multi-media advertising and sponsorship rights, including the right to market, sell and transfer such rights, for the University Athletics programs. Such rights shall include, without limitation, advertising and sponsorship rights associated with print, media, radio and television programming, existing and new signage at University athletic events and venues and related promotional and sponsorship rights for the University’s athletics programs.

E. Grant the Club exclusive athletic team apparel and footwear use and sponsorship rights.

4. **Determination of Needs for Solicitation of Private Funds.** It is understood and agreed that the Club shall look to the University for a determination of specific needs and athletic programs the Club shall plan and manage as a part of its fund-raising efforts. However, the University understands the importance of long-range planning in fund solicitation and agrees to involve the Club in the process of determining the specific needs and programs. The President of the University shall be responsible for planning for these specific needs and programs.

5. **Financial Statements.** The Club shall maintain financial and accounting records and annual financial statements in accordance with Generally Accepted Accounting Principles, which records shall be maintained separately from the records of the University. These financial records shall be audited annually by a Certified Public Accounting firm engaged for that purpose by the Club and approved by IHL. These statements shall contain such detail as the IHL Board may from time to time require. The Club shall furnish, subject to such terms and conditions as required, to the University and IHL by March 1 of each year such audited financial statements together with a list of the officers and directors of the Club.

The Club understands and agrees its Audited Financial Statement may be required for inclusion State of Mississippi’s Comprehensive Annual Financial Report(CAFR). If so required the Club will submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Deputy
Commissioner of Finance and Administration and external auditing firm hired to perform the annual IHL system audit. If requested the Club will furnish the annual audited financial statements to the President and to IHL, along with a list of Club officers and directors by October 15 of the year requested. The IHL Board’s Deputy Commissioner of Finance and Administration shall notify the Club of the applicability of the October 15 deadline as far in advance of the deadline as possible each year.

The CPA firm utilized by the Club must be approved by the IHL Board and all requests for approval of such firm must be submitted to the IHL Board. All requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three (3) months prior to the end of the Club’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and the Club shall then submit requests for CPA approval on an annual basis. The Club and the President may request a waiver of the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as limited assets which make the expense of such an audit financially burdensome to the Club and unnecessary. The IHL Board may grant such a waiver which may be conditioned upon such other review of the financial records of the Club as the University and IHL may deem feasible. The Club shall accompany such request for a waiver with (a) its most recent annual audited financial statement (if it exists), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Club anticipates the year-end financial statement for the current year will differ from the financial statements of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request for such a waiver is within the sole discretion of the University and the IHL Board. Any waiver granted shall apply only for one year, and any request to waive the requirement for any succeeding year will be submitted as above set out.

6. **Confidential Records.** Certain donor and fund information and contracts maintained in furtherance of the Club's fundraising activities and other services is recognized to be the property of the Club and as such is confidential whether in paper or electronic format. The parties acknowledge the Club's electronic donor records, including, but not limited to related biographical, pledge, and gift records, and contracts entered into by the Club are the exclusive property of the Club, regardless of the server or computer on which the records reside. To the extent information shared with the University may be protected from disclosure, the University will notify the Club before disclosure to afford the University and the Club an opportunity to take all necessary action to protect such information under available statutory exceptions if disclosure would result in a breach of
confidentiality or public disclosure of confidential, or private information. In particular, the University will actively join with the Club to pursue the protection of the identity of donors and any information the Club may collect about said donors and shall establish and enforce policies that support the Club's ability to respect the privacy and confidentiality of donor records.

If requested by the University, the Club shall provide any and all information relating to the operation or management of the Club or any funds contributed to, received by, expended by, or managed by the Club. To the extent that information is inspected, reviewed or received by the President or his designees with respect to the identity of donors who have expressly stated they wish to maintain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University shall take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to IHL acting upon its minutes; however, it is understood the appropriate extent of any disclosure or other use of the information is in the discretion of IHL and, further, any decision to release any personal, commercial, or proprietary information that would identify any particular donor shall be made by IHL, acting upon its minutes.

7. Communications. The President of the University shall be responsible for communicating to the Club priorities and long-term plans of the University. The parties shall work together to encourage communications between the Board of Trustees of State Institutions of Higher Learning and the Board of Directors of the Club. To provide the Directors with the appropriate information to assist them in the proper execution of their duties and responsibilities as the Board of Directors of the Club, the University shall furnish the Club reports, schedules and records as may be requested by the Club, and the Directors of the Club will seek input from the President of the University in defining major needs and priorities.

8. Gift Receipting and Ownership. All gifts received by the University for athletics shall be immediately forwarded to the Club for acknowledgment in accordance with section 2(C) of this Agreement to ensure proper receipting and recording of all athletics gifts into a common record. Gifts made to the Club shall be accounted for and ownership maintained by the Club. However, checks made payable to the University will be transferred to the Club if a gift agreement, pledge, or expectancy exists between the donor and the Club. If a check is made payable to the University and no gift agreement, pledge, or expectancy exists between the Club and the donor, the donor will be contacted to clarify his intent.
The intent expressed by the donor will control the delivery and ownership of the funds. Certain non-endowed gifts made for athletics may be received through the MSU Foundation, Inc. ("Foundation") as part of annual giving appeals, or otherwise. In these cases, the Foundation will acknowledge the gifts and hold the funds until disbursement is requested by the Club. If a donor wishes to establish an endowed fund for the benefit of athletics through the Foundation, normal policies governing the investment and disbursement of investment income from endowed funds will apply as set forth by the Board of Directors of the Foundation.

9. **Trademark/Logo Usage:** To assist the Club in discharging its obligations under this Agreement, the University grants the Club a non-exclusive worldwide license to use University trademarks, service marks and logos consistent with University policy and the terms and conditions of this Agreement. It is understood and agreed that the University’s name, marks and logos have great economic and public relations value. The Club shall not assign or delegate authority to use the University’s name, marks or logos to any person or entity without the written approval of the University’s Trademark Licensing office.

10. **Club Funding.** The Club, with the consent of the University, which consent shall not be unreasonably withheld, may use a percentage of the annual unrestricted funds, assess fees for services, or impose charges against managed funds to support its operations.

11. **Term of Agreement.** Subject only to the provisions for termination as hereinafter set forth, the initial term of this Agreement shall be for a period beginning on January 1, 2018, and ending on December 31, 2022, and shall continue thereafter from year to year.

   A. The University may terminate this Agreement without cause with thirty (30) days written notice to the Club and with the prior approval of IHL, acting upon its minutes.

   B. The University may terminate this Agreement for cause, without notice to the Club but with notice to IHL and prior approval of IHL, acting upon its minutes.

   C. Upon termination and non-renewal of this Agreement: (1) the Club shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President; (2) the Club shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University; (3) the Club shall work in concert with its donors, to the extent
practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University; (4) the Club shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the President; and, (5) the Club shall work in concert with the University to provide the University or its designee with records and materials of the Club as are necessary to continue the business and/or wind up the affairs of the Club.

D. The Club agrees to cease using University’s name, marks, and logos, in the event that the Club dissolves, ceases to be a non-profit corporation, or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code.

E. In the event that the President notifies IHL, that the relationship between President and the Club is detrimental to the well being of the University, IHL shall attempt to reconcile the parties, including through mediation, if advisable. However, if IHL determines and notifies the President that it is in the best interest of the University to substitute new members of the Board of Directors of the Club, the President may direct that at the expiration of a ninety-day period, the terms of office of up to 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five person Commission shall be selected as follows: (1) one member appointed by the President; (2) one member appointed by IHL; (3) one member appointed by the Board of Directors of the Mississippi State University Alumni Association; and, (4) two members appointed by a majority vote of the Athletic Director, the Faculty Representative of the Athletic Department and the living three (3) largest lifetime individual donors to the Bulldog Club not members of the Board of Directors and who were not removed as a director under the provisions of this subsection. The Commission shall then appoint, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. It is expressly understood that any one, or all, of the previous members of the Board of Directors of the Club may be re-appointed by this Commission. The reconstituted Board of Directors shall then elect new officers of the Club, which may include former officers or Board Members.

F. The Club may not terminate this Affiliation Agreement without the consent of the President and IHL

12. This agreement shall apply to any and all entities owned or controlled by the Club, with the exception of a special purpose entity created for the sole and
specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. Should the use/purpose of any such special purpose entity change, the Club will comply with any and all provisions of the affiliation agreement between the University and the entity owning or controlling the special purpose entity.

13. **Notices.** Any notice, request, demand, or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to an officer of the Club or the President of the University, as the case may be, or when deposited in the United States mails, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the Club and the University as shown below, or to such other address as either party shall designate by written notice to the other:

   As to the University:  
   MISSISSIPPI STATE UNIVERSITY  
   Post Office Box 6018  
   Mississippi State, MS  39762

   As to the Club:  
   President  
   THE BULLDOG CLUB  
   Post Office Box BT  
   Mississippi State, MS 39762

14. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part by one party without the written consent of the other party.

15. **Applicable Law.** This Agreement shall be construed, interpreted and the rights and duties of the parties determined in accordance with the laws of the State of Mississippi.

16. **Independent Contractor.** It is understood and agreed that the Club, its officers, employees, and agents, if any, shall act solely in the capacity of an independent contractor and not as employees of or agents for the University.

17. **Reportable Events and Notices.**

   A. The Club President shall promptly notify the President and IHL, in writing, if any of the following events ("Reportable Events") occur:

   (i) The Club has materially breached any of its contractual obligations under the Agreement;
(ii) The Club has materially failed to properly receive, apply, manage, or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

(iii) The Club has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

(iv) There has been a failure by the Club or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing document or procedures of the Club;

(v) Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Club or upon its status as a tax exempt organization; or

(vi) The Club has contracted with or entered into any business or pecuniary relationship with any of its Board members, other than a full-time employee of the Club, or any entity controlled directly or indirectly by the Board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of Fifty Thousand Dollars ($50,000) in any calendar year; the previous sentence creates a duty to the Club to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

B. The President of the Club shall submit to the President and IHL a signed certification statement annually, before January 31 of each year, which affirmatively states the Club has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and to the best of its knowledge, there is no evidence any Reportable Event occurred, other than those which have been duly reported to the President and IHL, as required above. The President of the Club shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Club President will immediately notify, in writing, the President of the University.

18. Miscellaneous.

A. It is recognized that the Mississippi State University Foundation, Inc. is primary in major gift fund-raising activities as requested by the University but does not hold an exclusive right to other activities such as solicitation for support of athletic programs as currently performed by the Club.
However, the University has agreed to first notify the MSU Foundation, Inc. before making any contract or commitment with any other individual, corporation, association, or partnership concerning such activities.

B. The parties acknowledge the Club has, and the Club agrees, to keep in effect a conflict-of-interest policy that complies with all requirements of MISS. CODE ANN. § 79-11-269 (1972), as amended.

C. The President of the University shall make all necessary reports to the Commissioner of Higher Education concerning supplemental compensation or salary supplements made by the Club to employees of the University. No form of additional compensation for the President or any IHL system office employee may be underwritten or increased by the Club without prior approval of the IHL Board.

D. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

E. This Agreement constitutes the basic agreement between the parties with respect to the services of the Club concerning athletics programs. This Agreement may be amended only by an instrument in writing specifically referring to this Agreement and executed by duly authorized representatives of both parties to this Agreement.

F. This Agreement supersedes and cancels all prior, similar agreements between the Club and the University.

G. If any provisions of this Agreement shall, for any reason, be held violative of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provisions, which shall remain in full force and effect.

H. The maximum period of time for which the Club shall enter into contracts for professional, advisory, or other personal services shall be six (6) years.

I. The headings of the several Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be as of the day and year first above written.
14. **MSU - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE MISSISSIPPI STATE UNIVERSITY RESEARCH AND TECHNOLOGY CORPORATION**

Mississippi State University requests Board approval of the below proposed affiliation agreement between the University and the Mississippi State University Research and Technology Corporation. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement Between Mississippi State University and the Mississippi State University Research and Technology Corporation**

THIS AGREEMENT ("Agreement") is entered into as of the 1st day of January, 2018, by and between MISSISSIPPI STATE UNIVERSITY ("University") and MISSISSIPPI STATE UNIVERSITY RESEARCH AND TECHNOLOGY CORPORATION ("MSU-RTC").

WHEREAS, the University is an institution of higher education, and an agency of the State of Mississippi; and

WHEREAS, the MSU-RTC is a 501(c)(3), non-profit corporation formed and approved pursuant to Mississippi Code Annotated Section 37-147-15, the purpose of which is to promote, develop and administer enterprises arising from research and technology innovations in order to take advantage of opportunities of scientific, educational and economic development on behalf of the University; and

WHEREAS, the President of the University (hereinafter referred to as the "President") believes that it is in the best interest of the University for MSU-RTC to provide support to the University and desires to engage the services of the MSU-RTC in accordance with the terms and conditions more fully set forth herein below; and

WHEREAS, the University has the authority and right to enter into this agreement subject to the Institutions of Higher Learning Board of Trustees (the "Board" or "IHL") Policy 301.0806 (the "Policy");

NOW, THEREFORE, in consideration of the premises, and the mutual covenants
and agreements contained herein, the parties hereby agree as follows:

1. **Relationship of Parties.** The MSU-RTC is a non-profit corporation created pursuant to Section 37-147-15 of the Mississippi Code Annotated (1972). In accordance with its Articles of Incorporation, the MSU-RTC is to be administered and operated for the benefit of the University. However, the MSU-RTC is not a subsidiary of the University and is not controlled by the University. The Board of Directors of the MSU-RTC is entitled to make all decisions regarding the business and affairs of the MSU-RTC. Moreover, the assets of the MSU-RTC are the exclusive property of the MSU-RTC and do not belong to the University.

2. **MSU-RTC Services.** During the term of this Agreement, the MSU-RTC shall be responsible for conducting on behalf of the University, as specifically requested by the University, research-related contracting, intellectual property rights assignment, licensing and management, property development and management, and related services (“Services”). MSU-RTC shall consult with and coordinate with the University regarding the MSU-RTC’s means and methods for providing such Services. In its operations and in performing services for the University, the MSU-RTC shall comply with all applicable state and federal law. The services performed by MSU-RTC shall include, but not be limited to:

   A. Promote, develop and administer enterprises arising from research or technological innovations in order to take advantage of opportunities of scientific, educational and economic development.

   B. To manage assigned University intellectual properties and related University assets.

   C. To receive and hold on behalf of the University equity interests in licenses of intellectual properties.

   D. Own, manage, develop, plan, design, and sub-lease property associated with the Thad Cochran Research, Technology & Economic Development Park and other University owned or controlled properties utilized for research and economic development purposes.

   E. Accept, manage, hold and administer research contracts, grants, and gifts at the request of the University.

   F. Manage all funds in its control in a fiscally sound and prudent manner.

   G. Such other duties as the University may reasonably request as necessary or desirable to effectively conduct the research and economic development programs, services and mission of the University.
3. **University Obligations.** For all services rendered by the MSU-RTC under this Agreement, and in consideration of the agreements of the MSU-RTC contained herein, the University shall, at no additional cost to the MSU-RTC, during the term of this Agreement:

A. Provide to the MSU-RTC all personnel necessary for the performance of its duties under this Agreement; such personnel shall be selected, hired and discharged by the University; the compensation of such personnel, together with all fringe benefits, employment taxes, and other costs thereof, shall be set and paid by the University; all such personnel shall be under the full supervision and control of the University and shall for all purposes be considered employees of the University.

B. Provide offices, furnishing and equipment, utilities, and other support for the MSU-RTC as necessary and appropriate for the performance of the services required hereunder.

C. Reimburse the MSU-RTC for certain reasonable business expenses, which the MSU-RTC may incur on the University's behalf.

4. **Financial Statements.** The MSU-RTC shall maintain financial and accounting records in accordance with Generally Accepted Accounting Principles, which records shall be maintained separately from the records of the University. These financial records shall be audited annually by a Certified Public Accounting firm engaged for that purpose by the MSU-RTC and approved by the IHL. These statements shall contain such detail as the IHL Board may from time to time require. The MSU-RTC shall submit annual audited financial statements for inclusion in the State of Mississippi's Comprehensive Annual Financial Report ("CAFR") as determined by the IHL Board's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit to the President and to the IHL, along with a list of MSU-RTC officers and directors by October 15 of each year. A request for approval of the CPA firm shall be submitted to the IHL Board on an annual basis not later than three months prior to the end of the MSU-RTC’s fiscal year for which the audit will be conducted unless approval is specifically granted for multiple years.

5. **Confidential Records.** Certain information and contracts maintained in furtherance of the MSU-RTC’s activities and other services is recognized to be the property of the MSU-RTC and as such is confidential whether in paper or electronic format. To the extent information shared with the University may be protected from disclosure, the University will notify the MSU-RTC before disclosure to afford the University and the MSU-RTC an opportunity to take all necessary action to protect such information.
under available statutory exceptions if disclosure would result in a breach of confidentiality or public disclosure of confidential, or private information. If requested by the University, the MSU-RTC shall provide any and all information relating to the operation or management of the MSU-RTC or any funds contributed to, received by, expended by, or managed by the MSU-RTC. The University shall take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to IHL acting upon its minutes; however, it is understood the appropriate extent of any disclosure or other use of the information is in the discretion of IHL and, further, any decision to release any personal, commercial, or proprietary information shall be made by IHL, acting upon its minutes.

6. **Grant and Gift Receipting and Ownership.** All grants and gifts made to the University but managed by the MSU-RTC shall be accounted for and ownership maintained by the University. All grants and gifts made to the MSU-RTC shall be accounted for and ownership maintained by the MSU-RTC. However, checks made payable to the University will be transferred to the MSU-RTC if a grant or gift agreement or expectancy exists between the grantor/donor and the MSU-RTC. If a check is made payable to the University and no grant or gift agreement or expectancy exists between the MSU-RTC and the grantor/donor, the grantor/donor will be contacted to clarify his intent. The intent expressed by the grantor/donor will control the delivery and ownership of the funds. The MSU-RTC shall only accept or solicit grants or gifts for the benefit of the University that are consistent with the University’s mission, goals and objectives.

7. **Independent Contractor.** It is understood and agreed that the MSU-RTC, its officers, employees, and agents, if any, shall act solely in the capacity of an independent contractor and not as employees of or agents for the University.

8. **MSU-RTC Funding.** The MSU-RTC, with the consent of the University, which consent shall not be unreasonably withheld, may use a percentage of the assessed fees for the Services provided to support its operations.

9. **Term of Agreement and Termination.** Subject only to the provisions for termination as hereinafter set forth, the initial term of this Agreement shall begin on January 1, 2018, and end on December 31, 2022, and shall continue thereafter from year to year.

   A. The University may terminate this Agreement without cause with thirty (30) days written notice to the MSU-RTC and with the prior approval of the IHL, acting upon its minutes.

   B. The University may terminate this Agreement for cause, without notice to the
MSU-RTC but with notice to the IHL and prior approval of the IHL, acting upon its minutes.

C. The MSU-RTC may not terminate this Affiliation Agreement without the consent of the President and the IHL.

D. Upon termination and non-renewal of this Agreement: (1) the MSU-RTC shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President; (2) the MSU-RTC shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University; (3) the MSU-RTC shall move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University; (4) the MSU-RTC shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the President; and, (5) the MSU-RTC shall work in concert with the University to provide the University or its designee with records and materials of the MSU-RTC as are necessary to continue the business and/or wind up the affairs of the MSU-RTC.

E. MSU and MSU-RTC expect there to exist a cooperative relationship between them. In the event that the MSU President determines that the relationship with MSU-RTC is detrimental to the well-being of MSU, the MSU President has the authority, pursuant to Miss. Code Ann. 37-147-15(2), to remove a director or director(s) from the MSU-RTC Board of Directors at any time, with or without cause.

10. Notices. Any notice, request, demand, or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to an officer of the MSU-RTC or the President of the University, as the case may be, when delivered by electronic mail, or when deposited in the United States mails, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the MSU-RTC and the University as shown below, or to such other address as either party shall designate by written notice to the other:

As to the University:
President
Mississippi State University
P.O. Box 6018
Mississippi State, MS 39762
As to the MSU-RTC:
President
Mississippi State University Research & Technology Corporation
100 Research Boulevard, Suite 105
Starkville, MS 39759

11. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.

12. **Applicable Law.** This Agreement shall be construed, interpreted and the rights and duties of the parties determined in accordance with the laws of the State of Mississippi.

13. **Reportable Events and Notices.**

   A. The MSU-RTC President shall promptly notify the President and the IHL, in writing, if any of the following events ("Reportable Events") occur:

   i. The MSU-RTC has materially breached any of its contractual obligations under the Agreement;

   ii. The MSU-RTC has materially failed to properly receive, apply, manage, or disburse any funds or has materially failed to properly comply with any binding instructions from the source of those funds relating to those funds;

   iii. The MSU-RTC has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

   iv. There has been a failure by the MSU-RTC or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the MSU-RTC;

   v. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the MSU-RTC or upon its status as a tax exempt organization; or

   v. The MSU-RTC has contracted with or entered into any business or pecuniary relationship with any of its Board members, other than a full time employee of the MSU-RTC, or any entity controlled directly or indirectly by the Board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of Fifty
Thousand Dollars ($50,000) in any calendar year. The previous sentence creates a duty for the MSU-RTC to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

B. The President of the MSU-RTC shall submit to the President and the IHL a signed certification statement annually, before June 30 of each year, which affirmatively states that the MSU-RTC has examined its business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President and the IHL, as required above. The President of the MSU-RTC shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the MSU-RTC President will immediately notify, in writing, the President of the University.


A. The parties acknowledge that the MSU-RTC has, and the MSU-RTC agrees to keep in effect, a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended, entitled "Conflict of Interest Transaction".

B. The President of the University shall make all necessary reports to the Commissioner of Higher Education concerning supplemental compensation or salary supplements made by the MSU-RTC to employees of the University. No form of additional compensation for the President or any IHL system office employee may be underwritten or increased by the MSU-RTC without prior approval of the IHL Board. This provision does not apply to transfers from the MSU-RTC to the University for items such as professorships, chairs, and other programmatic support that are paid directly to the university and included in its annual budget.

C. The maximum period of time for which the MSU-RTC shall enter into contracts for professional, advisory, or other personal services shall be six (6) years.

D. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

E. This Agreement replaces and supersedes all similar agreements between the MSU-RTC and the University.

F. If any provisions of this Agreement shall, for any reason, be held violate of any
applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provisions, which shall remain in full force and effect.

G. The headings of the several Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

H. This agreement shall apply to any and all entities owned or controlled by the MSU-RTC, with the exception of a special purpose entity created for the sole and specific purpose of utilizing as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. Should the use/purpose of any such special purpose entity change, the MSU-RTC will comply with any and all provisions of the affiliation agreement between the University and the entity owning or controlling the special purpose entity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

15. MUW - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH MISSISSIPPI UNIVERSITY FOR WOMEN FOUNDATION

Mississippi University for Women requests Board approval of the below proposed affiliation agreement between the University and the Mississippi University for Women Foundation. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Mississippi University for Women
and the
Mississippi University for Women Foundation

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between Mississippi University for Women, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and The Mississippi University for Women Foundation, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the
University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, The Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated June 4, 1965;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c) (3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the University has an active development program and wishes to utilize enhanced computer capabilities and assistance in the identification, solicitation and stewardship of donors (current or prospective), acknowledgement and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Foundation can provide;

WHEREAS, the University and the Foundation anticipate that the Foundation, as the primary entity for receiving philanthropic support designated for the benefit of the University, will provide the University with specified services in carrying out its mission, and the University will provide the Foundation facilities in carrying out its mission;

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;
NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. UNIVERSITY OBLIGATIONS AND SERVICES

1.1 The Foundation may utilize, with the approval of the University, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the mission and purposes of the Foundation.

1.2 The Foundation and the University agree that the portion of the cost incurred by utilizing University employees for Foundation operational activities will be reviewed annually.

1.3 The University shall provide office space, utilities and other support for the Foundation as needed and appropriate for work on-site within the University, adequate for the performance of the services required hereunder.

1.4 The University shall provide support services to the Foundation of the type provided to University departments including printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

1.5 The University designates the Foundation as the primary entity for receipting, acknowledging, accounting for, managing and investing its endowment funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors.

1.6 The President of the University shall serve ex officio as a non-voting member of the Foundation’s Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation’s Board of Directors.

1.7 Annually, the President of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.
1.8 The President of the University shall submit a request to the Foundation for utilization of unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, consider the University’s request and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and the Executive Director of the Foundation shall routinely update the Foundation Board members on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fund raising needs and objectives.

1.9 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

1.9 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.

1.9 (b) An exclusive, transferable license to use University trademarks, service marks, and trade names historically associated with the Foundation.

1.9 (c) The designation of the Foundation as a University affiliated entity.

1.9 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 2. FOUNDATION OBLIGATIONS

2.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, serving as the entity researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its educational, research and service missions.

2.2 The Foundation, acting through its Board of Directors, shall assist the University’s Office of Development and Alumni in its fund-raising activities and
development programs with individuals, corporations, foundations, and other external organizations.

2.3 The Foundation, acting through its Board of Directors, shall solicit, accept and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and/or improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University’s missions, goals, and obligations.

2.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired. The Foundation must manage all funds in its control in a fiscally sound and prudent manner. The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets of the income related thereto may be used for the operating or other expenses of the Foundation.

2.5 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 5 years.

2.6 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of the condition of the Foundation, which shall include such detail as the IHL Board may from time to time require; The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Foundation’s annual financial statements; The Foundation shall submit the audited financial statements, along with a list of Foundation officers, directors or trustees, not later than five months following the completion of the Foundation’s fiscal year, to the affiliated university’s IEO and to IHL; However, the annual audited financial statements of some of the Foundation will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR); Those Entities which will be required to submit annual audited financial statements for
inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner for Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the affiliated university’s IEO and to the IHL, along with a list of Foundation officers, directors or trustees, by October 15 of each year; The IHL Board’s Associate Commissioner for Finance and Administration shall notify each such Foundation of the applicability of the October 15 deadline to such Foundation as far in advance of the deadline as possible each year; The CPA firm to be utilized by the Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Foundation’s fiscal year for which the audit will be conducted; Unless approval in specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis; However, at the request of the Foundation, the IEO of a university, with the approval of the IHL Board, may grant a request of the Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Foundation are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Foundation and unnecessary; Such a waiver may be conditioned upon such other review of the financial records of the Foundation in lieu of an audit as the University and the IHL may deem feasible; Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Foundation (if such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements; The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board; Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation.

2.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.9 All gifts received by the Foundation shall be receipted and deposited in a timely manner in accordance with the directive of the donor. All gifts received by the University shall be immediately forwarded to the Foundation for acknowledgement to
ensure proper receipting and recording of all gifts. Gifts made to the University shall be accounted for and ownership maintained by the University; gifts made to the Foundation shall be accounted for and ownership maintained by the Foundation. However, checks made payable to the University will be transferred to the Foundation if a gift agreement, pledge, or expectancy exists between the donor and the Foundation. If a check is made payable to the University and no gift agreement, pledge, or expectancy exists between the Foundation and the donor, the donor will be contacted to clarify his/her intent. It will be explained that, in most situations, it is the University’s desire to have funds held within the Foundation. The intent of the donor will then control the delivery and ownership of the funds. If a situation exists where the Foundation has deposited a gift directly intended solely for the University, the Foundation shall immediately deposit into the appropriate University account funds designated for each account.

2.10 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation. In order to perform duties herein this agreement, the Foundation may use a percentage of the annual restricted funds, assess fees for services, or impose charges against managed funds to support its operations. The Foundation will inform the University of the implementation of, or changes to, any assessment of fees.

2.11 The Executive Director of Development and Alumni shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations.
4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or
6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the
board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.12 If requested by the University, the Foundation shall provide any and all information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the University President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 3. COMPLIANCE

3.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

3.2 The provisions of the affiliation agreement shall apply to any and all entities owned or controlled by the Foundation, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special entity would then be required to comply with any and all provisions of the affiliation agreement between the university and any Entity which owns or controls the special purpose entity.

ARTICLE 4. INSURANCE

4.1 The Foundation shall maintain insurance coverage as deemed appropriate by the Foundation’s Board of Directors, including the bonding of its officers and shall
maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

ARTICLE 5. REPORTING

5.1 As set forth in Section 2.6 of this Agreement, the Foundation shall, by December 1 of each year during this Agreement, submit to the University’s chief financial officer and to the IHL its annual audited financial statements for the prior fiscal year. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University employees, it being agreed that any such payments shall only be made through the University’s payroll system and with University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the University President or provided to the University for purposes of supplementing the President’s salary.

5.2 In order to facilitate transparency, the Foundation shall also maintain on its website, for public and University inspection, a copy of this Agreement along with its annual report and other documents related to the Foundation’s mission and operations.

5.3 The Executive Director of Development and Alumni shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The President of the Foundation shall reaffirm that, in the event he/she becomes aware of any such Reportable Events, the President of the Foundation will immediately notify, in writing, the President of the University.

ARTICLE 6. TERMINATION AND RENEWAL

6.1 This Agreement is set to expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

6.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.
6.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Foundation may not terminate the agreement without the consent of the IEO and the IHL Board.

6.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

6.5 The Foundation agrees to cease using University’s name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

6.6 The University and the Foundation have a long history of mutual cooperation and support. To further this relationship, the University President will approve nominations to the Foundation’s Board of Directors. In addition, Foundation Board Members shall be elected to terms not to exceed three years and no less than one-third of the Board members shall be elected in a single year. Although a director may be elected to more than one term, the approval process and rotation required shall work to maintain alignment between the Foundation and the mission of the University. If the University President determines that the cooperation between the University and the Foundation is not in place and is, as a result, detrimental to the best interests of the University, the President shall notify the Commissioner of Higher Education. The IHL shall attempt to reconcile the parties, including mediation if advisable. If, however, the IHL determines and notifies the University President that it is in the best interests of the University to substitute new members of the Board of Directors of the Foundation, the University President may direct that, at the expiration of a ninety-day period, the terms of office of 100% of the Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the Mississippi University for Women Alumni Association,
and (4) two members appointed from within and by the group of donors to the University whose lifetime outright giving to the University, through the MUW Foundation, exceeds $50,000; however, this donor group may not appoint as a member of the Committee anyone who at the time of the appointment is serving as (i) a University or IHL employee or (ii) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall then appoint, within the ninety-day period, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Foundation.

6.7 In the unlikely event that the Commission, as described in 6.6 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation board members may be reelected by this Commission to serve.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

7.2 The parties agree that the Foundation is not an agent or employee of the University, and nothing in this Agreement creates an employment or other agency relationship between the parties.

7.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.

7.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.

7.5 The University and Foundation agree that the Foundation’s donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation financial support are confidential and proprietary. Except for the provisions of Section 2.12 above, unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

7.6 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and
shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

7.7 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

7.8 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

7.9 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

7.10 The Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls.

ARTICLE 8. NOTICE

8.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: To the Foundation:
Dr. Jim Borsig Dr. Jayne Perkins-Brown
President Chair, Board of Directors
Mississippi University for Women MUW Foundation
1100 College Street, MUW-1600 1100 College Street, MUW-1618
Columbus, MS 39701 Columbus, MS 39701

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the President of the University and the Chair of the Board of Directors of the Foundation, respectively, execute this Agreement on ___ day of ______ to be effective on January 1, 2018.

STAFF RECOMMENDATION: Board staff recommends approval of this item.
16. **MVSU– APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE MISSISSIPPI VALLEY STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION**

Mississippi Valley State University requests Board approval of the proposed affiliation agreement between the University and the Mississippi Valley State University National Alumni Association. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement**

**Between**

**Mississippi Valley State University**

and the

**Mississippi Valley State University National Alumni Association**

This agreement is made and entered into this 1st day of January, 2018 (the effective date) by and between MISSISSIPPI VALLEY STATE UNIVERSITY, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (hereinafter referred to as “University”), and the MISSISSIPPI VALLEY STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION, a corporation duly organized under the laws of the State of Mississippi (hereinafter referred to as “Association”).

**RECITALS**

1. The University is a state institution of higher learning established pursuant to the laws of the State of Mississippi.

2. The Association has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986 for the purposes outlined in its Articles of Incorporation, a copy of which is attached to this agreement as Exhibit A.

3. The University must enter an affiliation agreement with the Association as required by the Board of Trustees of the State Institutions of Higher Learning (“IHL”), as set forth in IHL Policy 301.0806.

4. The University has a strong interest in maintaining a favorable relationship with its graduates, former students, and friends of the University.

5. The Association serves the University and promotes its mission by among other things, attracting, organizing, and encouraging graduates, former students, and friends throughout Mississippi and the world to advance the University's mission and by
fostering, encouraging, establishing, and maintaining affinity, loyalty, community, and relationships among the University, its alumni, former students, and its friends.

6. The University and the Association have a history of interaction and cooperation that has served the interests of the University.

7. The Association has the responsibility as an affiliated entity to use its resources in a responsible and effective manner to further the mission of the University and to support the University.

8. The University and the Association anticipate that the University will provide the Association with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other services, support, and assistance the Association shall provide the University.

9. The University and the Association desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the University and the Association do hereby agree, as follows:

ARTICLE 1. PERSONNEL AND SERVICES

1.1 The Association may utilize, with the approval of the President of the University, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Association as agreed by the University.

1.2 IHL Board Policy 301.0806 D.15 requiring affiliated entities to submit to the IHL an annual report providing a detailed list of supplemental compensation provided to administrators, faculty, athletic staff, and other employees is not applicable to the Association as no such supplemental compensation is contemplated under this agreement.

1.3 The President of the University shall submit a request to the Association for utilization of University unrestricted gifts received by the Association in the following fiscal year. The Association shall, consistent with the goals and priorities established by the University, incorporate the University's request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the University Vice President of Advancement (or equivalent position), shall routinely update key Association personnel on the University initiatives involving private support to ensure that Association and University personnel are informed of fund raising needs and objectives.
ARTICLE 2. ASSOCIATION OBLIGATIONS

2.1 The Association agrees to provide an organizational framework for volunteer service to the University through local alumni clubs, professional chapters, and special interest alumni groups. The Association will serve as the most widely accessible medium for graduates, former students, and friends of the University to maintain relationships with the University. Nothing in this Agreement shall be construed to give the Association control of or authority over other affiliates supporting the University and its constituent units. The Association will work cooperatively and in good faith with these organizations to promote the interests of the University and its relationship with its alumni.

2.2 The Association agrees to assist the University in developing and supporting programs and services, including, but not limited to, administration, maintenance, and enhancement of the alumni data base; operation of homecoming and reunion programs; participation in advocacy and other advancement endeavors; maintenance of a career services program; maintenance of programs serving the University's student population; and participation in scholarship programs, award recognition programs, student recruitment programs, and special events.

2.3 The Association agrees to provide volunteers to serve the University.

2.4 The Association agrees that it may only use its resources to advance the University’s mission as outlined in its Articles of Incorporation. The Association further agrees that it may not amend its Articles of Incorporation or By-Laws during the life of this Agreement unless the University consents to the proposed amendment.

2.5 The University may from time to time make other requests from the Association or seek other assistance from the Association in accomplishing the mission of the University, and the Association agrees that it will not unreasonably deny any such requests for assistance.

2.6 The Association shall reimburse the University for expenses the University incurs as a result of the Association’s operations if those expenses would not otherwise have been incurred by the University.

2.7 To assure that the resources and services provided by the University are expended for the ultimate benefit of the University, as long as this Agreement is in effect, the Association shall provide an annual report to the President of the University, including the following information:

1. How University resources and services were used, and the benefits (both financial and intangible) to the University arising from that use.
2. A description of proposed activities for the coming year. The description shall be developed with input from the University’s Chief Advancement Officer, Director of Alumni Affairs and subject to approval by the University President.

3. The Association's current financial policies, procedures and controls, if any, as set forth in its By-Laws and Articles of Incorporation.

2.8 The University’s Office of Alumni Affairs will provide an opportunity for the Association to participate in setting goals for the Association in conjunction with the University’s goals and priorities.

2.9 At least thirty days before the end of each Fiscal Year during this Agreement, the Association shall submit an annual budget for the forthcoming Fiscal Year to the President.

2.10 The Association agrees to manage all funds in its control in a fiscally sound and prudent manner.

2.11 The Association agrees to maintain its financial and accounting records separate from the records of the University and in accordance with Generally Accepted Accounting Principles. The Association agrees to retain all books, accounts, reports, files and other records of the Association relating to this Agreement, the operation and management of the Association or any funds contributed to, received by, expended by, or managed by the Association, and to make such records available at all reasonable times for inspection and audit by the President or his/her designees, during the term of and for a period of five years after the completion of this Agreement. Such records shall be provided at the University’s Alumni Office, or such other location as designated by the University upon reasonable notice to the Association. To the extent that information is inspected, reviewed or received by the President or his/her designees, with respect to the identity of donors, sponsors, or members who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors, sponsors, or members, with respect to personal, commercial, or proprietary information relating to a donor or member or his/her family or business, or with respect to any personal, commercial or proprietary information provided to the Association by third parties, such information shall be treated as confidential by the President and by any designee who may review or acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. If upon such inspection or audit the University determines that University funds or resources have been expended for purposes inconsistent with this Agreement, the Association, upon demand by the University, shall reimburse the University for such misused funds, and the University shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this
Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL, and further, any such decision to disclose or release any confidential, personal, commercial or proprietary information or information that would identify any particular donor or members shall be made by the IHL acting upon its minutes.

2.12 The Association shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Association must cause to be prepared annual financial statements of its condition, which shall include such detail as the IHL Board may from time to time require; The Association must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the its annual financial statements; The Association shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Association’s fiscal year, to the affiliated university’s IEO and to IHL; However, submission of the Association’s annual audited financial statements will be required when necessary for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR); Those Entities (including the Association) which will be required to submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the affiliated university’s IEO and to the IHL, along with a list of Association officers, directors or trustees, by October 15 of each year; The IHL Board’s Associate Commissioner of Finance and Administration shall notify the Association of the applicability of the October 15 deadline as far in advance of the deadline as possible each year; The CPA firm to be utilized by the Association must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Association’s fiscal year for which the audit will be conducted; Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis; However, at the request of the Association, the IEO of a university, with the approval of the IHL Board, may grant a request of the Association to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Association are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Association and unnecessary; Such a waiver may be conditioned upon such other review of the financial records of the Association in lieu of an audit as the University and the IHL may deem feasible; Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Association (if any such statements exist), (b) the
financial statements of the most recently completed fiscal year, (c) a written description of how the Association anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements; The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board; Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.13 The Association may not underwrite, pay, or provide additional compensation to the University President or any IHL system office employee without the prior approval of the IHL. Any such request for approval shall be made through the IHL Commissioner to the IHL. Additionally, the Association may not provide or pay compensation to any other University employee without prior approval of the President, and any such approval shall be reported to the IHL by the Association at the IHL’s next meeting. This provision does not apply to transfers to the University by the Association that are paid directly to the University for use by the University to compensate University employees if that compensation is included in the University’s annual budget.

2.14 To the extent the Association engages in fundraising on behalf of the University, the Association agrees to accept or solicit only those gifts that are consistent with the University’s missions, goals, or objectives.

2.15 The Association shall not accept any gift, donation or grant or enter into any transaction that creates any liability for the University, without advance written approval of the University President.

2.16 No member of the Association may encumber the University’s funds or otherwise bind the University in any way.

2.17 No University assets will be managed by the Association.

2.18 The Association acknowledges and agrees that the University owns all copyright, interest in, and right to all trademarks, trade names, logos, and service marks developed by the University for use by the Association, including all such trademarks, service marks, and trade names historically associated with the Association.

2.19 The Association shall adopt and maintain a conflict of interest policy that complies with the requirements of Miss. Code Ann. § 79-11-269 (1972), as amended from time to time.

2.20 The Association shall provide the President reasonable notice of any regular, annual, or special meetings of its Board of Directors or of its Executive
Committee, and the President or his/her designee shall have the right to attend any such meetings as well as the meetings of any other Association committees.

2.21 If the Association should cease to exist, any Association assets donated to the Association for the benefit of the University must be transferred to the University or to another non-profit entity designated by the University.

2.22 The Association may enter its contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed two years.

2.23 The Association shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Association.

2.24 All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Entity.

ARTICLE 3. UNIVERSITY OBLIGATIONS AND OTHER IN-KIND SUPPORT

3.1 The University grants the Association a non-exclusive, non-transferable license to use University trademarks, service marks, and logos consistent with University policy and its contract with Collegiate Licensing Company, including but not limited to a license to use marks developed by the University for use by the Association.

3.2 The University grants the Association an exclusive, transferable license to use University trademarks, service marks, and trade names historically associated with the Association or developed by the University or the Association for the Association’s use.

3.3 The University agrees to designate the Association as an official affiliated entity of the University.

3.4 The University shall provide the Association such other rights, privileges or benefits as the President, in the President’s sole discretion, may determine will assist the Association in discharging its obligations under this Agreement.

3.5 The University President shall be an ex-officio non-voting member of the Association's Board of Directors and Executive Committee and shall be given reasonable notice of any meeting of the Board or Executive Committee, as required by 2.20 of this Agreement.
3.6 Subject to the availability of funding and the budget process, the University agrees to provide the Association with resources suitable in the University's judgment for the accomplishment of the Association's activities for the University's benefit, and may include services and supplies, staff support, office space, and such financial support as agreed upon between the parties from time to time. The amount and nature of such resources shall be determined annually, on a fiscal year basis, in connection with the program planning and budget processes of the University and the Association. No provision in this Agreement shall be construed to give the Association any legal entitlement to any University funding, personnel or other resources in any particular fiscal year. All University assets, including personal property, made available to the Association under the terms of this agreement shall remain the property of the University unless sold, conveyed or transferred to the Association by way of a separate written agreement.

3.7 The University's President will encourage all parts of the University to collaborate with the Association in implementing the Association’s programs and services.

3.8 The University President agrees to inform the Association on a regular basis of the University’s needs and priorities.

ARTICLE 4. COMPLIANCE

The Association shall comply with any and all federal and state laws and regulations.

ARTICLE 5. INDEMNIFICATION

The Association agrees to indemnify and hold harmless the University, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. The Association agrees to reimburse the University and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

ARTICLE 6. INSURANCE

6.1 The Association shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.
6.2 The Association shall maintain Automobile Liability insurance providing at least $1,000,000 per accident or occurrence for bodily injury and property damage.

6.3 The Association shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property, and in the event that the Association owns any interest in real property during the life of this Agreement sufficient property and casualty insurance to insure against the loss of the real property and any improvements or personal property associated with the insured premises.

6.4 The Association shall maintain Directors and Officers liability insurance on members of the Board of Directors and Association Officers, while performing as such.

6.5 The Association shall maintain Commercial Excess or Umbrella Coverage: The Association shall maintain $5,000,000 in commercial umbrella coverage in addition to the basic coverages set forth in Articles 6.1, 6.2, and 6.4.

6.6 The Association shall maintain Workers Compensation if required to do so by applicable law or such other insurance coverages as may be required by applicable law.

ARTICLE 7. REPORTING

7.1 The Association shall, by October 15 of each year during the life of this Agreement submit a detailed annual report of the work and financial condition of the Association for the preceding fiscal year to the University President, and shall also submit by the same date any other reports as required by this Agreement, by the Bylaws of the Association, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 2.12 and 2.13. of this Agreement.

7.2 The Association shall promptly notify the President of the University and the IHL, in writing, if any of the following events ("Reportable Events") occur:

1. The Association has materially breached any of its contractual obligations under the Agreement;
2. The Association has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Association has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Association or any of its officers and directors to comply with any conflict of interest requirements created by
applicable state or federal law or by the governing documents or procedures of the Association;

5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Association or upon its status as a tax exempt organization; or

6. The Association has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Association, or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Association to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

7.3 The Association’s chief executive officer shall submit to the President and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Association has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required in Article 7.2 above. In this certification the Association’s chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Association chief executive officer will immediately notify, in writing, the President of the University.

ARTICLE 8. TERMINATION AND RENEWAL

8.1 This Agreement shall have a term of five years, if not renewed by mutual consent of the parties before that date.

8.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Association and prior approval of IHL, acting upon its minutes.

8.3 The University may terminate this Agreement for cause without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Association may not terminate this Agreement without the prior approval of the University President and the IHL.

8.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 8.1, Articles 2.11, 2.19, 2.22, 5, 8, and 9 shall survive the termination.
8.5 Upon termination and/or non-renewal of this Agreement, (1) the Association shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Association shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (3) the Association shall work in concert with its members and/or donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Association shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the President; and (5) the Association shall work in concert with the University to provide the University or its designee with records and materials of the Association necessary to continue the business and/or wind up the affairs of the Association.

8.6 The Association agrees to cease using the University’s name, marks, and logos in the event the Association dissolves, ceases to be a non-profit corporation, ceases to be recognized as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, or this Agreement is terminated.

8.7 The University and the Association expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation does not exist and that the relationship is untenable and thus, in the President’s view, detrimental to the best interests of the University, the President shall notify the Commissioner of Higher Education and the IHL shall attempt to reconcile the parties, including through mediation if practicable. If the IHL determines and notifies the University President that it is in the best interest of the University to establish new members of the Board of directors of the Association, the University President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors and all accompanying officers shall be deemed to have expired. Upon such an occurrence, a five-person special appointment committee shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the MVSU Foundation, and (4) Two members appointed from within and by the group of donors to the University whose verifiable lifetime total giving to the University, exceeds $10,000.00; however this donor group may not appoint as a member of the committee anyone who at the time of the appointment is serving as (i) a University employee or (ii.) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The committee, within the ninety-day period shall then appoint, by majority vote, the new members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the MVSU National Alumni Association.
ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

9.2 The parties agree that the Association is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

9.3 The parties agree that the Association is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of the Association, no IHL employee shall hold a voting position on the Association Board. Senior University administrators should only participate on the Association’s Board, if at all, in an ex-officio, non-voting capacity. The IHL may allow, upon written request by the University, exceptions to this restriction regarding IHL/University employees.

9.4 The University and the Association agree that the Association’s donor and giving records and any other financial or commercial information possessed by the Association or provided by the Association to the University concerning individuals or corporations that provide the Association financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Article 2.11 of this Agreement with respect to actions by IHL acting upon its minutes, the University and the Association agree not to disclose to third parties and to keep confidential the giving records, giving history, and financial or commercial information of individuals and corporations that provide financial support to the Association.

9.5 In the performance of this Agreement, the Association shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sexual orientation, sex, age, physical or mental disability, medical condition, or veteran’s status.

9.6 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

9.7 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

9.8 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of
that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

9.9 The Association’s obligations and all provisions set forth pursuant to this Agreement shall apply to any and all entities owned or controlled by the Association, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the university and the Association which owns or controls the special purpose entity pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

17. MVSU– APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE MISSISSIPPI VALLEY STATE UNIVERSITY FOUNDATION

Mississippi Valley State University requests Board approval of the proposed affiliation agreement between the University and the Mississippi Valley State University Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
Mississippi Valley State University
and the
Mississippi Valley State University Foundation

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between Mississippi Valley State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the "University"), and The Mississippi Valley State University Foundation, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the "Foundation"). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation
and the Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated October 6, 2003, a copy of which is attached to this Agreement as Exhibit A;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c)(3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the "Board" or "IHL") Policy 301.0806 (the "Policy");

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. UNIVERSITY PERSONNEL AND SERVICES

1.1 The President of the University and the University's chief advancement officer shall serve ex officio as a non-voting member of the Foundation's Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation's Board of Directors.

1.2 Annually, the President of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.
1.3 The President of the University shall submit a request to the Foundation for utilization of University unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, incorporate the University's request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the University Vice President of Advancement (or equivalent position), shall routinely update key Foundation personnel on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fundraising needs and objectives.

1.4 The Foundation may utilize, with the approval of the President of the University, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Foundation as agreed by the University.

1.5 Subject to the availability of funding and the budget process, the University agrees to provide the Foundation with resources suitable in the University's judgment for the accomplishment of the Foundation's activities for the University's benefit, and may include services and supplies, staff support, office space, and such financial support as agreed upon between the parties from time to time. The amount and nature of such resources shall be determined annually, on a fiscal year basis, in connection with the program planning and budget processes of the University and the Foundation. No provision in this Agreement shall be construed to give the Foundation any legal entitlement to any University funding, personnel or other resources in any particular fiscal year. All University assets, including personal property, made available to the Foundation under the terms of this agreement shall remain the property of the University unless sold, conveyed or transferred to the Foundation by way of a separate written agreement.

1.6 The University's name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University's name or registered marks or logos to any person or entity without the written approval of the President of the University and the Director of the University's Licensing Program. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

1.6 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.
1.6 (b) An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Foundation.
1.6 (c) The designation of the Foundation as a University affiliated entity.
1.6 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 2. FOUNDATION OBLIGATIONS

2.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its charitable, scientific and educational purposes.

2.2 The Foundation, acting through its Board of Directors and staff, shall assist the University's Office of Advancement in its fund-raising activities and development programs with individuals, corporations, foundations, governmental and other external organizations.

2.3 The Foundation, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University's physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University's missions, goals and obligations.

2.4 The Foundation agrees that it may only use its resources to advance the University’s mission as outlined in its Articles of Incorporation. The Foundation further agrees that it may not amend its Articles of Incorporation or By-Laws during the life of this Agreement unless the University consents to the proposed amendment.

2.5 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired.
2.6 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 5 years.

2.7 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of its condition, which shall include such detail as the IHL Board may from time to time require; The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the its annual financial statements; The Foundation shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Foundation's fiscal year, to the affiliated university's IEO and to IHL; However, submission of the Foundation's annual audited financial statements will be required when necessary for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR); Those Entities (including the Foundation) which will be required to submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the affiliated university's IEO and to the IHL, along with a list of Foundation officers, directors or trustees, by October 15 of each year; The IHL Board's Associate Commissioner of Finance and Administration shall notify the Foundation of the applicability of the October 15 deadline as far in advance of the deadline as possible each year; The CPA firm to be utilized by the Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Foundation's fiscal year for which the audit will be conducted; Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis; However, at the request of the Foundation, the IEO of a university, with the approval of the IHL Board, may grant a request of the Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Foundation are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Foundation and unnecessary; Such a waiver may be conditioned upon such other review of the financial records of the Foundation in lieu of an audit as the University and the IHL may deem feasible; Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as
of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements; The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board; Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.8 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation.

2.9 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.10 The Foundation shall immediately deposit into the appropriate University account any funds which are sent to the Foundation but which are clearly intended to be funds designated for a University account. In such an instance, the Foundation shall issue, on behalf of the University, a University development receipt. No University assets will be managed by the Foundation.

2.11 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation.

2.12 The Foundation CEO shall promptly notify the President of the University and the IHL, in writing, if any of the following events ("Reportable Events") occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;

2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by
applicable state or federal law or by the governing documents or procedures of the Foundation;

5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or

6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; the previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.13 If requested by the University, the Foundation shall provide any and all information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

2.14 The Foundation shall provide the President reasonable notice of any regular, annual, or special meetings of its board of Directors or of its Executive Committee, and the President or his/her designee shall have the right to attend any such meetings as well as the meeting of any other Foundation committees.

2.15 If the Foundation should cease to exist, any Foundation assets donated to the Foundation for the benefit of the University must be transferred to the University or to another non-profit entity designated by the University.
2.16 The Foundation shall not accept any gift, donation or grant or enter into any transaction that creates any liability for the University, without advance written approval of the University President.

2.17 No member of the Foundation may encumber the University’s funds or otherwise bind the University in any way.

2.18 The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation.

2.19 All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Entity.

ARTICLE 3. COMPLIANCE

3.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 4. REPORTING

4.1 The Foundation shall, by December 1 of each year during this Agreement, submit to the University President and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.6 of this Agreement. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty, athletic staff, or other University Employees, it being agreed that any such payments shall only be made through the University's payroll system and with Presidential approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without prior IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the President or provided to the University for purposes of supplementing the President's salary.

4.2 The Foundation CEO shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and
that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The Foundation CEO shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Foundation CEO will immediately notify, in writing, the President of the University.

ARTICLE 5. TERMINATION AND RENEWAL

5.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

5.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

5.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Foundation may not terminate this Agreement without the prior approval of the University President and the IHL Board.

5.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University's name or registered marks or logos to any person or entity without the written approval of the President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

5.5 The Foundation agrees to cease using University's name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

5.6 The University and Foundation expect there to exist a cooperative relationship between them. In the event that the University President determines that such cooperation does not exist and that the relationship is untenable and thus, in the President’s view, detrimental to the best interests of the University, the President shall
notify the Commissioner of Higher Education and the IHL shall attempt to reconcile the parties, including through mediation if practicable. If the IHL determines and notifies the University President that it is in the best interest of the University to establish new members of the Board of Directors of the Foundation, the University President may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors and all accompanying officers shall be deemed to have expired. Upon such an occurrence, a five-person special appointment committee shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the MVSU Foundation, and (4) Two members appointed from within and by the group of donors to the University whose verifiable lifetime total giving to the University exceeds $25,000.00; however this donor group may not appoint as a member of the committee anyone who at the time of the appointment is serving as (i) a University employee or (ii.) an employee, officer, trustee, or director of any University affiliated support organization or foundation. The committee, within the ninety-day period shall then appoint, by majority vote, the new members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the MVSU Foundation.

5.7 In the unlikely event that the Commissioner, as described in 5.6 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation board members may be reelected by this committee to serve.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

6.2 The parties agree that the Foundation is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

6.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.

6.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.
6.5 The University and Foundation agree that the Foundation's donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Notwithstanding Section 2.12 above, unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

6.6 In the performance of this Agreement, the Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

6.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

6.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

6.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

6.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

6.11 The Foundation's obligations and all provisions set forth pursuant to this Agreement shall apply to any and all entities owned or controlled by the Foundation, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37 101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the university and the Foundation which owns or controls the special purpose entity.
ARTICLE 7. INDEMNIFICATION

7.1 The Foundation agrees to indemnify and hold harmless the University, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. The Foundation agrees to reimburse the University and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

ARTICLE 8. INSURANCE

8.1 The Foundation shall maintain Directors and Officers liability insurance on members of the Board of Directors and Foundation Officers, while performing as such.

8.2 The Foundation shall maintain Workers Compensation if required to do so by applicable law or such other insurance coverages as may be required by applicable law.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows or to such other addressee as may be hereafter designated by written notice.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

18. UM–APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE UNIVERSITY OF MISSISSIPPI RESEARCH FOUNDATION

The University of Mississippi requests Board approval of the proposed affiliation agreement between the University and the University of Mississippi Research Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
University of Mississippi
and the
University of Mississippi Research Foundation
This agreement is made and entered into this the 1st day of January, 2018 (the effective date) by and between UNIVERSITY OF MISSISSIPPI, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (hereinafter referred to as "UM"), and the UNIVERSITY OF MISSISSIPPI RESEARCH FOUNDATION, a corporation duly organized under the laws of the State of Mississippi (hereinafter referred to as "RF").

PREAMBLE

WHEREAS, RF has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986 for the purposes outlined in its Articles of Incorporation, a copy of which is attached to this agreement as Exhibit A;

WHEREAS, UM has the authority and right to enter into agreements with affiliated 501(c)(3), not-for-profit organizations with the approval of its governing board, the Board of Trustees for Institutions of Higher Learning for the State of Mississippi ("IHL");

WHEREAS, RF has the responsibility as a non-profit corporation to use its resources in a responsible and effective manner to further the research, academic, and service programs of UM and to support UM as outlined in its Articles of Incorporation;

WHEREAS, UM and RF anticipate that UM will provide RF with specified services and facilities with which to carry out its responsibilities in exchange for the development, commercialization, management, financial, and other service, support, and assistance RF shall provide UM; and

WHEREAS, UM and RF desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, UM and RF do hereby agree, as follows:

ARTICLE I. USE OF UM FACILITIES

1.1 UM grants to RF a license to use for RF's activities, physical space provided by UM as needed by RF and available from UM. Upon such time as RF may require space for its exclusive use, UM and RF shall enter a separate lease for such space or the parties shall amend the agreement accordingly.

1.2 This license shall include use of office and related space, maintenance, furniture, equipment and utilities for the leased space. UM agrees to maintain the premises,
including equipment provided by UM, in reasonable repair. Maintenance of equipment purchased by RF will be the responsibility of RF. All additions and improvements made by RF to the premises which are not firmly affixed to a structure shall remain the property of RF and may be removed by RF at any time. UM may request RF to relocate at such time that licensed space is needed to fulfill the missions and programs of UM.

ARTICLE 2. PERSONNEL AND SERVICES

RF may utilize, with the approval of the Chancellor of UM, which approval shall not be unreasonably withheld, such UM administrative, professional, and other employees from time to time as are needed to carry out the purposes of RF as agreed by UM. RF may also recommend to the Chancellor changes in personnel, as necessary, for those University employees who perform work for or under the direction of RF Board or RF employees.

ARTICLE 3. RF OBLIGATIONS

3.1 RF acknowledges, covenants, and agrees that it may only use its resources for the express purpose of advancing UM's academic, educational, research, and service missions as outlined in its Articles of Incorporation.

3.2 During the term of this Agreement UM may assign to RF contractual rights resulting from UM's licensing of intellectual property owned or developed in whole or in part by UM or resulting from UM's related commercialization activities and efforts. These contractual rights may include income streams from or an equity position or ownership interest in other business entities or the right to receive income streams from or an equity position or ownership interest in other business entities (collectively "Equities"). RF further covenants and agrees upon UM's request to distribute according to UM's instructions any dividends or other income received as a result of owning Equities and any proceeds from the sale or transfer of any interest in any portion of the Equities.

3.3 At least thirty days before the end of each Fiscal Year during this Agreement, RF shall submit an annual budget for the forthcoming Fiscal Year to the Chancellor or the Chancellor's designee.

3.4 RF agrees to maintain its financial and accounting records separate from the records of UM and in accordance with generally accepted accounting principles. RF agrees to retain all books, accounts, reports, files and other records relating to this Agreement, the operation and management of RF or any funds contributed to, received by, expended by, or managed by RF, and to make such records available at all reasonable times for inspection and audit by the Chancellor or his/her designees, during the term of and for a period of five years after the completion of this Agreement. Such records shall be provided at RF's offices on UM's Oxford Campus, or such other location as designated...
by UM upon reasonable notice to RF. To the extent that information is inspected, reviewed or received by the Chancellor or his/her designees, with respect to the identity of donors or members who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors or members, with respect to personal information relating to a donor or member or his/her family business, or with respect to any personal, commercial or proprietary information provided to RF by third parties, such information shall be treated as confidential by the Chancellor and by any designee who may review or acquire such information. UM is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. If upon such inspection or audit UM determines that UM funds or resources have been expended for purposes inconsistent with this Agreement, RF, upon demand by UM, shall reimburse UM for such misused funds, and UM shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL, and further, any such decision to disclose or release any confidential, personal or proprietary information or information that would identify any particular donor or members shall be made by the IHL acting upon its minutes.

3.5 RF must cause to be prepared annual financial statements of its condition, which shall include such detail as the IHL may from time to time require. RF must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. RF shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the RF’s fiscal year, to the Chancellor of UM and to IHL. However, if the IHL's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit determine that RF's annual audited financial statement will be required for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR), then RF must submit annual audited financial statements, along with a list of Entity officers, directors or trustees, by October 15 of each year. The IHL's Associate Commissioner of Finance and Administration shall notify RF of the applicability of the October 15 deadline to RF as far in advance of the deadline as possible each year. The CPA firm to be utilized by RF must be approved by the IHL, and all such requests must be submitted to the IHL for approval not later than three months prior to the end of RF's fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of RF, the Chancellor, with the approval of the IHL, may grant a request to waive the requirement of an annual audit by a
CPA firm on a showing of adequate grounds, such as a showing that RF's assets are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of RF financial records in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how RF anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements.

The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above. RF shall contemporaneously submit an annual report to UM and to the IHL providing a detailed list of supplemental compensation which was submitted to UM for the purpose of providing additional compensation to UM employees or paid directly to UM employees. This reporting requirement does not apply to transfers to UM by RF that are paid directly to UM for use by UM to compensate UM employees if that compensation is included in UM's annual budget.

3.6 RF may not provide or pay compensation to any UM employee without prior approval of the Chancellor, and any such approval shall be reported to the IHL by RF at the IHL's next meeting. This provision does not apply to transfers to UM by RF that are paid directly to UM for use by UM to compensate UM employees if that compensation is included in UM's annual budget. Nothing in this provision prevents, however, RF from reimbursing a UM employee for expenses consistent with policies or procedures established between UM and RF.

3.7 RF acknowledges and agrees that UM owns all copyright, interest in and right to all trademarks, trade names, logos, and service marks developed by UM for use by RF, including all such trademarks, service marks, and trade names historically associated with RF.

3.8 RF shall adopt and maintain a conflict of interest policy that complies with all requirements of Miss Code Ann § 79-11-269 (1972), as amended from time to time.

3.9 RF shall enter into an agreement with the University of Mississippi Foundation, Inc. to provide for the University of Mississippi Foundation, Inc.'s receipting and accounting for charitable gifts, grants, and endowments given to or received by RF, to assure that any such charitable gifts, grants, and endowments are received and accounted for consistent with the policies and practices adopted by the University of Mississippi
Foundation, Inc. and consistent with the Affiliation Agreement between UM and the University of Mississippi Foundation, Inc., and to provide for the University of Mississippi Foundation, Inc.'s, management on behalf of RF of all RF endowments and other non-cash assets. The RF shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the RF. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the RF.

3.10 RF shall provide the Chancellor notice of any regular, annual, or special meetings of the RF Board of Directors, and the Chancellor or the Chancellor's designee has the right to attend any such meetings.

3.11 RF agrees to timely satisfy any and all financial, audit, and accounting obligations to third parties, including but not limited to any requirements of any funding or grant awarding agencies.

3.12 RF further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless UM consents to the proposed amendment.

3.13 UM may from time to time make other requests from RF or seek other assistance from RF in accomplishing UM's mission, and RF agrees that it will not unreasonably deny any such requests.

3.14 RF shall reimburse the University for expenses the University incurs as a result of RF operations if those expenses would not otherwise have been incurred by the University, specifically including telephone, mail, and other such services provided on a monthly basis. The rate charged RF shall be the rate that is charged to University departments for such services.

3.15 The parties acknowledge that UM employees currently serve on RF's Board of Directors. RF agrees that when future Board Members are solicited, no employee of the University or of its governing board will be elected to serve as a voting member of the RF Board of Directors without the prior approval of the IHL.

3.16 RF agrees to regularly seek input from UM's Chancellor in defining RF's objectives.

3.17 RF may not underwrite, pay, or provide additional compensation to the UM Chancellor or any IHL system office employee without the prior approval of the IHL. Any such request for approval shall be made through the IHL Commissioner to the IHL.
3.18 Although RF may seek contributions, grants, and other support from third parties on its own behalf, RF shall not seek contributions, grants, or other public or private support on behalf of UM without the consent of UM through its Chancellor. To the extent RF seeks any contributions, gifts, grants, and other support from third parties on its own behalf but for the benefit of UM, RF agrees to accept or solicit only those contributions, gifts, grants, and support that are consistent with UM and RF’s missions, goals, or objectives.

3.19 RF agrees to manage all funds and/or assets in its control in a reasonably sound and prudent manner.

3.20 RF may enter its contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed two years.

ARTICLE 4. UM OBLIGATIONS AND IN-KIND SUPPORT

To assist RF in discharging its obligations under this Agreement and in development, commercialization, management, financial, and other service, support, and assistance RF shall provide UM in support of its academic, educational, research, and service missions, UM grants RF the following rights:

4.1 The designation as an UM official affiliated entity.

4.2 A non-exclusive, non-transferable license to use UM trademarks, service marks, and logos consistent with UM policy and its contract with Collegiate Licensing Company, including but not limited to a license to use marks developed by UM for use by RF.

4.3 An exclusive, transferable license to use UM trademarks, service marks, and trade names historically associated with RF.

4.4 UM shall provide support services to RF of the type provided to UM departments on a cost reimbursement basis including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool, and, to the extent permitted by law, use of the UM campus mail system and protection of the University Police Department.

4.5 UM shall provide RF employees staff identification cards, parking privileges, admission to athletics and entertainment events, and access to the UM's library and to its recreation and fitness programs at the same rates and under the same terms as those
benefits and facilities are made available to University administrators and other employees.

4.6 UM shall provide RF technical support, expertise, cooperation, and assistance in applying for grants and external funding and in complying with the regulatory and other requirements of governmental agencies and other funding sources.

4.7 UM shall provide RF such other rights, privileges or benefits as the Chancellor, in the Chancellor's sole discretion, may determine will assist RF in discharging its obligations under this Agreement.

4.8 UM, through its Chancellor, will regularly communicate to RF UM's needs and priorities to RF, particularly with respect to UM's research objectives, mission, and goals.

ARTICLE 5. COMPLIANCE

RF shall comply with any and all federal and state laws and regulations and shall comply with any compliance, financial, accounting, audit, and regulatory guidelines as may be required by UM's governing Board or by granting or funding agencies.

ARTICLE 6. INDEMNIFICATION

RF agrees to indemnify and hold harmless UM, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. RF agrees to reimburse UM and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

ARTICLE 7. INSURANCE

7.1 RF shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

7.2 In the event RF owns, or leases automobiles or other motorized vehicles, RF shall maintain Automobile Liability insurance providing at least $1,000,000 per accident or occurrence for bodily injury and property damage.
7.3 RF shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property, and in the event that RF owns any interest in real property during the life of this Agreement, sufficient property and casualty insurance to insure against the loss of the real property and any improvements or personal property associated with the insured premises.

7.4 RF shall maintain Directors and Officers liability insurance on members of the Board of Directors and RF Officers, while performing as such.

7.5 RF shall maintain Commercial Excess or Umbrella Coverage: RF shall maintain $4,000,000 in additional coverage in excess or over and above the basic coverages set forth in Articles 7.1, 7.2, and 7.4.

7.6 RF shall maintain Workers Compensation insurance if required to do so by applicable law or such other insurance coverages as may be required by applicable law.

7.7 Although in some circumstances an RF employee may be considered a university employee under the statutory definition of “Employee” under the Mississippi Tort Claim Act ("MTCA"), the parties agree that any insurance coverage purchased by RF shall not constitute a waiver of any protections provided by the MTCA to the University and shall not constitute "excess" insurance within the meaning of Miss. Code Ann. § 11-46-17(4) or be any waiver under the MTCA.

ARTICLE 8. REPORTING

8.1 RF shall, by October 15 of each year during the life of this Agreement submit a detailed annual report of the work and financial condition of RF for the preceding fiscal year to the Chancellor, and shall also submit by the dates set forth in this Agreement any other reports as required by this Agreement, by the Bylaws of RF, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 3.4 and 3.5 of this Agreement.

8.2 RF shall promptly notify the Chancellor and the IHL, in writing, if any of the following events ("Reportable Events") occur:

a. RF has materially breached any of its contractual obligations under the Agreement;
b. RF has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
c. RF has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
d. There has been a failure by RF or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of RF;

  e. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on RF or upon its status as a tax exempt organization; or

  f. RF has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of RF, or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for RF to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

8.3 RF's chief executive officer shall submit to the Chancellor and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that RF has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the Chancellor and the IHL, as required in Article 8.2 above. In this certification RF's chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, RF's chief executive officer will immediately notify, in writing, the Chancellor of UM.

ARTICLE 9. TERMINATION AND RENEWAL

9.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

9.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Association and prior approval of IHL, acting upon its minutes.

9.3 The University may terminate this Agreement for cause without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes. RF may not terminate this Agreement without the prior consent of the University Chancellor and the IHL.

9.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 9.1, Articles 6, 9, and 10 shall survive the termination.

9.5 Upon termination and/or non-renewal of this Agreement, (1) RF shall cease to use and shall not assign or delegate the authority to use UM's name or registered marks or
logos to any person or entity without the written approval of the Chancellor, (2) RF shall remit any and all unrestricted funds held for the benefit of UM to such entity as designated in writing by the Chancellor on behalf of UM, (3) RF shall work in concert with its members and/or donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of UM to such entity as designated in writing by the Chancellor on behalf of UM, (4) RF shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by Chancellor; and (5) RF shall work in concert with the UM to provide UM or its designee with records and materials of RF necessary to continue the business and/or wind up the affairs of RF.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

10.2 The parties agree that RF is not the agent or employee of UM, and nothing in this Agreement creates an employment or other agency relationship between the parties.

10.3 The parties agree that RF is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of RF, no IHL employee shall hold a voting position on the RF Board. Senior UM administrators should only participate on the RF Board, if at all, in an ex-officio, non-voting capacity. The IHL may allow, upon written request by UM, exceptions to this restriction regarding IHL/University employees. As of the date of this Agreement, IHL has allowed such exceptions, with certain UM officials serving in their official capacities as voting members of the RF Board.

10.4 UM and RF agree that RF’s donor and giving records and any other financial or commercial information possessed by RF or provided by RF to UM concerning individuals or corporations that provide RF financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Article 3.4 of this Agreement with respect to actions by IHL acting upon its minutes, UM and RF agree not to disclose to third parties and to keep confidential the giving records, giving history, and financial or commercial information of individuals and corporations that provide financial support to RF.

10.5 In the performance of this Agreement, RF shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status.
10.6 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

10.7 The provision of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

10.8 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

10.9 RF's obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.

10.10 UM and RF agree that it is intended for title to all personal property and contents purchased by RF for the use of UM to be conveyed to UM at the time of delivery to UM. Therefore, RF shall be under no duty to purchase property insurance coverage for personal property and contents which are purchased by RF for the use of UM.

10.11 UM and RF agree that neither UM nor RF shall have any liability for the obligations, acts or omissions of the other party. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this agreement shall be responsible for its own obligations, acts or omissions. The parties further agree that although RF may provide perquisites and supplemental compensation to some UM employees, RF is doing so at the direction of UM under the RF affiliation agreement. RF and UM agree that RF is not the employer of any University employees and does not control, direct or supervise the work of any UM employees.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

STAFF RECOMMENDATION: Board staff recommends approval of this item.
19. **UM – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE OLE MISS ATHLETIC FOUNDATION**

The University of Mississippi requests Board approval of the proposed affiliation agreement between the University and the Ole Miss Athletics Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. While the affiliation agreement with the Ole Miss Athletics Foundation does not contain the typical restructuring provision in the event of irreconcilable differences between the University and the Foundation’s board, such a provision is not necessary in this instance. Under Article III 2. of the Bylaws of the Foundation, there are seven (7) Foundation “members”, six (6) of whom are university employees who serve by virtue of their official positions at UM. Those seven (7) members have the power, pursuant to Article IV 13. of the Foundation’s Bylaws, to replace the entire Board of Governors of the Foundation at-will. The Attorney General has approved this request.

**Affiliation Agreement**
Between
The University of Mississippi
and the
Ole Miss Athletics Foundation

This agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between UNIVERSITY OF MISSISSIPPI, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (hereinafter referred to as “UM”), and the OLE MISS ATHLETICS FOUNDATION, a corporation duly organized under the laws of the State of Mississippi (hereinafter referred to as “AF”).

**PREAMBLE**

WHEREAS, AF has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986 for the purposes outlined in its Articles of Incorporation, a copy of which is attached to this agreement as Exhibit A;

WHEREAS, UM has the authority and right to enter into agreements with affiliated 501(c)(3), not-for-profit organizations with the approval of its governing board, the Board of Trustees for Institutions of Higher Learning in the State of Mississippi (“IHL”);

WHEREAS, AF has the responsibility under its mission statement and as a non-profit corporation to use its resources in a responsible and effective manner to further the
literary and educational programs of UM and to aid UM’s Department of Intercollegiate Athletics as outlined in its Articles of Incorporation;

WHEREAS, UM and AF anticipate that UM will provide AF with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other service, support, and assistance AF shall provide UM; and

WHEREAS, UM and AF desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, UM and AF do hereby agree, as follows:

ARTICLE 1. LEASE OF FACILITIES

1.1 UM hereby leases to AF a suite of fifteen offices in Tad Smith Coliseum that formerly housed men’s and women’s basketball staffs along with two offices within the building that houses the UM Department of Intercollegiate Athletics’ administrative offices. In addition to the leased space described above, UM grants AF a license to use the common areas of the Athletics administration building consistent with the intended uses of those common areas. Upon reasonable request and based upon availability, UM through its Director of Intercollegiate Athletics, may grant AF a license to use additional office, storage, or other space within UM buildings as necessary for AF to fulfill its obligations to UM under this Agreement.

1.2 This lease shall include office and related space, maintenance, furniture, equipment and utilities for the leased space. UM agrees to maintain the leased premises, to include equipment provided by UM, in reasonable repair. Maintenance of equipment purchased by AF will be the responsibility of AF. All additions and improvements made by AF to the leased premises which are not firmly affixed to a structure shall remain the property of AF and may be removed by AF at any time. UM may request AF to relocate at such time that leased space is needed to fulfill the missions and programs of UM.

ARTICLE 2. PERSONNEL AND SERVICES

AF may utilize, with the approval of the Director of Intercollegiate Athletics ("AD"), which approval shall not be unreasonably withheld, such UM administrative, professional, and other employees from time to time as are needed to carry out the purposes of AF as agreed by UM. AF may also recommend to AD changes in personnel, as necessary, for those UM employees who perform work for or under the direction of AF Board or AF employees.
ARTICLE 3. AF OBLIGATIONS

3.1 AF, in cooperation with UM, agrees to use its reasonable best efforts to solicit and develop private and corporate support for UM and its athletics programs and to develop affinity programs to promote affinity and support for UM and its athletics programs. When soliciting support for the benefit of UM, AF agrees to solicit and/or accept only those gifts that are consistent with the University’s missions, goals, and obligations. AF shall manage all AF funds in its control in a fiscally sound and prudent manner and consistent with the terms of this Agreement.

3.2 AF agrees to provide in support of UM Department of Intercollegiate Athletics in the current Fiscal Year (for purposes of this Agreement, AF and UM’s “Fiscal Year” begins each July 1 during the life of this Agreement and ends the following June 30) an amount as mutually agreed upon by UM and AF. In the absence of such agreement, AF shall provide $8 million. AD may direct AF to provide some or all of this support directly to the Department of Intercollegiate Athletics. AD may also request AF to provide some or all of the amount set forth above to one or more UM employees consistent with a supplemental compensation agreement between the UM employee and AF that has been approved by AD and the Chancellor (in which event, AF agrees to report such approval and supplemental compensation to IHL at its next official meeting), or AD may request AF to provide some or all of the amount set forth above to third parties to satisfy obligations owed to the third parties by the UM Department of Intercollegiate Athletics. UM acknowledges that if AD requests AF to pay some or all of the amount set forth above to one or more UM employees or to third parties consistent with the preceding sentence, approval of the AF Board of Directors may be required under AF’s corporate governance before AF may comply with AD’s request. AF agrees that it will not unreasonably deny such reasonable requests by AD.

3.3 Prior to the end of each Fiscal Year during this Agreement, AF shall submit an annual budget for the forthcoming Fiscal Year to AD or AD’s designee.

3.4 AF agrees to maintain its financial and accounting records separate from the records of UM and in accordance with Generally Accepted Accounting Principles. AF agrees to retain all books, accounts, reports, files and other records relating to this Agreement, the operation and management of AF or any funds contributed to, received by, expended by, or managed by AF, and to make such records available at all reasonable times for inspection and audit by the Chancellor or his/her designees, during the term of and for a period of five years after the completion of this Agreement. Such records shall be provided at AF’s offices on UM’s Oxford Campus, or such other location as designated by UM upon reasonable notice to AF. To the extent that information is inspected, reviewed or received by AD or the Chancellor or his/her designees, with respect to the identity of donors or sponsors who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification,
cultivation and solicitation of donors or sponsors with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, or with respect to any personal, commercial or proprietary information provided to AF by third parties, such information shall be treated as confidential by AD or the Chancellor and by any designee who may review or acquire such information. UM is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. If upon such inspection or audit UM determines that UM funds or resources have been expended for purposes inconsistent with this Agreement, AF, upon demand by UM, shall reimburse UM for such misused funds, and UM shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL, acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL and, further, any such decision to disclose or release any confidential, personal, commercial or proprietary information or information that would identify any particular donor shall be made by the IHL acting upon its minutes.

3.5 AF agrees that it may only use its resources to further the literary and educational programs of UM and to aid UM’s Department of Intercollegiate Athletics as outlined in its Articles of Incorporation. AF further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless UM consents to the proposed amendment. UM agrees, through the Chancellor and AD, to keep AF apprised of UM’s needs and priorities. AF agrees to consider and communicate to the University its ability and plans to fund those needs and priorities.

3.6 AF agrees to submit to UM and to the IHL audited financial statements based upon an annual audit of AF’s books, records, and expenditures by an external auditor selected by UM and approved by the IHL such that audited financial statements for each Fiscal Year may be prepared and submitted to UM and to IHL by December 1 of the following Fiscal Year, along with a list of Foundation officers, directors or trustees. AF shall contemporaneously submit an annual report to UM and to IHL providing a detailed list of supplemental compensation which was submitted to UM for the purpose of providing additional compensation to UM employees or paid directly to UM employees at AD’s request under Article 3.2. This reporting requirement does not apply to transfers to UM by AF that are paid directly to UM for use by UM to compensate UM employees if that compensation is included in UM’s annual budget.

3.7 Except as directed by AD and approved by the Chancellor under Article 3.2 or Article 3.13 and consistent with applicable laws and regulations as outlined in Article 5, AF shall provide no benefit or compensation to any UM employee. Notwithstanding the foregoing, AF shall not pay or provide compensation to the
Chancellor, to any IHL system office employee, or to the University for the purpose of supplementing the Chancellor’s salary without the prior approval of the IHL. Any request for such approval shall come through the Commissioner of the IHL.

3.8 AF acknowledges and agrees that UM owns all copyright, interest in and right to all trademarks, trade names, logos, and service marks developed by UM for use by AF, including all such trademarks, service marks, and trade names historically associated with AF.

3.9 AF shall adopt and maintain a conflict of interest policy that complies with all requirements of Miss. Code Ann. § 79-11-269 as amended from time to time.

3.10 AF shall enter into an agreement with the University of Mississippi Foundation, Inc. to provide for the University of Mississippi Foundation, Inc.’s receipting and accounting for gifts, grants, and endowments given to or received by AF, to assure that any such gifts, grants, and endowments are received and accounted for consistent with the policies and practices adopted by the University of Mississippi Foundation, Inc. and consistent with the Affiliation Agreement between UM and the University of Mississippi Foundation, Inc., and to provide for the University of Mississippi Foundation, Inc.’s, management on behalf of AF of all AF endowments and other non-cash assets. AF does not manage UM assets.

3.11 AF shall provide AD and Chancellor notice of any regular, annual, or special meetings of the AF Board of Directors, and AD, Chancellor or their designees have the right to attend any such meetings.

3.12 AF agrees to timely satisfy any and all financial obligations to third parties, including but not limited to its Promissory Note and other obligations to BancorpSouth related to or secured by AF’s interest in the Manning Center.

3.13 AF agrees to manage and support the UM Department of Intercollegiate Athletics Courtesy Car Program consistent with the policies and guidelines for such program approved by AD.

3.14 AD may from time to time make other requests from AF or seek other assistance from AF in accomplishing the mission of the UM Department of Intercollegiate Athletics, and AF agrees that it will not unreasonably deny any such requests.

3.15 AF shall pay UM for services provided AF by UM employees by annually reimbursing UM a percentage of employment costs associated with those UM employees who perform work for or under the direction of AF Board or AF employees. The amount AF shall reimburse UM for a particular employee’s services in support of AF shall be based upon an estimate of the portion of that employee’s time devoted to AF work. A list
of UM employees providing services to AF and the portion of associated employment expenditures for which AF shall reimburse UM will be determined annually and incorporated herein by reference. AF shall pay to UM on each June 30 an amount as mutually agreed upon by UM and AF.

3.16 AF shall make all such payments to UM for the benefit of its employees providing services for AF by deposit in UM’s payroll system upon written request of AD.

3.17 AF shall reimburse the UM for expenses UM incurs as a result of AF operations if those expenses would not otherwise have been incurred by UM, specifically including telephone, mail, and other such services provided on a monthly basis. The rate charged AF shall be the rate that is charged to UM departments for such services.

3.18 AF may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed five years.

3.19 AF shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to UM, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of AF. All gifts made to UM shall be accounted for and ownership shall be maintained by UM, even though the gifts may be managed by AF.

ARTICLE 4. SEATING PRIORITY AND OTHER IN-KIND SUPPORT

To assist AF in discharging its obligations under this Agreement and in soliciting, developing, and generating private and corporate support for UM and its athletics programs, UM grants AF the following rights.

4.1 The right to assign seating priority at UM athletics events, including UM football games, home baseball games, women’s basketball games, men’s basketball games, and other athletics events in the discretion of AD.

4.2 The right to assign parking privileges to park in restricted areas designated by AD for certain athletics events, including UM football games, baseball games, women’s basketball games, men’s basketball games, and other athletics events in the discretion of AD.

4.3 A non-exclusive, non-transferable license to use UM trademarks, service marks, and logos consistent with UM policy and its contract with Collegiate Licensing Company, including but not limited to a license to use marks developed by UM for use by AF.
4.4 An exclusive, transferable license to use UM trademarks, service marks, and trade names historically associated with AF.

4.5 The designation as an UM official affiliated entity.

4.6 Such other rights, privileges or benefits as AD, in AD’s sole discretion, may determine will assist AF in discharging its obligations under this Agreement.

4.7 UM shall provide support services to AF of the type provided to UM departments on a cost reimbursement basis including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool, and, to the extent permitted by law, use of the UM mail system and protection of the UM Police Department.

4.8 UM shall provide AF employees staff identification cards, parking privileges, admission to athletics and entertainment events, and access to UM’s library, health facilities, dining facilities and to its recreation and fitness programs, including the UM Golf Course, at the same rates and under the same terms as those benefits and facilities are made available to UM administrators and other employees.

ARTICLE 5. COMPLIANCE

AF shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by IHL, by the Southeastern Conference (“SEC”) or by the National Collegiate Athletics Association (“NCAA”). In managing the rights, privileges, and benefits assigned to AF in Article 4 above, AF shall include as a condition of any contract or agreement assigning to a third party any of those rights, privileges or benefits, that the rights, privileges or benefits may be withheld if the recipient or prospective recipient has engaged in conduct that UM or AF reasonably believes to be a violation of SEC or NCAA rules or legislation.

ARTICLE 6. INDEMNIFICATION

6.1 AF shall indemnify and hold harmless UM, its officers, employees, agents, and students in their official and personal capacities, from and against any and all claim, damage, liability, injury, expense, demands, and judgments, including court costs and attorney's fees, to the extent any such claim, damage, liability, injury, expense, demand or judgment is caused by the AF or any AF employee acting within the course and scope of their employment. This provision shall continue beyond termination or expiration of this Agreement.
6.2 UM and AF agree that UM generally controls the operation and activities of the Manning Center and other property leased by AF to UM while such leases are in effect.

ARTICLE 7. INSURANCE

7.1 AF shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

7.2 AF shall maintain Automobile Liability insurance providing at least $1,000,000 per accident or occurrence for bodily injury and property damage.

7.3 AF shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property, and in the event that AF owns any interest in real property during the life of this Agreement, including the Manning Center, sufficient property and casualty insurance to insure against the loss of the real property and any improvements or personal property associated with the insured premises.

7.4 AF shall maintain Directors and Officers liability insurance on members of the Board of Directors and AF Officers, while performing as such.

7.5 AF shall maintain Commercial Excess or Umbrella Coverage of $4,000,000 in additional coverage in excess or over and above the basic coverage set forth in Articles 7.1, 7.2, and 7.4.

7.6 AF shall maintain Workers Compensation insurance, if required to do so by applicable law, or such other insurance coverage as may be required by applicable law.

7.7 Although in some circumstances AF or an AF employee may be considered a university employee under the statutory definition of “Employee” under the Mississippi Tort Claim Act ("MTCA"), the parties agree that any insurance coverage purchased by AF shall not constitute a waiver of any protections provided by the MTCA to UM and shall not constitute "excess" insurance within the meaning of Miss. Code Ann. § 11-46-17(4) or be any waiver under the MTCA.

7.8 UM and AF agree that it is intended for title to all personal property and contents purchased by AF for the use of UM to be conveyed to UM at the time of delivery to UM. Therefore, AF shall be under no duty to purchase property insurance
coverage for personal property and contents which are purchased by AF for the use of UM.

ARTICLE 8. REPORTING

8.1 AF shall, by each December 1 of each year during the life of this Agreement, submit a detailed annual report of the work and financial condition of the AF for the preceding fiscal year to AD, to the Chancellor and to IHL, and shall also submit by the same date any other reports as required by this Agreement, by the Bylaws of the AF, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 3.2 and 3.6 of this Agreement.

8.2 AF shall promptly notify the Chancellor of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. AF has materially breached any of its contractual obligations under the Agreement;
2. AF has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. AF has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by AF or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on AF or upon its status as a tax exempt organization; or
6. AF has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of AF, or any AF controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for AF to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

8.3 AF’s chief executive officer shall submit to the Chancellor and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that AF has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best
of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the Chancellor of the University and the IHL, as required in Section 8.2 above. In this certification AF’s chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, AF chief executive officer will immediately notify, in writing, the Chancellor of the University.

**ARTICLE 9. TERMINATION AND RENEWAL**

9.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

9.2 UM may terminate this Agreement without cause with thirty days’ prior notice to AF and prior approval of IHL, acting upon its minutes.

9.3 UM may terminate this Agreement for cause with no notice to AF, but with prior notice to the IHL and prior approval of IHL, acting upon its minutes. The AF may not terminate this Agreement without the prior consent of the University Chancellor and the IHL.

9.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 9.1, Articles 3.6, 6, 7.7, 7.8, 9, and 10 shall survive the termination.

9.5 Upon termination and/or non-renewal of this Agreement, (1) AF shall cease to use and shall not assign or delegate the authority to use UM’s name or registered marks or logos to any person or entity without the written approval of the Chancellor, (2) AF shall remit any and all unrestricted funds held for the benefit of UM to such entity as designated in writing by the Chancellor on behalf of UM, (3) AF shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of UM to such entity as designated in writing by the Chancellor on behalf of the UM, (4) AF shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by Chancellor; and (5) AF shall work in concert with the UM to provide the UM or its designee with records and materials of the AF are necessary to continue the business and/or wind up the affairs of AF.

9.6 AF agrees to cease using University’s name, marks, and logos in the event that AF dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.
ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

10.2 The parties agree that AF is not the agent or employee of UM, and nothing in this Agreement creates an employment or other agency relationship between the parties.

10.3 The parties agree that AF is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of AF, no IHL employee shall hold a voting position on the AF Board. Senior UM administrators should only participate on the AF’s Board, if at all, in an ex-officio, non-voting capacity. The IHL may allow, upon written request by UM, exceptions to this restriction regarding IHL/UM employees.

10.4 UM and AF agree that AF’s donor and giving records and any other financial or commercial information possessed by AF or provided by AF to UM concerning individuals or corporations that provide AF financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Section 3.4 of this Agreement with respect to actions by IHL acting upon its minutes, UM and AF agree not to disclose to third parties and to keep confidential the giving records, giving history, and financial or commercial information of individuals and corporations that provide financial support to AF.

10.5 In the performance of this Agreement, AF shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sexual orientation, sex, age, physical or mental disability, medical condition, or veteran’s status.

10.6 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

10.7 The provision of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

10.8 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.
10.9 AF’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls.

10.10 UM and AF agree that neither UM or AF shall have any liability for the obligations, acts or omissions of the other party. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions. UM and AF further agree that although AF may provide perquisites and supplemental compensation to some UM employees, AF is doing so at the direction of UM under the affiliation agreement. UM and AF agree that AF is not the employer of any UM employees and does not control, direct or supervise the work of any UM employees.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

20. UM – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE ALUMNI ASSOCIATION OF THE UNIVERSITY OF MISSISSIPPI

The University of Mississippi requests Board approval of the proposed affiliation agreement between the University and the Alumni Association of the University of Mississippi. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
The University of Mississippi
and the
Alumni Association of the University of Mississippi

This agreement is made and entered into this 1st day of January, 2018 (the effective date) by and between UNIVERSITY OF MISSISSIPPI, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (hereinafter referred to as “University”), and the ALUMNI ASSOCIATION OF THE UNIVERSITY OF MISSISSIPPI, a corporation duly organized under the laws of the State of Mississippi (hereinafter referred to as “Association”).
RECITALS

1. The University is a state institution of higher learning established pursuant to the laws of the State of Mississippi.

2. The Association has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986 for the purposes outlined in its Articles of Incorporation, a copy of which is attached to this agreement as Exhibit A.

3. The University must enter an affiliation agreement with the Association as required by the Board of Trustees of the State Institutions of Higher Learning ("IHL"), as set forth in IHL Policy 301.0806.

4. The University has a strong interest in maintaining a favorable relationship with its graduates, former students, and friends of the University.

5. The Association serves the University and promotes its mission by among other things, attracting, organizing, and encouraging graduates, former students, and friends throughout Mississippi and the world to advance the University's mission and by fostering, encouraging, establishing, and maintaining affinity, loyalty, community, and relationships among the University, its alumni, former students, and its friends.

6. The University and the Association have a history of interaction and cooperation that has served the interests of the University.

7. The Association has the responsibility as an affiliated entity to use its resources in a responsible and effective manner to further the mission of the University and to support the University.

8. The University and the Association anticipate that the University will provide the Association with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other services, support, and assistance the Association shall provide the University.

9. The University and the Association desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the University and the Association do hereby agree, as follows:
ARTICLE 1. PERSONNEL AND SERVICES

The Association may utilize, with the approval of the Chancellor of the University, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Association as agreed by the University.

ARTICLE 2. ASSOCIATION OBLIGATIONS

2.1 The Association agrees to provide an organizational framework for volunteer service to the University through local alumni clubs, professional chapters, and special interest alumni groups. The Association will serve as the most widely accessible medium for graduates, former students, and friends of the University to maintain relationships with the University. Nothing in this Agreement shall be construed to give the Association control of or authority over other affiliates supporting the University and its constituent units. The Association will work cooperatively and in good faith with these organizations to promote the interests of the University and its relationship with its alumni.

2.2 The Association agrees to assist the University in developing and supporting programs and services, including, but not limited to, administration, maintenance, and enhancement of the alumni data base; operation of homecoming and reunion programs; participation in advocacy and other advancement endeavors; maintenance of a career services program; maintenance of programs serving the University's student population; and participation in scholarship programs, award recognition programs, student recruitment programs, and special events.

2.3 The Association agrees to provide volunteers to serve the University.

2.4 The Association agrees that it may only use its resources to advance the University’s mission as outlined in its Articles of Incorporation. The Association further agrees that it may not amend its Articles of Incorporation or By-Laws during the life of this Agreement unless the University consents to the proposed amendment.

2.5 The University may from time to time make other requests from the Association or seek other assistance from the Association in accomplishing the mission of the University, and the Association agrees that it will not unreasonably deny any such requests for assistance.

2.6 The Association shall reimburse the University for expenses the University incurs as a result of the Association’s operations if those expenses would not otherwise have been incurred by the University.
2.7 To assure that the resources and services provided by the University are expended for the ultimate benefit of the University, as long as this Agreement is in effect, the Association shall provide an annual report to the Chancellor of the University, including the following information:

1. How University resources and services were used, and the benefits (both financial and intangible) to the University arising from that use.

2. A description of proposed activities for the coming year. The description shall be developed with input from the University’s Executive Director of Alumni Affairs and subject to approval by the University Chancellor.

3. The Association's current financial policies, procedures and controls, if any, as set forth in its By-Laws and Articles of Incorporation.

2.8 The University’s Office of Alumni Affairs will provide an opportunity for the Association to participate in setting goals for the Association in conjunction with the University’s goals and priorities.

2.9 At least thirty days before the end of each Fiscal Year during this Agreement, the Association shall submit an annual budget for the forthcoming Fiscal Year to the Chancellor.

2.10 The Association agrees to manage all funds in its control in a fiscally sound and prudent manner.

2.11 The Association agrees to maintain its financial and accounting records separate from the records of the University and in accordance with Generally Accepted Accounting Principles. The Association agrees to retain all books, accounts, reports, files and other records of the Association relating to this Agreement, the operation and management of the Association or any funds contributed to, received by, expended by, or managed by the Association, and to make such records available at all reasonable times for inspection and audit by the Chancellor or his/her designees, during the term of and for a period of five years after the completion of this Agreement. Such records shall be provided at the University’s Alumni Office on the University’s Oxford Campus, or such other location as designated by the University upon reasonable notice to the Association. To the extent that information is inspected, reviewed or received by the Chancellor or his/her designees, with respect to the identity of donors, sponsors, or members who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors, sponsors, or members, with respect to personal, commercial, or proprietary information relating to a donor or member or his/her family or business, or with respect to any personal, commercial or proprietary
information provided to the Association by third parties, such information shall be treated as confidential by the Chancellor and by any designee who may review or acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. If upon such inspection or audit the University determines that University funds or resources have been expended for purposes inconsistent with this Agreement, the Association, upon demand by the University, shall reimburse the University for such misused funds, and the University shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL, and further, any such decision to disclose or release any confidential, personal, commercial or proprietary information or information that would identify any particular donor or members shall be made by the IHL acting upon its minutes.

2.12 The Association must cause to be prepared annual financial statements of its condition, which shall include such detail as the IHL may from time to time require. The Association must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. The Association shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Association’s fiscal year, to the Chancellor of UM and to IHL. However, if the IHL’s Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit determine that the Association’s annual audited financial statement will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR), then the Association must submit annual audited financial statements, along with a list of Entity officers, directors or trustees, by October 15 of each year. The IHL’s Associate Commissioner of Finance and Administration shall notify the Association of the applicability of the October 15 deadline to the Association as far in advance of the deadline as possible each year. The CPA firm to be utilized by the Association must be approved by the IHL, and all such requests must be submitted to the IHL for approval not later than three months prior to the end of the Association’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of the Association, the Chancellor, with the approval of the IHL, may grant a request to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the Association’s assets are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review
of the Association’s financial records in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Association anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above. The Association shall contemporaneously submit an annual report to the University and to the IHL providing a detailed list of supplemental compensation which was submitted to the University for the purpose of providing additional compensation to University employees or paid directly to University employees. This reporting requirement does not apply to transfers to the University by the Association that are paid directly to the University for use by the University to compensate University employees if that compensation is included in the University’s annual budget.

2.13 The Association may not underwrite, pay, or provide additional compensation to the University Chancellor or any IHL system office employee without the prior approval of the IHL. Any such request for approval shall be made through the IHL Commissioner to the IHL. Additionally, the Association may not provide or pay compensation to any other University employee without prior approval of the Chancellor, and any such approval shall be reported to the IHL by the Association at the IHL’s next meeting. This provision does not apply to transfers to the University by the Association that are paid directly to the University for use by the University to compensate University employees if that compensation is included in the University’s annual budget.

2.14 To the extent the Association engages in fundraising on behalf of the University, the Association agrees to accept or solicit only those gifts that are consistent with the University’s missions, goals, or objectives.

2.15 The Association shall enter into an agreement with the University of Mississippi Foundation, Inc. to provide for the University of Mississippi Foundation, Inc.’s receipting and accounting for gifts, grants, and endowments given to or received by the Association or any local clubs or professional chapters, to assure that any such gifts, grants, and endowments are received and accounted for consistent with the policies and practices adopted by the University of Mississippi Foundation, Inc. and consistent with the Affiliation Agreement between the University and the University of Mississippi Foundation, Inc., and to provide for the University of Mississippi Foundation, Inc.’s, management on behalf of the Association of all the Association endowments and other non-cash assets. The Association shall maintain an appropriate methodology under
which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Association. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Association.

2.16 The Association shall not accept any gift, donation or grant or enter into any transaction that creates any liability for the University, without advance written approval of the University Chancellor.

2.17 No member of the Association may encumber the University’s funds or otherwise bind the University in any way.

2.18 No University assets will be managed by the Association.

2.19 The Association acknowledges and agrees that the University owns all copyright, interest in, and right to all trademarks, trade names, logos, and service marks developed by the University for use by the Association, including all such trademarks, service marks, and trade names historically associated with the Association.

2.20 The Association shall adopt and maintain a conflict of interest policy that complies with the requirements of Miss. Code Ann. § 79-11-269 (1972), as amended from time to time.

2.21 The Association shall provide the Chancellor reasonable notice of any regular, annual, or special meetings of its Board of Directors or of its Executive Committee, and the Chancellor have the right to attend any such meetings as well as the meetings of any other Association committees.

2.22 If the Association should cease to exist, any Association assets donated to the Association for the benefit of the University must be transferred to the University or to another non-profit entity designated by the University.

2.23 The Association may enter its contracts for professional, advisory or other personal services in carrying out its duties, but any such contracts entered into after the execution of this Agreement shall not exceed two years.

ARTICLE 3. UNIVERSITY OBLIGATIONS AND OTHER IN-KIND SUPPORT

3.1 The University grants the Association a non-exclusive, non-transferable license to use University trademarks, service marks, and logos consistent with University
policy and its contract with Collegiate Licensing Company, including but not limited to a license to use marks developed by the University for use by the Association.

3.2 The University grants the Association an exclusive, transferable license to use University trademarks, service marks, and trade names historically associated with the Association or developed by the University or the Association for the Association’s use.

3.3 The University agrees to designate the Association as an official affiliated entity of the University.

3.4 The University shall provide the Association such other rights, privileges or benefits as the Chancellor, in the Chancellor’s sole discretion, may determine will assist the Association in discharging its obligations under this Agreement.

3.5 The University Chancellor shall be an ex-officio non-voting member of the Association's Board of Directors and Executive Committee and shall be given reasonable notice of any meeting of the Board or Executive Committee, as required by 2.21 of this Agreement.

3.6 Subject to the availability of funding and the budget process, the University agrees to provide the Association with resources suitable in the University's judgment for the accomplishment of the Association's activities for the University's benefit, and may include services and supplies, staff support, office space, and such financial support as agreed upon between the parties from time to time. The amount and nature of such resources shall be determined annually, on a fiscal year basis, in connection with the program planning and budget processes of the University and the Association. No provision in this Agreement shall be construed to give the Association any legal entitlement to any University funding, personnel or other resources in any particular fiscal year. All University assets, including personal property, made available to the Association under the terms of this agreement shall remain the property of the University unless sold, conveyed or transferred to the Association by way of a separate written agreement.

3.7 The University's Chancellor will encourage all parts of the University to collaborate with the Association in implementing the Association’s programs and services.

3.8 The University Chancellor agrees to inform the Association on a regular basis of the University’s needs and priorities.
ARTICLE 4. COMPLIANCE

The Association shall comply with any and all federal and state laws and regulations.

ARTICLE 5. INDEMNIFICATION

The Association agrees to indemnify and hold harmless the University, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. The Association agrees to reimburse the University and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

ARTICLE 6. INSURANCE

6.1 The Association shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.

6.2 The Association shall maintain Automobile Liability insurance providing at least $1,000,000 per accident or occurrence for bodily injury and property damage.

6.3 The Association shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property, and in the event that the Association owns any interest in real property during the life of this Agreement sufficient property and casualty insurance to insure against the loss of the real property and any improvements or personal property associated with the insured premises.

6.4 The Association shall maintain Directors and Officers liability insurance on members of the Board of Directors and Association Officers, while performing as such.

6.5 The Association shall maintain Commercial Excess or Umbrella Coverage: The Association shall maintain $5,000,000 in commercial umbrella coverage in addition to the basic coverages set forth in Articles 6.1, 6.2, and 6.4.

6.6 The Association shall maintain Workers Compensation if required to do so by applicable law or such other insurance coverages as may be required by applicable law.
6.7 Although in some circumstances an Association employee may be considered a university employee under the statutory definition of “Employee” under the Mississippi Tort Claim Act ("MTCA"), the parties agree that any insurance coverage purchased by the Association shall not constitute a waiver of any protections provided by the MTCA to the University and shall not constitute "excess" insurance within the meaning of Miss. Code Ann. § 11-46-17(4) or be any waiver under the MTCA.

ARTICLE 7. REPORTING

7.1 The Association shall, by October 15 of each year during the life of this Agreement submit a detailed annual report of the work and financial condition of the Association for the preceding fiscal year to the Chancellor, and shall also submit by the same date any other reports as required by this Agreement, by the Bylaws of the Association, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 2.11 and 2.12 of this Agreement.

7.2 The Association shall promptly notify the Chancellor of the University and the IHL, in writing, if any of the following events ("Reportable Events") occur:

1. The Association has materially breached any of its contractual obligations under the Agreement;
2. The Association has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Association has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Association or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Association;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Association or upon its status as a tax exempt organization; or
6. The Association has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Association, or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous
sentence creates a duty for the Association to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

7.3 The Association’s chief executive officer shall submit to the Chancellor and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Association has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the Chancellor of the University and the IHL, as required in Article 7.2 above. In this certification the Association’s chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Association chief executive officer will immediately notify, in writing, the Chancellor of the University.

ARTICLE 8. TERMINATION AND RENEWAL

8.1 This Agreement shall have a term of five years, if not renewed by mutual consent of the parties before that date.

8.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Association and prior approval of IHL, acting upon its minutes.

8.3 The University may terminate this Agreement for cause without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Association may not terminate this Agreement without the prior approval of the University Chancellor and the IHL.

8.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 8.1, Articles 2.11, 2.19, 2.22, 5, 6.7, 8, and 9 shall survive the termination.

8.5 Upon termination and/or non-renewal of this Agreement, (1) the Association shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the Chancellor, (2) the Association shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the University, (3) the Association shall work in concert with its members and/or donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the University, (4) the Association shall work in concert with persons or entities with which it had contractual relations to the extent
practical and allowed by law, to assign any contracts to such entity as designated by 
Chancellor; and (5) the Association shall work in concert with the University to provide 
the University or its designee with records and materials of the Association necessary to 
continue the business and/or wind up the affairs of the Association.

8.6 The Association agrees to cease using the University’s name, marks, and 
logos in the event the Association dissolves, ceases to be a non-profit corporation, ceases 
to be recognized as a tax exempt entity under Section 501(c)(3) of the Internal Revenue 
Code, or this Agreement is terminated.

8.7 The University and the Association expect there to exist a cooperative 
relationship between them. In the event that the University Chancellor determines that 
such cooperation is not in place and is thus, in the Chancellor’s view, detrimental to the 
well being of the University, the Chancellor shall notify the IHL to allow the IHL to 
ter intervene to reconcile the parties. However, if the IHL determines and notifies the 
Chancellor that it is in the best interest of the University to substitute new members of the 
Board of Directors of the Association, the Chancellor may direct that at the expiration of 
a ninety-day period, the terms of office of 100% of the total number of Directors shall be 
deemed to have expired. Upon such event, a five-person Commission shall be selected as 
follows: (1) one member shall be the Chancellor or his designee, (2) one member shall 
be the University’s Executive Director of Alumni Affairs, (3) one member shall be the 
President of the Association, (4) one member shall be the president-elect of the 
Association, and (5) one member appointed by a majority vote of the then living 
members of the Barnard Society, or the then existing equivalent donor group with a 
lifetime giving of $5 million or greater; however, such donor group may not appoint as a 
member of the Commission anyone who at the time of such appointment is serving as an 
employee, officer, trustee, or director of any University affiliated support organization or 
foundations. The Commission shall then appoint, by majority vote, members to the Board 
of Directors to replace the Directors whose terms shall be deemed to have expired.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be construed, governed, interpreted and applied in 
accordance with the laws of the State of Mississippi.

9.2 The parties agree that the Association is not the agent or employee of the 
University and nothing in this Agreement creates an employment or other agency 
relationship between the parties.

9.3 The parties agree that the Association is a private, independent entity and, 
as such, is not governed by the IHL. To insure the independence of the Association, no 
IIHL employee shall hold a voting position on the Association Board. Senior University 
administrators should only participate on the Association’s Board, if at all, in an ex-
officio, non-voting capacity. The IHL may allow, upon written request by the University, exceptions to this restriction regarding IHL/University employees.

9.4 The University and the Association agree that the Association’s donor and giving records and any other financial or commercial information possessed by the Association or provided by the Association to the University concerning individuals or corporations that provide the Association financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Article 2.11 of this Agreement with respect to actions by IHL acting upon its minutes, the University and the Association agree not to disclose to third parties and to keep confidential the giving records, giving history, and financial or commercial information of individuals and corporations that provide financial support to the Association.

9.5 In the performance of this Agreement, the Association shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sexual orientation, sex, age, physical or mental disability, medical condition, or veteran’s status.

9.6 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

9.7 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

9.8. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

9.9 The Association’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq., as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.
9.10 The University and the Association agree that it is intended for title to all personal property and contents purchased by the Association for the use of The University to be conveyed to The University at the time of delivery to The University. Therefore, the Association shall be under no duty to purchase property insurance coverage for personal property and contents which are purchased by the Association for the use of The University.

9.11 The University and the Association agree that neither the University nor the Association shall have any liability for the obligations, acts or omissions of the other party. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this agreement shall be responsible for its own obligations, acts or omissions. The parties further agree that although the Association may provide perquisites and supplemental compensation to some University employees, the Association is doing so to at the direction of the University under the affiliation agreement. The Association and the University agree that the Association is not the employer of any University employees and does not control, direct or supervise the work of any the University employees.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

21. UM – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE UNIVERSITY OF MISSISSIPPI FOUNDATION

The University of Mississippi requests Board approval of the proposed affiliation agreement between the University and The University of Mississippi Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
Between
The University of Mississippi
and
The University of Mississippi Foundation

This Agreement is made and entered into effective this 1st day of January, 2018 (the effective date) by and between The University of Mississippi, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and The University of Mississippi Foundation, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This
Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated July 31, 1973, a copy of which is attached to this Agreement as Exhibit A;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c) (3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the Foundation owns certain real property situated at 406 University Avenue, Oxford, Mississippi, referred to as “Brandt Memory House” including the attached “Carriage House.” The offices of the Foundation being located in this facility, which adjoins, but is not part of, the campus of the University;

WHEREAS, the University has an active fund-raising and development program and wishes to utilize office space, enhanced computer capabilities and assistance in the identification of donors, solicitation of donations, acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Foundation can provide;

WHEREAS, the University and the Foundation anticipate that the Foundation will provide the University with specified services and facilities in carrying out its mission; and
WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:

ARTICLE 1. LEASE OF FACILITIES

1.1 The Foundation shall provide the University with approximately 11,500 square feet of office space in Brandt Memory House and Carriage House at the prevailing rate for comparable office space in Oxford, Mississippi, as well as parking privileges for University employees performing work on behalf of the Foundation or the University’s fund-raising activities. The rental fee charged the University for this office space shall include the cost of all utilities other than telephone service charges, which charges shall be paid separately by the University. The parties agree at this time that this charge will be $16.10 per square foot for a total sum of $185,000 per year. Future increases are anticipated to be based on approximate increases in market rates. The University agrees to maintain the leased premises, to include equipment provided by the Foundation, in reasonable repair. All additions and improvements made to the leased premises which are not firmly affixed to a structure shall remain the property of the University and may be removed by the University at any time.

1.2 The Foundation shall permit the University to use Brandt Memory House for appropriate University functions consistent with the terms set forth in its Brandt Memory House Rental Agreement. A separate contract is to be executed for each official use of Brandt Memory House. The Foundation serves as host for many functions sponsored by the University and will continue to do so.

ARTICLE 2. UNIVERSITY PERSONNEL AND SERVICES

2.1 The Foundation may utilize, with the approval of the University Vice Chancellor for Finance, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the purposes of the Foundation.

2.2 The Foundation and the University agree that the portion of the cost incurred by utilizing University employees for Foundation operational activities shall be reimbursed annually by the Foundation to the University. The reimbursement shall be based on the percentage of time University employees devote to Foundation operations multiplied by the employee(s) annual compensation including benefit costs.
2.3 The Foundation shall reimburse the University for expenses the University incurs as a result of Foundation operations, if those expenses would not otherwise have been incurred by the University, specifically including telephone, mail and other such services provided on a monthly basis. The rate shall be the rate that is charged to University departments for such services.

2.4 The University shall provide support services to the Foundation of the type provided to University departments on a cost reimbursement basis including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

2.5 The University shall provide Foundation employees staff identification cards, parking privileges, admittance to athletics and entertainment events, health services benefits and access to the University’s library and to its recreation and fitness programs, at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.

2.6 The University designates the Foundation as the primary entity for receipting, acknowledging, accounting for and managing its funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors. The University and the Foundation agree that the annual sum of $425,000 is a fair and appropriate amount for the University to pay to the Foundation for the performance of these services. Adjustments to this sum in future fiscal years are expected to be based on local cost of living adjustments, unless otherwise agreed to by the University Vice Chancellor for Finance and the Foundation CEO. The University shall also reimburse the Foundation for the cost of any donations received for items such as wire fees and credit card fees on gifts received.

2.7 The Chancellor of the University shall serve ex officio as a non-voting member of the Foundation’s Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation’s Board of Directors.

2.8 Annually, the Chancellor of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.
2.9 The Chancellor of the University shall submit a request to the Foundation for utilization of University unrestricted gifts received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, incorporate the University’s request into its operating budget and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University Chancellor and/or the University Director of Development (or equivalent position), shall routinely update key Foundation personnel on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fund raising needs and objectives.

2.10 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the Chancellor of the University and the Director of the University’s Licensing Program. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

2.10 (a) A non-exclusive, non-transferable license to use University trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.

2.10 (b) An exclusive, transferable license to use University trademarks, service marks and trade names historically associated with the Foundation.

2.10 (c) The designation of the Foundation as a University affiliated entity.

2.10 (d) Such other rights, privileges or benefits as the University Chancellor, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 3. FOUNDATION OBLIGATIONS

3.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its charitable, scientific and educational purposes.

3.2 The Foundation, acting through its Board of Directors and staff, shall assist the University’s Office of Development in its fund-raising activities and
development programs with individuals, corporations, foundations, governmental and other external organizations.

3.3 The Foundation, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University’s physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University’s missions, goals and obligations.

3.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired. The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Foundation.

3.5 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 5 years.

3.6 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of the condition of the Entity, which shall include such detail as IHL may from time to time require. The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the Foundation’s annual financial statements, and the Foundation shall submit the audited financial statements, along with a list of its officers, directors or trustees, to the Chancellor of the University and to IHL within five months following the completion of the Foundation’s fiscal year or by October 15 of each year, whichever is earlier. The CPA firm to be utilized by the Foundation must be approved by the IHL, and the Foundation must request such approval not later than three months prior
to the end of the Foundation’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis.

3.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation.

3.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269, as amended.

3.9 The Foundation shall immediately deposit into the appropriate University account any funds which are sent to the Foundation but which are clearly intended to be funds designated for a University account. In such an instance, the Foundation shall issue, on behalf of the University, a University development receipt.

3.10 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University, so long as consistent with the governing documents of the Foundation.

3.11 The Foundation CEO shall promptly notify the Chancellor of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or
6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

3.12 If requested by the University, the Foundation shall provide any and all information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the Chancellor of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the Chancellor and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial, or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 4. COMPLIANCE

4.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 5. INSURANCE

5.1 The Foundation shall maintain General Liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate liability covering its employees and agents during the course and scope of their employment, providing protection from general liability risks, including, but not limited to, protection against claims of sexual harassment, discrimination or other violations of law.
5.2 The Foundation shall maintain Property Insurance in an amount sufficient to provide full replacement of all insured property to insure against the loss of the real property and any improvements associated with the insured premises.

5.3 The Foundation shall provide for the bonding of its officers and employees and shall maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

5.4 The Foundation shall maintain Commercial Excess or Umbrella Coverage of $4,000,000 in additional coverage in excess or over and above the basic coverage set forth above.

5.5 The Foundation shall maintain Worker’s Compensation insurance, if required to so by applicable law, or such other insurance coverage as may be required by applicable law.

5.6 Although in some circumstances the Foundation or a Foundation employee may be considered a university employee under the statutory definition of “Employee” under the Mississippi Tort Claim Act ("MTCA"), the parties agree that any insurance coverage purchased by the Foundation shall not constitute a waiver of any protections provided by the MTCA to the University and shall not constitute "excess" insurance within the meaning of Miss. Code Ann. § 11-46-17(4) or be any waiver under the MTCA.

ARTICLE 6. REPORTING

6.1 The Foundation shall, each year during this Agreement, submit to the University Vice Chancellor for Administration and Finance and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 3.6 of this Agreement. Such submission shall also include a list of Foundation officers, directors or trustees. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University Employees, it being agreed that any such payments shall only be made through the University’s payroll system and with the Chancellor’s approval. Understanding that no form of additional compensation may be underwritten for the University Chancellor or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the Chancellor or provided to the University for purposes of supplementing the Chancellor’s salary.

6.2 In order to facilitate transparency, the Foundation shall also maintain on its website, for public and University inspection, a copy of this Agreement along with
copies of the most recent annual audited financial statements, Form 990, By-laws, Charter, listing of the members of its Board of Directors, its conflict of interest policy and its investment policy.

6.3 The Foundation CEO shall submit to the Chancellor of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the Chancellor of the University and the IHL, as required above. The Foundation CEO shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Foundation CEO will immediately notify, in writing, the Chancellor of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

7.2 The University may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

7.3 The University may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes. The Foundation may not terminate this Agreement without the prior consent of the University Chancellor and the IHL.

7.4 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the Chancellor, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the Chancellor on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University Chancellor; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.
7.5 The Foundation agrees to cease using University’s name, marks, and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

7.6 The University and Foundation expect there to exist a cooperative relationship between them. In the event that the University Chancellor determines that such cooperation is not in place and is thus, in the Chancellor’s view, detrimental to the well-being of the University, the Chancellor shall notify the IHL to allow the IHL to intervene to reconcile the parties. However, if the IHL determines and notifies the Chancellor that it is in the best interest of the University to substitute new members of the Board of directors of the Foundation, the Chancellor may direct that at the expiration of a ninety-day period, the terms of office of 100% of the total number of Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the Chancellor, (2) one member appointed by the IHL, (3) one member appointed by the Board of Directors of the Ole Miss Athletics Foundation, (4) one member appointed by a majority vote of the Board of Directors of the University of Mississippi Alumni Association, and (5) one member appointed by a majority vote of the then living members of the Barnard Society, or the then existing equivalent donor group with a lifetime giving of $5 million or greater; however, such donor group may not appoint as a member of the Commission anyone who at the time of such appointment is serving as an employee, officer, trustee, or director of any University affiliated support organization or foundation. The Commission shall during the ninety day period appoint, by majority vote, members to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Foundation.

7.7 In the unlikely event that the Commission, as described in 7.6 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation board members may be reelected by this Commission to serve.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Foundation is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

8.3 Neither the University nor the Foundation shall have any liability for the obligations, acts, or omissions of the other party.
8.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions. The parties further agree that although the Foundation may provide perquisites and supplemental compensation to some University employees, the Foundation is doing so at the direction of the University under the Foundation affiliation agreement. The Foundation and the University agree that the Foundation is not the employer of any University employees and does not control, direct or supervise the work of any University employees.

8.5 The University and Foundation agree that the Foundation’s donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Except as otherwise provided in Section 3.12 above, and unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

8.6 In the performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

8.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

8.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.
8.10 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.11 The Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls (including, but not limited to, the University of Mississippi Foundation Realty, LLC), with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq., as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this Agreement.

8.12 The University and the Foundation agree that it is intended for title to all personal property and contents purchased by the Foundation for the use of the University to be conveyed to the University at the time of delivery to the University. Therefore, the Foundation shall be under no duty to purchase property insurance coverage for personal property and contents which are purchased by the Foundation for the use of the University.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing and signed by the party given it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:
Jeffrey S. Vitter, Chancellor
The University of Mississippi
123 Lyceum
University, MS 38677

To the Foundation:
Wendell W. Weakley, President and CEO
The University of Mississippi Foundation
406 University Avenue
Oxford, MS 38655

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the Chancellor of the University and the President and Chief Executive Officer of the Foundation, respectively, execute this Agreement on this the ____ day of ____________, 2017.

STAFF RECOMMENDATION: Board staff recommends approval of this item.
22. **UMMC – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER RESEARCH AND DEVELOPMENT FOUNDATION**

The University of Mississippi Medical Center requests Board approval of the proposed affiliation agreement between the University and The University of Mississippi Medical Center Research and Development Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement**
**Between**
**University of Mississippi Medical Center**
**and**
**University of Mississippi Medical Center Research and Development Foundation**

This agreement is made and entered into this 1st day of ______, ____ (the effective date) by and between the University of Mississippi Medical Center, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (hereinafter referred to as UMMC), and the University of Mississippi Medical Center Research and Development Foundation (hereinafter referred to as RDF), a corporation duly organized under the laws of the State of Mississippi.

**PREAMBLE**

WHEREAS, RDF is a non-profit, research, educational and charitable organization supporting research, technology development and intellectual property management at UMMC, and;

WHEREAS, RDF has been established to be a 501(c)(3), not-for-profit corporation for the purposes outlined in its Articles of Incorporation, and;

WHEREAS, UMMC has the authority and right to enter into agreements with affiliated 501(c)(3), not-for-profit organizations, with the approval of its governing board, the Board of Trustees for the Institutions of Higher Learning for the State of Mississippi (hereinafter referred to as IHL) and;

WHEREAS, UMMC and RDF anticipate UMMC will provide RDF with specified services and facilities with which to carry out its responsibilities in exchange for the development, commercialization, management, financial and other service, support, and assistance RDF shall provide UMMC, and;

WHEREAS, RDF has the responsibility as a non-profit corporation to use its resources in a responsible and effective manner to foster the missions of UMMC, and;
WHEREAS, UMMC and RDF desire to define the arrangements concerning
services, facilities, premises, and activities as set out in this agreement, and;

NOW, WHEREFORE, in consideration of the premises and mutual covenants
contained herein, UMMC and RDF do hereby agree, as follows:

**ARTICLE 1. USE OF UMMC FACILITIES**

1.1 The RDF may use for its activities, physical space provided by UMMC as
needed by RDF and available from UMMC. Upon such time in the future as space is
required for its exclusive use, UMMC shall lease such space to RDF.

1.2 The lease shall include space, maintenance, furniture, equipment and
utilities for the leased space. UMMC agrees to maintain the leased premises, to include
equipment provided by UMMC, in reasonable repair. The rental fee charged for this
office space shall include the cost of all utilities. Maintenance and insurance of
equipment purchased by RDF will be the responsibility of RDF. All additions and
improvements made by RDF to the leased premises which are not firmly affixed to a
structure shall remain the property of RDF and may be removed by RDF at any time.
UMMC may request RDF to relocate at such time that space is needed to fulfill the
missions and programs of UMMC. UMMC will give at least sixty (60) days’ notice
before any relocation.

**ARTICLE 2. PERSONNEL AND SERVICES**

2.1 RDF may utilize, with the approval of the Vice Chancellor for Health
Affairs, which approval shall not be unreasonably withheld, such UMMC administrative,
professional and other employees from time to time as are needed to carry out the
purposes of the RDF as agreed by UMMC. UMMC may reassign the duties of such of its
employees accordingly.

2.2 The Vice Chancellor has selected the members of the RDF Board in
conformity with Miss. Code Ann. § 37-147-15 and IHL Board of Trustees Policy on
University Foundation/Affiliate

d Entity Activities.

2.3 All Gifts made to RDF shall be accounted for and owned by RDF, but
shall be managed by UMMC. RDF shall, consistent with the goals and priorities of
UMMC, incorporate UMMC's requests into its operating budget and may allocate
unrestricted gifts accordingly to the extent funds are available. The UMMC Vice
Chancellor shall routinely update key RDF personnel on UMMC initiatives to ensure that
RDF and UMMC are informed of fund raising needs and objectives.

**ARTICLE 3. RDF OBLIGATIONS**

3.1 RDF's primary purpose is to provide support to UMMC in accord with the
provisions of its Charter of Incorporation and By-laws, which state RDF operates exclusively for the charitable purpose of supporting the research activities of UMMC.

3.2 During the term of this Agreement UMMC may assign to RDF contractual rights resulting from UMMC's licensing of intellectual property owned or developed in whole or in part by UMMC or resulting from UMMC's related commercialization activities and efforts. These contractual rights may include income streams from or an equity position or ownership interest in other business entities or the right to receive income streams from or an equity position or ownership interest in other business entities (collectively "Equities"). RDF further covenants and agrees upon UMMC's request to distribute according to UMMC's instructions any dividends or other income received as a result of owning Equities and any proceeds from the sale or transfer of any interest in any portion of the Equities.

3.3 RDF acknowledges and agrees that UMMC owns all copyright, interest in and right to all trademarks, trade names, logos, and service marks developed by UMMC for use by RDF, including all such trademarks, service marks, and trade names historically associated with RDF.

3.4 RDF, acting through its Board of Directors, shall solicit and transfer funds for the purchase of UMMC equipment and supplies, for the construction, renovation and improvement of UMMC's physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; and for other educational, research, and scientific programs and activities.

3.5 RDF shall enter into an agreement with UMMC to provide for receipting and accounting for all charitable gifts, grants, and endowments given to or received by RDF, to assure that any such charitable gifts, grants, and endowments are received and accounted for consistent with the policies and practices adopted by RDF and consistent with this Agreement.

3.6 Although RDF may seek contributions, grants, and other support from third parties on its own behalf, RDF shall not seek contributions, grants or other public or private support on behalf of UMMC without the consent of UMMC through its Vice Chancellor. To the extent RDF seeks any contributions, gifts, grants or other support from third parties on its own behalf but for the benefit of UMMC, RDF agrees to accept or solicit only those contributions, gifts, grants, and support that are consistent with UMMC and RDF's missions, goals, or objectives.

3.7 If requested by UMMC, RDF shall provide any and all information relating to the operation or management by RDF. To the extent that information is inspected, reviewed or received by the Vice Chancellor of UMMC or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation,
and solicitation of donors, or with respect to personal information relating to a donor or his/her family business, such information shall be treated as confidential by the Vice Chancellor and any designee who may acquire such information. UMMC is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of IHL and, further, any decision to release any information that would identify any particular donor shall be made by the IHL. The Vice Chancellor shall promptly notify the IHL and Commissioner if RDF refuses or fails to produce any information requested by the Vice Chancellor.

3.8 RDF agrees to maintain separate financial and accounting records from UMMC in accordance with generally accepted accounting principles. RDF shall manage all funds in its control in a fiscally sound and prudent manner.

3.9 RDF agrees to timely satisfy any and all financial, audit, and accounting obligations to third parties, including but not limited to any requirements of any funding or grant awarding agencies.

3.10 RDF agrees that it will cause to be prepared annual financial statements of the condition of the Foundation, which shall include such detail as the IHL Board may from time to time require. RDF must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the RDF's annual financial statements. RDF shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the its fiscal year (December 1), to the Vice Chancellor and to IHL. However, the annual audited financial statements of some of the Entities will be required for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR). Those Entities which will be required to submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board's Deputy Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the Vice Chancellor and to IHL, along with a list of Entity officers, directors or trustees, by October 15 of each year. The IHL Board's Deputy Commissioner of Finance and Administration shall notify each such Entity of the applicability of the October 15 deadline to such Entity as far in advance of the deadline as possible each year. The CPA firm to be utilized by the Entity must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Entity's fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of RDF, the Vice Chancellor, with the approval of the IHL Board, may grant a request of the Entity to waive the requirement of an annual audit by a CPA firm on a
showing of adequate grounds, such as a showing that the assets of the Entity are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Entity and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the RDF in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the RDF (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the RDF anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above;

3.11 RDF shall provide to UMMC and IHL by December 1 of each year during the life of this Agreement a list of its officers, directors or trustees. RDF shall contemporaneously submit an annual report to UMMC and to IHL providing a detailed list of supplemental compensation, if any additional compensation is paid, which was submitted to UMMC for the purpose of providing additional compensation to UMMC employees or paid directly to UMMC for use by UMMC to compensate UMMC employees if that compensation is included in UMMC's annual budget.

3.12 RDF agrees it will not provide any form of additional or increased compensation for the Vice Chancellor or any IHL system office employee without the prior approval of the Board and the request for approval shall come through the Commissioner to the IHL Board. As to other Medical Center employees, the RDF will provide no form of additional compensation without the prior approval by the Vice Chancellor. All such approvals by the Vice Chancellor must be reported to the Board of Trustees at its next official meeting. This provision does not apply to transfers to UMMC by RDF that are paid directly to UMMC for use by UMMC to compensate UMMC employees if that compensation is included in UMMC's annual budget. Nothing in this provision prevents RDF from reimbursing a UMMC employee for expenses consistent with policies and procedures established between UMMC and RDF.

3.13 RDF may enter into contracts for professional, advisory, or other professional services in carrying out its duties, but such contracts shall not exceed five (5) years.

3.14 RDF shall maintain a conflict of interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended.

3.15 RDF shall provide the Vice Chancellor notice of any regular, annual, or
special meetings of the RDF Board of Directors, and the Vice Chancellor or the Vice Chancellor's designee has the right to attend any such meetings.

3.16 RDF further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless UMMC consents to the proposed amendment.

3.17 UMMC may from time to time make other requests from RDF or seek other assistance from RDF in accomplishing UMMC's mission, and RDF agrees that it will not unreasonably deny any such requests.

3.18 RDF agrees to regularly seek input from UMMC's Vice Chancellor in defining RDF's objectives.

3.19 The RDF CEO shall promptly notify the Vice Chancellor of UMMC and IHL, in writing, if any of the following events ("Reportable Events") occur:

1. RDF has materially breached any of its contractual obligations under the agreement;
2. RDF has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. RDF has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by RDF or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of RDF;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on RDF or upon its status as a tax exempt organization; or
6. RDF has contracted with or entered into any business of pecuniary relationship with any board members, other than a full time employee of RDF, or any foundation controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment of benefits to that person exceeding the value of Fifty Thousand Dollars ($50,000) in any calendar year. The previous sentence creates a duty for RDF to report any such transaction but does not suggest or imply that such transactions are either prohibited or permitted.

ARTICLE 4. UMMC OBLIGATIONS AND IN-KIND SUPPORT

To assist RDF in discharging its obligations under this Agreement and in
development, commercialization, management, financial, and other service, support, and assistance RDF shall provide UMMC in support of its academic, educational, research, and service missions, UMMC grants RDF the following rights:

4.1 The designation as an UMMC official affiliated entity.

4.2 A non-exclusive, non-transferable license to use UMMC trademarks, service marks, and logos consistent with UMMC policy, including but not limited to a license to use marks developed by UMMC for use by RDF.

4.3 An exclusive, transferable license to use UMMC trademarks, service marks, and trade names historically associated with RDF.

4.4 Upon agreement of the parties, UMMC shall provide support services to RDF of the type provided to UMMC departments on a cost reimbursement basis including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and publication services, motor pool, and, to the extent permitted by law, use of the UMMC campus mail system and protection of the Campus Police.

4.5 UMMC shall provide RDF technical support, expertise, cooperation, and assistance in applying for grants and external funding and in complying with the regulatory and other requirements of governmental agencies and other funding sources.

4.6 UMMC shall provide RDF such other rights, privileges or benefits as the Vice Chancellor may determine will assist RDF in discharging its obligations under this Agreement.

4.7 UMMC, through its Vice Chancellor, will regularly communicate to RDF UMMC's needs and priorities, particularly with respect to UMMC's research objectives, mission, and goals.

ARTICLE 5. COMPLIANCE

5.1 The RDF shall comply with any and all federal and state laws and regulations and shall comply with any compliance, financial, accounting, audit, and regulatory guidelines as may be required by UMMC's governing Board or by granting or funding agencies.

ARTICLE 6. INDEMNIFICATION

6.1 The RDF agrees to and does hereby indemnify and hold harmless UMMC, including its agents and employees from any and all claims, demands, suits or liabilities of any nature, or on account of any of the actions or inactions in or about the leased premises. The RDF agrees to reimburse UMMC and its agents and employees for any
expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

**ARTICLE 7. INSURANCE**

7.1 RDF shall obtain insurance coverage for General Liability, Automobile Liability Insurance, if applicable, Property Insurance, if applicable, Directors and Officers Liability Insurance and Commercial Excess or Umbrella Coverage.

**ARTICLE 8. REPORTING**

8.1 The RDF shall, within one hundred and twenty (120) days of June 30, the close of UMMC's fiscal year, submit a detailed annual report of the work and financial condition of the RDF to the Vice Chancellor of UMMC, and any other reports as required by the Bylaws of the RDF. Such submissions shall also include a list of RDF officers, directors or trustees. RDF shall submit an annual report providing a detailed list of any supplemental compensation to administrators, faculty, or other UMMC Employees, if any, it being agreed that any such payments shall only be made through UMMC's payroll system and with Vice Chancellor approval. Understanding that no form of additional compensation may be underwritten for the UMMC Vice Chancellor without IHL approval, RDF shall also provide documentation of approval from the IHL of any supplemental compensation provided to the Vice Chancellor. RDF shall furnish all such information to the IHL, if so requested.

8.2 The RDF Secretary-Treasurer shall submit to the Vice Chancellor and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that RDF has examined its donor records and business transactions occurring during its fiscal year ending with the prior calendar year, and that to be best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the Vice Chancellor of UMMC and the IHL, as required above. In this certification RDF's Secretary-Treasurer shall re-affirm that, in the event he/she becomes aware of such Reportable Events, the RDF Secretary-Treasurer will immediately notify, in writing, the Vice Chancellor of UMMC.

**ARTICLE 9. TERMINATION AND RENEWAL**

9.1 This Agreement shall expire on December 31, 2022, if not renewed by mutual consent of the parties before that date.

9.2 UMMC may terminate this Agreement without cause with thirty (30) days written notice to RDF and prior approval of IHL, acting upon its minutes.

9.3 UMMC may terminate this Agreement for cause without notice to RDF but with notice to the IHL and prior approval of IHL, acting upon its minutes.
9.4 RDF shall have no right to terminate this Agreement without the consent of the Vice Chancellor and the IHL.

9.5 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed, Articles 6, 9.5, and 10 shall survive the termination.

9.6 Upon termination and non-renewal of this Agreement, (1) RDF shall cease to use and shall not assign or delegate the authority to use UMMC's name or registered marks or logos to any person or entity without the prior approval of the Vice Chancellor, (2) RDF shall remit any and all unrestricted funds held for the benefit of UMMC to such entity as designated in writing by the Vice Chancellor on behalf of UMMC, (3) RDF shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of UMMC to such entity as designated in writing by the Vice Chancellor on behalf of UMMC, (4) RDF shall work in concert with persons or entities with which it had contractual relations to the extent practicable and allowed by law, to assign any contracts to such entity as designated by the UMMC Vice Chancellor; and (5) RDF shall work in concert with UMMC to provide UMMC or its designee with records and materials of RDF as are necessary to continue the business and/or wind up the affairs of RDF.

9.7 UMMC and RDF expect there to exist a cooperative relationship between them. In the event that the UMMC Vice Chancellor determines that such cooperation is not in place and is thus, in the Vice Chancellor's view, detrimental to the well-being of UMMC, the Vice Chancellor has the power pursuant to Miss. Code § 37-147-15(2) and Miss. Code § 79-11-245(1) & (7) to elect a new Board each year or to replace the entire RDF Board of Directors, at-will.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

10.2 The parties agree that RDF is an independent entity that is not a part of or controlled by UMMC or its governing board.

10.3 The parties agree that RDF is not the agent or employee of UMMC, and nothing in this Agreement creates an employment or other agency relationship between the parties. UMMC employees may be members of the RDF Board pursuant to Miss. Code Ann. § 37-147-15.

10.4 In performance of this Agreement, RDF shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sex, sexual orientation, age, physical or mental disability, medical
condition, or veteran's status.

10.5 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

10.6 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

10.7 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this agreement the day and year set forth below.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

23. USM – APPROVAL OF AFFILIATION AGREEMENT WITH THE UNIVERSITY OF SOUTHERN MISSISSIPPI FOUNDATION

The University of Southern Mississippi requests Board approval of the proposed affiliation agreement between the University and The University of Southern Mississippi Foundation as required by Board policy 301.0806. The Attorney General has approved this request.

Affiliation Agreement between The University of Southern Mississippi and The University of Southern Mississippi Foundation

This Affiliation Agreement (the “Agreement”) is made and entered into effective this 1st day of January, 2018 (the effective date) by and between The University of Southern Mississippi, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and The University of Southern Mississippi Foundation, a not-for-profit corporation duly chartered pursuant to the laws of the State of Mississippi (the “Foundation”). This Agreement is designed to govern the relationship between the University and the Foundation by setting forth the terms and
conditions under which the University will provide certain support and services for the Foundation and the Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Foundation has been established as a not-for-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated October 27, 1959;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c)(3) not-for-profit organizations, subject to the Institutions of Higher Learning Board of Trustees (the “Board” or “IHL”) Policy 301.0806 (the “Policy”);

WHEREAS, the Board Policy acknowledges that the independent nature of the Foundation provides flexibility to the University in fiscal management and responsiveness;

WHEREAS, the Foundation has the responsibility under its mission statement and as a not-for-profit corporation to use its resources in a responsible and effective manner to operate exclusively for the benefit of the University and its students, alumni, faculty and staff to promote, encourage and assist all forms of educational, scientific, literary, research and service activities provided by the University, all for the public welfare as outlined in its Charter of Incorporation;

WHEREAS, the University has an active development program and wishes to utilize enhanced computer capabilities and assistance in the identification, solicitation and stewardship of donors (current or prospective), acknowledgment and accounting of contributions and maintenance of donor biographical, financial and contribution records, all of which the University believes the Foundation can provide;

WHEREAS, the University and the Foundation anticipate that the Foundation, as the primary entity for receiving philanthropic support designated for the benefit of the University, will provide the University with specified services in carrying out its mission, and the University will provide the Foundation facilities in carrying out its mission;

WHEREAS, the University and the Foundation desire to define the arrangement concerning services, facilities, premises and activities in support of each other as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for good and valuable consideration, the adequacy of which is hereby acknowledged, the University and the Foundation do hereby agree as follows:
ARTICLE 1. UNIVERSITY OBLIGATIONS AND SERVICES

1.1 The Foundation may utilize, with the approval of the University, which approval shall not be unreasonably withheld, such University administrative, professional and other employees from time to time as are needed to carry out the mission and purposes of the Foundation.

1.2 The Foundation and the University agree that the portion of the cost incurred by utilizing University employees for Foundation operational activities will be reviewed annually.

1.3. The University shall provide office space, utilities and other support for the Foundation as needed and appropriate for work on-site within the University, adequate for the performance of the services required hereunder.

1.4. The University shall provide support services to the Foundation of the type provided to University departments including but not limited to telephones, computer networking and Internet connection, custodial services, printing and publication services, motor pool and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

1.5 The University shall provide Foundation employees staff identification cards, parking privileges, admittance to University events, health services benefits, access to the University’s library and to its recreation and fitness programs, and all other benefits and programs available to University employees at the same rates and under the same terms as those benefits and facilities are made available to University administrators and other employees.

1.6 The University designates the Foundation as the primary entity for receipting, acknowledging, accounting for, managing and investing its endowment funds, as well as for researching, identifying and maintaining biographical and giving records of potential and actual donors.

1.7 The President of the University shall serve ex officio as a non-voting member of the Foundation’s Board of Directors pursuant to the bylaws of the Foundation. No University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation’s Board of Directors.

1.8 Annually, the President of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures. The
Foundation shall be relieved of any liability arising from a disbursement made pursuant to the provisions of this Section of the Agreement.

1.9 The President of the University shall submit a request to the Foundation for utilization of unrestricted gifts anticipated to be received by the Foundation in the following fiscal year. The Foundation shall, consistent with the goals and priorities established by the University, consider the University’s request and may allocate unrestricted gifts accordingly to the extent funds are available. In addition to unrestricted funds, the University President and/or the Vice President for Advancement shall routinely update the Foundation on the University initiatives involving private support to ensure that Foundation and University personnel are informed of fundraising needs and objectives.

1.10 The University’s name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

1.10 (a) A non-exclusive, non-transferable license to use the intellectual property of the University including but not limited to trademarks, service marks and logos consistent with University policy, including but not limited to a license to use marks developed by the University for use by the Foundation.

1.10 (b) An exclusive, transferable license to use the intellectual property of the University including but not limited to trademarks, service marks and trade names historically associated with the Foundation.

1.10 (c) The designation of the Foundation as a University affiliated entity.

1.10 (d) Such other rights, privileges or benefits as the University President, in his/her sole discretion, may determine will assist the Foundation in discharging its obligations under this Agreement.

ARTICLE 2. FOUNDATION OBLIGATIONS

2.1 The Foundation’s primary purpose is to provide support to the University in accord with the provisions of its Charter of Incorporation and Bylaws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its educational, research and service missions.
2.2 The Foundation shall assist the University’s Office of Development in its fund-raising activities and development programs with individuals, corporations, foundations, and other external organizations and entities.

2.3 The Foundation shall solicit, accept and transfer funds consistent with the educational, research and service missions of the University for purposes including but not limited to the purchase of University equipment and supplies; the construction, renovation and/or improvement of the University’s physical facilities; the support of faculty, staff and student travel and research; the support of faculty professorships, lectureships and endowed chairs; the support of student scholarships; and the support of other educational, research, cultural, scientific, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University’s missions, goals and obligations pursuant to Foundation policies.

2.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation and shall keep accurate and current records of all such contributions made directly to the University or to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi.

2.5 The Foundation may, pursuant to Foundation policies, enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed two (2) years.

2.6 The Foundation agrees to maintain its financial and accounting records separate from the records of the University and in accordance with Generally Accepted Accounting Principles applicable for its industry. The Foundation agrees to submit annual financial statements, which shall include such detail as the IHL Board may from time to time require. The Foundation will engage a Certified Public Accounting (CPA) firm to perform the annual audits of the Foundation’s annual financial statements and will submit the audited financial statements, along with a list of Entity officers, directors or trustees, not later than five months (December 1) following the completion of the Foundation’s fiscal year, to the University President and to IHL. On occasion, the annual audited financial statements will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If the Foundation is required to submit its annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner for Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, the Foundation agrees to submit the annual audited financial statements to the affiliated, the University President and to the IHL, along with a list of Entity officers, directors or trustees by October 15 of
each year. The IHL Board’s Associate Commissioner for Finance and Administration shall notify the Foundation of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized by the Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Foundation’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. At the request of the Foundation, the University President, with the approval of the IHL Board may grant a request made by the Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Foundation are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Foundation in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.7 The Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos and service marks developed by the University for use by the Foundation, including all such trademarks, service marks and trade names historically associated with the Foundation. The Foundation shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the President of the University.

2.8 The Foundation shall maintain a conflict-of-interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended from time to time.

2.9 All gifts received by the Foundation shall be receipted and deposited in a timely manner in accordance with the directive of the donor. All gifts received by the University shall be immediately forwarded to the Foundation for acknowledgment to ensure proper receipting and recording of all gifts. Gifts made to the University shall be
accounted for and ownership maintained by the University; gifts made to the Foundation shall be accounted for and ownership maintained by the Foundation. However, gifts made to the University will be transferred to the Foundation if a gift agreement, pledge or expectancy exists between the donor and the Foundation. If a gift is made to the University and no gift agreement, pledge or expectancy exists between the donor and the Foundation, the donor or donor representative as applicable will be contacted to clarify intent. It will be explained that, in most situations, it is the University’s desire to have funds held within the Foundation. The intent of the donor or donor representative will then control the delivery and ownership of the gifts. If a situation exists where the Foundation has accepted a gift intended by the donor or donor representative solely for the University, the Foundation shall immediately account to the University for the gift.

2.10 The Foundation shall perform any and all other acts and activities on behalf of the University, as the Foundation deems appropriate, in carrying out the purposes and mission of the University pursuant to Foundation policies. In order to perform its duties under this agreement, the Foundation may use a percentage of the annual restricted funds, assess fees for services, or impose charges against managed funds to support its operations. The Foundation will inform the University of the implementation of, or changes to, any assessment of fees.

2.11 The President of the Foundation shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Foundation or upon its status as a tax exempt organization; or
6. The Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Foundation, or any Foundation controlled
directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year. The previous sentence creates a duty for the Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

2.12 If requested by the University, the Foundation shall provide any and all information relating to the operation or management of the Foundation or any funds contributed to, received by, expended by or managed by the Foundation. To the extent that information is inspected, reviewed or received by the President of the University or his/her designees with respect to the identity of donors who have expressly stated they wish to remain anonymous, or with respect to any information relating to the identification, cultivation and solicitation of donors, or with respect to personal, commercial or proprietary information relating to a donor or his/her family or business, such information shall be treated as confidential by the University President and any designee who may acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. Such inspection rights are also extended to the IHL acting upon its minutes, however, it is understood that the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and, further, any decision to release any personal, commercial or proprietary information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

ARTICLE 3. COMPLIANCE

3.1 The Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 4. INSURANCE

4.1 The Foundation shall maintain insurance coverage as deemed appropriate by the Foundation’s Board of Directors, including but not limited to the bonding of its officers and other appropriate persons and shall maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

ARTICLE 5. REPORTING

5.1 The Foundation shall, by December 1 of each year during this Agreement, submit to the University’s chief financial officer and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.6 of this Agreement.
Such submission shall also include a list of Foundation officers and directors. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty or other University employees, it being agreed that any such payments shall only be made through the University’s payroll system and with University President’s approval. Understanding that no form of additional compensation may be underwritten for the University President or for any IHL system office employee without IHL approval, the Foundation shall also provide documentation of approval from the IHL of any supplemental compensation provided to the University President or provided to the University for purposes of supplementing the President’s salary.

5.2 In order to facilitate transparency, the Foundation shall also maintain on its website, for public and University inspection, documents designated by the Foundation Board of Directors for public review which shall include but not be limited to a copy of this Agreement, the most recent annual audited financial statements, the most recent IRS Form 990 and other appropriate documents related to the Foundation’s mission and operations.

5.3 The President of the Foundation shall submit to the President of the University and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required above. The President of the Foundation shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the President of the Foundation will immediately notify, in writing, the President of the University.

ARTICLE 6. TERMINATION AND RENEWAL

6.1 This Agreement shall be extended from the date shown above until it’s expiration on December 31, 2022, if not renewed by mutual consent of the parties before that date.

6.2 The University President may terminate this Agreement without cause with thirty (30) days written notice to the Foundation and with the prior approval of the IHL, acting upon its minutes.

6.3 The University President may terminate this Agreement for cause, without notice to the Foundation but with notice to the IHL and prior approval of the IHL, acting upon its minutes.
6.4 The Foundation has no right to terminate this Agreement without the consent of the University President and the IHL.

6.5 Upon termination and non-renewal of this Agreement, (1) the Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (4) the Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by the University President; and (5) the Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Foundation as are necessary to continue the business and/or wind up the affairs of the Foundation.

6.6 The Foundation agrees to cease using University’s name, marks and logos in the event that the Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

6.7 The University and the Foundation have a long history of mutual cooperation and support. Foundation Board Members shall be elected to terms not to exceed three years and no less than one-third of the Board Members shall be elected in a single year. Although a director may be elected to more than one term, the approval process and rotation required shall work to maintain alignment between the Foundation and the mission of the University. If the University President determines that the relationship between the University and the Foundation is unduly detrimental to the well being of the University, the President shall notify the Commissioner of Higher Education. The IHL shall then attempt to reconcile the parties, including mediation if advisable. If, however, the IHL determines and notifies the University President that it is in the best interests of the University to substitute new members of the Board of Directors of the Foundation, the University President may direct that, at the expiration of a ninety-day period, the terms of office of up to 100 percent of the Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by The University of Southern Mississippi Alumni Association, (4) one member appointed by The University of Southern Mississippi Athletic Foundation, and (5) one member selected by a majority vote of the then living and competent individuals (not including entities such as foundations and corporations)
who are members of the Gallery of Benefactors within the Honor Club of the Foundation, or the then existing equivalent donor group or groups with a lifetime giving of $1,000,000 or greater by whatever name. The Commission shall then appoint, within the ninety-day period, by majority vote, members, which may include former Foundation Board Directors, to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Foundation.

6.8 In the unlikely event that the Commission, as described in 6.7 above, shall appoint a new Board of Directors for the Foundation, it is expressly understood that any, or all, of the previous Foundation Board members may be reelected by this Commission to serve on the new Foundation Board of Directors.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

7.2 The parties agree that the Foundation is not an agent or employee of the University, and nothing in this Agreement creates an employment or other agency relationship between the parties.

7.3 Neither the University nor the Foundation shall have any liability for the obligations, acts or omissions of the other party.

7.4 The parties agree that the Foundation is a private, independent entity and, as such, is not governed by the IHL, but rather has its own governing Board of Directors. Accordingly, to the extent permitted by the laws of the State of Mississippi applicable to a public institution of higher learning, each party to this Agreement shall be responsible for its own obligations, acts or omissions.

7.5 The University and Foundation agree that the Foundation’s donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Except as provided in Section 2.12 above, unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

7.6 In the performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group
identification, sex, age, physical or mental disability, medical condition, or veteran’s status. The Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

7.7 The parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

7.8 The provisions of this Agreement are severable, and in the event that any provisions of the Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

7.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

7.10 The Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of University auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the University and the Foundation.

7.11 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

ARTICLE 8. NOTICE

8.1 Any notice to either party hereunder shall be in writing signed by the party given it and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University:  To the Foundation:
Dr. Rodney D. Bennett  Stace Mercier  
President  Executive Director
The University of Southern Mississippi  
118 College Drive, #5001  
Hattiesburg, Mississippi 39406

USM Foundation  
118 College Drive, #5210  
Hattiesburg, Mississippi 39406

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the University and the Foundation, acting through the President of the University and the President of the Board of Directors of the Foundation, respectively, execute this Agreement effective the 1st day of January, 2018.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

24. USM – APPROVAL OF AFFILIATION AGREEMENT WITH THE UNIVERSITY OF SOUTHERN MISSISSIPPI ATHLETIC FOUNDATION

The University of Southern Mississippi requests Board approval of the proposed affiliation agreement between the University and The University of Southern Mississippi Athletic Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement  
between  
The University of Southern Mississippi  
and  
The University of Southern Mississippi Athletic Foundation

This Affiliation Agreement (this “Agreement”) is made and entered into effective this 1st day of January, 2018 (the effective date) by and between THE UNIVERSITY OF SOUTHERN MISSISSIPPI, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and THE UNIVERSITY OF SOUTHERN MISSISSIPPI ATHLETIC FOUNDATION, a corporation duly organized under the laws of the State of Mississippi (the “Athletic Foundation”). This agreement is designed to govern the relationship between the University and the Athletic Foundation by setting forth the terms and conditions under which the University will provide certain support and services for the Athletic Foundation and the Athletic Foundation will provide certain support and services for and on behalf of the University.

PREAMBLE

WHEREAS, the Athletic Foundation has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue
Code of 1986 for the purposes outlined in its Articles of Incorporation dated July 14, 2000;

WHEREAS, the University has the authority and right to enter into agreements with affiliated 501(c)(3), not-for-profit organizations with the approval of its governing board, the Board of Trustees for Institutions of Higher Learning in the State of Mississippi (“IHL”);

WHEREAS, the Athletic Foundation has the responsibility under its mission statement and as a non-profit corporation to use its resources in a responsible and effective manner to further the literary and educational programs of the University and to aid the University’s Department of Intercollegiate Athletics as outlined in its Articles of Incorporation;

WHEREAS, the University and the Athletic Foundation anticipate that the University will provide the Athletic Foundation with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other service, support, and assistance the Athletic Foundation shall provide the University; and

WHEREAS, the University and the Athletic Foundation desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the University and the Athletic Foundation do hereby agree, as follows:

ARTICLE 1. PERSONNEL, FACILITIES AND SERVICES

1.1 The Athletic Foundation may utilize, with the approval of the Director of Intercollegiate Athletics (“AD”) who also serves as Chief Executive Officer (“CEO”) of the Athletic Foundation (“CEO”), which approval shall not be unreasonably withheld, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Athletic Foundation as agreed by the University. The Athletic Foundation may also recommend to the AD/CEO changes in personnel, as necessary, for those University employees who perform work for or under the direction of the Athletic Foundation Board or the Athletic Foundation employees.

1.2 The Athletic Foundation may utilize, with the approval of the AD/CEO, which approval shall not be unreasonably withheld, such University facilities from time to time as are needed to carry out the purposes of the Athletic Foundation as agreed by the University.
ARTICLE 2. ATHLETIC FOUNDATION OBLIGATIONS

2.1 The Athletic Foundation, in cooperation with the University, agrees to use its reasonable best efforts to solicit and develop private and corporate support for the University and its athletics programs and to develop affinity programs to promote affinity and support for the University and its athletics programs. When soliciting support for the benefit of the University, the Athletic Foundation agrees to solicit and/or accept only those gifts that are consistent with the University’s missions, goals, and obligations. The Athletic Foundation shall manage all Athletic Foundation funds in its control in a fiscally sound and prudent manner and consistent with the terms of this Agreement.

2.2 The Athletic Foundation agrees to provide in support of the University Department of Intercollegiate Athletics in the current Fiscal Year (for purposes of this Agreement, the Athletic Foundation and the University’s Fiscal Year begins each July 1 during the life of this Agreement and ends the following June 30) an amount as mutually agreed upon by the University and the Athletic Foundation no later than July 1 of each year. This may consist of supplemental compensation that has been approved by the AD/CEO and the University President (in which event, the Athletic Foundation agrees to report such approval and supplemental compensation to IHL at its next official meeting), debt service and other expense related to the activities of the Athletic Foundation.

2.3 Prior to the end of each Fiscal Year during this Agreement, the Athletic Foundation shall submit an annual budget for the forthcoming Fiscal Year to the University President.

2.4 The Athletic Foundation agrees to maintain its financial and accounting records separate from the records of the University and in accordance with Generally Accepted Accounting Principles applicable for its industry. The Athletic Foundation agrees to retain all books, accounts, reports, files and other records relating to this Agreement, the operation and management of the Athletic Foundation or any funds contributed to, received by, expended by, or managed by the Athletic Foundation, and to make such records available at all reasonable times for inspection and audit by the University President or his/her designees, during the term of and for a period of five (5) years after the completion of this Agreement. Such records shall be provided at the Athletic Foundation’s offices on the University’s Hattiesburg Campus, or such other location as designated by the University upon reasonable notice to the Athletic Foundation. To the extent that information is inspected, reviewed or received by the AD/CEO or the University President or his/her designees, with respect to the identity of donors or sponsors who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors or sponsors with respect to personal, commercial, or proprietary information relating to a donor or his/her family or business, or with respect to any personal, commercial or proprietary information provided to the Athletic Foundation by third
parties, such information shall be treated as confidential by the AD/CEO or the University President and by any designee who may review or acquire such information, the University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL, acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL and, further, any such decision to disclose or release any confidential, personal, commercial or proprietary information or information that would identify any particular donor shall be made by the IHL acting upon its minutes.

2.5 The Athletic Foundation agrees that it may only use its resources to further the athletic and educational programs of the University and to aid the University’s Department of Intercollegiate Athletics as outlined in its Articles of Incorporation. The Athletic Foundation further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless the University consents to the proposed amendment. The University agrees, through the University President and the AD/CEO, to keep the Athletic Foundation apprised of the University’s needs and priorities. The Athletic Foundation agrees to consider and communicate to the University its ability and plans to fund those needs and priorities.

2.6 The Athletic Foundation agrees to submit annual financial statements, which shall include such detail as the IHL Board may from time to time require. The Athletic Foundation will engage a Certified Public Accounting (CPA) firm to perform the annual audits of the Athletic Foundation’s annual financial statements and will submit the audited financial statements, along with a list of Entity officers, directors or trustees, not later than five months (December 1) following the completion of the Athletic Foundation’s fiscal year, to the University President and to IHL. On occasion, the annual audited financial statements will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If the Athletic Foundation is required to submit its annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner for Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, the Athletic Foundation agrees to submit the annual audited financial statements to the University President and to the IHL, along with a list of Entity officers, directors or trustees, by October 15 of each year. The IHL Board’s Associate Commissioner for Finance and Administration shall notify the Athletic Foundation of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized by the Athletic Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months (March 30) prior to the end of the Athletic Foundation’s fiscal year for which the audit will be conducted. Unless approval is specifically granted for multiple
years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. At the request of the Athletic Foundation, the University President, with the approval of the IHL Board, may grant a request made by the Athletic Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Athletic Foundation are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Athletic Foundation in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Athletic Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Athletic Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above. The Athletic Foundation shall contemporaneously submit an annual report to the University and to IHL providing a detailed list of supplemental compensation which was submitted to the University for the purpose of providing additional compensation to the University employees or paid directly to University employees at the AD/CEO’s request under Article 2.2. This reporting requirement does not apply to transfers to the University by the Athletic Foundation that are paid directly to the University for use by the University to compensate University employees if that compensation is included in the University’s annual budget.

2.7 Except as directed by the AD/CEO and approved by the University President under Article 2.2 or Article 2.13 and consistent with applicable laws and regulations as outlined in Article 4, the Athletic Foundation shall provide no benefit or compensation to any University employee. Notwithstanding the foregoing, the Athletic Foundation shall not pay or provide compensation to the University President, to any IHL system office employee, or to the University for the purpose of supplementing the University President’s salary without the prior approval of the IHL. Any request for such approval shall come through the Commissioner of the IHL.

2.8 The Athletic Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos, and service marks developed by the University for use by the Athletic Foundation, including all such trademarks, service marks, and trade names historically associated with the Athletic Foundation.
2.9 The Athletic Foundation shall adopt and maintain a conflict of interest policy that complies with all requirements of Miss. Code Ann. § 79-11-269 as amended from time to time.

2.10 All gifts received by the Athletic Foundation shall be deposited and receipted in a timely manner in accordance with the directive of the donor. Gifts made to the Athletic Foundation shall be accounted for and ownership maintained by the Athletic Foundation. If a situation exists where the Athletic Foundation has accepted a gift intended by the donor or donor representative solely for the University, the Athletic Foundation shall immediately account to the University for the gift.

2.11 As members of the Board of Directors and Executive Committee of the Athletic Foundation, the Athletic Foundation shall provide the AD/CEO and University President notice of any regular, annual, or special meetings of the Athletic Foundation Board of Directors, and the AD/CEO, University President or their designees have the right to attend any such meetings.

2.12 The Athletic Foundation agrees to timely satisfy any and all financial obligations to third parties.

2.13 The Athletic Foundation agrees to manage and support the University Department of Intercollegiate Athletics Courtesy Car/Airplane Program consistent with the policies and guidelines for such program approved by the AD/CEO.

2.14 The AD/CEO may from time to time make other requests from the Athletic Foundation or seek other assistance from the Athletic Foundation in accomplishing the mission of the University Department of Intercollegiate Athletics, and the Athletic Foundation agrees that it will not unreasonably deny any such requests.

2.15 The Athletic Foundation shall provide the University information in the form of an audit reflecting the portion of the cost incurred by the Athletic Foundation utilizing University employees for Athletic Foundation operations with this cost to be reviewed annually by the Athletic Foundation and the University.

2.16 The Athletic Foundation shall provide the University information in the form of an audit reflecting the portion of the expenses the University incurs as a result of the Athletic Foundation operations, including facilities, telephone, mail, and other such services provided on a monthly basis with this cost to be reviewed annually by the Athletic Foundation and the University.

2.17 The Athletic Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed two (2) years.
2.18 The Athletic Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Athletic Foundation.

ARTICLE 3. SEATING PRIORITY AND OTHER IN-KIND SUPPORT

To assist the Athletic Foundation in discharging its obligations under this Agreement and in soliciting, developing, and generating private and corporate support for the University and its athletics programs, the University grants the Athletic Foundation the following rights.

3.1 The exclusive right to assign seating priority at University athletics events, including University football games, home baseball games, women’s basketball games, men’s basketball games, and other athletics events in the discretion of the AD/CEO.

3.2 The exclusive right to assign parking privileges to park in restricted areas designated by the AD/CEO for certain athletics events, including University football games, baseball games, women’s basketball games, men’s basketball games, and other athletics events in the discretion of the AD/CEO.

3.3 A non-exclusive, non-transferable license to use the intellectual property of the University including but not limited to trademarks, service marks, and logos consistent with University policy and its contract with Licensing Resource Group, including but not limited to a license to use marks developed by the University for use by the Athletic Foundation.

3.4 An exclusive, transferable license to use the intellectual property of the University including but not limited to trademarks, service marks, and trade names historically associated with the Athletic Foundation or developed by the University for the Athletic Foundation’s use.

3.5 The designation as a University official affiliated entity.

3.6 Such other rights, privileges or benefits as the AD/CEO, in the AD/CEO’s sole discretion, may determine will assist the Athletic Foundation in discharging its obligations under this Agreement.

3.7 The University shall provide support services to the Athletic Foundation of the type provided to University departments including, but not limited to, utilities, telephone, fiber optic Internet cable connection, custodial services, printing and
publication services, motor pool, public relations, marketing, technology and, to the extent permitted by law, use of the University mail system and protection of the University Police Department.

3.8 The University shall provide the Athletic Foundation employees and/or University employees assigned to the Athletic Foundation staff identification cards, parking privileges, admission to athletics and entertainment events, and access to the University’s library and to its recreation and fitness programs and all other benefits and programs available to University employees at the same rates and under the same terms as those benefits and facilities are made available to the University administrators and other employees.

ARTICLE 4. COMPLIANCE

4.1 The Athletic Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by IHL, by Conference USA (“C-USA”) or by the National Collegiate Athletics Association (“NCAA”). In managing the rights, privileges, and benefits assigned to the Athletic Foundation in Article 3 above, the Athletic Foundation shall include as a condition of any contract or agreement assigning to a third party any of those rights, privileges or benefits, that the rights, privileges or benefits may be withheld if the recipient or prospective recipient has engaged in conduct that the University or the Athletic Foundation reasonably believes to be a violation of C-USA or NCAA rules or legislation.

ARTICLE 5. INSURANCE

5.1 The Athletic Foundation shall maintain insurance coverage as deemed appropriate by the Athletic Foundation’s Board of Directors, including but not limited to the bonding of its officers and other appropriate persons and shall maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

ARTICLE 6. REPORTING

6.1 The Athletic Foundation shall, by each December 1 of each year during the life of this Agreement, submit a detailed annual report of the work and financial condition of the Athletic Foundation for the preceding fiscal year to the AD/CEO, to the University President and to IHL, and shall also submit by the same date any other reports as required by this Agreement, by the Bylaws of the Athletic Foundation, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 2.2 and 2.6 of this Agreement.
6.2 The Athletic Foundation shall promptly notify the University President and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Athletic Foundation has materially breached any of its contractual obligations under the Agreement;
2. The Athletic Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Athletic Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Athletic Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Foundation;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Athletic Foundation or upon its status as a tax exempt organization; or
6. The Athletic Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members (other than a full time employee of the Athletic Foundation or the AD/CEO as approved by the University President under Article 2.2 or Article 2.13 and consistent with applicable laws and regulations as outlined in Article 4) or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year. The previous sentence creates a duty for the Athletic Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

6.3 The Athletic Foundation’s AD/CEO shall submit to the University President and the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Athletic Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the University President and the IHL, as required in Section 6.2 above. In this certification the Athletic Foundation’s chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Athletic Foundation AD/CEO will immediately notify, in writing, the University President.
ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall be extended until December 31, 2022, if not renewed by mutual consent of the parties before that date.

7.2 The University President may terminate this Agreement without cause with thirty (30) days’ prior notice to the Athletic Foundation and prior approval of IHL, acting upon its minutes.

7.3 The University President may terminate this Agreement for cause with no notice to the Athletic Foundation, but with prior notice to the IHL and prior approval of IHL, acting upon its minutes.

7.4 The Athletic Foundation has no right to terminate this Agreement without the consent of the University President and the IHL.

7.5 Upon termination and/or non-renewal of this Agreement, (1) the Athletic Foundation shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Athletic Foundation shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Athletic Foundation shall work in concert with its donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (4) the Athletic Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by University President; and (5) the Athletic Foundation shall work in concert with the University to provide the University or its designee with records and materials of the Athletic Foundation are necessary to continue the business and/or wind up the affairs of the Athletic Foundation.

7.6 The Athletic Foundation agrees to cease using University’s name, marks, and logos in the event that the Athletic Foundation dissolves, ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as a tax exempt entity under Section 501(c)(3) of the Internal Revenue code.

7.7 The University and the Athletic Foundation have a long history of mutual cooperation and support. Athletic Foundation Board Members shall be elected to terms not to exceed three years and no less than one-third of the Board Members shall be elected in a single year. Although a director may be elected to more than one term, the approval process and rotation required shall work to maintain alignment between the Athletic Foundation and the mission of the University. If the University President
determines that the relationship between the University and the Athletic Foundation is unduly detrimental to the well-being of the University, the President shall notify the Commissioner of Higher Education. The IHL shall then attempt to reconcile the parties, including mediation if advisable. If, however, the IHL determines and notifies the University President that it is in the best interest of the University to substitute new members of the Board of Directors of the Athletic Foundation, the President may direct that at the expiration of a ninety-day period, the terms of office of up to 100 percent of the total number of Directors shall be deemed to have expired. Upon such event, a seven-person Commission shall be selected as follows: 1) one member appointed by the University President, 2) one member appointed by the AD/CEO (or Acting AD/CEO), 3) one member appointed by the IHL, 4) one member appointed by The University of Southern Mississippi Alumni Association, 5) one member appointed by The University of Southern Mississippi Foundation, and 6 and 7) two members selected by a majority vote of then living and competent individuals (not including entities such as corporations or foundations) who are members of the Circle of Champions and higher donor groups within the Athletic Foundation, or then existing equivalent donor group or groups with a lifetime giving of $100,000 or greater by whatever name. The Commission shall then appoint within the ninety-day period, by majority vote, members, which may include former Athletic Foundation Board Directors, to the Athletic Foundation Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Athletic Foundation. In the unlikely event that the Commission, as described above, shall appoint a new Board of Directors for the Athletic Foundation, it is expressly understood that any, or all, of the previous Athletic Foundation Board members may be recommended by this Commission to serve on the new Athletic Foundation Board of Directors.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Athletic Foundation is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

8.3 Neither the University nor the Athletic Foundation shall have any liability for the obligations of the other party.

8.4 The parties agree that the Athletic Foundation is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of the Athletic Foundation, no IHL employee shall hold a voting position on the Athletic Foundation Board. Senior University administrators should only participate on the Athletic Foundation’s Board, if at all, in an ex-officio, non-voting capacity. The IHL may
allow, upon written request by the University, exceptions to this restriction regarding IHL/University employees.

8.5 The University and the Athletic Foundation agree that the Athletic Foundation’s donor and giving records and any other financial or commercial information possessed by the Athletic Foundation or provided by the Athletic Foundation to the University concerning individuals or corporations that provide the Athletic Foundation financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Section 2.4 of this Agreement with respect to actions by IHL acting upon its minutes, the University and the Athletic Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history, and financial or commercial information of individuals and corporations that provide financial support to the Athletic Foundation.

8.6 In the performance of this Agreement, the Athletic Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sexual orientation, sex, age, physical or mental disability, medical condition, or veteran’s status.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

8.8 The provision of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

8.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

8.10 The Athletic Foundation’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of University auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the University and the Association.
8.11 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing signed by the party given it and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: To the Athletic Foundation:
Dr. Rodney D. Bennett Chief Executive Officer
President Southern Miss Athletic Foundation
The University of Southern Mississippi 118 College Drive, #5017
118 College Drive, #5001 Hattiesburg, Mississippi 39406
Hattiesburg, Mississippi 39406

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement effective on the date shown above.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

25. USM – APPROVAL OF AFFILIATION AGREEMENT WITH THE UNIVERSITY OF SOUTHERN MISSISSIPPI ALUMNI ASSOCIATION

The University of Southern Mississippi requests Board approval of the proposed affiliation agreement between the University and The University of Southern Mississippi Alumni Association. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

Affiliation Agreement
between
The University of Southern Mississippi
and
The University of Southern Mississippi Alumni Association

This Affiliation Agreement (this “Agreement”) is made and entered into this 1st day of January, 2018 (the effective date) by and between The University of Southern Mississippi

To the University:
Dr. Rodney D. Bennett
President
The University of Southern Mississippi
118 College Drive, #5001
Hattiesburg, Mississippi 39406

To the Athletic Foundation:
Chief Executive Officer
Southern Miss Athletic Foundation
118 College Drive, #5017
Hattiesburg, Mississippi 39406

or to such other addressee as may be hereafter designated by written notice.
MISSISSIPPI, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the “University”), and THE UNIVERSITY OF SOUTHERN MISSISSIPPI ALUMNI ASSOCIATION, a not-for-profit corporation duly organized under the laws of the State of Mississippi (the “Association”). This agreement is designed to govern the relationship between the University and the Association by setting forth the terms and conditions under which the University will provide certain support and services for the Association and the Association will provide certain support and services for and on behalf of the University.

RECITALS

1. The University is a state institution of higher learning established pursuant to the laws of the State of Mississippi.

2. The Association has been established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes outlined in its Charter of Incorporation dated December 12, 1955.

3. The University must enter an affiliation agreement with the Association as required by the Board of Trustees of the State Institutions of Higher Learning (“IHL”), as set forth in IHL Policy 301.0806.

4. The University has a strong interest in maintaining a favorable relationship with its graduates, former students, and friends of the University.

5. The Association serves the University and promotes its mission by among other things, attracting, organizing, and encouraging graduates, former students, and friends throughout Mississippi and the world to advance the University's mission and by fostering, encouraging, establishing, and maintaining affinity, loyalty, community, and relationships among the University, its alumni, former students, and its friends.

6. The University and the Association have a history of interaction and cooperation that has served the interests of the University.

7. The Association has the responsibility as an affiliated entity to use its resources in a responsible and effective manner to further the mission of the University and to support the University.

8. The University and the Association anticipate that the University will provide the Association with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other services, support, and assistance the Association shall provide the University.
9. The University and the Association desire to define the arrangements concerning services, facilities, premises, and activities as set forth in this agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the University and the Association do hereby agree, as follows:

**ARTICLE 1. PERSONNEL AND SERVICES**

1.1 The Association may utilize, with the approval of the President of the University, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Association as agreed by the University.

**ARTICLE 2. ASSOCIATION OBLIGATIONS**

2.1 The Association agrees to provide an organizational framework for volunteer service to the University through local alumni chapters, constituent societies, and other special interest alumni groups. The Association will serve as the most widely accessible medium for graduates, former students, and friends of the University to maintain relationships with the University. Nothing in this Agreement shall be construed to give the Association control of or authority over other affiliates supporting the University and its constituent units. The Association will work cooperatively and in good faith with these organizations to promote the interests of the University and its relationship with its alumni.

2.2 The Association agrees to assist the University in developing and supporting programs and services, including, but not limited to, administration, maintenance, and enhancement of the alumni database; development of University traditions; publication of the alumni magazine; coordination of homecoming and reunion programs; participation in advocacy and other advancement endeavors; maintenance of programs serving the University's student population; and participation in scholarship programs, award recognition programs, student recruitment programs, and special events.

2.3 The Association agrees to provide volunteers to serve the University.

2.4 The Association agrees that it may only use its resources to advance the University’s mission as outlined in its Articles of Incorporation.

2.5 The University may from time to time make other requests from the Association or seek other assistance from the Association in accomplishing the mission of the University, and the Association agrees that it will not unreasonably deny any such requests for assistance.
2.6 The Association shall reimburse the University for expenses the University incurs as a result of the Association’s operations if those expenses would not otherwise have been incurred by the University.

2.7 To assure that the resources and services provided by the University are expended for the ultimate benefit of the University, as long as this Agreement is in effect, the Association shall provide an annual report to the President of the University, including the following information:

1. How University resources and services were used, and the benefits (both financial and intangible) to the University arising from that use.

2. A description of proposed activities for the coming year. The description shall be developed with input from the Executive Director of the Alumni Association and subject to approval by the University President.

3. The Association's current financial policies, procedures and controls, if any, including but not limited to those set forth in its Bylaws and Articles of Incorporation.

2.8 The University’s Office of Alumni Affairs will provide an opportunity for the Association to participate in setting goals for the Association in conjunction with the University’s goals and priorities.

2.9 Before the end of each Fiscal Year during this Agreement, the Association shall submit an annual budget for the forthcoming Fiscal Year to the University President.

2.10 The Association agrees to manage all funds in its control in a fiscally sound and prudent manner.

2.11 The Association agrees to maintain its financial and accounting records separate from the records of the University and in accordance with Generally Accepted Accounting Principles applicable for its industry. The Association agrees to retain all books, accounts, reports, files and other records of the Association relating to this Agreement, the operation and management of the Association or any funds contributed to, received by, expended by, or managed by the Association, and to make such records available at all reasonable times for inspection and audit by the President or his/her designees, during the term of and for a period of three (3) years after the completion of this Agreement. Such records shall be provided at the University’s Alumni Office on the University’s Hattiesburg Campus, or such other location as designated by the University
upon reasonable notice to the Association. To the extent that information is inspected, reviewed or received by the President or his/her designees, with respect to the identity of donors, sponsors, or members who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors, sponsors, or members, with respect to personal, commercial, or proprietary information relating to a donor or member or his/her family or business, or with respect to any personal, commercial or proprietary information provided to the Association by third parties, such information shall be treated as confidential by the President and by any designee who may review or acquire such information. The University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. If upon such inspection or audit the University determines that University funds or resources have been expended for purposes inconsistent with this Agreement, the Association, upon demand by the University, shall reimburse the University for such misused funds, and the University shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL, and further, any such decision to disclose or release any confidential, personal, commercial or proprietary information or information that would identify any particular donor or members shall be made by the IHL acting upon its minutes.

2.12 The Association agrees to submit annual financial statements, which shall include such detail as the IHL Board may from time to time require. The Association will engage a Certified Public Accounting (CPA) firm to perform the annual audits of the Association’s annual financial statements and will submit the audited financial statements, along with a list of Entity officers, directors or trustees, not later than five months (December 1) following the completion of the Association’s fiscal year, to the University President and to IHL. On occasion, the annual audited financial statements will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If the Association is required to submit its annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner for Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, the Association agrees to submit the annual audited financial statements to the University President and to the IHL, along with a list of Entity officers, directors or trustees by October 15 of each year. The IHL Board’s Associate Commissioner for Finance and Administration shall notify the Association of the applicability of the October 15 deadline as far in advance of the deadline as possible each year. The CPA firm to be utilized by the Association must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for approval not later than three months prior to the end of the Association’s fiscal year.
for which the audit will be conducted. Unless approval is specifically granted for multiple years, approval of a firm by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. At the request of the Association, the University President, with the approval of the IHL Board may grant a request made by the Association to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Association are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Association in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Association (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Association anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above. The Association shall contemporaneously submit an annual report to the University and to the IHL providing a detailed list of supplemental compensation which was submitted to the University for the purpose of providing additional compensation to University employees or paid directly to University employees. This reporting requirement does not apply to transfers to the University by the Association that are paid directly to the University for use by the University to compensate University employees if that compensation is included in the University’s annual budget.

2.13 The Association may not underwrite, pay, or provide additional compensation to the University President or any IHL system office employee without the prior approval of the IHL. Any such request for approval shall be made through the IHL Commissioner to the IHL. Additionally, the Association may not provide or pay compensation to any other University employee without prior approval of the President, and any such approval shall be reported to the IHL by the Association at the IHL’s next meeting. This provision does not apply to transfers to the University by the Association that are paid directly to the University for use by the University to compensate University employees if that compensation is included in the University’s annual budget.

2.14 To the extent the Association engages in fundraising on behalf of the University, the Association agrees to accept or solicit only those gifts that are consistent with the University’s missions, goals, or objectives.
2.15 All gifts received by the Association shall be receipted and deposited in a timely manner in accordance with the directive of the donor. Gifts made to the Association shall be accounted for and ownership maintained by the Association. If a situation exists where the Association has accepted a gift intended by the donor or donor representative solely for the University, the Association shall immediately account to the University for the gift.

2.16 The Association shall not accept any gift, donation or grant or enter into any transaction that creates any liability for the University, without advance written approval of the University President.

2.17 No University assets other than furniture, fixtures, equipment and supplies will be managed by the Association.

2.18 The Association acknowledges and agrees that the University owns all copyright, interest in, and right to all trademarks, trade names, logos, and service marks developed by the University for use by the Association, including all such trademarks, service marks, and trade names historically associated with the Association.

2.19 The Association shall adopt and maintain a conflict of interest policy that complies with the requirements of Miss. Code Ann. § 79-11-269 (1972), as amended from time to time.

2.20 The Association shall provide the President reasonable notice of any regular, annual, or special meetings of its Board of Directors and the President has the right to attend any such meetings as well as the meetings of any other Association committees.

2.21 If the Association should cease to exist, any Association assets donated to the Association for the benefit of the University must be transferred to the University or to another non-profit entity designated by the University.

2.22 The Association may pursuant to Association policies enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed two (2) years.

2.23 The Association shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Association.
ARTICLE 3. UNIVERSITY OBLIGATIONS AND OTHER IN-KIND SUPPORT

3.1 The University grants the Association a non-exclusive, non-transferable license to use the intellectual property of the University including but not limited to trademarks, service marks, and logos consistent with University policy and its contract with Licensing Resource Group, including but not limited to a license to use marks developed by the University for use by the Association.

3.2 The University grants the Association an exclusive, transferable license to use the intellectual property of the University including but not limited to trademarks, service marks, and trade names historically associated with the Association or developed by the University or the Association for the Association’s use.

3.3 The University agrees to designate the Association as an official affiliated entity of the University.

3.4 The University shall provide the Association such other rights, privileges or benefits as the President, in the President’s sole discretion, may determine will assist the Association in discharging its obligations under this Agreement.

3.5 The University President shall be an ex-officio non-voting member of the Association's Board of Directors and shall be given reasonable notice of any meeting of the Board as required by 2.20 of this Agreement.

3.6 Subject to the availability of funding and the budget process, the University agrees to provide the Association with resources suitable in the University's judgment for the accomplishment of the Association's objectives for the University's benefit, and may include services and supplies, staff support, office space, and such financial support as agreed upon between the parties from time to time. The amount and nature of such resources shall be determined annually, on a fiscal year basis, in connection with the program planning and budget processes of the University and the Association. No provision in this Agreement shall be construed to give the Association any legal entitlement to any University funding, personnel or other resources in any particular fiscal year. All University assets, including personal property, made available to the Association under the terms of this agreement shall remain the property of the University unless sold, conveyed or transferred to the Association by way of a separate written agreement.

3.7 The University President will encourage all parts of the University to collaborate with the Association in implementing the Association’s programs and services.
3.8 The University President agrees to inform the Association on a regular basis of the University’s needs and priorities.

ARTICLE 4. COMPLIANCE

4.1 The Association shall comply with any and all federal and state laws and regulations and shall comply with any compliance and regulatory guidelines as may be required by the Board.

ARTICLE 5. INSURANCE

5.1 The Association shall maintain insurance coverage as deemed appropriate by the Association’s Board of Directors, including but not limited to the bonding of its officers and other appropriate persons and shall maintain Directors and Officers liability insurance on members of its Board of Directors and officers, while performing as such.

ARTICLE 6. REPORTING

6.1 The Association shall, by December 1 of each year during the life of this Agreement, submit a detailed annual report of the work and financial condition of the Association for the preceding fiscal year to the President, and shall also submit by the same date any other reports as required by this Agreement, by the Bylaws of the Association, by IHL policies or by other applicable law, including but not limited to any and all reports required by Articles 2.12 and 2.13 of this Agreement.

6.2 The Association shall promptly notify the President of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. The Association has materially breached any of its contractual obligations under the Agreement;
2. The Association has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;
3. The Association has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;
4. There has been a failure by the Association or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of the Association;
5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on the Association or upon its status as a tax exempt organization; or
6. The Association has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of the Association, or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year. The previous sentence creates a duty for the Association to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

6.3 The Association’s chief executive officer shall submit to the President and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Association has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the President of the University and the IHL, as required in Article 6.2 above. In this certification the Association’s chief executive officer shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the Association chief executive officer will immediately notify, in writing, the President of the University.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall be extended until December 31, 2022, if not renewed by mutual consent of the parties before that date.

7.2 The University President may terminate this Agreement without cause with thirty (30) days written notice to the Association and prior approval of IHL, acting upon its minutes.

7.3 The University President may terminate this Agreement for cause without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes.

7.4 The Association has no right to terminate this Agreement without the consent of the University President and the IHL.

7.5 Upon termination and/or non-renewal of this Agreement, (1) the Association shall cease to use and shall not assign or delegate the authority to use the University’s name or registered marks or logos to any person or entity without the written approval of the President, (2) the Association shall remit any and all unrestricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (3) the Association shall work in concert with its members and/or donors, to the extent practicable and allowed by law, to move
any restricted funds held for the benefit of the University to such entity as designated in writing by the University President on behalf of the University, (4) the Association shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by University President; and (5) the Association shall work in concert with the University to provide the University or its designee with records and materials of the Association necessary to continue the business and/or wind up the affairs of the Association.

7.6 The Association agrees to cease using the University's name, marks, and logos in the event the Association dissolves, ceases to be a non-profit corporation, ceases to be recognized as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, or this Agreement is terminated.

7.7 The University and the Association have a long history of mutual cooperation and support. Association Board Members shall be elected to terms not to exceed three years and no less than one-third of the Board Members shall be elected in a single year. Although a director may be elected to more than one term, the approval process and rotation required shall work to maintain alignment between the Association and the mission of the University. If the University President determines that the relationship between the University and the Association is unduly detrimental to the well-being of the University, the President shall notify the Commissioner of Higher Education. The IHL shall then attempt to reconcile the parties, including mediation if advisable. If, however, the IHL determines and notifies the University President that it is in the best interests of the University to substitute new members of the Board of Directors of the Association, the University President may direct that, at the expiration of a ninety-day period, the terms of office of up to 100 percent of the Directors shall be deemed to have expired. Upon such event, a five-person Commission shall be selected as follows: (1) one member appointed by the University President, (2) one member appointed by the IHL, (3) one member appointed by The University of Southern Mississippi Foundation, (4) one member appointed by The University of Southern Mississippi Athletic Foundation, and (5) one member selected by a majority vote of the then living and competent members of the Past Presidents Council of The University of Southern Mississippi Alumni Association. The Commission shall then appoint, within the ninety-day period, by majority vote, members, which may include former Association Board Directors, to the Board of Directors to replace the Directors whose terms shall be deemed to have expired. The reconstituted Board of Directors shall then elect new officers of the Association. In the unlikely event that the Commission, as described above, shall appoint a new Board of Directors for the Association, it is expressly understood that any, or all, of the previous Association Board members may be reelected by this Commission to serve on the new Association Board of Directors.
ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Mississippi.

8.2 The parties agree that the Association is not the agent or employee of the University and nothing in this Agreement creates an employment or other agency relationship between the parties.

8.3 Neither the University nor the Association shall have any liability for the obligations of the other party.

8.4 The parties agree that the Association is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of the Association, no IHL employee shall hold a voting position on the Association Board. Senior University administrators should only participate on the Association’s Board, if at all, in an ex-officio, non-voting capacity. The IHL may allow, upon written request by the University, exceptions to this restriction regarding IHL/University employees.

8.5 The University and the Association agree that the Association’s donor and giving records and any other financial or commercial information possessed by the Association or provided by the Association to the University concerning individuals or corporations that provide the Association financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Article 2.11 of this Agreement with respect to actions by IHL acting upon its minutes, the University and the Association agree not to disclose to third parties and to keep confidential the giving records, giving history, and financial or commercial information of individuals and corporations that provide financial support to the Association.

8.6 In the performance of this Agreement, the Association shall not deny employment opportunities to any person on the basis of race, color, religion, ethnic group identification, sexual orientation, sex, age, physical or mental disability, medical condition, or veteran’s status.

8.7 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

8.8 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or non-enforceable under
any controlling body of the law, such invalidity or non-enforceability shall not in any way affect the validity or enforceable nature of the remaining provisions hereof.

8.9 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

8.10 The Association’s obligations pursuant to this Agreement shall also extend, as applicable, to any entity it owns or controls with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the private financing of University auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the University and the Association.

8.11 This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

ARTICLE 9. NOTICE

9.1 Any notice to either party hereunder shall be in writing signed by the party given it and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or overnight mail, or when sent by Federal Express or a comparable service, or hand-delivered, when addressed as follows:

To the University: To the Association:
Dr. Rodney D. Bennett Jerry B. DeFatta, Jr.
President Executive Director
The University of Southern Mississippi Southern Miss Alumni Association
118 College Drive, #5001 118 College Drive, #5013
Hattiesburg, Mississippi 39406 Hattiesburg, Mississippi 39406

or to such other addressee as may be hereafter designated by written notice.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement effective on the date shown above.

STAFF RECOMMENDATION: Board staff recommends approval of this item.
26. **USM – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE UNIVERSITY OF SOUTHERN MISSISSIPPI RESEARCH FOUNDATION**

The University of Southern Mississippi requests Board approval of the proposed affiliation agreement between the University and The University of Southern Mississippi Research Foundation. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General has approved this request.

**Affiliation Agreement**

between

**The University of Southern Mississippi**

and

**The University of Southern Mississippi Research Foundation**

This Agreement is made and entered into on this, the 1st day of January 2018, by and between The University of Southern Mississippi (“University”) and The University of Southern Mississippi Research Foundation (“Research Foundation”).

1. **Relationship of Parties.** The Research Foundation is a not-for-profit corporation organized under the laws of the State of Mississippi. In accordance with its Articles of Incorporation, the Research Foundation is administered and operated exclusively for the benefit of the University. However, the Research Foundation is neither a subsidiary nor an affiliate of the University and is not directly or indirectly controlled by the University. In recognizing that each is an independent entity, the University and the Research Foundation agree and acknowledge that:

   A. The independent Board of Directors of the Research Foundation is entitled to make all decisions regarding the business and affairs of the Research Foundation.

   B. The assets of the Research Foundation are the exclusive property of the Research Foundation and do not belong to the University.

   C. The resources of the Research Foundation are committed and disbursed at the discretion of the Research Foundation’s Board of Directors in accordance with Research Foundation policy developed and updated as needed in cooperation with the University.

   D. Neither party will be liable, nor will be held out by the other as liable, for any of the other’s contracts, torts, or other acts or omissions, or those of the other’s trustees, directors, officers, members, staff or activity participants.
E. Transactions between the University and Research Foundation shall meet the normal tests for ordinary business transactions, including proper documentation and necessary approvals. Special attention shall be given to avoid direct or indirect conflicts of interest between the University and the Research Foundation and those with whom the Research Foundation does business. After the execution of this Agreement, the Research Foundation may not enter into any contracts for professional, advisory or other personal services for a period in excess of two (2) years.

F. As a university research foundation formed pursuant to Miss. Code Ann. Section 37-147-15 (1972), as amended, the Research Foundation’s Board of Directors shall be appointed by the President of the University in accordance with state law. Further, the President or his designee and the Vice President for Research of the University shall be seated as ex-officio non-voting members of the Research Foundation Board of Directors. Both shall communicate to the Research Foundation Board of Directors the needs and priorities of the University as such relate to the functions of the Research Foundation.

G. The Research Foundation is granted non-exclusive use of the name “The University of Southern Mississippi Research Foundation” and/or “USM Research Foundation,” but shall operate under its own seal. The Research Foundation acknowledges and agrees that the University owns all copyright, interest in and right to all trademarks, trade names, logos, and service marks developed by the University for use by the Research Foundation, including all such trademarks, service marks, and trade names historically associated with the Research Foundation. Any use of such trademarks, etc., by the Research Foundation shall be consistent and in conformity with any and all policies and contracts of the University.

H. The Research Foundation may utilize, with the approval of the President of the University, which approval shall not be unreasonably withheld, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Research Foundation as agreed by the University. The Research Foundation may also recommend to the President of the University changes in personnel, as necessary, for those University employees who perform work for or under the direction of Research Foundation Board of Directors.

I. The Research Foundation understands and agrees that the provisions of this agreement shall apply to any and all entities owned or controlled by the Research Foundation, with the exception of a special purpose entity
created for the sole and specific purpose of utilization as a financing vehicle for the private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specifically authorized by Miss. Code Ann. Section 37-101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of this agreement.

2. Research Foundation Services. The services to be performed by the Research Foundation hereunder shall include, but not be limited to:

   A. The Research Foundation shall be responsible for conducting on behalf of the University, as specifically requested by the University, research projects as defined and funded according to contract between them. Such project contracts shall comply with state and federal regulations governing research and sponsored programs. The Research Foundation shall consult and coordinate with the University regarding the Research Foundation’s means and methods for conducting these programs. In its operations and in its performance of services for the University, the Research Foundation shall comply with all applicable state and federal law.

   B. For consideration, the Research Foundation may provide to the University management of intellectual property, management of real property, and management of grants and contracts coming from industrial and private sources. Consideration for grants and contracts coming from industrial and private sources may include administrative fees up to 50% of those paid by sponsors. Consideration for real property management or intellectual property management for each portfolio shall be defined and funded according to a separate contract and may include contingency and commission arrangements.

   C. The Research Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Research Foundation.

3. University Obligations. For all services rendered by the Research Foundation under this Agreement, and in consideration of the agreements of the Research
Foundation contained herein, the University shall, at no additional cost to the Research Foundation, during the term of this Agreement:

A. Provide to the Research Foundation all personnel necessary for the performance of its duties under this Agreement; the compensation of such personnel, together with all fringe benefits, employment taxes, and other costs thereof, shall be set and paid by the University. All such personnel shall be under the full supervision and control of the University and shall for all purposes be considered employees of the University.

B. Provide an annual education and general fund operating budget to pay personnel and operating costs of the Research Foundation as consideration for services to be rendered. The Research Foundation may negotiate on an annual basis through the University’s budget process any revisions to the operating budget.

C. Provide offices and utilities adequate for the performance of the services required hereunder.

D. Provide technology support services as well as online access to such University files as are relevant to the business and purpose of the Research Foundation.

E. Provide, at normal rates (where applicable), access to auxiliary services, including printing, mailing, audio-visual, events-scheduling and related facilities.

F. Reimburse the Research Foundation for certain reasonable business expenses which the Research Foundation may incur on the University’s behalf.


A. At least thirty days before the end of each Fiscal Year during this Agreement, the Research Foundation shall submit an annual budget for the forthcoming Fiscal Year to the President or his designee.

B. The Research Foundation agrees to maintain its financial and accounting records separate from the records of University and in accordance with generally accepted accounting principles. The Research Foundation agrees to manage all funds in its control in a fiscally sound and prudent manner and retain all books, accounts, reports, files and other records relating to this Agreement, the operation and management of the Research
Foundation or any funds contributed to, received by, expended by, or managed by the Research Foundation, and to make such records available at all reasonable times for inspection and audit by the President or his designees, during the term of and for a period of five years after the completion of this Agreement. Such records shall be provided at such locations as designated by University upon reasonable notice to the Research Foundation. To the extent that information is inspected, reviewed or received by the President or his designees, with respect to the identity of donors or members who have expressly stated they wish to remain anonymous, with respect to any information relating to the identification, cultivation and solicitation of donors or members, with respect to personal information relating to a donor or member or his/her family business, or with respect to any personal, commercial or proprietary information provided to the Research Foundation by third parties, such information shall be treated as confidential by the President and by any designee who may review or acquire such information. University is expected to take appropriate safeguards to assure that such information is utilized or disseminated only in a manner that is appropriate under the circumstances. If upon such inspection or audit University determines that University funds or resources have been expended for purposes inconsistent with this Agreement, the Research Foundation, upon demand by University, shall reimburse University for such misused funds, and University shall have all rights provided by law, including the right to suspend further provision of resources under this Agreement and to terminate this Agreement. These same inspection and information rights are also extended to the IHL or its designee when authorized to exercise such rights by the IHL acting upon its minutes. However, it is understood that the appropriate extent of any disclosure or other use of any confidential, personal, commercial or proprietary information is in the discretion of the IHL, and further, any such decision to disclose or release any confidential, personal or proprietary information or information that would identify any particular donor or members shall be made by the IHL acting upon its minutes.

C. The Research Foundation agrees to cause to be prepared annual financial statements of the condition of the Research Foundation, which shall include such detail as the IHL Board may from time to time require. The Research Foundation also agrees to engage a certified public accounting firm to perform audits of its annual financial statements. The Research Foundation agrees to submit the audited financial statements, along with a list of Research Foundation officers, directors and/or trustees, not later than five months following the completion of the Research Foundation’s fiscal year, to the President of USM and to IHL. However, the annual
audited financial statements may be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR). If so, the Research Foundation will be required to submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board’s Associate Commissioner for Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, by October 15 of each year. The IHL Associate Commissioner for Finance and Administration shall notify the Research Foundation of the applicability of such October 15 deadline to the Research Foundation as far in advance of the deadline as possible each year. The CPA firm to be utilized by the Research Foundation must be approved by the IHL Board and all requests for approval of the CPA firm must be submitted to the IHL Board for its approval not later than three months prior to the end of the Research Foundation’s fiscal year for which the audit will be conducted. Unless approval of is specifically granted for multiple years, approval by the IHL Board for one year does not constitute approval for other years, and requests for approval of the CPA firm must be submitted on an annual basis. However, at the request of the Research Foundation, the USM President, with the approval of the IHL Board, may grant a request to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Research Foundation are so limited as to make the expense of the engaging of a CPA firm to perform the audit financially burdensome to the Research Foundation and unnecessary. Such a waiver may be conditioned upon such other review of the financial records of the Research Foundation in lieu of an audit as the University and the IHL may deem feasible. Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Research Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Research Foundation anticipates that the year-end financial statements for the current fiscal year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements. The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board. Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above. The Research Foundation shall also submit an annual report to University and to the IHL providing a detailed list of supplemental compensation which was submitted to University for the purpose of providing additional compensation to University employees or paid directly to University
employees. This reporting requirement regarding supplemental compensation does not apply to transfers to University by the Research Foundation that are paid directly to University for use by University to compensate University employees if that compensation is included in University’s annual budget.

D. The Research Foundation may not provide or pay compensation to any University employee without prior approval of the President, and any such approval shall be reported to the IHL by the Research Foundation at the IHL’s next meeting. This provision does not apply to transfers to University by the Research Foundation that are paid directly to University for use by University to compensate University employees if that compensation is included in University’s annual budget. Nothing in this provision prevents, however, the Research Foundation from reimbursing a University employee for expenses consistent with policies or procedures established between University and Foundation.

E. The Research Foundation shall adopt and maintain a conflict of interest policy that complies with all requirements of Miss. Code Ann. § 79-11-269 (1972), as amended from time to time.

F. The Research Foundation shall provide the University President notice of any regular, annual, or special meetings of the Research Foundation Board of Directors, and the President or his designee has the right to attend any such meetings.

G. The Research Foundation agrees to timely satisfy any and all financial, audit, and accounting obligations to third parties, including but not limited to any requirements of any funding or grant awarding agencies.

H. The Research Foundation further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless University consents to the proposed amendment.

5. Confidential Records. Certain information maintained in furtherance of the Research Foundation’s activities is recognized to be the property of the Research Foundation and as such is confidential whether in paper or electronic format. The parties acknowledge that the Research Foundation’s electronic records are the exclusive property of the Research Foundation, regardless of the server or computer on which the records reside. To the extent information shared with the University may be protected from disclosure, the University will take all necessary action to protect such information under available statutory exceptions
if disclosure would result in a breach of confidence by the Research Foundation or public disclosure of private information.

6. **Communications.** The President of the University or his designee shall be responsible for communicating to the Research Foundation priorities and long-term plans of the University. The parties shall work together to encourage communications between members of the Board of Trustees of State Institutions of Higher Learning and the Board of Directors of the Research Foundation to include periodic meetings between the members of the Board of Trustees, the President of the Research Foundation, and the President of the University. To provide the Directors with the appropriate information to assist them in the proper execution of their duties and responsibilities as the Board of Directors of the Research Foundation, the University shall furnish the Research Foundation reports, schedules and records as may be requested by the Research Foundation, and the Directors of the Research Foundation will seek input from the President of the University or his designee in defining major needs and priorities.

7. **Gift Receipting and Ownership.** Gifts made to the University shall be accounted for and ownership maintained by the University; gifts made to the Research Foundation shall be accounted for and ownership maintained by the Research Foundation. However, checks made payable to the University will be transferred to the Research Foundation if a gift agreement, pledge or expectancy exists between the donor or sponsor and the Research Foundation. If a check is made payable to the University and no gift agreement, pledge, or expectancy exists between the Research Foundation and the donor or sponsor, the donor or sponsor will be contacted to clarify his intent. The intent expressed by the donor or sponsor will then control the delivery and ownership of the funds. The Research Foundation shall only accept or solicit gifts for the benefit of the University which are consistent with the mission, goals or objectives of the University.

8. **Independent Contractor.** It is understood and agreed that the Research Foundation, its officers, employees, and agents, if any, shall act solely in the capacity of an independent contractor and not as employees or agents for the University.

9. **Research Foundation Funding.** The Research Foundation may impose charges against managed funds, assess fees for services or use a percentage of its unrestricted funds to support its operations.

10. **Term of Agreement.**

A. The term of this Agreement shall be extended from January 1, 2018 until December 31, 2022.
B. University may terminate this agreement without cause with thirty (30) days written notice to the Research Foundation and prior approval of IHL. University may terminate this agreement for cause without notice to the Research Foundation but with notice to IHL and prior approval of IHL. The Research Foundation may not terminate this agreement without the written approval of the President of the University and IHL.

C. Upon termination and/or non-renewal of this agreement, (1) the Research Foundation shall cease to use and shall not assign or delegate the authority to use University’s name or registered marks or logos to any person or entity without the written approval of the University President, (2) the Research Foundation shall remit any and all unrestricted funds held for the benefit of University to such entity as designated in writing by the President on behalf of University, (3) the Research Foundation shall work in concert with its members and/or donors, to the extent practicable and allowed by law, to move any restricted funds held for the benefit of University to such entity as designated in writing by the President on behalf of University, (4) the Research Foundation shall work in concert with persons or entities with which it had contractual relations to the extent practical and allowed by law, to assign any contracts to such entity as designated by President; and (5) the Research Foundation shall work in concert with University to provide University or its designee with records and materials of the Research Foundation necessary to continue the business and/or wind up the affairs of the Research Foundation.

11. Reporting.

A. The Research Foundation shall, by each December 1 of each year during the life of this agreement submit a detailed annual report of the work and financial condition of the Research Foundation for the preceding fiscal year to the President, and shall also submit by the same date any other reports as required by this agreement, by the Bylaws of the Research Foundation, by IHL policies or by other applicable law, including but not limited to any and all reports required by this agreement.

B. The Research Foundation shall promptly notify the University President and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

1. Research Foundation has materially breached any of its contractual obligations under the Agreement;
2. Research Foundation has materially failed to properly receive, apply, manage or disburse any funds or has materially failed to properly comply with any binding instructions from donors relating to those funds;

3. Research Foundation has engaged in any conduct that is prohibited or subject to sanction under state or federal law, including any and all requirements applicable to tax exempt organizations;

4. There has been a failure by Research Foundation or any of its officers and directors to comply with any conflict of interest requirements created by applicable state or federal law or by the governing documents or procedures of Foundation;

5. Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on Research Foundation or upon its status as a tax exempt organization; or

6. Research Foundation has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of Research Foundation, or any entity controlled directly or indirectly by the board member, which would reasonably be expected to provide for payment or benefits to that person exceeding the value of $50,000 in any calendar year; The previous sentence creates a duty for the Research Foundation to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

C. The Research Foundation’s President shall submit to the President of the University and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that the Research Foundation has examined its donor records and business transactions occurring during its fiscal year ending within the prior calendar year, and that to the best of its knowledge, there is no evidence that any Reportable Events occurred, other than those which have been duly reported to the University President and IHL, as required in above. In this certification the Research Foundation’s President shall re-affirm that, in the event he becomes aware of any such Reportable Events, the Research Foundation’s President will immediately notify, in writing, the University President.

12. Notices. Any notice, request, demand, or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when
personally delivered to an officer of the Research Foundation or the President of the University, as the case may be, or when deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the Research Foundation and the University as shown below, or to such other addresses as either party shall designate by written notice to the other:

As to the University:

President
The University of Southern Mississippi
118 College Drive #5001
Hattiesburg, MS 39406

As to the Research Foundation:

President, Board of Directors
The University of Southern Mississippi
Research Foundation
118 College Drive #8959
Hattiesburg, MS 39406

13. **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred, or conveyed in whole or in part.

14. **Applicable Law.** This Agreement shall be construed, interpreted and the rights and duties of the parties determined in accordance with the laws of the State of Mississippi.

15. **Activities.** The Research Foundation agrees to perform the activities described herein requested by the University and shall not hold an exclusive right to similar activities.

16. **Compliance.** The Research Foundation shall comply with any and all federal and state laws and regulations and shall comply with any compliance, financial, accounting, audit, and regulatory guidelines as may be required by University’s governing Board or by granting or funding agencies.

17. **Additional Compensation.** No form of additional compensation for the University President or IHL system office each year may be underwritten or paid by the Research Foundation without the approval of the IHL Board. No form of additional compensation may be paid or underwritten by the Research Foundation without the prior written approval of the University President. The President of
the University shall make all necessary reports to the Commissioner of Higher Education concerning supplemental compensation made by the Research Foundation to any employee of the University or of the Board.

18. **Waiver.** A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term of condition for the future, or any subsequent breach thereof, or of any other term and condition of this Agreement.

19. **Severability.** If any provisions of the Agreement shall, for any reason, be held to violate any applicable law, and so much of the Agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provisions, which shall remain in full force and effect.

20. **Indemnification.** The Research Foundation agrees to indemnify and hold harmless University, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. The Research Foundation agrees to reimburse University and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed as of the day and year indicated herein below.

**STAFF RECOMMENDATION:** Board staff recommends approval of this item.

27. **JSU – APPROVAL OF DR. DEBRA MAYS-JACKSON AS LEGISLATIVE LIAISON**

Jackson State University requests approval of Dr. Debra Mays-Jackson as Legislative Liaison in compliance with Board Policy 201.0506 Political Activity.

**STAFF RECOMMENDATION:** Board staff recommends approval of this item.

28. **UMMC – APPROVAL OF BUTLER SNOW LLP AS IN-STATE LOBBYING CONSULTANT**

Board Policy 201.0506 Political Activity requires annual Board approval of the use of all outside lobbyists which will perform lobbying activities within the State of Mississippi on behalf of any of the institutions prior to an institution contracting
therewith. In addition, Board Policy 201.0506 requires that the Board approve the actual contract with such a lobbyist. The request for approval must include disclosure of all other clients represented by the proposed lobbyist, as well as the specific source of funding to be used for payment of the lobbyist, including expenses. The request must indicate whether funding is to be derived from state general funds or self-generated funds. Further, the contractual agreement with such an outside lobbyist to conduct in-state lobbying must provide that the agreement is either terminable at will, or it must contain a provision that provides that such contract may be terminated by IHL or the client institution if IHL or the institution determines that a new client of the lobbyist creates a conflict. Lastly, Board policy requires that such lobbyists are required to apprise the Commissioner regarding lobbying activities related to IHL or any individual IHL institution, and to coordinate those activities within system strategies and processes prescribed by the IHL Board. In response to the various requirements of Board Policy 201.0506 regarding the approval requirements in order to use an outside lobbyist for lobbying activities within the State of Mississippi, the University of Mississippi Medical Center requests approval to contract with Butler Snow, LLP, to provide in-state lobbying and government relations consulting services. The contractual flat fee is $60,000 (payable $5,000.00 per month) and the contract provides for the reimbursement of reasonable expenses. The fee will be paid with self-generated funds. The term of the agreement is December 1, 2017 through November 30, 2018. Butler Snow’s client list is shown immediately below, and the proposed contract is below the client list. The Attorney General’s office has approved this request.

Lobbyist/Firm Clients:

1. Acadia Healthcare
2. Advance America
3. Anthem, Inc.
4. BCD Innovations, Inc.
5. Cerner Corporation
6. DXC (Formerly HPE)
7. Edgenuity
8. Global Tel*Link Corporation
9. Healthcare Navigator LLC
10. Helena Chemical
11. MS Bail Agents Association
12. MS Prison Industries Corporation
13. NBPTS
14. PowerSchool Group
15. Questar Assessment, Inc.
16. Renaissance Learning
17. Reynolds America, Inc.
18. Smart Work Ethics
LouAnn Woodward, M.D.
Vice Chancellor for Health Affairs and
Dean of the School of Medicine
The University of Mississippi Medical Center
2500 North State Street
Jackson, MS 39216

Re: Government Relations Advisory Services

Dear Dr. Woodward:

This letter will confirm that Butler Snow LLP (“Firm”) agrees to represent The University of Mississippi Medical Center (“UMMC”) in connection with certain government relations and public policy matters in the State of Mississippi. The terms of this agreement are as follows:

1. TERM – This agreement will be in effect for the period December 1, 2017 through and including November 30, 2018. The parties may renew this agreement and extend this term by mutual written consent.

2. SERVICES – During the term of this Agreement, Firm will provide services with respect to certain government relations of interest pertaining to UMMC in the State of Mississippi as requested and directed by a designee of UMMC and agreed by Firm. These services will consist of: (a) advice to UMMC; (b) representation of UMMC before appropriate legislative and executive bodies and (c) related government relations services and assistance necessary and appropriate to perform effectively the foregoing services.

3. ADDITIONAL SERVICES – UMMC and Firm acknowledge that the services described in Paragraph 2 to be provided to UMMC by Firm are services which may be performed by non-lawyers and that, as appropriate, Firm will provide such services through non-lawyers such as Sidney P. Allen, Jr., Caroline W. Sims, Kathryn B. Stewart, Charles V. Williams, or through attorneys who also are a part of Firm’s Government Relations Team. UMMC and Firm further acknowledge that, from time to time, and either in relation to the Services described in Paragraph 2 or on unrelated, independent matters, UMMC may have the need for legal services which can be performed only by attorneys and legal staff. Such
legal services are not contemplated by or covered under this agreement. Rather, UMMC may choose to have Firm provide such legal services or may choose to retain other attorneys for that purpose pursuant to IHL policies applicable to the retention of outside counsel. UMMC agrees that any such services it chooses to ask Firm to provide will be covered under a separate engagement agreement between UMMC and Firm and that any responsibilities of either UMMC or Firm, including compensation to Firm for such services, will be governed by any such agreement.

4. COMPENSATION – Unless other terms of payment are agreed upon in writing for specific projects, as compensation for Services rendered by Firm during the term of this Agreement, UMMC will pay Firm a consulting fee of $60,000.00 (payable $5,000.00 per month). This fee will be paid by non-appropriated funds. Such payment will be paid monthly and due upon invoice. The monthly consulting fee is a general retainer for Firm's availability to UMMC for the Services described in Paragraph 2, and UMMC acknowledges that this monthly consulting fee is not refundable, regardless of services provided or not provided by Firm during any given month. In the event of termination of this agreement pursuant to Paragraph 16, UMMC will be responsible for paying to Firm on a pro rata basis the monthly consultation fee due for the month during which the effective date of termination falls.

5. EXPENSES - Firm will be reimbursed for all necessary and reasonable expenses incurred in providing the Services described in Paragraph 2 of this Agreement and any travel outside the state of Mississippi. Prior approval by a designee of UMMC will be required for any single expense in excess of Five Hundred Dollars ($500). Reimbursement will be made upon receipt of a statement of expenses and associated receipts that identify all expenses in detail. Firm is not authorized to make donations or contributions on behalf of UMMC without prior written authorization from a designee of UMMC. In the event of termination of this agreement pursuant to Paragraph 16, UMMC will reimburse Firm for all necessary and reasonable expenses incurred through and including the effective date of termination.

6. COORDINATION - Firm will apprise the Commissioner of IHL regarding lobbying activities related to UMMC and will coordinate those activities within system strategies and processes prescribed by the IHL Board.

7. COMPLIANCE WITH IHL POLICY 201.0506 – During the term of this contract, Firm will apprise the IHL Board, through the Commissioner, of all new clients after engaging the client. Written notice of all new clients is required to be given to UMMC no less than ten (10) days prior to the effective date of adding the client.

8. EMPLOYMENT - Firm represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2015), and will register and participate in the status verification
system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Firm agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Firm further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Firm understands and agrees that any breach of these warranties may subject Firm to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Firm by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Firm would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

9. AVAILABILITY OF FUNDS – It is expressly understood and agreed that the obligation of UMMC to proceed under this agreement is conditioned upon the availability and receipt of funds by UMMC to specifically perform the obligations set forth for UMMC under this agreement.

10. CONTROLLING LAW – This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, without giving consideration to its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of Mississippi.

11. CONFIDENTIALITY – Firm agrees to maintain in strictest confidence all information disclosed to it regarding matters described in Paragraph 2 or otherwise concerning UMMC, its customers, strategies, products or business. Such confidential and proprietary information will be used by Firm solely in connection with the performance of services for UMMC under this Agreement.

12. INDEPENDENT CONTRACTOR – UMMC and Firm acknowledge and agree that this Agreement does not create an employment relationship between them and that the Firm is and shall remain an independent contractor.

13. COMPLIANCE – In connection with the performance of services under this agreement, Firm will comply with all applicable federal, state and local laws and regulations including those laws applicable to lobbying.
14. SEVERABILITY – If any term, provision, covenant or condition of this Agreement, or any application thereof shall be held by a court of competent jurisdiction to be invalid, void or unenforceable by any rules of law or public policy, or otherwise, all provisions, covenants and conditions of this Agreement not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. TERMINATION – Either party may terminate this agreement at any time for any reason subject to those obligations set forth herein which arise upon termination (see Paragraphs 4 and 5) and those which continue beyond termination (see Paragraph 11); and no portion of the compensation paid to Firm by UMMC shall be refundable.

16. ENTIRE AGREEMENT – This Agreement constitutes the entire agreement between the parties hereto and it may not be modified and no provision may be waived except by a subsequent written agreement between the parties hereto.

If the Agreement set forth above meets with your approval please sign and return the original of this letter to the Firm.

STAFF RECOMMENDATION: Board staff recommends approval of this item.
APPROVAL OF PERSONNEL ACTION REQUESTS

1. Employment

Alcorn State University

Josephine Posey; rehired retiree; reemployment position: Consultant, Center for Culture and Learning – Archival Project; salary $15,625 pro rata; E&G Funds; reemployment period: November 1, 2017 - January 31, 2018

2. Other Action

Delta State University

In accordance with Board Policy 401.0102 Delegation of Authority, Delta State University requests approval to create the position of Vice President of University Advancement and External Relations.

Currently, Delta State employs an Executive Director of the Alumni-Foundation Office who manages the areas of Alumni Relations, Development, and the DSU Foundation. Recently, the portfolio was expanded to include Communications and Marketing as well as Government Relations. As part of the university’s capital campaign planning efforts, a consultant was hired to evaluate this area’s operations and ability to support a more substantial fundraising effort. One of the recommendations from the consultant was to upgrade the Executive Director position to a Vice President position so that the title reflects the recently expanded portfolio and the university’s plans to expand its fundraising initiatives, as well as to acknowledge the importance of the areas within the portfolio.

The Vice President for Advancement and External Relations will report directly to the President, and will serve on the President's Cabinet and on the Executive Committee. The salary for this position will be in line with the salaries of the Vice President for Executive Affairs and the Vice President for Student Affairs.

Mississippi State University
(Revocation of Sabbatical approved March 2017)

Shirley Ann James Hanshaw; Associate Professor, English; from salary of $63,064.00 per annum, pro rata (nine-month contract); E&G Funds; to salary of $31,532.00 for sabbatical period; E&G Funds; effective January 1, 2018 to May 15, 2018; professional improvement.
1. **ASU – APPROVAL TO AWARD ONE HONORARY DEGREE**

The university requests approval to bestow one honorary degree at its December 2017 commencement ceremony. Supporting documents are on file at the Board Office.

**Staff Recommendation:** Board staff recommends approval of this item.

2. **DSU – APPROVAL TO AWARD TWO HONORARY DEGREES**

The university requests approval to bestow one honorary degree at its December 2017 and one at its May 2018 commencement ceremonies. Supporting documents are on file at the Board Office.

**Staff Recommendation:** Board staff recommends approval of this item.

3. **UM & UMMC – APPROVAL OF REVISION TO MISSION STATEMENT**

UM’s mission statement was incorrectly submitted at the October Board meeting. Below is the corrected version for the Board’s consideration.

**Mission Statement**

As Mississippi’s flagship first comprehensive, public university and academic medical center, the University of Mississippi transforms lives, communities, and the world by providing opportunities for the people of Mississippi and beyond through excellence in learning, discovery, healthcare, and engagement.

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<th>Oxford &amp; Regional Campus Mission</th>
<th>Medical Center Campus Mission</th>
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<td>The mission of the University of Mississippi is to create, evaluate, share, and apply knowledge in a free, open, and inclusive environment of intellectual inquiry. Building upon a distinguished foundation in the liberal arts, the state’s first comprehensive university serves the people of Mississippi and the world through a breadth of academic, research, professional, and service programs. The University of Mississippi provides an academic experience that emphasizes critical thinking; promotes research and creative achievement to advance society; uses its expertise to engage and transform communities; challenges and inspires a diverse community of undergraduate, graduate, and professional students; offers enriching opportunities outside the classroom; supports lifelong learning; and develops a sense of global responsibility.</td>
<td>The mission of the University of Mississippi Medical Center is to improve the health and well-being of patients and the community through excellent training for health care professionals, engagement in innovative research, and the delivery of state-of-the-art health care.</td>
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**Staff recommendation:** Board staff recommends approval of this item.
4. **USM – APPROVAL TO AWARD ONE HONORARY DEGREE**

The university requests approval to bestow one honorary degree at its December 2017 commencement ceremony. Supporting documents are on file at the Board Office.

**Staff Recommendation:** Board staff recommends approval of this item.
Regular

Agendas
1. **UMMC – REQUEST TO APPROVE BOND RESOLUTION FOR $91 MILLION FOR MEDICAL CENTER EDUCATIONAL BUILDING CORPORATION FOR THE PURPOSE OF EXPANDING CHILDREN’S OF MISSISSIPPI AND TO APPROVE INITIATION AND BOND RESOLUTION OF A BOND REFUNDING FOR $105,605,000 MILLION FOR THE MEDICAL CENTER EDUCATIONAL BUILDING CORPORATION FOR THE PURPOSE OF REFUNDING SERIES 2009 BONDS TO ACHIEVE NET PRESENT VALUE SAVINGS**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval of a bond resolution to issue through the Medical Center Educational Building Corporation (MCEBC) Revenue Bonds in one (1) or more taxable and/or tax-exempt series to finance the costs of (a) the Children’s of Mississippi Expansion ($91,000,000) and (b) current and/or advance refunding and defeasance of all or a portion of the MCEBC bonds, Series 2009, issued in the original principal amount of $105,605,000.

**Contractor’s Legal Name:** Hilltop Securities will serve as financial advisor. Butler Snow LLP will serve as bond counsel, in accordance with the terms of the contractual agreement for legal services approved by the Office of Attorney General. J.P. Morgan, Morgan Stanley, and Raymond James will serve as senior underwriters.

**History of Contract:** On October 19, 2017, the IHL Board of Trustees approved UMMC’s request to initiate the bond process for $91,000,000, as well as UMMC’s bond counsel, financial advisor, and underwriters.

**Specific Type of Contract:** Debt obligations to issue $91,000,000 in new money bonds and current and/or advance refunding and defeasance of all or a portion of the MCEBC bonds, Series 2009.

**Purpose:** The purpose of the new money portion of $91,000,000 is to fund the Children’s of Mississippi Expansion. The purpose of the current and/or advance refunding in one or more taxable and/or tax-exempt series is debt service savings of the 2009 MCEBC Bonds.

**Scope of Work:** Bond documentation, obtaining rating from rating agencies and private placement or public sale of debt obligations.

**Term of Contract:** For the new money portion, the bonds will mature no longer than thirty (30) years. For the refunding portion, the term of the new bonds will closely match the term of the existing debt which is being refinanced.

**Termination Options:** N/A
Contract Amount: MCEBC expects to issue an amount not to exceed $91,000,000 in new bonds. For the refunding, MCEBC expects to issue an estimated maximum of $72 million par value in fixed rate bonds to support this current and/or advance refunding and refinancing.

Funding Source for Contract: Patient Revenues

The resolution reads as follows:

RESOLUTION AUTHORIZING THE MEDICAL CENTER EDUCATIONAL BUILDING CORPORATION TO ISSUE REVENUE BONDS IN ONE OR MORE TAXABLE AND/OR TAX-EXEMPT SERIES IN THE MAXIMUM AGGREGATE PAR AMOUNT OF $165,000,000 (THE “BONDS”) TO FINANCE ALL OR A PORTION OF THE COSTS TO (A) ACQUIRE, CONSTRUCT, MAINTAIN, ENLARGE, IMPROVE OR EQUIP PUBLIC BUILDINGS, LAND AND FACILITIES AND TO MAKE OTHER CAPITAL IMPROVEMENTS ON THE CAMPUS OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER (THE “MEDICAL CENTER”) LOCATED IN OR NEAR JACKSON, MISSISSIPPI IN THE COUNTIES OF HINDS, RANKIN AND MADISON (THE “PROJECT SITES”), INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION, EQUIPPING AND LANDSCAPING OF AN APPROXIMATELY 340,000 SQUARE FOOT EXPANSION OF THE CHILDREN’S OF MISSISSIPPI HOSPITAL, INCLUDING APPROPRIATE EXTERNAL INFRASTRUCTURE IMPROVEMENTS SUCH AS PARKING, UTILITIES, STREETS AND DRIVES, A NEW AMBULATORY AND OUTPATIENT CLINIC, CLINIC SPACES, A NEW DIAGNOSTIC AND TREATMENT PODIUM, AND BED TOWER ADJACENT TO THE EXISTING HOSPITAL; A NEW SERVICE ELEVATOR CONNECTION; A PARKING GARAGE; MODIFICATIONS TO ENTRANCES AND EXITS; AND NEW OFFICE SPACES (COLLECTIVELY, THE “CONSTRUCTION PROJECT”), PROVIDED THE BONDS ISSUED FOR THE CONSTRUCTION PROJECT ARE EXPRESSLY LIMITED TO A MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF $91,000,000; (B) CURRENT AND/OR ADVANCE REFUND AND DEFEASE FOR INTEREST RATE SAVINGS ALL OR A PORTION OF THE MEDICAL CENTER EDUCATIONAL BUILDING CORPORATION REVENUE REFUNDING BONDS, SERIES 2009 (UNIVERSITY OF MISSISSIPPI MEDICAL CENTER FACILITIES REFINANCING), ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF $105,605,000 (THE “REFUNDED BONDS”) (THE “REFUNDING PROJECT”); AND (C) PAY THE COSTS OF THE ISSUANCE, SALE AND DELIVERY OF THE BONDS (TOGETHER, (A), (B) AND (C) CONSTITUTE THE “PROJECT”); AUTHORIZING THE EXECUTION OF A GROUND LEASE BY AND AMONG THE UNIVERSITY

The Board of Trustees of State Institutions of Higher Learning (the “Board”) hereby finds, determines and adjudicates as follows:

1. The Board is charged with the management and control of all state institutions of higher learning pursuant to Article VIII, Section 213-A, Mississippi Constitution of 1890, and Chapter 101 of Title 37, Mississippi Code of 1972, as amended.

2. The University of Mississippi (the “University”), of which the University of Mississippi Medical Center (the “Medical Center”) is a part, was organized and incorporated as a state institution of higher learning pursuant to Sections 37-115-1 et seq., Mississippi Code of 1972, as amended, is controlled and managed by the Board pursuant to Sections 37-101-1 et seq., Mississippi Code of 1972, as amended, and is an educational institution owned and operated by the State of Mississippi by and through the Board.
3. The Medical Center Educational Building Corporation (the “Corporation”) was created as a public non-profit corporation, known as an educational building corporation, pursuant to a resolution of this Board under the authority of Sections 37-101-61 through 37-101-71, Mississippi Code of 1972, as amended (the “Act”), for the purpose of acquiring or constructing facilities for the University.

4. Pursuant to the Act and Sections 31-27-1 et seq., Mississippi Code of 1972, as amended (the “Refunding Act”), the Board of Directors of the Corporation proposes to issue its revenue bonds in one or more taxable and/or tax-exempt series in the maximum aggregate par amount of $165,000,000 (the “Bonds”) to finance all or a portion of the costs (a) to acquire, construct, maintain, enlarge, improve or equip public buildings, land and facilities and to make other capital improvements on the campus of the University of Mississippi Medical Center (the “Medical Center”) located in or near Jackson, Mississippi in the counties of Hinds, Rankin and Madison (the “Project Sites”), including, but not limited to, construction, equipping and landscaping of an approximately 340,000 square foot expansion of the Children’s of Mississippi Hospital, including appropriate external infrastructure improvements such as parking, utilities, streets and drives, a new ambulatory and outpatient clinic, clinic spaces, a new diagnostic and treatment podium, and bed tower adjacent to the existing hospital; a new service elevator connection; a parking garage; modifications to entrances and exits; and new office spaces (collectively, the “Construction Project”), provided, the Bonds issued for the Construction Project are expressly limited to a maximum aggregate principal amount of $91,000,000; (b) to current and/or advance refund and defease for interest rate savings all or a portion of the Medical Center Educational Building Corporation Revenue Refunding Bonds, Series 2009 (University of Mississippi Medical Center Facilities Refinancing), issued in the original principal amount of $105,605,000 (the “Refunded Bonds”); and (c) to pay the costs of the issuance, sale and delivery of the Bonds (collectively, (a), (b), and (c) constitute the “Project”).

5. The Corporation shall lease the Project Sites from the Board and the University pursuant to a Ground Lease to be dated as of the first day of the month preceding the date of sale of the Bonds, by and among the Board, the University and the Corporation (the “Ground Lease”).

6. The Board shall lease the Project and the Project Sites from the Corporation pursuant to a Lease Agreement to be dated as of the first day of the month preceding the date of sale of the Bonds (the “Lease”).

7. The Board hereby determines that it is in the public interest and in its best interest to lease the Project Sites to the Corporation pursuant to the Ground Lease and to lease the Project and the Project Sites from the Corporation at the consideration set forth in the Lease and that it is necessary and appropriate to authorize the President of the Board and the Commissioner of Higher Education to execute and deliver the Ground Lease and the Lease for and on behalf of the Board.
8. The Corporation is authorized by the Act to issue the Bonds for the purposes set forth herein, which Bonds shall be payable solely out of the payments derived from the Lease and shall be solely and exclusively obligations of the Corporation and shall not be secured by the full faith and credit of the State of Mississippi, the Board or the University.

9. The Bonds will be issued by the Corporation on behalf of the Board for purposes of the Internal Revenue Code of 1986, as amended.

10. The Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the Project, and no part of the Corporation’s net earnings, if any, will ever inure to the benefit of any person, firm or corporation other than the Board.

11. The Board, through the University, will have exclusive beneficial possession and use of all of the improvements comprising the Project.

12. The Board has full authority under the Constitution and laws of the State of Mississippi, and in the manner provided by statute, to exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in its possession, levied and collected, received or appropriated for the use, benefit, support and maintenance or capital outlay expenditures of the institutions of higher learning of the State of Mississippi, including the University, in addition to the authority to fix and maintain fees, rentals and other charges to be paid by students, faculty members and others using or being served by facilities of the institutions of higher learning.

13. It is appropriate for the Board to approve the Preliminary Official Statement (the “Preliminary Official Statement”) to be used in connection with the marketing of the Bonds and to authorize and approve the execution and distribution of a final Official Statement (the “Official Statement”) in connection with the sale of the Bonds.

14. The Corporation will sell the Bonds on a negotiated basis pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) with J.P. Morgan, as senior underwriter, and such other underwriters as are named in the Bond Purchase Agreement (collectively, the “Underwriter”). It is necessary and appropriate for the Board to approve the Underwriter as the senior underwriter for the Bonds. It is also necessary and appropriate to authorize the President of the Corporation to execute the Bond Purchase Agreement at such prices as may be determined by the Corporation, provided that, in either case, the following conditions are satisfied: the aggregate par amount of the Bonds shall not exceed $165,000,000, provided the Bonds issued for the Construction Project are expressly limited to a maximum aggregate principal amount of $91,000,000; the final maturity of the Bonds shall not be more than thirty (30) years from the dated date thereof; the interest rates on the Bonds shall not exceed the
interest rates permitted by Mississippi law; and the terms and conditions of the Bonds shall otherwise comply with the provisions of the Act and the Refunding Act.

15. It is necessary in connection with the sale of the Bonds to enter into a Continuing Disclosure Agreement, and it is necessary and appropriate for the Board to approve the form, and authorize the execution, of a Continuing Disclosure Agreement.

16. To enhance the marketability of the Bonds, it may be desirable to obtain municipal bond insurance for the Bonds; and it is necessary and appropriate for the Board to authorize the Corporation to take such actions and execute such documents and agreements as may be necessary or appropriate to obtain bond insurance for the Bonds.

17. A portion of the Bonds may be issued as tax-exempt bonds (the “Tax-Exempt Bonds”) and a portion of the Bonds may be issued as taxable bonds (the “Taxable Bonds”). In order to protect the exclusion of interest on the Tax-Exempt Bonds, it is necessary for the Board to expressly agree to accept title to the portion of the Project financed with those Bonds that are issued as Tax-Exempt Bonds, and any additions thereto, upon retirement of those Bonds that are issued as Tax-Exempt Bonds.

NOW, THEREFORE, THE BOARD HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Board hereby approves the purposes and activities of the Corporation. The Corporation is hereby authorized to issue the Bonds, in one or more taxable and/or tax-exempt series to be designated in the Bond Purchase Agreement, in the maximum aggregate par amount of $165,000,000 at such time as the Corporation is able to sell the Bonds to the Underwriter and at such prices as may be determined by the Corporation, provided that the other conditions of paragraph 14 above of this Resolution are also satisfied in connection therewith. The Corporation shall issue the Bonds to finance the costs of the Project and to pay the costs of the issuance, sale and delivery of the Bonds and interest on and expenses relating to the Bonds. The Corporation’s engagement of Hilltop Securities, Inc. as financial advisor to the Corporation with respect to the issuance of the Bonds, of Butler Snow LLP, as bond counsel with respect to the issuance of the Bonds, and of J.P. Morgan, as senior underwriter for the Bonds, is hereby approved. The Board also approves the University counsel to serve in his official capacity as counsel for both the University and for the Corporation in connection with the various transactions related to the Project and the sale and issuance of the Bonds, and the Board specifically waives any related conflict of interest.
SECTION 2. The Ground Lease is hereby approved, and the President of the Board and the Commissioner of Higher Education are hereby authorized to execute and deliver the Ground Lease under the seal of the Board for and on behalf of the Board, in substantially the form attached hereto as Exhibit A, with such completions, changes, insertions, and modifications as shall be approved by such officials, the execution thereof by such officials to be conclusive evidence of such approval.

SECTION 3. The Lease is hereby approved, and the President of the Board and the Commissioner of Higher Education are hereby authorized to execute and deliver the Lease under the seal of the Board for and on behalf of the Board, in substantially the form attached hereto as Exhibit B, with such completions, changes, insertions, and modifications as shall be approved by such officials, the execution thereof by such officials to be conclusive evidence of such approval.

SECTION 4. The Preliminary Official Statement prepared in connection with the sale of the Bonds and the distribution thereof are hereby approved in substantially the form attached hereto as Exhibit C with such completions, changes, insertions, and modifications as shall be approved by the Corporation. The Official Statement with respect to the Bonds is hereby approved in substantially the form of the Preliminary Official Statement, with such completions, changes, insertions, and modifications as shall be approved by the Corporation; the distribution of said Official Statement in connection with the sale of the Bonds is hereby approved; and execution of said Official Statement by the President of the Corporation is hereby approved.

SECTION 5. Pursuant to the Continuing Disclosure Agreement, the Board will, when and if required, undertake to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of these undertakings with respect to the Bonds is set forth in the Preliminary Official Statement and will also be set forth with respect to the Bonds in the final Official Statement. The Continuing Disclosure Agreement is hereby approved in substantially the form attached hereto as Exhibit D, and the Commissioner of Higher Education is hereby authorized to execute and deliver the Continuing Disclosure Agreement under the seal of the Board for and on behalf of the Board, with such completions, changes, insertions, and modifications as shall be approved by said official, the execution thereof by such official to be conclusive evidence of such approval.

SECTION 6. The sale of the Bonds on a negotiated basis to the Underwriter is hereby authorized and approved at such prices as may be determined by the Corporation; provided that the Bond Purchase Agreement, when executed by the President of the Corporation, shall be in compliance with the requirements set forth in Section 1 hereof.

SECTION 7. The Corporation is hereby authorized to take such actions and execute such documents as may be necessary or appropriate to obtain municipal bond insurance for the
Bonds, whether such municipal bond insurance is to be obtained being entirely within the discretion of the Corporation.

SECTION 8. The Board hereby covenants and agrees that it shall accept full legal title to the Project and any improvements and additions thereto upon retirement of the Bonds, and no further action shall be necessary by the Board at such time for full legal title to the Project and any improvements and additions thereto to immediately vest in the Board.

SECTION 9. The Bonds shall be submitted to validation as provided by Chapter 13, Title 31, Mississippi Code of 1972, and to that end the clerk of the Board is hereby directed to make up a transcript of all legal papers and proceedings relating to the Bonds and to certify and forward the same, together with a transcript of all proceedings of the Corporation, to the State’s Bond Attorney for the institution of validation proceedings.

SECTION 10. The President of the Board and the Commissioner of Higher Education are further authorized to execute and deliver any additional documents, notices, instruments and certificates which may be required in connection with the sale and issuance of the Bonds. Further, from and after the execution and delivery of the documents hereinabove authorized, the proper officers, directors, agents and employees of the Board are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents and certificates as may be necessary or desirable in connection with the issuance and sale of the Bonds and the execution and delivery of the Lease, the Ground Lease, the Continuing Disclosure Agreement or other documents necessary to conclude the issuance, sale and delivery of the Bonds and to authorize changes to any of the said documents, the execution of said documents being conclusive evidence of such approval. If the issuance and delivery of any series of the Bonds does not occur during the calendar year 2017, then the Board hereby fully authorizes the officers of the Corporation, the President of the Board or the Vice-President of the Board and the Commissioner of Higher Education or the Associate Commissioner for Finance and Administration to approve all applicable and necessary changes to the documents attached hereto or otherwise and related to such change, including changing the series designation of the Bonds or providing for more than one series of taxable or tax-exempt bonds, if necessary, the execution of said documents being conclusive evidence of such approval.

SECTION 11. All prior orders, resolutions or proceedings in conflict with the provisions of this Resolution shall be, and the same are hereby repealed, rescinded and set aside, but only to the extent of such conflict. For cause, this Resolution shall become effective immediately upon the adoption thereof.
Board Staff Recommendation: Board Policy 906 states “Financing Projects. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation for the construction, maintenance, equipping, acquisition or renovation of facilities, the financial advisor must provide the Board with an independent analysis of the institution’s financial condition, to verify that proposed revenue stream(s) are sufficient to repay the debt service and to recommend the project’s viability. If the educational building corporation will issue commercial paper, the financial advisor shall also calculate an opinion of the breakeven interest rate to long term bonds to justify the use of commercial paper. The institution shall submit the report of the financial advisor(s) and the request for a project initiation to the Board for approval. The request must state the institution’s intent, justify the need for the project and give an estimate of the total construction budget. The request must also include naming the design professionals, bond counsel and senior underwriter(s) selected by the board of the educational building corporation.

Following the Board’s approval of the project initiation, the institution shall return to the Board at a subsequent meeting and present a resolution for Board approval granting permission for issuing bonds or other forms of debt obligations for the specific project.”

Board Policy 906 states “Refinancing or Defeasing of Outstanding Debt. Outstanding debt of the educational building corporation may be refinanced in accordance with the provisions of this policy. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, the financial advisor must provide the Board with an independent analysis showing potential net present value (NPV) savings based on current market conditions. The institution’s request must include naming the bond counsel and senior underwriter(s) selected by the board of the educational building corporation. After consideration of the financial advisor’s analysis and other factors that the Board deems material, the Board may approve the issuance of debt by the educational building corporation, in the discretion of the authorized representatives of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, which authorization may be conditioned on the specific level of NPV savings being achieved. Refinancing or defeasing of debt does not require a subsequent meeting of the Board of Trustees provided the financial advisor has provided a report demonstrating adequate net present value savings and the bond resolution and form of bond documents have been presented to and approved by the Board.”

The institution presented the Financial Advisor’s report for the Board’s review along with the intent, justification, and project professionals at the October 2017 Board meeting. The institution is now requesting approval of the bond resolution and form of bond documents.
The bond resolution and form of bond documents have been reviewed by the Attorney General’s Office and recommends approval. Board staff recommends approval.

2. UMMC – REQUEST FOR APPROVAL TO ENTER AMEND A LIMITED SUPPLY AGREEMENT WITH PETNET SOLUTIONS, INC.

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to amend its current Limited Supply Agreement with PETNET Solutions, Inc. (PETNET) for the purchase of Amyvid, a drug used for Positron Emission Tomography (PET) imaging of the brain in adults who are being evaluated for Alzheimer's disease and other causes of cognitive decline. UMMC originally projected the total cost of the Agreement to be less than $250,000. However, due to an increased number of research studies and patients using the drug, the Agreement now exceeds $250,000, and UMMC hereby submits it for the Board’s approval at this time.

Contractor’s Legal Name: PETNET Solutions, Inc.

History of Contract: In September 2016, UMMC entered into the two (2) year Agreement with PETNET for the purchase of Amyvid. The total estimated cost of the Agreement was $243,000, and therefore did not require Board approval at the time UMMC entered into the Agreement. Originally, the Agreement was to be used primarily for UMMC's MIND Center for the ARIC/IDEA study. During the term of the Agreement, UMMC’s Jackson Heart Study also began using this drug to evaluate vascular function of the brain and cognitive decline, which added an additional 50 patients. Also, during the past year, UMMC received a small number of self-pay patients who have asked for the PET scan using Amyvid. Primarily with the additional research study, the increased volume has caused the overall cost of the Agreement to exceed $250,000.00, and, as such, UMMC has submitted the Agreement for the Board’s approval at this time. UMMC has not made payments exceeding $250,000.00.

Specific Type of Contract: This is a Limited Supply Agreement.

Purpose: The purpose of the Agreement is to purchase Amyvid, a drug used for Positron Emission Tomography (PET) imaging of the brain in adults who are being evaluated for Alzheimer's disease and other causes of cognitive decline.

Scope of Work: Under the Agreement, PETNET will:
- Deliver doses of Amyvid to UMMC;
- Make Amyvid available from PETNET’s facility in New Orleans Tuesday through Thursday, excluding holidays; and
- Warrant the Amyvid doses are within ± 10% of the requested activity at the time of calibration, measured at PETNET’s place of business, and manufactured according to the applicable Amyvid specifications.
UMMC will purchase Amyvid exclusively from PETNET, except as follows:

- If product is for backup supply until a date certain when UMMC shall purchase exclusively from PETNET;
- If PETNET is unable to supply the product in accordance with the Agreement, and PETNET is unable to provide a comparable product reasonable acceptable to UMMC; and
- If a PETNET supplier stops supplying a third party product to PETNET, and PETNET is unable to provide a comparable product reasonable acceptable to UMMC.

Term of Contract: The term of the Agreement is two (2) years, from September 1, 2016, through September 2018.

Termination Options: The Agreement may be terminated as follows:

- By PETNET for cause if UMMC
  - Uses a single dose of the product for more than one patient,
  - Fails to pay any invoice for products for a period of more than 90 days, or
  - Purchases products from suppliers other than PETNET unless otherwise allowed under the Agreement;
- By UMMC for cause if PETNET fails to meet its performance obligations under the Agreement and such failure continues for 30 days after written notice of failure has been given to PETNET; and
- By either party upon 60 days’ written notice.

Contract Amount: The estimated cost of the Agreement is $754,224.00. Each dose of Amyvid is $2,756.00, plus regular or STAT delivery charges. The new estimated cost includes growth potential for additional research studies or patients during the remainder of the contract term.

Funding Source for Contract: The Agreement is funded by the grant funds or hospital patient revenue, as applicable.

Contractor Selection Process: At the time UMMC entered into the Agreement in September 2016, the products offered under the Agreement qualify as items for resale, which are excluded from the definition of "commodities" under Miss. Code Ann. §31-7-1(e) and exempted from procurement requirements under §31-7-13, as clarified by the Mississippi Attorney General (see MS AG Op., Boyce (May 15, 2015). As of July 1, 2017, these products also would qualify as clinical commodities under §31-7-1, which are exempt from procurement requirements under §31-7-13.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land,
personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Board staff recommends approval of this item. (As the Board is being asked to approve additional expense under an on-going agreement, no approval by the Attorney General’s Office is required.)

3. UMMC – REQUEST FOR APPROVAL TO SUBLEASE MEDICAL OFFICE BUILDING AT 8950 LORRAINE ROAD IN GULFPORT, MISSISSIPPI

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to enter into a new Medical Office Building Lease (Sublease) with Memorial Hospital at Gulfport (MHG) to sublease approximately 5,440 square feet of clinical space located at 8950 Lorraine Road in Gulfport, Mississippi, for use as a pediatric outpatient clinic. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or Services, UMMC also requests a waiver to allow prepayment of rent on the first day of each month.

Contractor’s Legal Name: Memorial Hospital at Gulfport

History of Contract: UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by Mamie Street Properties, LLC and currently leased to MHG through June 30, 2020. Memorial Hospital at Gulfport has proposed subleasing this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

Specific Type of Contract: This is a new Medical Office Building Lease.

Purpose: The purpose of this Sublease is to sublease approximately 5,440 square feet from Memorial Hospital at Gulfport for use as a pediatric outpatient clinic.

Scope of Work: Under the Sublease, MHG will:

- Sublease approximately 5,440 square feet of clinical space to UMMC for the remainder of the primary lease term with Mamie Street Properties, LLC;
- Provide:
  - Air conditioning sufficient to cool the premises and heat sufficient to warm the premises to maintain comfortable temperatures in the premises;
  - Provide utilities including hot and cold running water for all restrooms and lavatories, electricity, gas, rubbish collection, and medical waste (sharps collection) disposal;
  - Janitorial service to include soap, paper towels, toilet tissue for public restrooms, and cleaning supplies;
  - Electrical and mechanical maintenance services; and
- Maintenance and repairs, such as replacement of light bulbs and air conditioning filters, unclogging of plumbing fixtures, etc.;
  - Remove any interior or exterior signage identifying MHG;
  - Clean, wax, and seal all flooring;
  - Remove all soap and foam dispensers; and
  - Reattach any handrails or toilet paper dispensers in restrooms, with touch-up painting as needed.

UMMC will use the premises for a medical clinic.

**Term of Contract**: The initial term of the agreement is twenty-seven (27) months and five (5) days, beginning March 26, 2018, and ending June 30, 2020.

**Termination Options**: Termination options include:

- By UMMC in the event MHG causes any utility service interruption lasting longer than 30 consecutive days;
- By either party in the event of a partial destruction of the premises and MHG does not elect to make repairs or if the repairs cannot be made within 120 days;
- By either party in the event of a total destruction of the building;
- Automatically if the whole of the premises or building or so much thereof as to render the balance unusable by UMMC shall be taken under power of eminent domain, condemnation or by deed in lieu of foreclosure or otherwise;
- By UMMC in the event of a partial taking under power of eminent domain, by giving MHG written notice within 30 days after UMMC’s receipt of written notice of such partial taking;
- By either party in the event the other party commits an act of default under the Sublease, by giving the defaulting party at least ten (10) days’ prior written notice;
- By either party in the event any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Lease, and the parties fail to agree upon modified terms within 90 days;
- By either party immediately upon breach of any of the following ongoing representations and warranties that it, its officers, directors and employees:
  - are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs;
  - have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; and
are not under investigation or otherwise aware of any circumstances which may result in the party being excluded from participation in the Federal Healthcare Programs or any state healthcare programs;

• By UMMC in the event of a reduction in funds or no funds available;
• By either party in the event of an adverse change in law and the parties fail to agree upon modified terms within 60 days; and
• Automatically upon the expiration or termination of the lease agreement between MHG and Mamie Street Properties, LLC.

**Contract Amount:** The total cost of the Sublease is $379,329.17 over the twenty-seven (27) months and five (5) days term. UMMC’s base rent will be $10,132 per month, or $283,696 total, plus an estimated $95,633.17 in operating expenses over the term of the Sublease. Operating expenses were estimated based on historical cost data from MHG, adjusted upward for inflation of 1.5% in the second year of the lease.

**Funding Source for Contract:** The agreement will be funded by patient revenue.

**Contractor Selection Process:** UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by Mamie Street Properties, LLC and currently leased to MHG through June 30, 2020. Memorial Hospital at Gulfport has proposed subleasing this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

**Staff Recommendation:** Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommendation is pending.

4. **UMMC – REQUEST FOR APPROVAL TO SUBLEASE MEDICAL OFFICE BUILDING AT 12259 HIGHWAY 49 IN GULFPORT, MISSISSIPPI**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a new Medical Office Building Lease (Sublease) with Memorial Hospital at Gulfport (MHG) to sublease approximately 4,500 square feet of clinical space located at 12259 Highway 49 in Gulfport, Mississippi, for use as a pediatric outpatient clinic. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or
Services, UMMC also requests a waiver to allow prepayment of rent on the first day of each month.

Contractor’s Legal Name: Memorial Hospital at Gulfport

History of Contract: UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by Mamie Street Properties, LLC and currently leased to MHG through February 28, 2020. Memorial Hospital at Gulfport has proposed subleasing this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

Specific Type of Contract: This is a new Medical Office Building Lease.

Purpose: The purpose of this Sublease is to sublease approximately 4,500 square feet from Memorial Hospital at Gulfport for use as a pediatric outpatient clinic.

Scope of Work: Under the Sublease, MHG will:

- Sublease approximately 4,500 square feet of clinical space to UMMC for the remainder of the primary lease term with Mamie Street Properties, LLC;
- Provide:
  - Air conditioning sufficient to cool the premises and heat sufficient to warm the premises to maintain comfortable temperatures in the premises;
  - Provide utilities including hot and cold running water for all restrooms and lavatories, electricity, gas, rubbish collection, and medical waste (sharps collection) disposal;
  - Janitorial service to include soap, paper towels, toilet tissue for public restrooms, and cleaning supplies;
  - Electrical and mechanical maintenance services; and
  - Maintenance and repairs, such as replacement of light bulbs and air conditioning filters, unclogging of plumbing fixtures, etc.;
- Remove any interior or exterior signage identifying MHG;
- Clean, wax, and seal all flooring; and
- Remove all soap and foam dispensers.

UMMC will use the premises for medical urgent care, walk-in or outpatient clinic/facility.

Term of Contract: The term of the agreement is twenty-three (23) months and five (5) days, beginning March 26, 2018, and ending February 28, 2020.
Termination Options: Termination options include:

- By UMMC in the event MHG causes any utility service interruption lasting longer than 30 consecutive days;
- By either party in the event of a partial destruction of the premises and MHG does not elect to make repairs or if the repairs cannot be made within 120 days;
- By either party in the event of a total destruction of the building;
- Automatically if the whole of the premises or building or so much thereof as to render the balance unusable by UMMC shall be taken under power of eminent domain, condemnation or by deed in lieu of foreclosure or otherwise;
- By UMMC in the event of a partial taking under power of eminent domain, by giving MHG written notice within 30 days after UMMC’s receipt of written notice of such partial taking;
- By either party in the event the other party commits an act of default under the Sublease, by giving the defaulting party at least ten (10) days’ prior written notice;
- By either party in the event any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Lease, and the parties fail to agree upon modified terms within 90 days;
- By either party immediately upon breach of any of the following ongoing representations and warranties that it, its officers, directors and employees:
  - are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs;
  - have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; and
  - are not under investigation or otherwise aware of any circumstances which may result in the party being excluded from participation in the Federal Healthcare Programs or any state healthcare programs;
- By UMMC in the event of a reduction in funds or no funds available;
- By either party in the event of an adverse change in law and the parties fail to agree upon modified terms within 60 days; and
- Automatically upon the expiration or termination of the lease agreement between MHG and Mamie Street Properties, LLC.

Contract Amount: The total cost of the Sublease is $278,451.42 over the twenty-three (23) month and five (5) day term. UMMC’s base rent will be $8,460 per month, or $203,040 total, plus an estimated $75,411.42 in operating expenses over the term of the Sublease. Operating expenses were estimated based on historical cost data from MHG, adjusted upward for inflation of 1.5% in the second year of the Sublease.
Funding Source for Contract: The agreement will be funded by patient revenue.

Contractor Selection Process: UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by Mamie Street Properties, LLC and currently leased to MHG through February 28, 2020. Memorial Hospital at Gulfport has proposed subleasing this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommendation is pending.

5. **UMMC – REQUEST FOR APPROVAL TO SUBLEASE MEDICAL OFFICE BUILDING AT 920 TOMMY MUNRO DRIVE IN BILOXI, MISSISSIPPI**

   **Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a new Medical Office Building Lease (Sublease) with Memorial Hospital at Gulfport (MHG) to sublease approximately 2,229 square feet of clinical space located at 920 Tommy Munro Drive in Biloxi, Mississippi, for use as a pediatric outpatient clinic. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or Services, UMMC also requests a waiver to allow prepayment of rent on the first day of each month.

   **Contractor’s Legal Name:** Memorial Hospital at Gulfport

   **History of Contract:** UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by J & R Properties and currently leased to MHG through May 31, 2021. Memorial Hospital at Gulfport has proposed subleasing a portion of this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

   **Specific Type of Contract:** This is a new Medical Office Building Lease.

   **Purpose:** The purpose of this Sublease is to sublease approximately 2,229 square feet from Memorial Hospital at Gulfport for use as a pediatric outpatient clinic.
Scope of Work: Under the Sublease, MHG will:
- Sublease approximately 2,229 square feet of clinical space to UMMC for the remainder of the primary lease term with J & R Properties;
- Provide:
  - Air conditioning sufficient to cool the premises and heat sufficient to warm the premises to maintain comfortable temperatures in the premises;
  - Provide utilities including hot and cold running water for all restrooms and lavatories, electricity, gas, rubbish collection, and medical waste (sharps collection) disposal;
  - Janitorial service to include soap, paper towels, toilet tissue for public restrooms, and cleaning supplies;
  - Electrical and mechanical maintenance services; and
  - Maintenance and repairs, such as replacement of light bulbs and air conditioning filters, unclogging of plumbing fixtures, etc.;
- Remove any interior or exterior signage identifying MHG;
- Clean, wax, and seal all flooring; and
- Remove all soap and foam dispensers.

UMMC will use the premises for a medical clinic.

Term of Contract: The initial term of the agreement is thirty-eight (38) months and five (5) days, beginning March 26, 2018, and ending May 31, 2021.

Termination Options: Termination options include:
- By UMMC in the event MHG causes any utility service interruption lasting longer than 30 consecutive days;
- By either party in the event of a partial destruction of the premises and MHG does not elect to make repairs or if the repairs cannot be made within 120 days;
- By either party in the event of a total destruction of the building;
- Automatically if the whole of the premises or building or so much thereof as to render the balance unusable by UMMC shall be taken under power of eminent domain, condemnation or by deed in lieu of foreclosure or otherwise;
- By UMMC in the event of a partial taking under power of eminent domain, by giving MHG written notice within 30 days after UMMC’s receipt of written notice of such partial taking;
- By either party in the event the other party commits an act of default under the Sublease, by giving the defaulting party at least ten (10) days’ prior written notice;
- By either party in the event any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such
laws due to the existence of any provision of this Lease, and the parties fail to agree upon modified terms within 90 days;
• By either party immediately upon breach of any of the following ongoing representations and warranties that it, its officers, directors and employees:
  o are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs;
  o have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; and
  o are not under investigation or otherwise aware of any circumstances which may result in the party being excluded from participation in the Federal Healthcare Programs or any state healthcare programs;
• By UMMC in the event of a reduction in funds or no funds available;
• By either party in the event of an adverse change in law and the parties fail to agree upon modified terms within 60 days; and
• Automatically upon the expiration or termination of the lease agreement between MHG and Mamie Street Properties, LLC.

Contract Amount: The total cost of the Sublease is $226,864.79 over the thirty-eight (38) months and five (5) days term. UMMC’s base rent will be a total of $161,969.24, plus an estimated $64,895.66 in operating expenses over the term of the Sublease. The initial base rent is $4,040.06 per month, subject to the annual increase in the Consumer Price Index, not to exceed three percent (3%). UMMC has included the maximum three percent (3%) annually in its calculation of the total cost. Operating expenses were estimated based on historical cost data from MHG, adjusted upward for inflation of 1.5% each subsequent year of the Sublease.

Funding Source for Contract: The agreement will be funded by patient revenue.

Contractor Selection Process: UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by J & R Properties and currently leased to MHG through May 31, 2021. Memorial Hospital at Gulfport has proposed subleasing a portion of this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods
and Services, Board approval of a prepayment/waiver is required at the same time
permission is sought from the Board under Board Policy 707.01. The agreement has been
reviewed and approved by the Attorney General’s Office. Board staff recommendation
is pending.

6. UMMC – REQUEST FOR APPROVAL TO SUBLEASE MEDICAL OFFICE
BUILDING AT 833 HIGHWAY 90 IN BAY ST. LOUIS, MISSISSIPPI

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests
approval to enter into a new Medical Office Building Lease (Sublease) with Memorial
Hospital at Gulfport (MHG) to sublease approximately 2,880 square feet of clinical space
located at 833 Highway 90 in Bay St. Louis, Mississippi, for use as a pediatric outpatient
clinic. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or Services,
UMMC also requests a waiver to allow prepayment of rent on the first day of each month.

Contractor’s Legal Name: Memorial Hospital at Gulfport

History of Contract: UMMC has sought to establish pediatric outpatient clinics along the
Mississippi Gulf Coast. The property is owned by Dr. Ronald J. Artigues, Sr. and currently
leased to MHG through August 31, 2018. Memorial Hospital at Gulfport has proposed
subleasing this specific clinic to UMMC, at the same rental costs paid now by MHG. The
location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a
pediatric clinic and requires no additional work in order for the building to be operable.
Upon approval of the Sublease, MHG will renew its lease with Dr. Artigues to extend the
term through August 31, 2021.

Specific Type of Contract: This is a new Medical Office Building Lease.

Purpose: The purpose of this Sublease is to sublease approximately 2,880 square feet from
Memorial Hospital at Gulfport for use as a pediatric outpatient clinic.

Scope of Work: Under the Sublease, MHG will:

- Sublease approximately 2,880 square feet of clinical space to UMMC for the
  remainder of the primary lease term with Dr. Artigues;
- Provide:
  - Air conditioning sufficient to cool the premises and heat sufficient to warm
    the premises to maintain comfortable temperatures in the premises;
  - Provide utilities including hot and cold running water for all restrooms and
    lavatories, electricity, gas, rubbish collection, and medical waste (sharps
    collection) disposal;
Janitorial service to include soap, paper towels, toilet tissue for public restrooms, and cleaning supplies;
- Electrical and mechanical maintenance services; and
- Maintenance and repairs, such as replacement of light bulbs and air conditioning filters, unclogging of plumbing fixtures, etc.;
- Remove any interior or exterior signage identifying MHG;
- Clean, wax, and seal all flooring;
- Remove all soap and foam dispensers; and
- Clean and/or replace any stained or damaged ceiling tiles.

UMMC will use the premises for a medical clinic.

**Term of Contract:** The initial term of the agreement is five (5) months and five (5) days, beginning March 26, 2018, and ending August 31, 2018. Upon MHG’s renewal of its lease with Dr. Artigues, the Sublease will extend through August 31, 2021, for a total term of three (3) years, five (5) months, and five (5) days.

**Termination Options:** Termination options include:
- By UMMC in the event MHG causes any utility service interruption lasting longer than 30 consecutive days;
- By either party in the event of a partial destruction of the premises and MHG does not elect to make repairs or if the repairs cannot be made within 120 days;
- By either party in the event of a total destruction of the building;
- Automatically if the whole of the premises or building or so much thereof as to render the balance unusable by UMMC shall be taken under power of eminent domain, condemnation or by deed in lieu of foreclosure or otherwise;
- By UMMC in the event of a partial taking under power of eminent domain, by giving MHG written notice within 30 days after UMMC’s receipt of written notice of such partial taking;
- By either party in the event the other party commits an act of default under the Sublease, by giving the defaulting party at least ten (10) days’ prior written notice;
- By either party in the event any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Lease, and the parties fail to agree upon modified terms within 90 days;
- By either party immediately upon breach of any of the following ongoing representations and warranties that it, its officers, directors and employees:
  - are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs;
  - have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise
declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; and

O are not under investigation or otherwise aware of any circumstances which may result in the party being excluded from participation in the Federal Healthcare Programs or any state healthcare programs;

• By UMMC in the event of a reduction in funds or no funds available;
• By either party in the event of an adverse change in law and the parties fail to agree upon modified terms within 60 days; and
• Automatically upon the expiration or termination of the lease agreement between MHG and Dr. Artigues.

Contract Amount: The total cost of the Sublease is $279,633.36 over the initial and renewal term. UMMC’s base rent will be a total of $189,346.41, plus an estimated $90,286.95 in operating expenses over the term of the Sublease. The initial base rent is $4,320 per month, subject to the annual increase in the Consumer Price Index, which UMMC has estimated as a two and a half percent (2.5%) annually. Operating expenses were estimated based on historical cost data from MHG, adjusted upward for inflation of 1.5% each subsequent year of the Sublease.

Funding Source for Contract: The agreement will be funded by patient revenue.

Contractor Selection Process: UMMC has sought to establish pediatric outpatient clinics along the Mississippi Gulf Coast. The property is owned by Dr. Ronald J. Artigues, Sr. and currently leased to MHG through August 31, 2018. Memorial Hospital at Gulfport has proposed subleasing this specific clinic to UMMC, at the same rental costs paid now by MHG. The location is acceptable and agreeable to UMMC as it is currently being utilized by MHG as a pediatric clinic and requires no additional work in order for the building to be operable.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General's Office. Board staff recommendation is pending.
7. **UMMC – REQUEST FOR APPROVAL TO ENTER INTO A NEONATOLOGY SERVICES AGREEMENT WITH SOUTHERN MISSISSIPPI NEONATOLOGY, P.A.**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a Neonatology Services Agreement with Southern Mississippi Neonatology, P.A. (SMN) to provide neonatology services to patients of the neonatal intensive care unit (NICU) at Memorial Hospital at Gulfport (MHG) in Gulfport, Mississippi.

**Contractor’s Legal Name:** Southern Mississippi Neonatology, P.A.

**History of Contract:** This is a new Neonatology Services Agreement. UMMC will provide management services for the neonatal intensive care unit (NICU) at Memorial Hospital at Gulfport (MHG) in Gulfport, Mississippi. MHG is currently contracted with SMN to provide neonatology services at the NICU. UMMC has determined it is in the best interests of patient care in the MHG NICU to continue the services provided by SMN.

**Specific Type of Contract:** This is a new Neonatology Services Agreement.

**Purpose:** The purpose of the Agreement is to provide neonatology services to patients of the neonatal intensive care unit (NICU) at Memorial Hospital at Gulfport (MHG) in Gulfport, Mississippi.

**Scope of Work:** Under the Agreement, SMN will:

- Provide the full range of professional neonatology services required at the NICU;
- Provide on-call services at the NICU;
- Arrange for a sufficient number of providers who are approved by UMMC to render reasonably necessary professional neonatology services and to provide full-time coverage at the NICU;
- Arrange for providers who fulfill UMMMC’s qualifications;
- Provide services in accordance with the standards of quality care established by the American Board of Pediatrics in the subspecialty of neonatology, UMMC and MHG’s policies and procedures, and cooperate with UMMC regarding conformance with acceptable standards of patient care;
- Prepare in a timely fashion reports of all medical examinations, medical procedures, and other medical services rendered by the providers to the NICU and the NICU’s patients;
- Collaborate and cause providers to collaborate with UMMC on various matters; and
- Maintain professional liability insurance, worker’s compensation insurance, and employer’s liability insurance.
UMMC will:

- Retain full management over the day-to-day operations of the NICU;
- Provide and maintain space at MHG’s facilities as may be necessary or appropriate for the operation of the NICU and provision of SMN’s services;
- Provide such equipment as is reasonably necessary for the proper and efficient operation of the NICU and for performance by SMN’s providers;
- Provide such drugs and supplies as may be necessary or appropriate;
- Provide and maintain in adequate condition and quantity and make available to SMN personnel all space, supplies, equipment, and support services reasonable necessary;
- Promptly make available to SMN such information as shall reasonably enable SMN to successfully provide the services and to bill and collect for its services to NICU patients;
- Ensure that all of its employees and medical staff cooperate in a prompt and professional manner with SMN personnel; and
- Collaborate with SMN on various matters.

**Term of Contract:** The initial term of the Agreement is two (2) years, from January 22, 2018, through January 21, 2020. The Agreement will automatically renew for additional one (1) years terms, up to five (5) years, or January 21, 2023.

**Termination Options:** Termination options include:

- If at any time any of the Providers fails to meet qualifications requirements, or the representations are no longer true, accurate or complete, SMN shall promptly notify UMMC in writing, and SMN shall promptly cause any such non-qualified provider to discontinue the services. SMN shall make commercially reasonable efforts to correct the staffing deficiency within five (5) days. If SMN fails to correct the deficiency within fifteen (15) days, UMMC may, at its option, immediately terminate this Agreement;
- If UMMC requests removal of a particular provider, and the basis of removal was an adverse action, such provider may file an appeal pursuant to the applicable provisions of the Medical Staff Bylaws. If SMN fails to terminate or remove the applicable provider from providing any services under this Agreement within thirty (30) days of such request by UMMC or MHG, UMMC may, at its option, immediately terminate this Agreement;
- If either party provides at least 180 days’ written notice of termination to the other party;
- Immediately by either party upon the occurrence of any of the following:
  - Upon termination of the Master Affiliation Agreement between UMMC and MHG;
  - Any local, state, federal government or regulatory authority revokes, withdraws or suspends any license, permit or certification of a Party that is or
are material to its performance hereunder, with such termination effective immediately upon the effective date of such withdrawal, revocation or suspension;

- Either Party, or any local, state or federal regulatory agency reasonably believes that the health or safety of any of UMMC’s, MHG’s or SMN’s or Providers’ patients is jeopardized by actions or behavior of the other Party;

- Either Party is unable to obtain or maintain insurance coverage in amounts required by this Agreement or by law, whichever is greater;

- A determination that either Party is a Sanctioned Provider;

- The indictment or conviction of either Party (including the entering of a plea of guilty or nolo contendere) for Medicare or Medicaid Program-related offenses or other felony;

- The initiation of any insolvency proceedings, whether voluntary, or involuntary, receivership or general assignment for the benefit of creditors of the assets of either Party which remains unstayed or undismissed for more than forty-five (45) days;

- Upon the notice of intention to, or the taking of any action in order to liquidate or dissolve either Party or to effectuate a change of control of either Party (other than a change in the individual Board members effected in the ordinary course consistent with its Bylaws);

- By either party immediately if the other party materially breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after its receipt of written notice from the other party specifying the nature of such breach;

- In the event of an adverse change in law and the parties fail to reach an agreement upon an amendment within sixty (60) days after commencing negotiation;

- At any time upon mutual written agreement; and

- By SMN in the event that MHG or UMMC changes any of its policies and procedures so that any such policies and procedures are materially inconsistent with the terms of this Agreement. SMN must provide UMMC with thirty (30) days prior written notice and an opportunity to discuss and/or amend such materially inconsistent policies and procedures. If the parties cannot reach agreement regarding such materially inconsistent policies and procedures, then this Agreement may be terminated on the day specified in the written notice.

**Contract Amount:** The total amount of the Agreement over five (5) years is $1,710,000. The fixed rate for the neonatology services is $342,000 per year.

**Funding Source for Contract:** The agreement will be funded by hospital patient revenue.

**Contractor Selection Process:** Memorial Hospital at Gulfport (MHG) is currently contracted with SMN to provide neonatology services at the NICU. UMMC has determined
it is in the best interests of patient care in the MHG NICU to continue the services provided by SMN.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of the contract for all other land, personal property, and service contracts that require an aggregate total expenditure of more than $250,000. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommendation is pending.

8. UMMC – REQUEST FOR APPROVAL TO ENTER INTO A LEASE AGREEMENT WITH WINSTON COUNTY MEDICAL FOUNDATION

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to enter into a Lease Agreement with Winston County Medical Foundation (WCMF). The purpose of the agreement is to lease approximately 3,085 square feet of clinical space located at 17280 East Main Street, Louisville, MS, for UMMC’s Department of Dermatology. This rural clinic will be a catalyst for progress and will allow UMMC to further populate the state with dermatology providers—especially given the medical underserved populations in rural Mississippi. Pursuant to IHL policy 707.03 Approval of Prepayment for Goods or Services, UMMC also requests a waiver to allow prepayment of rent on the first day of each month.

Contractor’s Legal Name: Winston County Medical Foundation

History of Contract: On April 21, 2016, the IHL Board approved a Lease Agreement between UMMC and WCMF. As part of the Lease Agreement, WCMF was to construct a new clinical building, approximately 3,300 square feet, and lease it to UMMC for five (5) years, with a five (5) year automatic renewal. Following approval by IHL and signing of the Lease Agreement, construction pricing by WCMF fell well above the budgeted amount and fair market rental value. After several attempts to modify the plans to reduce scope, WCMF determined that it would not be able to provide the new building within the desired budget.

Following design overages prohibiting construction, WCMF proposed an alternative location to UMMC to be used for its Dermatology operations. It is an existing building located at 17280 East Main Street in Louisville, and most recently housed WCMF’s rehabilitation program. The rehabilitation program has since moved into the new Medical Center in Louisville. WCMF will renovate the entire building to accommodate UMMC Dermatology and lease it for the same term as previously approved—five (5) years, with a five (5) year optional extension. The base rental rate of $15.00 per square foot will remain the same as in the original agreement. In addition to the base rent, WCMF has agreed to include additional amenities including: utilities, environmental services, and landscaping services for an
additional $6.50 per square foot, thereby making the total $21.50 per square foot. WCMF has allotted $345,545.49 toward the design and renovation of their rehabilitation facility.

While the more long-term facility has been under development, UMMC found temporary space located at 313 N. Court Avenue in Louisville, Mississippi. Although not ideal, this temporary location has allowed UMMC to become operational in this rural area.

Specific Type of Contract: This is a new Lease Agreement.

Purpose: The purpose of the Lease Agreement is to lease approximately 3,085 square feet of clinic space in Louisville, Mississippi (Winston County). This lease will provide UMMC the opportunity to offer dermatology services in this rural setting. This rural clinic will be a catalyst for progress and will allow UMMC to further populate the state with dermatology providers – especially given the medically underserved populations in rural Mississippi.

Scope of Work: Under the lease, the WCMF has agreed to:
- To pay for the renovation of a building that will provide for 3,085 square feet of usable space, which will be leased to UMMC to be used as a medical clinic for medical, educational, and research purposes only.
- To obtain an appropriate contractor to renovate the building, obtain all necessary approvals and certificates related renovation and communicate/update UMMC as to progress of renovation.
- Maintain the parking lot and structural components of the building and electrical infrastructure including repairing any damage to the interior of the building due to water leaking pipes or from storm or rain entering building through no fault of UMMC.
- Repair or restore, at its sole expense, all damage to the premises caused by WCMF employees, agents or invitees.
- Provide utilities and environmental services.
- Maintain the grounds and landscaping of the property.
- Pay all real property taxes, if any, assessed on the property or improvements thereof.
- Maintain fire and extended coverage insurance and property damage insurance on the premises for not less than the full insurable value of the premises.

UMMC agrees to:
- Make necessary arrangements for removal of medical waste in compliance with rules, regulations and environmental laws regulating same.
- To not make or allow any unlawful or improper us of the premises.
- Be solely responsible, at its own expense, for supplying all furnishings, equipment and other personal property necessary for operation of the medical clinic.
• Furnish, at UMMC’s expense, all maintenance and ordinary repair services for the interior of the building to include interior painting, decorating or redecorating of the building.
• Not make any alterations or additions to the building without obtaining the lessors prior written permission.
• Repair or restore, at its sole expense, all damage to the premises caused by UMMC’s employees, agents or invitees.
• Be solely responsible for taxes, if any, assessed on all equipment and other personal property brought into the premises.
• Maintain insurance on all personal property.

Term of Contract: The term of the Lease Agreement is sixty (60) months with a single five (5) year automatic renewal term. UMMC expects the commencement date of the Lease Agreement to be on or about March 22, 2018, which would cause the expiration date to be March 21, 2028.

Termination Options: Termination options include the following:
• At the end of the initial term, UMMC may terminate the agreement upon 180 days’ notice of UMMC’s intent not to renew the agreement for another term of five (5) years.
• The WCMF may terminate the agreement if the cost of construction exceeds the assumed budget as described in the agreement.
• In event of UMMC’s failure to pay any installment, WCMF may terminate the agreement without written consent.
• A non-breaching party can terminate the agreement in the event of default by the other party. Default includes:
  ○ Breaches of representation or warranty made or given in the agreement or in the event that any such representation or warranty shall be untrue or by reason of failure to state a material fact or otherwise shall be misleading.
  ○ Claim of bankruptcy or insolvency or reassignment for the benefit of creditors or consent of appoint of a trustee or receiver or trustee or receiver shall be appointed for a substantial part of its property without its consent or a bankruptcy, reorganization or insolvency proceeding shall be instituted by or against Lessee or Lessor.
  ○ Fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder, and such failure or breach shall continue un-remedied for a period of 30 business days after the date on which notice thereof shall be given by the other party.
• Failure of WCMF to comply with the federal E-verify Program.
• In the event of any reduction in available funds to UMMC, the contract may be terminated without penalty to UMMC.
Contract Amount: The total cost over the ten (10) year term of the Lease Agreement is $726,267.62. Beginning in Year 2, UMMC has included an annual price increase of two percent (2%).

Funding Source of Contract: The agreement will be funded by patient revenue.

Contractor Selection Process: Winston County Medical Foundation was selected as it agreed to renovate an existing facility tailored to UMMC’s needs. This lease will provide UMMC the opportunity to offer dermatology services in this rural setting. This rural clinic will be a catalyst for progress and will allow UMMC to further populate the state with dermatology providers – especially given the medically underserved populations in rural Mississippi.

Staff Recommendation: Based on Board Policy 707.01, Land, Property and Service Contracts, Board approval is required prior to execution of leases in an amount greater than $100,000. Based on Board Policy 707.03, Approval of Prepayment for Goods and Services, Board approval of a prepayment/waiver is required at the same time permission is sought from the Board under Board Policy 707.01. The agreement has been reviewed and approved by the Attorney General’s Office. Board staff recommendation is pending.

9. MSU - REQUEST FOR APPROVAL FOR A BOND RESOLUTION TO REFUND SERIES 2011 AND 2013 REVENUE BONDS IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TEN MILLION ($110,000,000) TO ACHIEVE NET PRESENT VALUE SAVINGS; TO REVIEW FINANCIAL ADVISOR’S REPORT, AND FOR APPROVAL OF OTHER BOND DOCUMENTS AND TO APPROVE BOND COUNSEL, FINANCIAL ADVISOR, AND UNDERWRITERS

Agenda Item Request: Mississippi State University requests a Resolution authorizing the Mississippi State University Educational Building Corporation (“MSUEBC”) to issue up to a maximum aggregate principal amount of $110,000,000 of debt obligations (however denominated) for the purpose of refunding the MSUEBC Revenue Bonds, Series 2011 and 2013, to receive the Financial Advisor’s report, and to approve project professionals.

Contractor’s Legal Name: Project Professionals are:

- Financial Advisor – First Southwest, a division of Hilltop Securities, Inc.
- Bond Counsel – Jones Walker LLP
- Underwriters – Raymond James & Associates, Inc., Morgan Stanley & Co. LLC and such other underwriters as are named in the Bond Purchase Agreement

Payment to Bond Counsel is $1.15 for every $1,000 in par value of bonds sold.
History: The MSUEBC originally issued Series 2011 bonds in the amount of $54,370,000 for the purpose of constructing Oak and Magnolia residence halls and refunding EBC Series 2001 bonds. The current expected refunding Par Amount is $38,265,000.

Additionally, The MSUEBC issued Series 2013 bonds in the amount of $60,470,000 for financing capital expenditures in connection with improvements associated with the expansion of Davis Wade Stadium. The current expected refunding Par Amount is $54,810,000.

Specific Type of Contract: Advance Refunding of Long-Term Bonds

Purpose: The purpose of the refunding of the Series 2011 and 2013 Bonds is debt service savings. The financial advisor provided an independent analysis showing potential net present value (NPV) savings based on market conditions as of November 7, 2017. The financial advisor estimates an NPV savings of $5,054,448, or 5.43%.

Scope of Work: Bond documentation, obtaining rating from rating agencies, and the public sale of the Debt Obligations.

Term of Contract: Long-term bonds in one or more taxable or tax-exempt series will be issued with maturities not to exceed thirty (30) years.

Termination Options: The Bond issue documents will contain redemption provisions which can be used in case of market changes.

Contract Amount: Maximum aggregate principal amount of $110,000,000 for the refunding, at an estimated All-In Interest cost of 3.44%.

Funding Source for Contract: Existing cash flow from the projects refinanced with the Debt Obligations.

The text of the resolution is as follows:

RESOLUTION AUTHORIZING MISSISSIPPI STATE UNIVERSITY EDUCATIONAL BUILDING CORPORATION TO ISSUE REVENUE REFUNDING BONDS IN THE MAXIMUM AGGREGATE PAR AMOUNT OF $110,000,000 TO REFUND ALL OR A PORTION OF CERTAIN OUTSTANDING MISSISSIPPI STATE UNIVERSITY EDUCATIONAL BUILDING CORPORATION REVENUE BONDS TO BE IDENTIFIED IN THE BOND PURCHASE AGREEMENT, AND TO PAY THE COSTS OF THE ISSUANCE,
The Board of Trustees of State Institutions of Higher Learning (the "Board") hereby finds, determines and adjudicates as follows:

1. The Board is charged with the management and control of all state institutions of higher learning pursuant to Article VIII, Section 213-A, Mississippi Constitution of 1890, and Chapter 101 of Title 37, Mississippi Code of 1972, as amended.

2. Mississippi State University of Agriculture and Applied Science (the "University") was organized and incorporated as a state institution of higher learning pursuant to Section 37-113-1 et seq., Mississippi Code of 1972, as amended, is controlled and managed by the Board
pursuant to Chapter 101 of Title 37, Mississippi Code of 1972, and is an educational institution owned and operated by the State of Mississippi by and through the Board.

3. Mississippi State University Educational Building Corporation (the "Corporation") was created as a public non-profit corporation, known as an educational building corporation, pursuant to a resolution of this Board under the authority of Sections 37-101-61 through 37-101-71, Mississippi Code of 1972, as amended (the "Act"), for the purpose of acquiring or constructing facilities for the University.

4. The Board of Directors of the Corporation proposes to issue its Revenue Refunding Bonds in the maximum aggregate par amount of $110,000,000 (the "Bonds") to provide moneys to refund all or a portion of the outstanding revenue bonds set forth on the Schedule of Refundable Bonds attached hereto that are identified in Bond Purchase Agreement (defined below) as bonds to be refunded with the proceeds of the Bonds (the “Refunded Bonds”), and to pay the related costs of the issuance, sale and delivery of the Bonds and to pay the related costs of the refunding; provided, such issuance is conditioned upon the adoption of this Resolution authorizing the same.

5. The Corporation issued the Refunded Bonds to finance various projects as set forth on Exhibit B to the Lease (as defined below) (collectively, the “Project”) located on various sites on the campus of the University as set forth on Exhibit A to the Lease (collectively, the “Project Site”).
6. The Corporation shall lease the Project Site from the Board and the University pursuant to a Ground Lease to be dated as of the first day of the month preceding the date of sale of the Bonds, by and among the Board, the University and the Corporation (the "Ground Lease").

7. The Board shall lease the Project and the Project Site from the Corporation pursuant to a Lease Agreement to be dated as of the first day of the month preceding the date of sale of the Bonds (the "Lease").

8. The Board hereby determines that it is in the public interest and in its best interest to lease the Project Site to the Corporation pursuant to the Ground Lease and to lease the Project and the Project Site from the Corporation at the consideration set forth in the Lease and that it is necessary and appropriate to authorize the President of the Board and the Commissioner of Higher Education to execute and deliver the Ground Lease and the Lease for and on behalf of the Board.

9. The Corporation is authorized by the Act to issue the Bonds for the purposes set forth herein, which Bonds shall be payable solely out of the payments derived from the Lease and shall be solely and exclusively obligations of the Corporation and shall not be secured by the full faith and credit of the State of Mississippi, the Board or the University.

10. The Bonds will be issued by the Corporation on behalf of the Board for purposes of the Internal Revenue Code of 1986, as amended.

11. The Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the Project, and no part of the
Corporation's net earnings, if any, will ever inure to the benefit of any person, firm or corporation other than the Board.

12. The Board, through the University, will have exclusive beneficial possession and use of all of the improvements comprising the Project.

13. The Board has full authority under the Constitution and laws of the State of Mississippi, and in the manner provided by statute, to exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in its possession, levied and collected, received or appropriated for the use, benefit, support and maintenance or capital outlay expenditures of the institutions of higher learning of the State of Mississippi, including the University, in addition to the authority to fix and maintain fees, rentals and other charges to be paid by students, faculty members and others using or being served by facilities of the institutions of higher learning.

14. It is appropriate for the Board to approve the Preliminary Official Statement (the "Preliminary Official Statement") to be used in connection with the marketing of the Bonds and to authorize and approve the execution and distribution of a final Official Statement (the "Official Statement") in connection with the sale of the Bonds.

15. The Corporation will sell the Bonds, in one or more series, on a negotiated basis pursuant to one or more bond purchase agreements (referred to herein collectively as the "Bond Purchase Agreement") with Raymond James & Associates, Inc., Morgan Stanley & Co. LLC and such other underwriters as are named in the Bond Purchase Agreement (the "Underwriter"). It is necessary and appropriate for the Board to approve the Underwriter as the
underwriter for the Bonds. It is also necessary and appropriate to authorize the Corporation to
sell the Bonds at such prices as may be determined by the Corporation, provided that, the
following conditions are satisfied: the aggregate par amount of the Bonds shall not exceed
$110,000,000; the final maturity of the Bonds shall be not later than August 1, 2043; the
interest rates on the Bonds shall not exceed the interest rates permitted by Mississippi law; and
the terms and conditions of the Bonds shall otherwise comply with the provisions of the Act.
16. It is necessary in connection with the sale of the Bonds to enter into a Continuing
Disclosure Agreement, and it is necessary and appropriate for the Board to approve the form,
and authorize the execution, of a Continuing Disclosure Agreement.
17. To enhance the marketability of the Bonds, it may be desirable to obtain municipal bond
insurance for the Bonds; and it is necessary and appropriate for the Board to authorize the
Corporation to take such actions and execute such documents and agreements as may be
necessary or appropriate to obtain bond insurance for the Bonds.
18. It is anticipated that the Bonds will be issued as tax-exempt bonds. In order to protect the
exclusion of interest on the Bonds from gross income for purposes of federal income taxation,
it is necessary for the Board to expressly agree to accept title to the Project, and any additions
thereto, upon retirement of the Bonds.
NOW, THEREFORE, THE BOARD HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Board hereby approves the purposes and activities of the Corporation.
The Corporation is hereby authorized to issue the Bonds, in one or more series to be designated
in the Bond Purchase Agreement, in the maximum aggregate par amount of $110,000,000 at
such time as the Corporation is able to sell the Bonds to the Underwriter and at such prices as may be determined by the Corporation, provided that the other conditions of paragraph 15 above of this Resolution are also satisfied in connection therewith. The Corporation shall issue the Bonds to finance the refunding of the Refunded Bonds and to pay the costs of the issuance, sale and delivery of the Bonds and expenses relating to the Bonds. The Corporation's engagement of FirstSouthwest, a division of Hilltop Securities Inc., as financial advisor to the Corporation, and of Jones Walker LLP as bond counsel with respect to the issuance of the Bonds and of the Underwriter as underwriter for the Bonds is hereby approved. The Board also approves the University counsel to serve in her official capacity as counsel for both the University and for the Corporation in connection with the various transactions related to the issuance of the Bonds, and the Board specifically waives any related conflict of interest.

SECTION 2. The Ground Lease is hereby approved, and the President of the Board and the Commissioner of Higher Education are hereby authorized to execute and deliver the Ground Lease under the seal of the Board for and on behalf of the Board, in substantially the form attached hereto as Exhibit A, with such completions, changes, insertions, and modifications as shall be approved by such officials, the execution thereof by such officials to be conclusive evidence of such approval.

SECTION 3. The Lease is hereby approved, and the President of the Board and the Commissioner of Higher Education are hereby authorized to execute and deliver the Lease under the seal of the Board for and on behalf of the Board, in substantially the form attached hereto as Exhibit B, with such completions, changes, insertions, and modifications as shall be
approved by such officials, the execution thereof by such officials to be conclusive evidence of such approval.

SECTION 4. The Preliminary Official Statement prepared in connection with the sale of the Bonds and the distribution thereof are hereby approved in the substantially the form attached hereto as Exhibit C with such completions, changes, insertions, and modifications as shall be approved by the Corporation. The Official Statement with respect to the Bonds is hereby approved in substantially the form of the Preliminary Official Statement, with such completions, changes, insertions, and modifications as shall be approved by the Corporation; the distribution of said Official Statement in connection with the sale of the Bonds is hereby approved; and execution of said Official Statement by the President of the Corporation is hereby approved.

SECTION 5. Pursuant to the Continuing Disclosure Agreement, the Board will, when and if required, undertake to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of these undertakings with respect to the Bonds is set forth in the Preliminary Official Statement and will also be set forth with respect to the Bonds in the final Official Statement. The Continuing Disclosure Agreement is hereby approved in substantially the form included in Exhibit C, and the Commissioner of Higher Education is hereby authorized to execute and deliver the Continuing Disclosure Agreement under the seal of the Board for and on behalf of the Board, with such completions, changes, insertions, and modifications as shall be approved by said official, the execution thereof by such official to be conclusive evidence of such approval.
SECTION 6. The sale of the Bonds on a negotiated basis to the Underwriter is hereby authorized and approved.

SECTION 7. The Corporation is hereby authorized to take such actions and execute such documents as may be necessary or appropriate to obtain municipal bond insurance for the Bonds, whether such municipal bond insurance is to be obtained being entirely within the discretion of the Corporation.

SECTION 8. The Board hereby covenants and agrees that it shall accept full legal title to the Project and any improvements and additions thereto upon retirement of the Bonds, and no further action shall be necessary by the Board at such time for full legal title to the Project and any improvements and additions thereto to immediately vest in the Board.

SECTION 9. The Bonds shall be submitted to validation as provided by Chapter 13, Title 31, Mississippi Code of 1972, and to that end the clerk of the Board is hereby directed to make up a transcript of all legal papers and proceedings relating to the Bonds and to certify and forward the same, together with a transcript of all proceedings of the Corporation, to the State's Bond Attorney for the institution of validation proceedings.

SECTION 10. All prior orders, resolutions or proceedings in conflict with the provisions of this Resolution shall be, and the same are hereby repealed, rescinded and set aside, but only to the extent of such conflict. For cause, this Resolution shall become effective immediately upon the adoption thereof.

Board Staff Recommendation: Board Policy 906 states “Refinancing or Defeasing of Outstanding Debt. Outstanding debt of the educational building corporation may be refinanced in accordance with the provisions of this policy. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation to
refinance outstanding debt of the institution or the educational building corporation, the financial advisor must provide the Board with an independent analysis showing potential net present value (NPV) savings based on current market conditions. The institution’s request must include naming the bond counsel and senior underwriter(s) selected by the board of the educational building corporation. After consideration of the financial advisor’s analysis and other factors that the Board deems material, the Board may approve the issuance of debt by the educational building corporation, in the discretion of the authorized representatives of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, which authorization may be conditioned on the specific level of NPV savings being achieved. Refinancing or defeasing of debt does not require a subsequent meeting of the Board of Trustees provided the financial advisor has provided a report demonstrating adequate net present value savings and the bond resolution and form of bond documents have been presented to and approved by the Board.”

The institution is presenting the Financial Advisor’s report for the Board’s review along with the intent, justification, and project professionals. In addition, the institution is also requesting approval of the bond resolution and form of bond documents.

The bond resolution and form of bond documents have been reviewed by the Attorney General’s Office and recommends approval. Board staff recommends approval.

10. USM - REQUEST FOR APPROVAL FOR A BOND RESOLUTION TO REFUND SERIES 2013 REVENUE BONDS IN AN AMOUNT NOT TO EXCEED FIFTY MILLION ($58,000,000) TO ACHIEVE NET PRESENT VALUE SAVINGS; TO REVIEW FINANCIAL ADVISOR’S REPORT, AND FOR APPROVAL OF OTHER BOND DOCUMENTS AND TO APPROVE BOND COUNSEL, FINANCIAL ADVISOR, AND UNDERWRITER

Agenda Item Request: The University of Southern Mississippi requests for a Resolution authorizing the Southern Mississippi Educational Building Corporation (“SMEBC”) to issue up to a maximum aggregate principal amount of $58,000,000 of debt obligations (however denominated) for the purpose of refunding the SMEBC Revenue Bonds, Series 2013, to receive the Financial Advisor’s report, and to approve project professionals.

Contractor’s Legal Name: Project Professionals are:

- Financial Advisor – First Southwest, a division of Hilltop Securities, Inc.
- Bond Counsel – Butler Snow LLP
• Underwriter – Raymond James

Payment to Bond Counsel is $1.90 for every $1,000 in par value of bonds for the first $25,000,000 of bonds issued and $1.15 per $1,000 of bonds issued over and above $25,000,000. Total estimated fee assuming $58,000,000 of bonds are issued is $85,450 plus expenses.

History: The SMEBC originally issued Series 2013 bonds in the amount of $51,875,000 for the purpose of a) certain improvements and other capital expenditures, including but not limited to constructing, furnishing and equipping student residence halls to be located on the main campus of the University of Southern Mississippi in Hattiesburg, Mississippi, and demolishing abandoned facilities located on the project site, b) refunding of all of the outstanding Series 1997A Bonds, and c) the costs of issuance of the Series 2013 Bonds. The current expected refunding Par Amount is $48,240,000.

Specific type of contract: Advance Refunding of Long-Term Bonds

Purpose: The purpose of the refunding of the Series 2013 Bonds is debt service savings. The financial advisor provided an independent analysis showing potential net present value (NPV) savings based on market conditions as of October 23, 2017. The financial advisor estimates an NPV savings of $1,345,282, or 3.01%.

Scope of Work: Bond documentation, obtaining rating from rating agencies, and the public sale of the Debt Obligations.

Term of contract: Long-term bonds in one or more taxable or tax-exempt series will be issued with maturities not to exceed thirty (30) years.

Termination Options: The Bond issue documents will contain redemption provisions which can be used in case of market changes.

Contract Amount: Maximum aggregate principal amount of $58,000,000 for the refunding, at an estimated All-In Interest cost of 3.60%.

Funding Source for Contract: Existing cash flow from the projects refinanced with the Debt Obligations.
RESOLUTION AUTHORIZING THE S.M. EDUCATIONAL BUILDING CORPORATION TO ISSUE REVENUE REFUNDING BONDS IN ONE OR MORE TAXABLE AND/OR TAX-EXEMPT SERIES IN THE MAXIMUM AGGREGATE PAR AMOUNT OF $58,000,000 TO REFUND ALL OR A PORTION OF CERTAIN OUTSTANDING REVENUE BONDS OF S.M. EDUCATIONAL BUILDING CORPORATION TO BE IDENTIFIED IN THE BOND PURCHASE AGREEMENT, AND TO PAY THE COSTS OF THE ISSUANCE, SALE AND DELIVERY OF SAID BONDS; AUTHORIZING THE EXECUTION OF A GROUND LEASE BY AND AMONG THE UNIVERSITY OF SOUTHERN MISSISSIPPI, THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING AND THE S.M. EDUCATIONAL BUILDING CORPORATION AND A LEASE AGREEMENT BY AND BETWEEN THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING AND S.M. EDUCATIONAL BUILDING CORPORATION IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A CONTINUING DISCLOSURE AGREEMENT IN CONNECTION WITH THE SALE AND ISSUANCE OF SAID BONDS; APPROVING THE FORM AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT PERTAINING TO SAID BONDS; APPROVING THE FORM AND DISTRIBUTION OF A FINAL OFFICIAL STATEMENT PERTAINING TO SAID BONDS; AUTHORIZING S.M. EDUCATIONAL BUILDING CORPORATION TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AND AGREEMENTS AS MAY BE NECESSARY OR APPROPRIATE IN CONNECTION WITH OBTAINING BOND INSURANCE FOR SAID BONDS; APPROVING THE PURPOSES AND ACTIVITIES OF THE S.M. EDUCATIONAL BUILDING CORPORATION; AGREEING TO ACCEPT TITLE TO THE FACILITIES REFINANCED WITH THE PROCEEDS OF SAID BONDS; AND FOR RELATED PURPOSES.

The Board of Trustees of State Institutions of Higher Learning (the “Board”) hereby finds, determines and adjudicates as follows:

1. The Board is charged with the management and control of all state institutions of higher learning pursuant to Article VIII, Section 213-A, Mississippi Constitution of 1890, and Chapter 101 of Title 37, Mississippi Code of 1972, as amended.
2. The University of Southern Mississippi (the “University”) was organized and incorporated as a state institution of higher learning pursuant to Section 37-119-1 et seq., Mississippi Code of 1972, as amended, is controlled and managed by the Board pursuant to Chapter 101 of Title 37, Mississippi Code of 1972, and is an educational institution owned and operated by the State of Mississippi by and through the Board.

3. S.M. Educational Building Corporation (the “Corporation”) was created as a public non-profit corporation, known as an educational building corporation, pursuant to a resolution of this Board under the authority of Sections 37-101-61 through 37-101-71, Mississippi Code of 1972, as amended (the “Act”), for the purpose of acquiring or constructing facilities for the University.

4. The Board of Directors of the Corporation proposes to issue its Revenue Refunding Bonds in the maximum aggregate par amount of $58,000,000 (the “Bonds”) to provide moneys to refund all or a portion of the outstanding revenue bonds set forth on the Schedule of Refundable Bonds attached hereto that are identified in Bond Purchase Agreement (defined below) as bonds to be refunded with the proceeds of the Bonds (the “Refunded Bonds”), and to pay the related costs of the issuance, sale and delivery of the Bonds and to pay the related costs of the refunding; provided, such issuance is conditioned upon the adoption of this Resolution authorizing the same.

5. The Corporation issued the Refunded Bonds to finance various projects as set forth on Exhibit B to the Lease (as defined below) (collectively, the “Project”) located on various sites
on the campus of the University as set forth on Exhibit A to the Lease (collectively, the “Project Site”).

6. The Corporation shall lease the Project Site from the Board and the University pursuant to a Ground Lease to be dated as of the first day of the month preceding the date of sale of the Bonds, by and among the Board, the University and the Corporation (the “Ground Lease”).

7. The Board shall lease the Project and the Project Site from the Corporation pursuant to a Lease Agreement to be dated as of the first day of the month preceding the date of sale of the Bonds (the “Lease”).

8. The Board hereby determines that it is in the public interest and in its best interest to lease the Project Site to the Corporation pursuant to the Ground Lease and to lease the Project and the Project Site from the Corporation at the consideration set forth in the Lease and that it is necessary and appropriate to authorize the President of the Board and the Commissioner of Higher Education to execute and deliver the Ground Lease and the Lease for and on behalf of the Board.

9. The Corporation is authorized by the Act to issue the Bonds for the purposes set forth herein, which Bonds shall be payable solely out of the payments derived from the Lease and shall be solely and exclusively obligations of the Corporation and shall not be secured by the full faith and credit of the State of Mississippi, the Board, or the University.

10. The Bonds will be issued by the Corporation on behalf of the Board for purposes of the Internal Revenue Code of 1986, as amended.
11. The Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the Project, and no part of the Corporation’s net earnings, if any, will ever inure to the benefit of any person, firm or corporation other than the Board.

12. The Board, through the University, will have exclusive beneficial possession and use of all of the improvements comprising the Project.

13. The Board has full authority under the Constitution and laws of the State of Mississippi, and in the manner provided by statute, to exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in its possession, levied and collected, received or appropriated for the use, benefit, support and maintenance or capital outlay expenditures of the institutions of higher learning of the State of Mississippi, including the University, in addition to the authority to fix and maintain fees, rentals and other charges to be paid by students, faculty members and others using or being served by facilities of the institutions of higher learning.

14. It is appropriate for the Board to approve the Preliminary Official Statement (the “Preliminary Official Statement”) to be used in connection with the marketing of the Bonds and to authorize and approve the execution and distribution of a final Official Statement (the “Official Statement”) in connection with the sale of the Bonds.

15. The Corporation will sell the Bonds, in one or more series, on a negotiated basis pursuant to one or more bond purchase agreements (referred to herein collectively as the “Bond Purchase Agreement”) with Raymond James & Associates, Inc., and such other underwriters
as are named in the Bond Purchase Agreement (collectively, the “Underwriter”). It is necessary and appropriate for the Board to approve the Underwriter as the underwriter for the Bonds. It is also necessary and appropriate to authorize the Corporation to sell the Bonds at such prices as may be determined by the Corporation, provided that, the following conditions are satisfied: the aggregate par amount of the Bonds shall not exceed $58,000,000; the final maturity of the Bonds shall be not later than December 1, 2043; the interest rates on the Bonds shall not exceed the interest rates permitted by Mississippi law; and the terms and conditions of the Bonds shall otherwise comply with the provisions of the Act.

16. It is necessary in connection with the sale of the Bonds to enter into a Continuing Disclosure Agreement, and it is necessary and appropriate for the Board to approve the form, and authorize the execution, of a Continuing Disclosure Agreement.

17. To enhance the marketability of the Bonds, it may be desirable to obtain municipal bond insurance for the Bonds; and it is necessary and appropriate for the Board to authorize the Corporation to take such actions and execute such documents and agreements as may be necessary or appropriate to obtain bond insurance for the Bonds.

18. It is anticipated that the Bonds will be issued as tax-exempt and/or taxable bonds. In order to protect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, it is necessary for the Board to expressly agree to accept title to the Project, and any additions thereto, upon retirement of the Bonds.
NOW, THEREFORE, THE BOARD HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The Board hereby approves the purposes and activities of the Corporation. The Corporation is hereby authorized to issue the Bonds, in one or more taxable and/or tax-exempt series to be designated in the Bond Purchase Agreement, in the maximum aggregate par amount of $58,000,000 at such time as the Corporation is able to sell the Bonds to the Underwriter and at such prices as may be determined by the Corporation, provided that the other conditions of paragraph 15 above of this Resolution are also satisfied in connection therewith. The Corporation shall issue the Bonds to finance the refunding of the Refunded Bonds and to pay the costs of the issuance, sale and delivery of the Bonds and expenses relating to the Bonds. The Corporation’s engagement of Hilltop Securities Inc., as financial advisor to the Corporation, of Butler Snow LLP as bond counsel, and of the Underwriter as underwriter for the Bonds is hereby approved.

SECTION 2. The Ground Lease is hereby approved, and the President of the Board and the Commissioner of Higher Education are hereby authorized to execute and deliver the Ground Lease under the seal of the Board for and on behalf of the Board, in substantially the form attached hereto as Exhibit A, with such completions, changes, insertions, and modifications as shall be approved by such officials, the execution thereof by such officials to be conclusive evidence of such approval.

SECTION 3. The Lease is hereby approved, and the President of the Board and the Commissioner of Higher Education are hereby authorized to execute and deliver the Lease under the seal of the Board for and on behalf of the Board, in substantially the form attached
hereto as **Exhibit B**, with such completions, changes, insertions, and modifications as shall be approved by such officials, the execution thereof by such officials to be conclusive evidence of such approval.

**SECTION 4.** The Preliminary Official Statement prepared in connection with the sale of the Bonds and the distribution thereof are hereby approved in substantially the form attached hereto as **Exhibit C** with such completions, changes, insertions, and modifications as shall be approved by the Corporation. The Official Statement with respect to the Bonds is hereby approved in substantially the form of the Preliminary Official Statement, with such completions, changes, insertions, and modifications as shall be approved by the Corporation; the distribution of said Official Statement in connection with the sale of the Bonds is hereby approved; and execution of said Official Statement by the President of the Corporation is hereby approved.

**SECTION 5.** Pursuant to the Continuing Disclosure Agreement, the Board will, when and if required, undertake to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of these undertakings with respect to the Bonds is set forth in the Preliminary Official Statement and will also be set forth with respect to the Bonds in the final Official Statement. The Continuing Disclosure Agreement is hereby approved in substantially the form attached hereto as **Exhibit D**, and the President of the Board is hereby authorized to execute and deliver the Continuing Disclosure Agreement under the seal of the Board for and on behalf of the Board, with such completions, changes,
insertions, and modifications as shall be approved by said official, the execution thereof by such official to be conclusive evidence of such approval.

SECTION 6. The sale of the Bonds on a negotiated basis to the Underwriter is hereby authorized and approved.

SECTION 7. The Corporation is hereby authorized to take such actions and execute such documents as may be necessary or appropriate to obtain municipal bond insurance for the Bonds, whether such municipal bond insurance is to be obtained being entirely within the discretion of the Corporation.

SECTION 8. The Board hereby covenants and agrees that it shall accept full legal title to the Project and any improvements and additions thereto upon retirement of the Bonds, and no further action shall be necessary by the Board at such time for full legal title to the Project and any improvements and additions thereto to immediately vest in the Board.

SECTION 9. The Bonds shall be submitted to validation as provided by Chapter 13, Title 31, Mississippi Code of 1972, and to that end the clerk of the Board is hereby directed to make up a transcript of all legal papers and proceedings relating to the Bonds and to certify and forward the same, together with a transcript of all proceedings of the Corporation, to the State’s Bond Attorney for the institution of validation proceedings.

SECTION 10. All prior orders, resolutions or proceedings in conflict with the provisions of this Resolution shall be, and the same are hereby repealed, rescinded and set aside, but only to the extent of such conflict. For cause, this Resolution shall become effective immediately upon the adoption thereof.
Board Staff Recommendation: Board Policy 906 states “Refinancing or Defeasing of Outstanding Debt. Outstanding debt of the educational building corporation may be refinanced in accordance with the provisions of this policy. Prior to Board consideration of an institution’s request to issue debt of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, the financial advisor must provide the Board with an independent analysis showing potential net present value (NPV) savings based on current market conditions. The institution’s request must include naming the bond counsel and senior underwriter(s) selected by the board of the educational building corporation. After consideration of the financial advisor’s analysis and other factors that the Board deems material, the Board may approve the issuance of debt by the educational building corporation, in the discretion of the authorized representatives of the educational building corporation to refinance outstanding debt of the institution or the educational building corporation, which authorization may be conditioned on the specific level of NPV savings being achieved. Refinancing or defeasing of debt does not require a subsequent meeting of the Board of Trustees provided the financial advisor has provided a report demonstrating adequate net present value savings and the bond resolution and form of bond documents have been presented to and approved by the Board.”

The institution is presenting the Financial Advisor’s report for the Board’s review along with the intent, justification, and project professionals. In addition, the institution is also requesting approval of the bond resolution and form of bond documents.

The bond resolution and form of bond documents have been reviewed by the Attorney General’s Office and recommends the Authorizing Resolution and the form of the corresponding documents for IHL Board approval contingent on the Attorney General’s approval of the Agreement for Bond Counsel Legal Services between Butler Snow and S.M. Educational Building Corporation. Board staff recommends approval.
Note: Project numbers beginning with the prefix "GS" designate projects that the Bureau of Building provides management oversight for and are funded partially or wholly with state Bureau of Building bond revenues. Project numbers beginning with the prefix "IHL" designate projects that are funded from university self-generated sources including but not limited to donations, fees, and grants.

Board Policy §902, Initiation of Construction Projects

The Board must approve the initiation of a project for the construction of new facilities, repairs and renovations to existing facilities and requests for a capital outlay with a total project budget exceeding $1,000,000 regardless of how the projects are financed. It is the intent of the Board that its appropriate staff under the direction of the Commissioner shall be involved in all phases of building projects requiring approval by the Board. All construction, repairs, and renovation projects with a total budget of $1,000,000 or less may be approved by the Institutional Executive Officer. However, all projects utilizing any state bond funds, including Ayers funds, must be initiated with STAFF approval from the Office of Real Estate and Facilities. No further approvals are required by IHL staff for projects of $1,000,000 or less unless the budget changes. All budget changes for these projects must be reported to the Office of Real Estate and Facilities.

Board Policy §904(A), Board Approval

When funding has been secured from whatever source, each institution shall bring all new projects to the Board for the approval of the project initiation and the appointment of a design professional, as required in Board Policy §902, Initiation of Construction Projects. This request shall include a detailed description of the work to be accomplished, the total budget, the funding source and the design professional recommended to the Board for approval.

After the Board has granted approval of both the initiation of a project and the appointment of a design professional, no further Board action or approval is required for the completion of the project if the following conditions are met:

1. The detailed description of the work to be accomplished, as specifically approved by the Board within the project initiation, has not changed.
2. The total project budget has not increased beyond the amount specifically approved by the Board as part of the project initiation;
3. The funding source has not changed from that specifically approved by the Board as part of the project initiation; and
4. The design professional previously approved by the Board has not changed.
If the above four conditions have been met, the Board’s Real Estate and Facilities staff, through the Commissioner, shall have the authority to approve any and all necessary documents related to the completion of the subject construction project, including the approval of construction documents, the advertisement and receipt of bids, the approval of a bid, the award of a contract and any change orders.

Prior to the commencement of construction, the Board must approve the exterior design of the major buildings that have aesthetic impact on the overall campus, regardless of the cost of the project. This requirement applies to all buildings and facilities on an institution’s property even if the land is leased to an institution’s affiliated entity or a private developer.

APPROVAL OF BUDGET MODIFICATIONS AND/OR CHANGES OF SCOPE/FUNDING SOURCE(S) / APPROVAL OF EXTERIOR DESIGN

IHL PROJECTS .................................................................

1. **MSU – IHL 205-287 – MSU Parking Garage North**

   **Project Request:** Mississippi State University requests approval to change the funding source for the Parking Garage North project from EBC Bonds to Internal R&R funds. The project budget will remain the same. In addition, Mississippi State University requests approval of the exterior design for the project.

   **Project Phase:** Design

   **Design Professional:** McCarty Architects

   **General Contractor:** TBD

   **Purpose:** Mississippi State University is seeking to modify the funding source to use internal R&R funds instead of EBC Bond funds as previously approved by the Board of Trustees in May of 2017. Also, the university is seeking approval of the exterior rendering for IHL# 205-287 Parking Garage North as required by board policy.

   **Project Scope:** Provide design, contract documents and construction administration for a new multistory parking garage located on the campus of Mississippi State University. The new facility shall be a poured in place concrete structure. The exterior skin of the facility shall comply with the architectural design standards of Mississippi State University. The new facility will be located on the north side of
campus, east of Howell Hall, and will contain approximately 500 parking spaces. In addition, the facility shall be designed to expand upward for future parking levels.

Mississippi State University is acting in accordance with Board Policy §904(A), Board Approval, that requires each institution to submit all project budget increases and modifications to the Board for approval. Mississippi State University is also acting in accordance with Board Policy §904(A), Board Approval, that requires the Board to approve the exterior design of the major buildings that have aesthetic impact on the overall campus, regardless of the cost of the project.

**Project Initiation Date:** May 18, 2017

**Project Budget:**

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<td><strong>Total Project Budget</strong></td>
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**Proposed Funding Source(s):** Internal R&R Funds ($9,000,000)

*Staff Recommendation:* Board staff recommends approval of this item.
Rendering 1: North and East Side of Parking Garage North

Rendering 2: North and West Side of Parking Garage North
APPROVAL OF OTHER REAL ESTATE REQUESTS

2. UM – IHL 207-376–STEM Building – Approval to Hire an Owner’s Representative

**Project Request:** The University of Mississippi requests approval to hire an owner’s representative via the “Request for Qualifications” (RFQ) and interview process.

**Project Phase:** Design

**Design Professional:** McCarty Architects

**General Contractor:** TBD

**Purpose:** The University of Mississippi is seeking approval to hire an experienced team of construction professionals to assist the Owner in overseeing and evaluating construction costs, expenses, construction scheduling, construction quality, and day-to-day site operations of the Construction Manager at Risk (CMAR) on the STEM project. Services requested by the university include: developing standards and expectations for contractors’ allowable charges prior to construction start; assistance in setting construction scheduling milestones; tracking construction progress; third-party review of bid proposal; providing a full-time on-site professional and part-time support staff to assist UM’s Department of Facilities Planning; review and audit contractor’s pay applications and change orders prior to payment; evaluate and advise on project close-out and warranty submittals; perform close-out audit.

**Project Scope:** As student enrollment increases, the demand for Science, Technology, Engineering & Mathematics (STEM) facilities follows. It has been established that the University of Mississippi wishes to provide additional STEM facilities on campus to satisfy the demand in the form of a 4-story STEM Building in the Science District on campus. The building is approximately 207,000 gross square feet. It will be the largest, most expensive, and most complex building ever built on the UM campus. Due to the extreme size of this project, the University of Mississippi would like to have assistance in overseeing construction operations.

**Project Initiation Date:** January 16, 2014
Project Budget:

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**Total Project Budget** $14,000,000.00

(Note: The budget of $14,000,000 as shown above is the current Board approved budget. UM will request an increase in this budget at a later date as the funding becomes available. The total projected budget for this project is approximately $150,000,000)

Proposed Funding Source(s): Internal R&R Funds ($14,000,000)

Staff Recommendation: Board staff recommends approval of this item.

3. **UMMC – Request to Approve the Phase II Contract for Construction Manager at Risk (CMAR) Services with Brasfield & Gorrie, LLC for the New Children’s of Mississippi Expansion Project**

Request: The University of Mississippi Medical Center (UMMC) requests approval to move forward on Phase II – Construction with Brasfield & Gorrie, L.L.C. (B&G) for the provision of construction manager at risk (CMAR) services for the Children’s of Mississippi Expansion Project.

Contractor’s Legal Name: Brasfield & Gorrie, L.L.C.

History of Contract/Justification: In April 2016, the Board approved the initiation of the Children’s of Mississippi Expansion (IHL 209-555), and the request to use the Construction Manager at Risk project delivery method, in accordance with Mississippi Code Ann. Section 31-7-13.2.

In May 2017, the Board approved UMMC to enter into an agreement for Phase I – Preconstruction with B&G for the provision of CMAR services for the Children’s of Mississippi Expansion Project.
Specific type of contract: This is an agreement for Construction Manager at Risk services.

Purpose: The purpose of the agreement is for the provision of CMAR services for construction of the Children’s of Mississippi Expansion Project. To accommodate the growth in pediatric services that UMMC has incurred, UMMC finds it necessary to expand its Batson Children’s Hospital. The expansion project will include approximately 340,000 square feet of additional space to provide NICU, PICU, surgery, clinic and outpatient clinics and dedicated pediatric imaging space for its pediatric patients.

Pursuant to the CMAR agreement there are two phases of the project, as follows:

Phase I - Pre-construction phase (Phase I). In Phase I the CMAR has worked with the design professionals and UMMC on the design and specifications to ensure a complete and constructible set of plans that are within budget and scope.

Phase II - Construction phase (Phase II) is the construction phase and UMMC is seeking Board approval to move forward with Phase II. If approved, Phase II will commence upon receipt by B&G of a Notice to Proceed from UMMC. This Notice will set the date at which construction shall commence and will provide the number of days in which the project must be completed. B&G has provided a guaranteed maximum price (GMP) for the project pursuant to the requirements of the contract.

Scope of Work:

Under the agreement B&G will:

- Perform Phase II, Construction Services, upon receiving a Notice to Proceed, from UMMC:
  - Provide construction services in the agreed upon timeframe and at the agreed upon GMP.
  - Provide a superintendent and all key personnel for the project.
  - Assist in preparation, advertising, etc. of all bid packages.
  - Provide and pay for all labor, services and materials, etc. utilized/needed for proper execution and final completion of the construction work.
  - Supervise construction work related to project performance and ensure that all trade subcontracts are meeting all the terms of the contract documents.
  - Except for those permits and approvals that UMMC is required to obtain, obtain and pay fees related to all permits, approvals, licenses, etc. as applicable to the project.
  - Warrant that all materials and equipment used in or incorporated into the
construction work will be of good quality, new, and free of liens, claims, and security interest of third parties and that construction work will be of good quality and free from defects and CMAR shall, along with trade subcontractors, conduct a warranty inspection one year after substantial completion and remedy, at no cost to UMMC, any defects or deficiencies noted by UMMC representative(s).

- CMAR will pay all sales, consumer, use and similar taxes for the work or portions thereof provided by CMAR.
- CMAR will obtain, within ten (10) days of receipt of Notice to Proceed, a Performance Bond to ensure faithful performance of the contract and a Payment Bond, to ensure payment of obligations arising thereunder.
- CMAR will obtain insurance as will protect itself, UMMC, and the IHL, which includes commercial form general liability insurance, business automobile liability insurance, professional liability insurance, pollution liability, and builders risk property insurance. Additionally, CMAR will provide certificates of insurance to UMMC and the IHL’s Office of Risk Management.
- CMAR will require all subcontractors to provide insurance meeting the requirements as those prescribed in the agreement.
- Communicate with UMMC’s representative(s) during the project.
- Provide Applications for Payment to UMMC in accordance with the contract.
- Coordinate with all UMMC vendors and outside consultants, including but not necessarily limited to: commissioning agent, medical equipment providers, testing and inspection services, and technology providers.

Under the agreement UMMC will:
- Provide UMMC representative(s) for administration of the project and ensures CMAR executes the project in compliance with the contract.
- Provide payment upon receipt of application for payment and as further described by the contract in a timely manner.
- Assist in preparing bid packages and selection of subcontractors.
- Engage a 3rd Party Auditor to audit the CMAR contract and general conditions to ensure UMMC is paying only actual costs plus the agreed upon fee.

Term of contract: The term of the contract is expected to be four (4) years. This will include 210 days for completion of Phase I and thirty (30) months for completion of Phase II.
Termination Options: The agreement may be terminated by B&G for any of the following:

- UMMC has not commenced reasonable action to remove any order of a court stopping construction within 90 days of court order being entered, or the construction work is stopped for 90 consecutive days through no act or fault of B&G, any subcontractor, or any employee or agent of B&G or any subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- UMMC fails to perform any material obligation under the contract documents and fails to cure such default within 30 days, or UMMC has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from B&G stating the nature of such default.
- Repeated suspension of the work, as further described in the contract, by UMMC, except for those suspensions to which B&G has agreed, when such suspensions constitute, in the aggregate, more than 20% of the contract time.
- Upon the occurrence of one of the events listed in either of the bullet points above, B&G may, upon 10 days additional notice to UMMC and UMMC’s representative, and provided that the condition giving rise to B&G’s right to terminate is continuing, terminate the contract.

The agreement may be terminated by UMMC as follows:

- For convenience during Phase II of the project upon written notice to B&G or during Phase I of the project upon a five (5) day written notice to B&G.
- For cause if one of the following events occur:
  - B&G becomes insolvent or files for relief under the bankruptcy laws of the United States.
  - B&G makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
  - A receiver is appointed to take charge of B&G's property.
  - The commencement or completion of any work activity on the critical path is more than 30 days behind the date set forth in the contract schedule for such work activity, and which results in an inexcusable delay.
  - B&G abandons the work.
  - Upon the occurrence of any of the following events, UMMC will have the right to terminate the contract for cause if B&G fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from UMMC, or within such longer period of time as is reasonably
necessary to complete such cure:
- B&G persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work in accordance with the contract documents.
- B&G fails to make prompt payment of amounts properly due subcontractors after receiving payment from UMMC.
- B&G disregards applicable code requirements.
- B&G persistently or materially fails to execute the work in accordance with the contract documents.
- B&G is in default of any other material obligation under the contract documents.
- B&G persistently or materially fails to comply with applicable safety requirements.
• For failure of B&G to comply with applicable e-verify provisions.

**Contract Amount:** UMMC is requesting approval for Phase II at this time. The cost associated with Phase II, shall not exceed $135,464,856.00.

**Funding Source for Contract:** Phase II of the project will be funded by long-term and intermediate term fixed bond rates, state appropriations, patient revenues, and development funds.

**Contractor Selection Process:** UMMC is currently contracted with B&G for CMAR services for the Children’s of Mississippi Expansion Project.

**Staff Recommendation:** Board staff recommends this item for consideration by the Board of Trustees.
1. **UMMC - APPROVAL TO SETTLE TORT CLAIM**

The University of Mississippi Medical Center is seeking board approval for settlement for Tort Claim number 3095.

2. **UMMC - APPROVAL TO SETTLE TORT CLAIM**

The University of Mississippi Medical Center is seeking board approval for settlement for Tort Claim number 3109.
1. **SYSTEM – APPROVAL OF BOARD MEETING DATES AND LOCATIONS, JANUARY THROUGH DECEMBER 2018**

   Thursday, January 18, 2018       Board Office
   Thursday, February 15, 2018     Board Office
   Thursday, March 22, 2018        Board Office
   Thursday, April 19, 2018        Board Office
   Thursday, May 17, 2018          Board Office
   Thursday, June 21, 2018         Board Office
   Thursday, July 19, 2018         Subject to Call
   Thursday, August 16, 2018       Board Office
   Thursday, September 20, 2018    Board Retreat
   Thursday, October 18, 2018      Board Office
   Thursday, November 15, 2018     The University of Mississippi
   Thursday, December 20, 2018     Subject to Call

   Should committee meetings be held, they will most likely occur on the Wednesday prior to the Board meeting dates.

   **Staff recommendation: Board staff recommends approval of this item.**
Information

Agendas
1. **SYSTEM – THE INSTITUTIONS BELOW ARE OFFERING THE EXISTING ACADEMIC PROGRAMS ONLINE TO EXPAND STUDENT ACCESS BY PROVIDING AN ALTERNATIVE PROGRAM DELIVERY METHOD TO TRADITIONAL CLASSROOM INSTRUCTION.**

a. *Alcorn State University* is offering the *Bachelor of Science* in *Child Development*

b. *Alcorn State University* is offering the *Bachelor of Science* in *Business Administration*

c. *Mississippi State University* is offering the *Bachelor of Science* in *Industrial Technology*

d. *Mississippi State University* is offering the *Bachelor of Business Administration*

e. *Mississippi State University* is offering the *Master of Science* in *Educational Leadership* (concentration in School Administration)

f. *Mississippi State University* is offering the *Master of Science* in *Technology*

Mississippi State University is offering the *Master of Agribusiness Management*

g. *Mississippi State University* is offering the *Master of Professional Accountancy*

h. *Mississippi State University* is offering the *Master of Taxation*

i. *Mississippi Valley State University* is offering the *Master of Science* in *Criminal Justice*

j. *University of Southern Mississippi* is offering the *Doctor of Nursing Practice* in *Nursing (Clinical) - Hybrid*

k. *University of Southern Mississippi* is offering the *Doctor of Nursing Practice* in *Nursing (BSN to DNP Leadership in Nursing) - Hybrid*

l. *University of Southern Mississippi* is offering the *Master of Education* in *School Counseling - Hybrid*

m. *University of Southern Mississippi* is offering the *Master of Public Health* in *Public Health (Health Policy and Administration)*

n. *University of Southern Mississippi* is offering the *Educational Specialist* in *Education (Special Education)*

o. *University of Southern Mississippi* is offering the *Bachelor of Science* in *Business Administration* in *Management*

p. *University of Southern Mississippi* is offering the *Bachelor of Science* in *Nursing (RN-BSN)*

q. *University of Southern Mississippi* is offering the *Bachelor of Science* in *Medical Laboratory Science (MLT to MLS)*
2. **SYSTEM - ANNUAL REPORT ON INSTITUTIONAL ACCREDITATION**

In accordance with Board Policy 508 (2): Accreditation Procedures “The Commissioner of Higher Education shall report to the Board at least annually, through its Academic Affairs Committee, on each accreditation visit or change in accreditation status of each university,” the table below summarizes system accreditation activity for the period beginning July 1, 2016 and ending June 30, 2017.

<table>
<thead>
<tr>
<th>Institution/Area</th>
<th>Accreditation Agency</th>
<th>Date of Visit or Notification of Status Change</th>
<th>Reason for Visit or Status Change</th>
<th>Institutional Action</th>
<th>Accreditation Agency Action</th>
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</thead>
<tbody>
<tr>
<td>Alcorn State University</td>
<td>Council on Social Work Education (CSWE)</td>
<td>November 21, 2016</td>
<td>Reaffirmation of Accreditation</td>
<td>(Submit Progress Report on policies, criteria and procedures for evaluating field-setting effectiveness by August 1, 2017)</td>
<td>Accreditation affirmed for 8 years, June 2016-June 2024</td>
</tr>
<tr>
<td>School of Nursing: Associate of Science in Nursing</td>
<td>Accreditation Commission for Education in Nursing (ACEN)</td>
<td>(October 3-5, 2017)</td>
<td>Follow-up visit based on Warning Status</td>
<td>(Submit Self-Study Report by August 15, 2017)</td>
<td>Results pending Spring 2018 ACEN Board of Commissioners decision</td>
</tr>
<tr>
<td>Delta State University</td>
<td>Mississippi Department of Education (MDE)</td>
<td>May 2107</td>
<td>Continuing State Dept. of Education approval; Annual Process and Performance Review</td>
<td>No action required</td>
<td>All standards were fully met; no additional reporting required before next affirmation</td>
</tr>
<tr>
<td>College of Education and Human Sciences: Division of Teacher Education, Leadership and Research; Teacher Education Programs</td>
<td>Commission on Accreditation of Athletic Training Education (CAATE)</td>
<td>February 2017</td>
<td>Voluntary withdrawal from accreditation</td>
<td>Final report submitted, no further action needed</td>
<td>No additional reporting required, program terminated spring 2017</td>
</tr>
<tr>
<td>Robert E. Smith School of Nursing: Bachelor of Science in Nursing (BSN &amp; RN-BSN Completion Program); Master of Science in Nursing (MSN); Post-Graduate APRN Certificate Program; Doctor of Nursing Practice (DNP)</td>
<td>Mississippi Institutions of Higher Learning (IHL) and Commission on Collegiate Nursing Education (CCNE)</td>
<td>IHL: May 2017 CCNE: (Oct 2010 [BSN &amp; MSN]; Feb 2015 [Post-Graduate APRN Cert &amp; DNP])</td>
<td>IHL: Continuing Accreditation: BSN &amp; MSN; Full Accreditation – DNP. (Before May 2017, Continuing Accred w/conditions: BSN &amp; MSN; Full Accred: DNP)</td>
<td>IHL: Annual report to Director of Nursing Education</td>
<td>IHL: BSN &amp; MSN – Continuing Accreditation for 1 year; DNP – Full Accreditation for 1 year</td>
</tr>
<tr>
<td>CCNE: CCNE: Substantive Change Report submitted for BSN, RN-BSN &amp; DNP Performance Improvement Plan (PIP) for BSN &amp; MSN programs</td>
<td>IHL:</td>
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<tr>
<td>Jackson State University</td>
<td>Association to Advance Collegiate Schools of Business (AACSB)</td>
<td>April 2017</td>
<td>Continuing Accreditation</td>
<td>Periodic Report</td>
<td>Reaffirmed Accreditation until 2021</td>
</tr>
<tr>
<td>Institution/Area</td>
<td>Accreditation Agency</td>
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<tr>
<td>College of Business: All Programs (BSBA, MBA, MPA, and PhD)</td>
<td>Network of International Business Schools (NIBS)</td>
<td>May 2017</td>
<td>Initial Accreditation</td>
<td>Periodic Report</td>
<td>Initial Accreditation until 2021</td>
</tr>
<tr>
<td>College of Education and Human Development</td>
<td>Council on Rehabilitation Education (CORE)</td>
<td>June 2017</td>
<td>Continuing Accreditation</td>
<td>All Standards Met</td>
<td>Approved Accreditation 2016-2024</td>
</tr>
<tr>
<td>College of Liberal Arts</td>
<td>American Psychological Association (APA)</td>
<td>December 2016</td>
<td>Continuing Accreditation</td>
<td>Sept 1, 2016 - submitted Annual Report; Fall 2016 - submitted Written Response to Site Visitors Report</td>
<td>Approved Accreditation 2016-2021</td>
</tr>
<tr>
<td><strong>Mississippi State University</strong></td>
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<tr>
<td>College of Education: Counselor Education, Rehabilitation Counseling Concentration</td>
<td>Council on Rehabilitation Education (CORE)</td>
<td>March 2017</td>
<td>Continuing Accreditation</td>
<td>Two-year extension for continuing accreditation with follow-up report due October 2017</td>
<td>Continuing accreditation through 2019</td>
</tr>
<tr>
<td>College of Education: Science Education</td>
<td>National Science Teachers Associate (NSTA)</td>
<td>February 1, 2017 (January 2015)</td>
<td>Continuing Accreditation</td>
<td>September 2016 – submitted Response to Conditions</td>
<td>Approved 7-year accreditation; Recognized - Continuing accreditation through 2023</td>
</tr>
<tr>
<td>College of Business</td>
<td>Association to Advance Collegiate Schools of Business (AACSB)</td>
<td>February 2017</td>
<td>Continuing Accreditation</td>
<td></td>
<td>Continuing accreditation for 5 years (2022)</td>
</tr>
<tr>
<td>School of Accountancy</td>
<td>Association to Advance Collegiate Schools of Business (AACSB)</td>
<td>February 2017</td>
<td>Continuing Accreditation</td>
<td></td>
<td>Continuing accreditation for 5 years (2022)</td>
</tr>
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<tr>
<td>College of Arts and Sciences: Department of Psychology</td>
<td>American Psychological Association (APA)/Commission on Accreditation (CoA)</td>
<td>(May 1, 2016)</td>
<td>Initial Accreditation</td>
<td>(September 2017 – Submitted Periodic Report)</td>
<td>Accreditation for 5 years (2021)</td>
</tr>
<tr>
<td>College of Forest Resources: Forestry Department; BS in Forestry</td>
<td>Society of American Foresters (SAF)</td>
<td>April 2017</td>
<td>Continuing Accreditation</td>
<td>Submitted 10-year Accreditation Request and hosted site visit</td>
<td>Results pending</td>
</tr>
<tr>
<td>College of Forest Resources: Forestry Department; BS in Natural Resources and Environmental Conservation</td>
<td>Society of American Foresters (SAF)</td>
<td>April 2017</td>
<td>Initial Accreditation</td>
<td>Submitted Initial 10-year Accreditation Request and hosted site visit</td>
<td>Results pending</td>
</tr>
<tr>
<td>College of Forest Resources: Forestry Department; BS in Forestry – Forest Products concentration</td>
<td>Society of Wood Science and Technology (SWST)</td>
<td>April 2017</td>
<td>Continuing Accreditation</td>
<td>Submitted 10-year Accreditation Report and hosted site visit</td>
<td>Approved Continuing accreditation for 10 years; a 5-year reassessment recommended</td>
</tr>
</tbody>
</table>

**Mississippi University for Women**

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<tr>
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</thead>
<tbody>
<tr>
<td>BA/5 in Legal Studies</td>
<td>American Bar Association (ABA)</td>
<td>November 2016</td>
<td>Continuing Approval</td>
<td>Interim Report every 3 years</td>
<td>ABA Standing Committee on Paralegals found program in compliance with Guidelines for Approval of Paralegal Education Programs; Standing Committee will recommend that the ABA House of Delegates adopt recommendation at its next meeting</td>
</tr>
<tr>
<td>College of Nursing: ASN, BSN, MSN, and DNP</td>
<td>Mississippi Institutions of Higher Learning (IHL)</td>
<td>October 15, 2016</td>
<td>Continuing Accreditation</td>
<td>October of each year IHL Annual Report for MS nursing degree programs</td>
<td>Continuation Accreditation for the ASN, BSN, and MSN programs (full ongoing accreditation with no recommendations; and full accreditation for the DNP program (1st accreditation visit goes from initial to full accreditation when visit is completed and decision made (no recommendations)</td>
</tr>
<tr>
<td>Speech-Language Pathology</td>
<td>Council on Academic Accreditation of the American Speech-Language-Hearing Association (CAA)</td>
<td>August 2016</td>
<td>Continuing Accreditation</td>
<td>August of each year—submit Annual CAA Report</td>
<td>Ongoing full accreditation</td>
</tr>
<tr>
<td>College of Education</td>
<td>Mississippi Department of Education (MEPPA-MDE)</td>
<td>May 5, 2017</td>
<td>Continuing State Department of Education Approval</td>
<td>Progress Report</td>
<td>Results pending</td>
</tr>
</tbody>
</table>

**Mississippi Valley State University**

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>BS in Computer Science</td>
<td>Accreditation Board for Engineering and Technology (ABET)</td>
<td>October 2016</td>
<td>Continuing Accreditation</td>
<td>Periodic Report</td>
<td>Results pending</td>
</tr>
<tr>
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<tr>
<td>BSW Social Work</td>
<td>Council on Social Work Education (CSWE)</td>
<td>January 2017</td>
<td>Continuing Accreditation</td>
<td>Hosted site visit</td>
<td>Results pending as of June 30, 2017</td>
</tr>
<tr>
<td>University of Mississippi</td>
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<tr>
<td>Accountancy, BAccy and MAccy; Taxation, Mtax</td>
<td>Association to Advance Collegiate Schools of Business (ASCSB)</td>
<td>February 2017</td>
<td>Continuing Accreditation</td>
<td>January 29-31, 2017 – Peer Review Team Visit for School of Accountancy</td>
<td>Accreditation extended for an additional 5 years; next Peer Review Team visit scheduled for 2021-2022 AY</td>
</tr>
<tr>
<td>Social Work, BSW and MSW</td>
<td>Council of Social Work Education (CSWE)</td>
<td>March 2017</td>
<td>Continuing Accreditation</td>
<td>February 2018 – Progress review to be reviewed by Committee of Accreditations</td>
<td>Reaffirm accreditation through February 2024 (8 years)</td>
</tr>
<tr>
<td>Banking and Finance, BBA; Business Administration, MBA and PhD; Economics, BBA; General Business BBA; Insurance and Risk Management, BBA; Management, BBA; Management Information Systems, BBA; Managerial Finance, BBA; Marketing and Corporate Relations, BBA</td>
<td>Association to Advance Collegiate Schools of Business (AACSBI)</td>
<td>February 2017</td>
<td>Continuing Accreditation</td>
<td>(Progress Report due February 2018)</td>
<td>Results pending</td>
</tr>
<tr>
<td>Chemical Engineering; Civil Engineering; Electrical Engineering; Geological Engineering; Mechanical Engineering</td>
<td>Accreditation Board for Engineering Technology (ABET)</td>
<td>October 2016</td>
<td>Continuing Accreditation</td>
<td>No action needed</td>
<td>Draft Statement submitted Feb 27, 2017 with preliminary approval. Final Statement not yet submitted.</td>
</tr>
<tr>
<td>Journalism, BAJ; Integrated Marketing Communications, BS</td>
<td>Accrediting Council on Education in Journalism and Mass Communication (ACEJMC)</td>
<td>October 2016</td>
<td>Continuing Accreditation</td>
<td>No further action</td>
<td>Reaffirmed Accreditation until 2023</td>
</tr>
<tr>
<td>University of Mississippi Medical Center</td>
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<tr>
<td>UMMC Institutional</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>March 2017</td>
<td>Continuing Accreditation</td>
<td>Submitted Fifth Year Interim Report</td>
<td>No recommendations; next site visit 2021</td>
</tr>
<tr>
<td>School of Dentistry</td>
<td>Commission on Dental Accreditation (CODA)</td>
<td>February 2017</td>
<td>Continuing Accreditation</td>
<td>Self-Study and Site Visit</td>
<td>No recommendations</td>
</tr>
<tr>
<td>School of Nursing: Post-Master’s Certification and DNP</td>
<td>Commission on Collegiate Nursing Education (CCNE) and MS IHL</td>
<td>February 15-17, 2017</td>
<td>Continuing Accreditation</td>
<td>December 2016 – submitted Self-Study</td>
<td>Results pending</td>
</tr>
<tr>
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<tr>
<td>School of Nursing: Master’s Program Neonatal Nurse Practitioner (NNP) and Pediatric Nurse Practitioner (PNP) Tracks</td>
<td>Commission on Collegiate Nursing Education (CCNE)</td>
<td>(May 27, 2016 – substantive change notification. CCNE request for additional info for the addition of two new nurse practitioner (NP) tracks to master’s program.)</td>
<td>Initial Accreditation</td>
<td>(July 27, 2017 – submitted additional information for Key Elements II-A, II-B, and II-D)</td>
<td>No additional reporting required</td>
</tr>
<tr>
<td>School of Health Related Professions: BS Health Informatics and Information Management (HIIM)</td>
<td>Commission on Accreditation for Health Informatics and Information Management Education (CAHIIM)</td>
<td>2017</td>
<td>Continuing Accreditation</td>
<td>Annual Program Report</td>
<td>Continued Accreditation</td>
</tr>
<tr>
<td>School of Health Related Professions: BS in Histotechnology (HTL)</td>
<td>National Accrediting Agency for Clinical Laboratory Sciences (NAACLS)</td>
<td>(Fall 2018 or Spring 2019 – projected site visit)</td>
<td>Initial Accreditation</td>
<td>March 6, 2017 – submitted Letter of Intent; June 14, 2017 – submitted Application for Initial Accreditation; In-Progress – Program Official Approval Form; In Progress – NAACLS Preliminary Report</td>
<td>March 31, 2017 – Acknowledgement of Intent to Seek Initial Accreditation; June 15, 2017 – accepted Application for Initial Accreditation</td>
</tr>
<tr>
<td>School of Health Related Professions: BS Medical Laboratory Science (MLS)</td>
<td>National Accrediting Agency for Clinical Laboratory Sciences (NAACLS)</td>
<td>April 18-19, 2017</td>
<td>Continuing Accreditation</td>
<td>August 2016 – submitted Self-Study Report Annual Report</td>
<td>Site visit April 2017; (July 2017 – Review Committee and Consideration of Accreditation Status)</td>
</tr>
<tr>
<td>School of Health Related Professions: BS Radiologic Sciences (RS)</td>
<td>Joint Review Committee on Education in Radiologic Technology (JRCERT)</td>
<td>2017</td>
<td>Continuing Accreditation</td>
<td>Annual Report</td>
<td>Continued Accreditation; next site visit 2022</td>
</tr>
<tr>
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</tr>
<tr>
<td>School of Health Related Professions: MS Magnetic Resonance Imaging (MRI)</td>
<td>Joint Review Committee on Education in Radiologic Technology (JRCERT)</td>
<td>December 2016</td>
<td>Initial Accreditation</td>
<td>April 2016 – submitted Self-Study</td>
<td>Continued Accreditation</td>
</tr>
<tr>
<td>School of Health Related Professions: MS Nuclear Medicine Technology (NMT)</td>
<td>Joint Review Committee on Educational Programs in Nuclear Medicine Technology (JRCNMT)</td>
<td>2017</td>
<td>Continuing Accreditation</td>
<td>Annual Report</td>
<td>Continued Accreditation; next site visit 2020</td>
</tr>
<tr>
<td>School of Health Related Professions: Master of Health Informatics and Information Management (MHIIM)</td>
<td>Commission on Accreditation for Health Informatics and Information Management Education (CAHIIM)</td>
<td>(April 27 &amp; 28, 2016, site visit for “Informatics” Track)</td>
<td>Initial Accreditation</td>
<td>February 2017 – submitted Progress Report</td>
<td>Initial Accreditation – Master of Health “Informatics” Track August 17, 2016; Continued Accreditation through 2018; annual report required</td>
</tr>
<tr>
<td>School of Health Related Professions: Master of Occupational Therapy (MOT)</td>
<td>Accreditation Council for Occupational Therapy Education (ACOTE)</td>
<td>2017</td>
<td>Continuing Accreditation</td>
<td>Annual Report</td>
<td>Continued Accreditation; next site visit 2024</td>
</tr>
<tr>
<td>School of Health Related Professions: Doctor of Physical Therapy (DPT)</td>
<td>American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education (CAPTE)</td>
<td>2017</td>
<td>Continuing Accreditation</td>
<td>CAPTE Annual Report</td>
<td>Continued Accreditation; next site visit 2021</td>
</tr>
</tbody>
</table>

**University of Southern Mississippi**

<table>
<thead>
<tr>
<th>Institution/Area</th>
<th>Accreditation Agency</th>
<th>Date of Visit or Notification of Status Change</th>
<th>Reason for Visit or Status Change</th>
<th>Institutional Action</th>
<th>Accreditation Agency Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Engineering Technology, BS</td>
<td>American Council for Construction Education (ACCE)</td>
<td>August 1, 2016</td>
<td>Response to First Year Progress Report</td>
<td>May 30, 2017 – submitted Second Year Progress Report</td>
<td>Accepted First Year Progress Report as submitted; approved actions taken by the institution on correction or elimination of Weaknesses and Concerns cited in the 2015 Visiting Team Report</td>
</tr>
<tr>
<td>Biological Sciences (Licensure), BS; Chemistry (Licensure), BS; Physics (Licensure), BS</td>
<td>National Science Teachers Association (NSTA)</td>
<td>August 1, 2016</td>
<td>Response to an Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>Program has up to two opportunities to submit a Revised Report addressing unmet standards and other concerns noted in this recognition report</td>
<td>Program does not currently satisfy SPA requirements for national recognition</td>
</tr>
<tr>
<td>Institution/Area</td>
<td>Accreditation Agency</td>
<td>Date of Visit or Notification of Status Change</td>
<td>Reason for Visit or Status Change</td>
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<td>Accreditation Agency Action</td>
</tr>
<tr>
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<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Educational Administration P-12:</td>
<td>Educational Leadership Constituent Council (ELCC)</td>
<td>August 1, 2016</td>
<td>Response to an Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>Program has up to two opportunities to submit a Revised Report addressing unmet standards and other concerns noted in recognition report. If not submitted by September 15, 2017, program recognition status will revert to Not Recognized.</td>
<td>National Recognition with Probation. Program does not currently satisfy SPA requirements for national recognition; however, national recognition is retained from the previous review cycle</td>
</tr>
<tr>
<td>Education, EdD; Education, PhD; Educational</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration and Supervision, MEd</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>English (Licensure), BA</td>
<td>National Council of Teachers of English (NCTE)</td>
<td>August 1, 2016</td>
<td>Response to Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>(To retain recognition, another program report must be submitted mid-cycle before the next scheduled accreditation visit.)</td>
<td>Nationally Recognized through the semester and year of next NCATE [CAEP] accreditation decision (5-7 years)</td>
</tr>
<tr>
<td>Foreign Languages (Licensure), BA</td>
<td>American Council on the Teaching of Foreign Languages (ACTFL)</td>
<td>August 1, 2016</td>
<td>Response to an Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>(To retain national recognition, must submit by March 15, 2018, a report addressing the conditions to recognition.)</td>
<td>National Recognition with Conditions through August 1, 2018.</td>
</tr>
<tr>
<td>History (Social Studies Licensure), BA</td>
<td>National Council for the Social Studies (NCSS)</td>
<td>August 1, 2016</td>
<td>Response to an Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>(To retain national recognition, must submit by March 15, 2018, a report addressing the conditions to recognition.)</td>
<td>National Recognition with Conditions through August 1, 2018.</td>
</tr>
<tr>
<td>Kinesiology (Physical Education Licensure), BS;</td>
<td>National Association for Sport and Physical Education</td>
<td>August 1, 2016</td>
<td>Response to an Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>(To retain national recognition, must submit by March 15, 2018, a report addressing the conditions to recognition.)</td>
<td>National Recognition with Conditions through August 1, 2018.</td>
</tr>
<tr>
<td>Kinesiology (Physical Education Licensure) and Sport Coaching Education, BS dual degree</td>
<td>(NASPE)</td>
<td></td>
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</tr>
<tr>
<td>Special Education, BS; Elementary Education/Special Education, BS dual degree</td>
<td>Council for Exceptional Children (CEC)</td>
<td>August 1, 2016</td>
<td>Response to an Initial Review of the Specialty Professional Association (SPA) Report</td>
<td>(To retain national recognition, must submit by March 15, 2018, a report addressing the conditions to recognition.)</td>
<td>National Recognition with Conditions through August 1, 2018.</td>
</tr>
<tr>
<td>Audiology, AuD; Speech and Hearing Sciences (Speech-Language Pathology), MA/MS</td>
<td>Council on Academic Accreditation in Audiology and Speech-Language Pathology (CAA)</td>
<td>August 10, 2016</td>
<td>Continuing Accreditation</td>
<td>February 1, 2017 – Submitted First Annual Report</td>
<td>CAA voted to re-accredit for 8 years beginning January 1, 2016 through December 31, 2023</td>
</tr>
<tr>
<td>Computer Science, BS</td>
<td>Accreditation Board for Engineering and Technology (ABET) – Computing Accreditation Commission</td>
<td>August 30, 2016</td>
<td>Continuing Accreditation</td>
<td>(Must submit by July 1, 2017, a report describing the actions taken to correct shortcomings)</td>
<td>Accredit to September 30, 2018</td>
</tr>
<tr>
<td>Institution/Area</td>
<td>Accreditation Agency</td>
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</tr>
<tr>
<td>Architectural Engineering Technology, BS; Construction Engineering Technology, BS; Industrial Engineering Technology, BS</td>
<td>Accreditation Board for Engineering and Technology (ABET) – Engineering Technology Accreditation Commission</td>
<td>August 31, 2016</td>
<td>Continuing Accreditation</td>
<td>(Must submit by July 1, 2017, a report describing the actions taken to correct shortcomings)</td>
<td>Accredit to September 30, 2018</td>
</tr>
<tr>
<td>Computer Engineering Technology, BS; Electronics Engineering Technology, BS</td>
<td>Accreditation Board for Engineering and Technology (ABET) – Engineering Technology Accreditation Commission</td>
<td>August 31, 2016</td>
<td>Continuing Accreditation</td>
<td>(Must request ABET to initiate a reaccreditation evaluation visit by January 31, 2021; must submit a Self-Study Report by July 1, 2021)</td>
<td>Accredit to September 30, 2022</td>
</tr>
<tr>
<td>Accounting, BSBA; Accounting, MPA</td>
<td>The Association to Advance Collegiate Schools of Business (AACSB International)</td>
<td>September 11-13, 2016 March 13, 2017</td>
<td>Continuing Accreditation site visit</td>
<td>(Continuous Improvement Review Application due July 1, two years prior to the next review year)</td>
<td>USM achieved accreditation for five additional years. Next on-site continuous improvement review occurs in the fifth year, 2021-2022</td>
</tr>
<tr>
<td>Business Adm., BSBA; Business Adm., MBA; Finance, BSBA; Healthcare Marketing, BSBA; International Business, BSBA; Management, BSBA; Marketing, BSBA; Merchandising, BSBA; Tourism, BSBA</td>
<td>The Association to Advance Collegiate Schools of Business (AACSB International)</td>
<td>September 11-13, 2016 February 27, 2017</td>
<td>Continuing Accreditation site visit</td>
<td>(Continuous Improvement Review Application due July 1, two years prior to the next review year)</td>
<td>USM achieved accreditation for five additional years. Next on-site continuous improvement review occurs in the fifth year, 2021-2022</td>
</tr>
<tr>
<td>Computer Engineering, BS</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>December 13, 2016</td>
<td>Program Approval</td>
<td>No action required</td>
<td>SACSCOC BOT reviewed materials seeking approval of the BS in Computer Engineering degree program. BOT approved the program and included in the scope of current accreditation.</td>
</tr>
<tr>
<td>Ocean Engineering, BS</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>December 13, 2016</td>
<td>Program Approval</td>
<td>No action required</td>
<td>SACSCOC BOT reviewed materials seeking approval of the BS in Ocean Engineering degree program. BOT approved the program and included in the scope of current accreditation.</td>
</tr>
<tr>
<td>Psychology (Clinical), PhD</td>
<td>American Psychology Association (APA) Commission on Accreditation</td>
<td>December 14, 2016</td>
<td>Response to Narrative Report</td>
<td>No action required</td>
<td>Program responded effectively to Commission’s requests. Next site visit 2022</td>
</tr>
<tr>
<td>Music, BA; Music, BMEd; Music, BM; Music Edu., MMEd; Music, MM; Performance and Pedagogy, DMA; Music Edu., PhD</td>
<td>National Association of Schools of Music (NASM)</td>
<td>December 16, 2016</td>
<td>Continuing Accreditation</td>
<td>(October 1, 2017 – Response Report due to respond to concerns)</td>
<td>Continue current Membership status of the institution and seek further information before completing work with the application for renewal of Membership</td>
</tr>
<tr>
<td>Institution/Area</td>
<td>Accreditation Agency</td>
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</tr>
<tr>
<td><strong>Institution</strong></td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>January 11, 2017</td>
<td>Continuing Accreditation</td>
<td>(Submit Impact Report of the QEP as part of the Fifth-Year Interim Report due five years before the next reaffirmation review)</td>
<td>Accreditation reaffirmed. No additional report requested. Next reaffirmation 2026 unless otherwise notified</td>
</tr>
<tr>
<td><strong>Elementary Edu., BS</strong></td>
<td>Association for Childhood Education International (ACEI)</td>
<td>February 1, 2017</td>
<td>Response to Initial Review of SPA Report</td>
<td>(To retain recognition, another program report must be submitted mid-cycle before the next scheduled accreditation visit)</td>
<td>Nationally recognized through the semester and year of the institution’s next NCATE [CAEP] accreditation decision in 5-7 years</td>
</tr>
<tr>
<td><strong>Dietetic Internship</strong></td>
<td>Accreditation Council for Education in Nutrition and Dietetics (ACEND)</td>
<td>February 6, 2017</td>
<td>Continuing Accreditation</td>
<td>March 6, 2017 – submitted Response Report</td>
<td>Program Review Team reviewed Program Assessment Report submitted November 1, 2016; program has opportunity to provide additional information documenting compliance with accreditation standards</td>
</tr>
<tr>
<td><strong>Nutrition and Dietetics (Didactic Program in Dietetics), BS</strong></td>
<td>Accreditation Council for Education in Nutrition and Dietetics (ACEND)</td>
<td>February 6, 2017</td>
<td>Continuing Accreditation</td>
<td>March 7, 2017 – submitted Response Report</td>
<td>Program Review Team reviewed Program Assessment Report submitted November 1, 2016; program has opportunity to provide additional information documenting compliance with accreditation standards</td>
</tr>
<tr>
<td><strong>Dual Degree Arrangement between USM Master of Social Work and New Orleans Baptist Theological Seminary Master of Divinity and Master of Arts in Christian Edu</strong></td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>March 21, 2017</td>
<td>Notification of Modification</td>
<td>No action required</td>
<td>Accepted Notification of Modification of an existing dual degree arrangement</td>
</tr>
<tr>
<td><strong>Family Nurse Practitioner Graduate Certificate; Family Psychiatric-Mental Health Nurse Practitioner Graduate Certificate; Psychiatric Nursing Practitioner Graduate Certificate</strong></td>
<td>Commission on Collegiate Nursing Education (CCNE) Mississippi Institutions of Higher Learning (MS IHL)</td>
<td>March 22-24, 2017</td>
<td>Initial Accreditation</td>
<td>Awaiting notification</td>
<td></td>
</tr>
<tr>
<td><strong>Nursing, DNP</strong></td>
<td>Commission on Collegiate Nursing Education (CCNE)</td>
<td>March 22-24, 2017</td>
<td>Continuing Accreditation</td>
<td></td>
<td>Awaiting notification</td>
</tr>
<tr>
<td><strong>Instructional Technology, BS</strong></td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>April 17, 2017</td>
<td>Substantive Change</td>
<td>No action required</td>
<td>Approved closure of the BS in Instructional Technology; no additional information requested</td>
</tr>
<tr>
<td><strong>Religion, BA</strong></td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>April 17, 2017</td>
<td>Substantive Change</td>
<td>No action required</td>
<td>Approved closure of BA in Religion; no additional information requested</td>
</tr>
<tr>
<td>Institution/Area</td>
<td>Accreditation Agency</td>
<td>Date of Visit or Notification of Status Change</td>
<td>Reason for Visit or Status Change</td>
<td>Institutional Action</td>
<td>Accreditation Agency Action</td>
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</tr>
<tr>
<td>Speech and Hearing Sciences (Deaf Education), MS</td>
<td>Council on Education of the Deaf (CED)</td>
<td>April 25, 2017</td>
<td>Initial Accreditation</td>
<td>Submitted Self-Study Report</td>
<td>Awaiting notification</td>
</tr>
<tr>
<td>Art, FBA; Art, BA; Interior Design, BS</td>
<td>National Association of Schools of Art and Design (NASAD)</td>
<td>May 23, 2017</td>
<td>Continuing Accreditation</td>
<td>No action required</td>
<td>Accepted Progress Report. Comprehensive evaluation process begun in 2015 closed; next comprehensive review 2023-2024 AY</td>
</tr>
<tr>
<td>American Studies, BA</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC)</td>
<td>June 2, 2017</td>
<td>Substantive Change Notification</td>
<td>Submitted substantive change report for suspension of admission to program</td>
<td>Awaiting notification</td>
</tr>
<tr>
<td>School Counseling, MEd</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges</td>
<td>June 2, 2017</td>
<td>Substantive Change Notification</td>
<td>Submitted substantive change report for significant change in length of program</td>
<td>Awaiting notification</td>
</tr>
<tr>
<td>Hotel, Restaurant, and Tourism, BS</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges</td>
<td>June 23, 2017</td>
<td>Substantive Change Notification</td>
<td>Submitted substantive change report for suspension of admission to program</td>
<td>Awaiting notification</td>
</tr>
<tr>
<td>Organizational Communication, Graduate Certificate</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges</td>
<td>June 30, 2017</td>
<td>Substantive Change Notification</td>
<td>Submitted substantive change report for closing graduate certificate</td>
<td>Awaiting notification</td>
</tr>
<tr>
<td>Nursing (BSN to DNP Leadership in Nursing), DNP; Nursing (Clinical), DNP; Nursing (Nurse Anesthesia), DNP</td>
<td>Southern Association of Colleges and Schools, Commission on Colleges</td>
<td>June 30, 2017</td>
<td>Substantive Change Notification</td>
<td>Submitted substantive change report for significant change in length of three nursing programs</td>
<td>Awaiting notification</td>
</tr>
</tbody>
</table>
3. **STATE - ANNUAL REPORT OF WINNERS OF THE HALBROOK AWARDS FOR ACADEMIC ACHIEVEMENT AMONG ATHLETES FOR 2016-2017**

<table>
<thead>
<tr>
<th>Institution</th>
<th>Male Recipient</th>
<th>Female Recipient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcorn State University</td>
<td>Michael Hurns (Biology/Pre-PT)</td>
<td>Talisa D. Sherman (Psychology)</td>
</tr>
<tr>
<td>Delta State University</td>
<td>Tyler Sullivan (Biology)</td>
<td>Melanie Tombers (Business)</td>
</tr>
<tr>
<td>Jackson State University</td>
<td>Javancy Jones (Physical Edu)</td>
<td>Laura Uzzell (Biology)</td>
</tr>
<tr>
<td>Mississippi State University</td>
<td>Richard Brown (Industrial Tech)</td>
<td>Dominique Dillingham (Exer Phys)</td>
</tr>
<tr>
<td>Mississippi Valley State University</td>
<td>Deion Reid (HPE&amp;R)</td>
<td>Mariana Massaro Balbao (Bus Adm)</td>
</tr>
<tr>
<td>University of Mississippi</td>
<td>Craig Engels (Gen Studies/Bus)</td>
<td>Aubrey Edie (Elementary Edu)</td>
</tr>
<tr>
<td>University of Southern Mississippi</td>
<td>Picasso Nelson, Jr. (Fin/Real Est)</td>
<td>Dani Block (Biological Science)</td>
</tr>
<tr>
<td>Belhaven University</td>
<td>Scott Malcolm (Psychology)</td>
<td>Mary Lichlyter (Social Work)</td>
</tr>
<tr>
<td>Blue Mountain College</td>
<td>Jonas White (Social Science)</td>
<td>Mallorie Sweat (Exercise Science)</td>
</tr>
<tr>
<td>Millsaps College</td>
<td>Lee Ogletree (Biology)</td>
<td>Kim Klunk (Biology)</td>
</tr>
<tr>
<td>Mississippi College</td>
<td>Kyle Smith (Accounting)</td>
<td>Sydney Chandler (Exercise Science)</td>
</tr>
<tr>
<td>Rust College</td>
<td>Avery T. Moore (Biolog)</td>
<td>Julie Jean-Baptiste (Sociology)</td>
</tr>
<tr>
<td>Tougaloo College</td>
<td>Dedrick Barkley (Mathematics)</td>
<td>Taylor Kangethe (Econ/Bus)</td>
</tr>
<tr>
<td>William Carey University</td>
<td>Peyton Owen (English)</td>
<td>Kimberly Gilbert (Pre-Med)</td>
</tr>
<tr>
<td>Coahoma Community College</td>
<td>Not Submitted</td>
<td>Not Submitted</td>
</tr>
<tr>
<td>Copiah-Lincoln Comm. College</td>
<td>Stephen Hayes Thompson</td>
<td>Jule Elaine Kranner</td>
</tr>
<tr>
<td>East Central Community College</td>
<td>Samuel Thompson</td>
<td>Chaney Mills</td>
</tr>
<tr>
<td>East Mississippi Comm. College</td>
<td>Corley Reynolds</td>
<td>Mallory Vance</td>
</tr>
<tr>
<td>Hinds Community College</td>
<td>Ryan Wheeless</td>
<td>Bethany Myers</td>
</tr>
<tr>
<td>Holmes Community College</td>
<td>Zachary Boone</td>
<td>Micah Redd</td>
</tr>
<tr>
<td>Itawamba Community College</td>
<td>Bryce Hunt</td>
<td>Marlee Hatcher</td>
</tr>
<tr>
<td>Jones County Junior College</td>
<td>Shelton Wallace</td>
<td>Abbey Graham</td>
</tr>
<tr>
<td>Meridian Community College</td>
<td>John Taylor Champion</td>
<td>Abagail Lee Pate</td>
</tr>
<tr>
<td>MS Delta Community College</td>
<td>Not Submitted</td>
<td>Not Submitted</td>
</tr>
<tr>
<td>MS Gulf Coast Comm. College</td>
<td>Warr Adkinson</td>
<td>Nora Keehn</td>
</tr>
<tr>
<td>Northeast MS Comm. College</td>
<td>Joshua Martin Stillman</td>
<td>Hannah Makayla Cox</td>
</tr>
<tr>
<td>Northwest MS Comm. College</td>
<td>Zakary M. Harbin</td>
<td>Zoe Adozinda Saraiva</td>
</tr>
<tr>
<td>Pearl River Community College</td>
<td>Parker Dungan</td>
<td>Jordan Ahlgren</td>
</tr>
<tr>
<td>Southwest MS Comm. College</td>
<td>Bryce J. Baker</td>
<td>Kayla A. Sanchez</td>
</tr>
</tbody>
</table>

a Trophy award to institution with the highest percentage of graduating student athletes.
b Cash award to institution with greatest improvement in percentage of student athletes graduating.
c Certificate awarded to student athletes who have excelled in academics, leadership, and/or service.
1. **SYSTEM – AYERS INVESTMENT REPORT**

As part of the Ayers Settlement Agreement, publicly and privately funded endowments were created for the benefit of Alcorn State University, Jackson State University, and Mississippi Valley State University. The attached Ayers Investment Report summarizes the activity in the endowment accounts for FY 2017.

See next page.
Ayers Endowment Investment Report

June 30, 2017

Ayers Investment Committee:
- Trustee Alfred McNair (Chair)
- Trustee C.D. Smith
- Trustee Chip Morgan
- Commissioner Glenn F. Boyce
- President Alfred Rankins, Jr. (ASU)
- President William Bynum, Jr. (JSU)
- President Jerryl Briggs (MVSU)
I. Summary Information
II. Ayers Public Endowment
III. Ayers Private Endowment
IV. Alcorn State University
V. Jackson State University
VI. Glossary of Investment Terms
VII. One-Page Summary of Ayers Settlement
Ayers Settlement Agreement
Endowments

As part of the Ayers Settlement Agreement, publicly-funded and privately-funded endowments were created for the benefit of Alcorn State University, Jackson State University, and Mississippi Valley State University. The publicly-funded endowment is to total $70 million over a 14-year period. This amount is to be funded by the legislature at $5 million per year. The endowment principal can never be invaded and the interest income is to be used to increase other-race presence and to enhance academic programs at the three universities. The endowment principal and interest are to be split among the three universities with 43.4 percent going to Jackson State University and 28.3 percent to Alcorn State University and Mississippi Valley State University, respectively. A private endowment of $35 million is also included in the settlement agreement, but it is not guaranteed. The Board of Trustees is to undertake an effort to raise these funds over a seven year period.

The endowments are to be managed by a seven-member committee consisting of the presidents from Alcorn State University, Jackson State University, and Mississippi Valley State University; the President of the Board of Trustees; the Commissioner of Higher Education; an appointment by the President of the Board of Trustees; and one member voted by the endowment committee. Funds are to be managed by the Board’s endowment committee until such time each university, for which the endowments were created, attains and sustains other race enrollment (headcount) of 10 percent for three consecutive years. Upon attainment of the requirements as set by the settlement agreement, the university will manage the endowments.

Interest Distribution Policy

Interest earned and accrued via the AYERS endowment funds is communicated monthly by the Ayers investment manager to the IHL Executive Office. These funds are recorded in an endowment fund. After close of the fiscal-year end (typically late August), Finance and Administration calculates the allocation for each of the historically black universities (HBUs). This information is also communicated to the HBUs so that they may incorporate the interest earned dollars into the current fiscal year AYERS diversity scholarships or race-recruitment program budgets. As such, the interest earned and accrued in a previous fiscal year's programs. The HBUs receive the funds in the form of a reimbursement as they incur actual costs and submit billing requests to IHL.
Investment Philosophy

The investment philosophy is to protect the principal of the endowment funds while generating maximum above market income to be used to fulfill the purposes as set out in the Ayers Settlement Agreement. The fund will seek to utilize all the investment securities available under applicable state law as defined in § 27-105-33 of the Mississippi Code.

Allowed Investment Instruments

Investments opportunities available for the Ayers Endowment funds are limited by state law. The allowed investments are:

- Time certificates of deposit;
- Interest-bearing accounts;
- Direct United States Treasury obligations;
- United States Government agency;
- United States Government instrumentality and United States Government sponsored enterprise obligations; and
- Direct security repurchase agreements and reverse direct security repurchase agreements of any federal book entry of the aforementioned United States Treasury or government obligations.

The code section applicable to deposits and investments is Mississippi Code of 1972 (as amended) Section 27-105-33.
## Mississippi State Institutions of Higher Learning – Ayers Endowment Report

### Ayers Settlement

**State Appropriations for Ayers Public Endowment**

$70 million over 14 Years

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Managed by the University</th>
<th>Managed by the Endowment Committee</th>
<th>Total Public Endowment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Alcorn State University</td>
<td>Jackson State University</td>
<td>Total</td>
</tr>
<tr>
<td>FY 2006</td>
<td>$1,415,000</td>
<td>-</td>
<td>$1,415,000</td>
</tr>
<tr>
<td>FY 2007</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2008</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2009</td>
<td>1,415,000</td>
<td>1,415,000</td>
<td>2,829,000</td>
</tr>
<tr>
<td>FY 2010</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2011</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2012</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2013</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2014</td>
<td>1,415,000</td>
<td>-</td>
<td>1,415,000</td>
</tr>
<tr>
<td>FY 2015</td>
<td>1,415,000</td>
<td>23,870,000</td>
<td>25,285,000</td>
</tr>
<tr>
<td>FY 2016</td>
<td>1,415,000</td>
<td>21,700,000</td>
<td>3,585,000</td>
</tr>
<tr>
<td>FY 2017</td>
<td>-</td>
<td>449,450</td>
<td>449,450</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$16,980,000</td>
<td>$26,040,000</td>
<td>43,020,000</td>
</tr>
</tbody>
</table>

### Ayers Private Endowment

$35 million over 7 Years

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Managed by the University</th>
<th>Managed by the Endowment Committee</th>
<th>Total Private Endowment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Alcorn State University</td>
<td>Jackson State University</td>
<td>Total</td>
</tr>
<tr>
<td>FY 2006</td>
<td>$283,000</td>
<td>-</td>
<td>283,000</td>
</tr>
<tr>
<td>FY 2007</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2008</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2009</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2010</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2011</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2012</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2013</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2014</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FY 2015</td>
<td>10,075</td>
<td>10,075</td>
<td>20,150</td>
</tr>
<tr>
<td>FY 2016</td>
<td>449,450</td>
<td>449,450</td>
<td>898,900</td>
</tr>
<tr>
<td>FY 2017</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$293,075</td>
<td>$449,450</td>
<td>$742,525</td>
</tr>
</tbody>
</table>

**FY 2017 Ayers Endowment Report**
Ayers Public Endowment
Fiscal Years 2017 and 2016
(Managed by IHL Ayers Investment Committee)

<table>
<thead>
<tr>
<th>Synopsis</th>
<th>FY2017</th>
<th>FY2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value at June 30 (principal &amp; interest)</td>
<td>$17,695,506</td>
<td>$16,459,050</td>
</tr>
<tr>
<td>Interest Earnings past twelve months</td>
<td>$405,738</td>
<td>$689,851</td>
</tr>
<tr>
<td>Internal Rate of Return (7/1 – 6/30)</td>
<td>2.38%</td>
<td>2.87%</td>
</tr>
<tr>
<td>Yield to Maturity Rate of Return (as of 6/30)</td>
<td>2.77%</td>
<td>2.51%</td>
</tr>
<tr>
<td>Weighted Average Life (7/1 – 6/30)</td>
<td>3.4 years</td>
<td>3.4 years</td>
</tr>
</tbody>
</table>
## FY 2017 Ayers Endowment Report

### Mississippi State Institutions of Higher Learning

#### Ayers Public Endowment

**Summary of Yearly Activities**

**Fiscal Year 2017**

(Managed by IHL Ayers Investment Committee)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal @ June 30, 2016</td>
<td>$15,565,000</td>
</tr>
<tr>
<td>(Net) Interest Income during FY 2016</td>
<td>$894,050</td>
</tr>
<tr>
<td><em>Ayers</em> Public Endowment @ June 30, 2016</td>
<td>$16,459,050</td>
</tr>
</tbody>
</table>

**Activity during FY 2017:**

**Additions:**

- Appropriations                                         $1,415,000
- Interest Income Earned                                  $405,738

**Total Additions**                                      $1,820,738

**Deductions:**

- Allocation to Institutions                              $(501,254)
- Transfer FY16 carryover interest to JSU Self Managed    $(68,036)
- Investment Management Fees                              $(14,992)

**Ayers Public Endowment @ June 30, 2017**               $17,695,506

**Recap of Ending Balance:**

- Principal @ June 30, 2017                               $16,980,000
- Funds Available to be Allocated during FY 2017          $715,506

**Total Ayers Public Endowment @ June 30, 2016**          $17,695,506

*Note: Principal may never be invaded. Interest income is MVSU. ASU's and JSU's endowments are managed by ASU and JSU, respectfully.*
IHL Ayers Public Endowment
Portfolio by Security Type
June 30, 2017
(thousands)

Total Value = $17,695,506

Federal Home Loan Mortgage Corporation $2,985.9 17%
Federal National Mortgage Association $991.9 6%
Government National Mortgage Association $1,137.2 6%
Small Business Admin Part Certs $1,380.1 8%
Tax Municipal Bonds $7,372.6 42%
Federal Farm Credit Bank $1,123.2 6%
Cash $211.0 1%

Deposits in FHLB, FFCB, FHLMC and FNMA represent investment instruments in US Government Obligations, while deposits in GNMA and SBAPC represent investment instruments in Mortgage Backed Securities.
Ayers Private Endowment  
Fiscal Years 2017 and 2016  
(Managed by IHL Ayers Investment Committee)

### Synopsis

<table>
<thead>
<tr>
<th>Description</th>
<th>FY2017</th>
<th>FY2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value at June 30 (principal &amp; interest)</td>
<td>$ 304,342</td>
<td>$ 298,909</td>
</tr>
<tr>
<td>Interest Earnings past twelve months</td>
<td>$ 6,736</td>
<td>$ 5,834</td>
</tr>
<tr>
<td>Internal Rate of Return (7/1 – 6/30)</td>
<td>2.32%</td>
<td>1.04%</td>
</tr>
<tr>
<td>Yield to Maturity Rate of Return (as of 6/30)</td>
<td>2.82%</td>
<td>1.38%</td>
</tr>
<tr>
<td>Weighted Average Life (7/1 – 6/30)</td>
<td>3 months</td>
<td>7 months</td>
</tr>
</tbody>
</table>
## Mississippi State Institutions of Higher Learning – *Ayers* Endowment Report

### Mississippi State Institutions of Higher Learning

**Ayers Private Endowment**  
**Summary of Yearly Activities**  
**Fiscal Year 2017**  
(Managed by IHL Ayers Investment Committee)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principal @ June 30, 2016</strong></td>
<td>$293,075</td>
</tr>
<tr>
<td>Interest Income during FY 2016</td>
<td>5,834</td>
</tr>
<tr>
<td><strong>Ayers Private Endowment Value @ June 30, 2016</strong></td>
<td>$298,909</td>
</tr>
<tr>
<td><strong>Additions:</strong></td>
<td></td>
</tr>
<tr>
<td>Donations</td>
<td>-</td>
</tr>
<tr>
<td>Interest Income during FY 2017</td>
<td>6,736</td>
</tr>
<tr>
<td><strong>Total Additions</strong></td>
<td>6,736</td>
</tr>
<tr>
<td><strong>Deductions:</strong></td>
<td></td>
</tr>
<tr>
<td>Transfer Principal to ASU Self Managed</td>
<td>-</td>
</tr>
<tr>
<td>Transfer Principal to JSU Self Managed</td>
<td>-</td>
</tr>
<tr>
<td>Allocations to Institutions during FY 2017</td>
<td>(1,303)</td>
</tr>
<tr>
<td><strong>Ayers Private Endowment Value @ June 30, 2017</strong></td>
<td>$304,342</td>
</tr>
<tr>
<td><strong>Recap of Ending Balance:</strong></td>
<td></td>
</tr>
<tr>
<td>Principal @ June 30, 2017</td>
<td>$293,075</td>
</tr>
<tr>
<td>Interest Available to be Allocated during FY 2018</td>
<td>11,267</td>
</tr>
<tr>
<td><strong>Total Ayers Private Endowment @ June 30, 2017</strong></td>
<td>$304,342</td>
</tr>
</tbody>
</table>

**Note:** Principal may never be invaded. Interest income is MVSU. ASU's and JSU's endowments are managed by ASUF and JSUDF, respectfully.
IHL Ayers Private Endowment Portfolio by Security Type
June 30, 2017
(thousands)

Total Value = $304,342

Cash
$56,600
19%

Federal Farm Credit
Bank
$247,700
81%

*Deposits in FFCB represent investment instruments in US Government Obligations.*
# Ayers Public Endowment
Allocated to Alcorn State University
Summary of Yearly Activities
Fiscal Year 2017
(Managed by Alcorn State University)

<table>
<thead>
<tr>
<th>Description</th>
<th>ASU</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance @ June 30, 2016</strong></td>
<td>$15,753,949</td>
</tr>
<tr>
<td><strong>Additions:</strong></td>
<td></td>
</tr>
<tr>
<td>Share of FY 2017 Legislative Appropriation</td>
<td>$1,415,000</td>
</tr>
<tr>
<td>Interest Income during FY 2017</td>
<td>$339,447</td>
</tr>
<tr>
<td><strong>Deductions:</strong></td>
<td></td>
</tr>
<tr>
<td>Interest Distributions during FY 2017</td>
<td>$(235,070)</td>
</tr>
<tr>
<td><strong>Balance @ June 30, 2017</strong></td>
<td>$17,273,326</td>
</tr>
<tr>
<td><strong>Recap of Ending Balance:</strong></td>
<td></td>
</tr>
<tr>
<td>Principal @ June 30, 2017</td>
<td>$16,980,000</td>
</tr>
<tr>
<td>Funds Available to be Allocated during FY 2017</td>
<td>$293,326</td>
</tr>
<tr>
<td><strong>Total ASU Ayers Public Endowment @ June 30, 2017</strong></td>
<td>$17,273,326</td>
</tr>
</tbody>
</table>

*(Endowment is Managed by ASU via BancorpSouth, Trustmark, and Trinity Capital Investors)*

Note 1: The Portfolio's Return on Investment for FY 2017 was equal to 2.02%

Note 2: The Portfolio at June 30, 2017 was earning interest in a range of 1.65% and 2.34%.

*(information provided by the institution)*
## Ayers Private Endowment
### Allocated to Alcorn State University
### Summary of Yearly Activities
#### Fiscal Year 2017
(Managed by Alcorn State University Foundation)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance @ June 30, 2016</td>
<td>$339,196</td>
</tr>
<tr>
<td>Additions:</td>
<td></td>
</tr>
<tr>
<td>Private Donations</td>
<td>$10,075</td>
</tr>
<tr>
<td>Interest Income during FY 2017</td>
<td>$(1,345)</td>
</tr>
<tr>
<td>Deductions:</td>
<td></td>
</tr>
<tr>
<td>Interest Distributions during FY 2017</td>
<td>-</td>
</tr>
<tr>
<td><strong>Balance @ June 30, 2017</strong></td>
<td>$347,926</td>
</tr>
</tbody>
</table>

### Recap of Ending Balance:

- **Principal @ June 30, 2017**: $293,075
- **Funds Available to be Allocated during FY 2017**: $54,851
- **Total ASU Ayers Private Endowment @ June 30, 2017**: $347,926

(Endowment is Managed by ASU Foundation)

**Note 1:** The Portfolio's Return on Investment for FY 2016 was equal to 4.39%

**Note 2:** The Portfolio at June 30, 2017 was earning interest at a rate of 2.46%

(information provided by the institution)
Mississippi State Institutions of Higher Learning – Ayers Endowment Report

Ayers Public Endowment
Allocated to Jackson State University
Summary of Yearly Activities
Fiscal Year 2017
(Managed by Jackson State University)

<table>
<thead>
<tr>
<th>JSU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance @ June 30, 2016</td>
</tr>
<tr>
<td>Additions:</td>
</tr>
<tr>
<td>Share of FY 2017 Legislative Appropriation</td>
</tr>
<tr>
<td>Interest Income during FY 2017</td>
</tr>
<tr>
<td>Deductions:</td>
</tr>
<tr>
<td>Interest Distributions during FY 2017</td>
</tr>
<tr>
<td>Balance @ June 30, 2017 *</td>
</tr>
<tr>
<td>* - note that the original principal is equal to $26,040,000</td>
</tr>
</tbody>
</table>

(Endowment is Managed by JSU via Stifel Nicolauss)

Note 1: The Portfolio's Return on Investment for FY 2017 was equal to 2.83%

Note 2: The Portfolio at June 30, 2017 was earning interest in a range of 0.02% and 5.33%.

(information provided by the institution)
Ayers Private Endowment
Allocated to Jackson State University
Summary of Yearly Activities
Fiscal Year 2017
(Managed by Jackson State University Development Foundation)

<table>
<thead>
<tr>
<th>JSU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance @ June 30, 2016</td>
</tr>
<tr>
<td>Additions:</td>
</tr>
<tr>
<td>Interest Income during FY 2017</td>
</tr>
<tr>
<td>Deductions:</td>
</tr>
<tr>
<td>Interest Distributions during FY 2017</td>
</tr>
<tr>
<td>Balance @ June 30, 2017 *</td>
</tr>
</tbody>
</table>

* - note that the original principal is equal to $449,450

(Endowment is Managed by JSU via Stifel Nicolauss)

Note 1: The Portfolio's Return on Investment for FY 2016 was equal to 0.01%

Note 2: The Portfolio at June 30, 2016 was earning interest at a rate of 0.01%

(information provided by the institution)
Mississippi State Institutions of Higher Learning – Ayers Endowment Report

Ayers Settlement One-Page Summary

In January 1975, a group of black Mississippians filed a complaint naming the Governor, Board of Trustees of State Institutions of Higher Learning, and the five historically white Mississippi institutions as defendants. The suit asserted many claims of discrimination against the plaintiffs, including the establishment and maintenance of racially separated systems of public higher education and the denial of equal educational opportunity to black students and faculty. Prior to the eventual settlement of this case, the U.S. District Court entered a remedial decree requiring the Defendants to take additional actions beyond those already taken to further the desegregation of our state universities. Final resolution of the case was October 2004 (fiscal year 2005) for a total settlement of $503,236,000.

The settlement provides for 10 years of financial assistance for summer development programs totaling $6,250,000. The first five years are $500,000 per year and $750,000 per year for second five years. All institutions are eligible to participate and there is no obligation to continue funding the summer developmental programs after ten years. The first payment was for fiscal year 2006.

The settlement provides $245,880,000 for academic programs for the historically black institutions – Alcorn State University (ASU), Jackson State University (JSU), and Mississippi Valley State University (MVSU). Funds are provided for new programs, enhancement of existing programs and schools or initiatives. The funding allocation is ASU - $52,412,000; JSU - $140,819,000; and MVSU - $52,649,000. The annual obligation for academic programs in the settlement designates $16,946,000 for year 1 (FY 2006); however, the Legislature appropriated $20,200,000 in fiscal year 2006. Funding for years 2-7 are $20,200,000 per year; years 8-13 will be $13,467,000 per year; years 14-17 will be $6,733,000 per year. In addition, some legislative funding occurred prior to the final settlement.

Public and private endowments are provided in the settlement. The public endowment of $70 million will be funded over 14 years at $5 million per year. The endowment principal can never be invaded. The endowment income is used to increase other-race presence and to enhance academic programs at the three historically black universities as specified in the settlement. The principal is managed by a seven-person management committee until such time the respective university reaches at least a 10 percent other race enrollment which must be sustained for three consecutive years. Upon attainment of enrollment goals, the principal will be managed by the institution. The endowment split among ASU, JSU and MVSU is 28.3 percent, 43.4 percent and 28.3 percent, respectively. As long as the funds are managed by the Board’s management committee, the interest income will be allocated using the same proportion. Interest income of university-managed endowment is dependent on the investments strategies of the university. ASU and JSU have met the enrollment goal. A private endowment of $35 million is proposed but not guaranteed. Upon settlement, the Board of Trustees was to undertake the establishment of a privately-funded endowment over seven years. The current balance in the private endowment is $1.035 million.

Capital improvements of $75 million included in the settlement have been bonded by the state in fiscal years fiscal years 2002 – 2005. Attorney fees of $2.5 million have been paid in full. The settlement included credit for prior expenditures of $83,856,000 from the remedial decree.

The settlement agreement requires an implementation disclosure annually by October 1.

Non-financial requirements in the settlement include JSU being recognized as a comprehensive university, Mississippi Veterans Memorial Stadium to be designated as the home of JSU Tigers, JSU to become a member of the Stadium Commission and, subject only to the Board of Trustees, JSU has control over the facility referred to as the Universities Center. All non-financial obligations have been satisfied.
SYSTEM: REAL ESTATE ITEMS APPROVED SUBSEQUENT TO THE
October 19, 2017 BOARD MEETING SUBMISSION DEADLINE

NOTE: THE FOLLOWING ITEMS WERE APPROVED BY THE BOARD'S REAL
ESTATE AND FACILITIES STAFF ACCORDING TO BOARD POLICY §904 (A)
BOARD APPROVAL WHICH STATES:

Board Policy §904(A), Board Approval

When funding has been secured from whatever source, each institution shall bring all new
projects to the Board for the approval of the project initiation and the appointment of a design
professional, as required in Board Policy §902, Initiation of Construction Projects. This
request shall include a detailed description of the work to be accomplished, the total budget,
the funding source and the design professional recommended to the Board for approval.

After the Board has granted approval of both the initiation of a project and the appointment of
a design professional, no further Board action or approval is required for the completion of
the project if the following conditions are met:

1. The detailed description of the work to be accomplished, as specifically
   approved by the Board within the project initiation, has not changed.
2. The total project budget has not increased beyond the amount specifically
   approved by the Board as part of the project initiation;
3. The funding source has not changed from that specifically approved by the
   Board as part of the project initiation; and
4. The design professional previously approved by the Board has not changed.

If the above four conditions have been met, the Board’s Real Estate and Facilities staff,
through the Commissioner, shall have the authority to approve any and all necessary
documents related to the completion of the subject construction project, including the
approval of construction documents, the advertisement and receipt of bids, the approval of a
bid, the award of a contract and any change orders.

Change Order Approval Note: No change orders approved by Board staff, as reflected
within any of the following informational agenda items, increase the Board approved total
project budget. The total project budget as approved by the Board provides for a
contingency fund, which allows for an increase in the construction budget of between five
and ten percent. Any increase in the total project budget caused by a change order, would
require Board approval and could not be approved by Board staff until the budget increase
is approved by the Board.
ALCORN STATE UNIVERSITY

1. ASU – IHL 201-255 – Water Treatment Facility Improvements

Approval Request #1 (INTERIM): In accordance with Board Policy §904 (B) Board Approval, Interim Chair Approval was granted by Mr. Hal Parker, Chair of the Real Estate and Facilities Committee on August 24, 2017 to initiate a new project and appoint M&G Enterprises for the design and construction of a reverse osmosis water treatment system.

Approval Status & Date: APPROVED, August 24, 2017

Project Initiation Date: August 24, 2017
Design Professional: M&G Enterprises, Inc., d/b/a Engineering Services
General Contractor: TBD
Total Project Budget: $3,311,592.00

MISSISSIPPI STATE UNIVERSITY

2. MSU– GS 105-351 – YMCA Renovation

NOTE: This is a Bureau of Building project

Approval Request #1: Change Order #4

Board staff approved Change Order #4 in the amount of $126,716.29 and eight (8) additional days to the contract of Gregory Construction Services, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date: APPROVED, October 16, 2017

Change Order Description: Change Order #4 includes the following items: utility revisions; storm drain revisions; electrical revisions; site utility and piping modifications; electrical (IT) changes and eight (8) days to the contract.

Change Order Justification: These changes are due to user/owner requested modifications; and additional days for work as indicated herein.

Total Project Change Orders and Amount: Four (4) change orders for a total amount of $564,224.11.
3. MSU– GS 105-352 – Library Expansion, Mitchell Memorial Library

NOTE: This is a Bureau of Building project

Approval Request #1: Change Order #6

Board staff approved Change Order #6 in the amount of $4,999.00 and ten (10) additional days to the contract of West Brothers Construction, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date: APPROVED, September 14, 2017

Change Order Description: Change Order #6 includes the following items: added carpet in the atrium; and ten (10) days to the contract.

Change Order Justification: This change was necessary to latent job site conditions; and days for work as indicated herein.

Total Project Change Orders and Amount: Six (6) change orders for a total amount of $340,340.59.

Project Initiation Date: August 15, 2013
Design Professional: Foil Wyatt Architects & Planners, PLLC.
General Contractor: West Brothers Construction, Inc
Total Project Budget: $8,300,000.00

4. MSU – GS 113-145 (formerly IHL #213-142) – NWARC Roof Replacement

NOTE: This is a Bureau of Building project

Approval Request #1: Approval of Schematic Design Documents

Board staff approved the Schematic Design Documents as submitted by Pryor & Morrow Architects and Engineers, P.A.
Approval Status & Date: APPROVED, September 7, 2017

Approval Request #2: Waiver of Design Development Documents

Board staff approved the Waiver of Design Development Documents as submitted by Pryor & Morrow Architects and Engineers, P.A.

Approval Status & Date: APPROVED, September 7, 2017

Project Initiation Date: October 21, 2016

Design Professional: Pryor & Morrow Architects and Engineers, P.A.

General Contractor: TBD

Total Project Budget: $2,000,000.00

5. MSU–IHL 205-278 – MSU nSPARC Data Center

Approval Request #1: Change Order #4

Board staff approved Change Order #4 in the amount of $96,330.41 and thirty (30) additional days to the contract of Burks Mordecai Builders, Inc.

Approval Status & Date: APPROVED, October 13, 2017

Change Order Description: Change Order #4 includes the following items: additional diffusers; low voltage additional changes; installation of a knoxbox; landscaping revisions; security system changes; insulation changes at the metal panels; additional lighting controls; and thirty (30) days to the contract.

Change Order Justification: These changes are due to errors and omissions in the plans and specifications; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount: Four (4) change orders for a total amount of $334,553.29.

Project Initiation Date: November 20, 2014

Design Professional: Dale Partners Architects, P.A.

General Contractor: Burks Mordecai Architects, P.A.

Total Project Budget: $4,650,000.00
6. **MSU–IHL 205-279 – Addition & Renovation to Dudy Noble Field**

**Approval Request #1: Change Order #2**

Board staff approved Change Order #2 in the amount of $47,273.56 and zero (0) additional days to the contract of Wier Boerner Allin Architects, PLLC.

**Approval Status & Date:** APPROVED, September 28, 2017

**Change Order Description:** Change Order #2 includes the following items: re-feed the water line to an office; revised the view level vomitory slabs; credit for the revised undercut to the existing playing field; material abatement of the existing outfield restroom building; credit to keep the storm inlets; revised the design of the stadium view level railings; extended the grandstand steel light towers to 100’ above the field; revised the wall/door layout at the lobby to coordinate with the adjacent stair; and added a concrete wall at the void in the existing stadium.

**Change Order Justification:** These changes are due to errors and omissions in the plans and specifications; latent job site conditions; and user/owner requested modifications.

**Total Project Change Orders and Amount:** Two (2) change orders for a total credit amount of $422,526.44.

**Project Initiation Date:** May 21, 2015
**Design Professional:** Wier Boerner Allin Architects, PLLC
**General Contractor:** Jesco, Inc.
**Total Project Budget:** $55,000,000.00

**MISSISSIPPI UNIVERSITY FOR WOMEN**

7. **MUW–GS 104-184 – Fant Library Renovation – PH III (Build Out)**

**NOTE:** This is a Bureau of Building project

**Approval Request #1: Change Order #3**

Board staff approved Change Order #3 in the amount of $42,475.14 and eighty-six (86) additional days to the contract of Amason & Associates, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.
Approval Status & Date:  APPROVED, October 4, 2017

Change Order Description:  Change Order #3 includes the following items: additional power circuits to four (4) variable airflow valve (VAV) boxes; modifications to the existing electrical panels; added lighting control sensors for certain light fixtures located within the 2nd floor area; signage changes; electrical changes; power supply to the pre-action fire panel and air compressor; added window treatments; removal of potter panel and added a simplex panel for the sprinkler system; additional signage changes; and eighty-six (86) days to the contract.

Change Order Justification:  These changes are due to errors and omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount:  Three (3) change orders for a total credit amount of $61,438.19.

Project Initiation Date:  January 22, 2015
Design Professional:  Burris/Wagnon Architects, P.A.
General Contractor:  Amason & Associates, Inc.
Phased Project Budget:  $4,429,006.89
Total Project budget:  $8,249,000.00

UNIVERSITY OF MISSISSIPPI

8. UM– IHL 107-308 – Union Addition & Renovation

NOTE: This is a Bureau of Building project

Approval Request #1:  Change Order #9

Board staff approved Change Order #9 in the amount of $425,796.00 and twenty-one (21) additional days to the contract of Roy Anderson Corporation. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date:  APPROVED, September 7, 2017

Change Order Description:  Change Order #9 includes the following items: food service design revisions & clarifications; rerouted the mechanical pipe in the basement; added miscellaneous metal members based on structural/architectural coordination; installed
plywood, drip edge, and vapor barrier membrane at the low roof parapet; added three (3) additional card readers, and added raceways for six (6) added card readers at elevators in Phase 2; added one set of furniture pads at the freight elevator south of the kitchen; added aluminum cane rails; provided 2-hour fire-rated duct wrap at the makeup air ducts at the hoods; installed additional 3” of concrete at the loading dock drive lane for a total thickness of 8”; changed the ballroom carpet types and patterns; revised the sanitary sewer to replace & lower the existing sanitary line; revised the storm sewer to run along the nail wall and capture the existing clay pipe from Isom Hall; removed five (5) existing precast panels on the phase 3 lower east elevation; installed miscellaneous steel angle and deck at level 3 Phase 3 to infill the existing stair opening; swapped the chiller line connections; and twenty-one days to the contract.

Change Order Justification: These changes are due to changes & requirements or recommendations by governmental agencies; errors & omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount: Nine (9) change orders for a total amount of $1,795,661.00.

Project Initiation Date: August 18, 2011
Design Professional: Eley Guild Hardy Architects – Jackson, P.A.
General Contractor: Roy Anderson Corporation
Phased Project Budget: $58,580,521.45
Total Project budget: $58,900,000.00

9. UM– GS 107-317 (formerly IHL 207-368) – Johnson Commons East Renovation

NOTE: This is a Bureau of Building project

Approval Request #1: Change Order #1

Board staff approved Change Order #1 in the amount of $22,417.02 and twenty-nine (29) additional days to the contract of Legacy Construction Services. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date: APPROVED, September 7, 2017

Change Order Description: Change Order #1 includes the following items: deleted the chilled & hot water line work; installed an isolation valve at the return chiller line;
abatement of floor tile and adhesive at two floors; grading and drainage revisions; credit adjustment for energy management & control system quotes for the specified allowance; sidewalk and east plaza revisions; installed additional knee bracing at the mechanical mezzanine structural steel; installed fire sprinkler heads at the ceiling space below the mezzanines; and twenty-nine (29) days to the contract.

Change Order Justification: These changes are due to errors and omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount: One (1) change order for a total amount of $22,417.02.

Project Initiation Date: November 15, 2012
Design Professional: Belinda Stewart Architects, P.A.
General Contractor: Legacy Construction Services
Total Project Budget: $8,300,000.00

10. UM–IHL 207-372 – South Campus Recreation Facility & Transportation Hub

Approval Request #1: Change Order #3

Board staff approved Change Order #3 in the amount of $131,043.29 and twenty-two (22) additional days to the contract of Zellner Construction Services, LLC.

Approval Status & Date: APPROVED, September 14, 2017

Change Order Description: Change Order #3 includes the following items: pump out and remove an unknown neutralization basin uncovered on the site and fill with compacted soil in preparation for concrete; design revision of the site plan; modification of the existing fire main; pretreated the new concrete slabs for termites; shored up the existing building column; removal and disposal of unknown debris uncovered while digging the retention pond; modification of the existing structure to support the installation of a new beam; built additional temporary fencing around the retention pond; extended the length of communication lines to the relocated communication vault; relocated job traillers and temporary power; undercut areas of the new east bus road; lowered the depressed slab at the boulder wall making sure the padding is flush with the finish floor; removal of an uncovered concrete slab below the demolished asphalt; and twenty-two (22) days to the concrete, fifteen (15) of which are due to weather delays.
Change Order Justification: These changes are due to errors and omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; weather delays and days for work as indicated herein.

Approval Request #2:  Change Order #4

Board staff approved Change Order #4 in the amount of $110,538.52 and forty-nine (49) additional days to the contract of Zellner Construction Services, LLC.

Approval Status & Date: APPROVED, October 4, 2017

Change Order Description: Change Order #4 includes the following items: added a roof drain connection to the structure and to cap the existing connections; added closed caption tv (CCTV) raceways; additional duct for the gym storage room; undercutting areas of the new east bus road; removal of unforeseen concrete beneath the existing asphalt; added helical piers for the building corner; additional piping supports; and forty-nine (49) days to the contract, three (3) of which are due to weather delays.

Change Order Justification: These changes are due to errors and omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount: Four (4) change orders for a total amount of $417,028.43.

Project Initiation Date: June 20, 2013
Design Professional: JBHM Architects, P.A.
General Contractor: Zellner Construction Services, LLC
Phased Project Budget: $28,740,890.13
Total Project Budget: $32,000,000.00

11. UM – IHL 207–411.1 – Oxford-University Stadium (Swayze Field) Addition & Renovation – PH II

Approval Request #1: Change Order #2R

Board staff approved Change Order #2R in the amount of $140,950.33 and five (5) additional days to the contract of Century Construction & Realty, Inc.

Approval Status & Date: APPROVED, October 13, 2017
Change Order Description: Change Order #2R includes the following items: provide a temporary feed to the existing emergency generator to maintain life safety systems during owner occupancy of the building during construction; demolition of a dead ductbank; modification of the new storm drain to connect to the uncovered existing storm drain and tie into the original existing 18” main storm drain; modification of the existing sanitary storm sewer to route around the west edge of the building and tie into the existing manhole; changed the pile to the cap layout at the column corner; modification of the design of the segmented retaining wall; requested direct cost associated with the loss of deep foundation production; and five (5) days to the contract.

Change Order Justification: These changes are due to errors and omission in the plans and specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount: Two (2) change orders for a total amount of $147,698.11.

Project Initiation Date: October 15, 2015
Design Professional: Cooke Douglas Farr Lemons, Architects & Engineers, P.A.
General Contractor: Century Construction & Realty, Inc.
Phased Project Budget: $18,692,553.92
Total Project Budget: $19,844,146.00

12. UM- IHL 207-421 – Jackson Avenue Center Safe Room

Approval Request #1: Contract Documents

Board staff approved Contract Documents as submitted by Shafer & Associates

Approval Status & Date: APPROVED, September 7, 2017

Approval Request #2: Advertise

Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, September 7, 2017

Project Initiation Date: August 18, 2016
Design Professional: Shafer & Associates
General Contractor: TBD
13. UM – IHL 207-423 – Jackson Avenue Center Phase III – Swing Space

Approval Request #1: Change Order #3

Board staff approved Change Order #3 in the amount of $44,430.00 and ten (10) additional days to the contract of Murphy & Sons, Inc.

Approval Status & Date: APPROVED, August 29, 2017

Change Order Description: Change Order #3 includes the following items: demolished the existing storefront; constructed a new storefront; added a conduit rough-in; installed two (2) Dyson hand dryers and circuits; added three (3) fire extinguisher cabinets; added circuits for projector screens & projectors; and ten (10) days to the contract

Change Order Justification: These changes are due to errors and omissions in the plans and specifications; user/owner requested modifications; and days for work as indicated herein.

Approval Request #2: Change Order #4

Board staff approved Change Order #4 in the amount of $31,115.00 and zero (0) additional days to the contract of Murphy & Sons, Inc.

Approval Status & Date: APPROVED, September 14, 2017

Change Order Description: Change Order #4 includes the following items: modification of the roof system wall flashing on the parapet wall.

Change Order Justification: This change is due to latent job site conditions.

Total Project Change Orders and Amount: Four (4) change orders for a total amount of $91,173.00.
UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

14. UMMC– GS 109-210 (GC-001) – School of Medicine

NOTE: This is a Bureau of Building project

Approval Request #1: Change Order #14

Board staff approved Change Order #14 in the amount of $429,919.00 and eighty-one (81) additional days to the contract of Roy Anderson Corporation. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date: APPROVED, September 7, 2017

Change Order Description: Change Order #14 includes the following items: provided the necessary revisions to the Learning Resource Center (LRC) first floor corridor walls; relocated three (3) cove light fixtures to the west wall of a room and added a dimming switch; removed the top of the existing LRC precast panel and fill the floor gap on the LRC side; replaced the exterior aluminum entry doors thresholds with American Disabilities Act (ADA) ramp type thresholds; provided wire management enclosures at the headwall locations in the simulation rooms; provided aluminum angle closure trim at the glass smoke baffle locations; installed nine (9) low static pressure sensors on the return air exhaust ducts; installed new locks on five (5) penthouse exterior doors; excavated the existing fire main north of the dental school; installed a new sump pump, a breaker for the sump pump, and relocated the fire alarm heat detectors; retested the fire pump following the change to the breaker at the transfer switch; added road revisions; and eighty-one (81) days to the contract.

Change Order Justification: These changes are due to errors & omissions in the plans & specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Approval Request #2: Change Order #15

Board staff approved Change Order #15 in the amount of $128,923.00 and twenty-nine (29) additional days to the contract of Roy Anderson Corporation.

Approval Status & Date: APPROVED, September 7, 2017

Change Order Description: Change Order #15 includes the following items: installed metal studs, gypsum board and aluminum sheet over the back of the insulated spandrel glass in a stair; reduced the mulch material depth from 12” to 3” in the courtyard planters;
relocated the smoke detectors in a specialty ceiling within 3 feet of the HVAC grilles and diffusers; cleaned and repainted the ground floor north foundation wall of the LRC; added new traffic gate arms and power to the west entry of the north parking lot; added wiring and boxes for the surgical light in the simulation room; changed two (2) sprinkler heads under the ground floor atrium stair from exposed type to concealed; removed, revised, and reinstalled terrazzo base at the smoke curtains; added a steel plate infill at gaps between the steel stair stringers and walls of a stair; installed rough-ins and programming in order to revise the lab exhaust control and sequence; provided floor slab cores in a 3rd floor room and rated wall sleeve penetration at the 2nd floor; installed cube core grilles in the 4th floor ceiling exam rooms; and twenty-nine (29) days to the contract.

Change Order Justification: These changes are due to errors and omissions in the plans & specifications; latent job site conditions; user/owner requested modifications; and days for work as indicated herein.

Total Project Change Orders and Amount: Fifteen (15) change orders for a total amount of $1,511,227.00.

Project Initiation Date: June 16, 2011
Design Professional: Cooke Douglas Farr Lemons + Eley Guild Hardy – A Joint Venture
General Contractor: Roy Anderson Corporation
Phased Project Budget: $65,742,205.00
Total Project Budget: $66,000,000.00

15. UMMC – IHL 109-223 – Clinical Research Unit

NOTE: This is a Bureau of Building project

Approval Request #1: Approval of Design Development Documents

Board staff approved the Design Development Documents as submitted by Foil Wyatt Architects & Planners, PLLC.

Approval Status & Date: APPROVED, September 14, 2017

Project Initiation Date: May 18, 2017
Design Professional: Foil Wyatt Architects & Planners, PLLC
General Contractor: TBD
Total Project Budget: $7,500,000.00
16. UMMC – IHL 209-559 – School of Population Health

Approval Request #1: Approval of Schematic Design Documents

Board staff approved the Schematic Design Documents as submitted by Foil Wyatt Architects & Planners, PLLC.

Approval Status & Date: APPROVED, September 27, 2017

Project Initiation Date: June 15, 2017
Design Professional: Foil Wyatt Architects & Planners, PLLC
General Contractor: TBD
Total Project Budget: $5,000,000.00

17. UMMC- IHL 209-560– Pediatric Pharmacy Renovation

Approval Request #1: Contract Documents

Board staff approved Contract Documents as submitted by Foil Wyatt Architects & Planners, PLLC

Approval Status & Date: APPROVED, September 27, 2017

Approval Request #2: Advertise

Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, September 27, 2017

Project Initiation Date: August 17, 2017
Design Professional: Foil Wyatt Architects & Planners, PLLC
General Contractor: TBD
Total Project Budget: $1,105,000.00
18. UMMC- IHL 209-560– Pediatric Pharmacy Renovation – Sole Source

Approval Request #1 (INTERIM): In accordance with Board Policy §904 (B) Board Approval, Interim Chair Approval was granted by Mr. Hal Parker, Chair of the Real Estate and Facilities Committee on September 26, 2017 requesting permission to sole source the energy management controls for the Pediatric Pharmacy Renovations project as an extension of the existing Johnson Controls system.

Approval Status & Date: APPROVED, September 26, 2017

Project Initiation Date: August 17, 2017
Design Professional: Foil Wyatt Architects & Planners, PLLC
General Contractor: TBD
Total Project Budget: $1,105,000.00

19. USM– GS 110-097 – Campus Repairs & Renovations

NOTE: This is a Bureau of Building project

Approval Request #1: Contract Documents

Board staff approved Contract Documents as submitted by Allred Architectural Group

Approval Status & Date: APPROVED, September 14, 2017

Approval Request #2: Advertise

Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, September 14, 2017

Project Initiation Date: October 15, 2015
Design Professional: Allred Architectural Group
General Contractor: TBD
Total Project Budget: $2,000,000.00
20. USM– IHL 208-335 – Ross Boulevard Parking Project

Approval Request #1: Change Order #2

Board staff approved Change Order #2 in the amount of $11,832.30 and thirty (30) additional days to the contract of R&J Construction, Inc.

Approval Status & Date: APPROVED, October 12, 2017

Change Order Description: Change Order #2 includes the following items: a deduct for adjustment of miscellaneous unit quantities of underruns on materials, excess excavation and Portland Cement soil treatment; additional miscellaneous overruns, added crushed stone, borrow excavation; and thirty (30) days to the contract, sixteen (16) of which were due to weather delays.

Change Order Justification: These changes are due to latent job site conditions; weather delays and days for work as indicated herein.

Total Project Change Orders and Amount: Two (2) change orders for a total credit amount of $11,522.98.

Project Initiation Date: May 19, 2016
Design Professional: Neel-Schaffer, Inc.
General Contractor: R&J Construction, Inc.
Total Project Budget: $1,350,000.00
SYSTEM - REPORT OF PAYMENTS TO OUTSIDE COUNSEL

Legal fees approved for payment to outside counsel in relation to litigation and other matters:

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 1/1/17, 2/1/17, 4/1/17, 5/1/17, 6/19/17, 9/1/17 and 9/1/17) from the funds of Alcorn State University. (These statements, in the amounts of $15.50, $28.51, $16.50, $30.05, $460.00, $2,000.00 and $22.68, respectively, represent services and expenses in connection with immigration/labor certification.)

TOTAL DUE………………………………………………..$ 2,573.24

Payment of legal fees for professional services rendered by Gian Franco Borio (statement dated 10/20/17) from the funds of Mississippi State University. (This statement, in the amount of $3,500.00, represents services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………..$ 3,500.00

Payment of legal fees for professional services rendered by Brunini, PLLC (statement dated 9/17/17) from the funds of Mississippi State University. (This statement, in the amount of $835.00, represents services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………..$ 835.00

Payment of legal fees for professional services rendered by Perry & Winfield (statement dated 10/2/17) from the funds of Mississippi State University. (This statement, in the amount of $2,031.00, represents services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………..$ 2,031.00

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 9/1/17, 9/1/17, 9/1/17, 10/1/17, 10/1/17, 10/1/17 and 10/1/17) from the funds of Mississippi State University. (These statements, in the amounts of $2,500.00, $2,000.00, $2,500.00, $504.00, $2,000.00, $1,000.00, $2,000.00 and $2,000.00, respectively, represent services and expenses in connection with immigration/labor certification.)

TOTAL DUE………………………………………………..$ 14,504.00
Payment of legal fees for professional services rendered by Butler|Snow (statement dated 9/18/17) from the funds of the University of Mississippi. (This statement, in the amount of $41,621.50, represents services and expenses in connection with legal advice.)

TOTAL DUE…………………………………………………………$ 41,621.50

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 10/1/17) from the funds of the University of Mississippi. (These statements, in the amounts of $4,000.00, $2,500.00 and $2,966.00, represent services and expenses in connection with immigration/labor certification.)

TOTAL DUE…………………………………………………………$ 9,466.00

Payment of legal fees for professional services rendered by the Baker|Donelson (statement dated 9/12/17) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $4,957.00, represents services and expenses in connection with legal advice.)

TOTAL DUE…………………………………………………………$ 4,957.00

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 9/12/17, 9/12/17, 9/12/17, 9/12/17 and 9/19/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $27,437.90, $15,900.80, $2,235.53, $41,158.50 and $6,674.70, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE…………………………………………………………$ 93,407.43

Payment of legal fees for professional services rendered by Hogan Lovell (statements dated 9/18/17 and 9/28/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $712.80 and $41,471.20, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE…………………………………………………………$ 42,184.00

Payment of legal fees for professional services rendered by Watkins & Eager (statements dated 8/29/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $825.00, $1,551.00, $882.75, $363.00, $1,468.50 and $660.00, represent services and expenses in connection with legal advice.)

TOTAL DUE…………………………………………………………$ 5,750.25
Payment of legal fees for professional services rendered by Whitfield Law Group (statements dated 9/1/17, 9/1/17, 9/12/17 and 9/12/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $6,372.30, $243.90, $10,575.10 and $4,765.70, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………$ 21,957.00

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 9/13/17, 9/18/17, 10/9/17 and 10/11/17) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $147.50, $2,360.00, $236.00 and $10,856.00, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………$ 13,599.50

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 10/1/17) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $1,500.00, $46.81, $464.00, $1,507.10 and $2,500.00, represent services and expenses in connection with immigration/labor certifications.)

TOTAL DUE………………………………………………$ 6,017.91

Legal fees approved for payment to outside counsel in relation to patent and other matters:

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 8/31/17) from the funds of Mississippi State University. (These statements represent services and expenses in connection with the following patents: “Vibrio Assay Methods and Kits” - $407.50; “Live Attenuated Catfish Vaccine and Method of Making” - $38.00; “Sequence Specific Phage-Based Antimicrobials” - $184.50; “Symmetrical CCC-NHC Pincer Metal Complexes and Catalytic Methods” - $512.50; “CCC-NHC Pincer Metal Complexes and Catalytic Methods” - $487.00; “Live Attenuated Edwardsiella Ictaluri Vaccine and Method of Using Same” - $50.00 and “Cancer Therapeutic Use of Occidiofungin” - $89.00.)

TOTAL DUE………………………………………………$ 1,768.50

Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 8/23/17, 9/21/17 and 9/21/17) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $1,746.00, $2,102.00 and $1,000.00, respectively, represent services and expenses in connection with intellectual property patents.)

TOTAL DUE………………………………………………$ 4,848.00
Payment of legal fees for professional services rendered by Butler|Snow (statements dated 9/18/17) from the funds of the University of Southern Mississippi. (These statements represent services and expenses in connection with the following patents: “Self-Repairing Oxetane-Substituted Chitosan Polyurethane Networks” - $400.00 and “Covalent Attachment of Bacteriophages to Plymeric Surfaces” - $820.32.)

TOTAL DUE.................................................................$  1,220.32
1. **SYSTEM – 2017 DECEMBER COMMENCEMENT SCHEDULES**

**Alcorn State University**
- **Time/Date:** 10:00 a.m., Friday, December 8, 2017
- **Location:** Davey L. Whitney Health and Physical Education Complex
- **Speaker:** Dr. Caleph B. Wilson, Field Application Scientist, Miltenyi Biotec

**Delta State University**
- **Graduate Commencement Exercises**
  - **Time/Date:** 10:00 a.m., Saturday, December 9, 2017
  - **Location:** Bologna Performing Arts
  - **Speaker:** Dr. Ronald G. Koehler, Chair Emeritus for the Department of Art and Professor Emeritus of Art; 2017 Recipient of S.E. Kossman Outstanding Teacher Award, Delta State University

- **Undergraduate Commencement Exercises**
  - **Time/Date:** 2:00 p.m., Saturday, December 9, 2017
  - **Location:** Bologna Performing Arts
  - **Speaker:** Dr. Ronald G. Koehler, Chair Emeritus for the Department of Art and Professor Emeritus of Art; 2017 Recipient of S.E. Kossman Outstanding Teacher Award, Delta State University

**Jackson State University**
- **Undergraduate/Graduate Commencement Exercises**
  - **Time/Date:** 10:00 a.m., Friday, December 10, 2017
  - **Location:** Lee E. Williams Athletics and Assembly Center
  - **Speaker:** Dr. Kevin Murriel, Senior Pastor, Cascade United Methodist Church

**Mississippi State University**
- **Meridian Campus**
  - **Time/Date:** 11:00 a.m., Thursday, December 7, 2017
  - **Location:** Kahlmus Auditorium, College Park Campus, MSU-Meridian
  - **Speaker:** Eddie Kelley, Meridian Division Manager, Mississippi Power

- **Starkville Campus**
  - **College of Architecture, Art and Design, College of Arts and Sciences, College of Education**
    - **Time/Date:** 9:30 a.m., Friday, December 8, 2017
    - **Location:** Humphrey Coliseum
    - **Speaker:** Dr. Allen K. Sills, Jr., Chief Medical Officer, National Football League
2. **SYSTEM – COMMISSIONER’S NOTIFICATION OF APPROVAL**

The following item was approved by the Commissioner on behalf of the Board and are available for inspection in the Board Office.

a. **JSU** – In accordance with Board Policy 707.01 Land, Property, and Service Contracts, “The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000.” On October 25, 2017, Commissioner Glenn F. Boyce approved the proposed Motor Vehicle License to Use Agreement between the university and Toyota Motor Sales, U.S.A., Inc. for the use of a Toyota Rav4 Hybrid vehicle by the JSU Athletic Department as part of a partnership between SWAC and Toyota. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract document.

b. **MSU** – In accordance with Board Policy 707.01 Land, Property, and Service Contracts, “The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000.” Pursuant to Board Policy 707.03 Approval for Prepayment for Goods or Services, the Commissioner is authorized to approve certain prepayment/waivers on behalf of the Board. It further provides in part that written permission from the Commissioner or Board must be obtained prior to making or contracting to make prepayment of goods or services before such goods or services are received. On October 17, 2017, Commissioner Glenn F. Boyce approved the Lease Agreement with Hewlett Wood Products, Inc. for the lease of 6,250 square feet of space to be used for Bagley College of Engineering activities of the student competition.
teams, outreach coordinator, and storage. The lease renewal is for a one-year period beginning November 18, 2017 at a cost of $2,500 per month plus $280 per month for electricity, payable in advance at the beginning of each month. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract document.

c. **MSU** – In accordance with Board Policy 707.01 Land, Property, and Service Contracts, “The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000.” On October 17, 2017, Commissioner Glenn F. Boyce approved the Lease Agreement between MSU (lessee) and Union Station Hair Designers (lessor). This is a revenue generating lease for approximately 392 square feet of space in Colvard Student Union for the purposes of a hair salon. The term of the lease will be five years beginning December 1, 2017 and ending November 30, 2022 at a cost of either $800 per month or 15% of the gross sales for the five years, providing MSU with a minimum of $48,000 in revenue over the five-year term. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract document.

d. **UM** – In accordance with Board Policy 707.01 Land, Property, and Service Contracts, “The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000.” On October 11, 2017, Commissioner Glenn F. Boyce approved Amendment #1 to the July 1, 2017 Refueler Lease Agreement between the university and Ascent Aviation Group for the lease of two aviation refueler tanks. The Amendment is for the provision of an additional refueler truck during home games with larger than normal attendance. The additional truck will be provided at no additional cost. All other provisions of the original Lease Agreement remain unchanged. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract document.

e. **UMMC** – In accordance with Board Policy 1107 Enactment of Traffic Rules and Regulations, “the Board hereby delegates to the Commissioner of Higher Education the power to approve and authorize the enactment of such university traffic rules and regulations, which shall include university parking and traffic fines and fees, on behalf of the Board.” On October 11, 2017, Commissioner Glenn F. Boyce approved the Policies for Parking and Traffic Rules and Regulations, Revised September 2017.

f. **USM** – In accordance with Board Policy 707.01 Land, Property, and Service Contracts, “The Commissioner is authorized and empowered to approve non-oil, gas and mineral leases in an amount equal to or less than $100,000.” Pursuant to
Board Policy 707.03 Approval for Prepayment for Goods or Services, the Commissioner is authorized to approve certain prepayment/waivers on behalf of the Board. It further provides in part that written permission from the Commissioner or Board must be obtained prior to making or contracting to make prepayment of goods or services before such goods or services are received. On October 23, 2017, Commissioner Glenn F. Boyce approved the Commercial Lease Agreement between the university and Duff Amusement Company, Inc. for approximately 4,200 square feet of off-site warehouse storage space for use by Housing & Residence Life. The term of the lease is four years beginning November 1, 2017, at a cost of $1,600 per month, to be paid in advance monthly plus utilities at an average cost of $65 per month. The IHL Associate Commissioner for Legal Affairs has reviewed and approved the contract document.