Board Book
March 19, 2020

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 | March 18, 2020, 3:00p | UMMC Office of the Vice Chancellor
IHL Board Meeting | March 19, 2020, 9:00a | IHL Board Room

CALL TO ORDER

INVOCATION

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   8. UMMC – Master of Health Sciences (MHS)  

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2. MSU – Request Approval to Enter into a Services Agreement with Frontier Strategies, LLC  
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4. UMMC – Request Approval to Amend an End User Agreement with Air Products and Chemicals, Inc.  
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ADJOURNMENT
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 December 10, 2019, to each and every member of said Board said date being at least five days prior to this February 20, 2020 meeting. At the above-named place there were present the following members to wit: Dr. Steven Cunningham, Dr. Ford Dye, Mr. Shane Hooper, Ms. Ann H. Lamar, Ms. Jeanne Carter Luckey, Mr. Bruce Martin (by phone), Dr. Alfred E. McNair, Jr., Mr. Chip Morgan, Mr. Gee Ogletree, Mr. Hal Parker, and Dr. J. Walt Starr. Mr. Tom Duff was absent. The meeting was called to order by Hal Parker, President. Trustee Shane Hooper introduced Dr. Donald Cole, retired Assistant Provost and the Assistant to the Chancellor for Multicultural Affairs at the University of Mississippi, to provide the invocation.

INTRODUCTION OF GUESTS

- President Parker welcomed the Student Government Association Officers: Ken Johnson, SGA President at Alcorn State University; Elizabeth Swindle, SGA President at Delta State University; John Jacob Miller, SGA President at Mississippi University for Women; and Barron Mayfield, SGA President of the University of Mississippi.

2020 DIVERSITY AND INCLUSION AWARDS CEREMONY

President Hal Parker noted that each year the Board observes Black History Month by celebrating the achievements and accomplishments of one individual from each state institution of higher learning who has contributed significantly to the positive advancement of diversity on his/her campus, in their community, and the state. In addition, a community leader who has greatly impacted our state and its citizens is awarded the Karen Cummins Community Service Award.

Trustee Steven Cunningham, Chair of the Diversity Committee, thanked the members of the committee for their time and effort. Committee members include Mrs. Jeanne Luckey, Mr. Bruce Martin, and Dr. Alfred McNair. Trustee Cunningham gave special thanks to Hannah Harrison, IHL Director of Administration and Support Services, and Caron Blanton, IHL Director of Communications, and recognized the universities’ Chief Diversity Officers who were in attendance.

Trustee Cunningham congratulated all the nominees and presented them with a plaque for serving as role models and strong advocates for the advancement of diversity at their respective universities. The nominees were as follows:
- Dr. Ira Scott-Sewell, Alcorn State University
- Dr. Glendscene Williams, Delta State University
- Dr. Lisa Beckley-Roberts, Jackson State University
- Dr. Donald Shaffer, Mississippi State University
- Dr. C. LaShan Simpson, Mississippi State University, Division of Agriculture, Forestry and Veterinary Medicine
Trustee Cunningham announced Dr. Susan Mayfield-Johnson, Associate Professor in the School of Health Professions at the University of Southern Mississippi, as the 2020 Diversity Educator of the Year as chosen by the IHL Board of Trustees’ Diversity Committee. Next, Trustee Cunningham presented Dr. Eddie A. Holloway of Hattiesburg with the Karen Cummins Community Service Award. Dr. Mayfield-Johnson and Dr. Holloway each received a resolution and plaque commemorating these awards. A copy of each resolution is included in the February 20, 2020 Board Working File.

APPROVAL OF THE MINUTES

On motion by Trustee McNair, seconded by Trustee Cunningham, with Trustee Duff absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted unanimously to approve the Minutes of the Board meetings held on January 16, 2020 and February 10, 2020.

CONSENT AGENDAS

On motion by Trustee Morgan, seconded by Trustee Starr, with Trustee Duff absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted unanimously to approve the following Consent Agendas.

FINANCE

1. MSU – Approved the request to purchase retail sales and inventory software with RJ Young, LLC for the MAFES Sales Store. The MAFES Sales Store software is in critical need of an upgrade due to a) an old, outdated software platform (ColdFusion) and b) shipping needs that cannot be maintained under the current software arrangement (specifically with United Parcel Service). The contract will commence upon signatures of both parties. The projected start date is February 21, 2020 and projected to end on February 20, 2025. The project consists of a six (6) month development to deployment period, with renewable option for maintenance up to 5 years (inclusive of the six-month development period). MSU will pay $3,400 for QuickBooks License for POS Workstations, $2,700 for Project Fixed Fee, and $199,600 for Implementation for a total of $205,700 for development, implementation, training and testing, and will pay $19,155 per year for Annual Maintenance Costs, for a total of $301,475. The agreement will be funded by Self-generated funds. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.
2. **UM** – Approved the request to amend a contract with Salesforce.org (Salesforce). The purpose of this agreement is to provide a platform for a customer relationship management (CRM) solution for the Undergraduate Office of Admissions for tracking, communicating, and recruiting of prospective students. Implementation services, on-going training, support, and maintenance will also be provided. The Salesforce platform contract is required as a part of the university’s contract with the TargetX CRM Software solution. The term of the order form is in effect from February 24, 2020 through February 23, 2025. The original contract amount was $12,960 and the new additional amount is $423,915 bringing the total to $436,875. Pursuant to IHL Board Policy 707.03, Approval of Prepayment for Goods or Services, the Board also approved the prepayment of the monthly fees. The contract will be funded with general funds. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

3. **UM** – Approved the request for the University of Mississippi Office of Admissions to enter a contract with TargetX to provide a customer relationship management (CRM) solution for the Office of Admissions for tracking, communicating, and recruiting of prospective students. Implementation services and on-going training, support, and maintenance will also be provided. The term of the agreement will be in effect from February 27, 2020 through February 27, 2025. The contract amount for the initial term of the agreement is $113,375. If all options to renew are exercised, the total contract amount would be $442,375. Annual renewals shall be contingent upon the university’s satisfaction with the performance of the software and related support services. Pursuant to IHL Board Policy 707.03, Approval of Prepayment for Goods or Services, the Board also approved the prepayment of the annual payment each year. The contract will be funded by E&G sources. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

4. **UMMC** – Approved Amendment 22 to its current license and support agreement with Epic Systems Corporation to add the Long Term Care module to the current licensed program property. This module will allow UMMC to generate the minimum data sets needed for appropriate clinical documentation and to appropriately bill long term care stays. The module will be utilized for the swing beds in UMMC’s Grenada facility as well as the new pediatric skilled nursing facility. The term of Amendment 22 will begin upon last signature date and be coterminous with the current agreement term ending August 22, 2024. The estimated cost for Amendment 22 is $66,450. With the addition of Amendment 22, the total estimated approved cost for the Epic agreement is $105,083,182.99. A breakdown of costs associated with this amendment is included in the bound February 20, 2020 Board Working File. Pursuant to IHL Board Policy 707.03, Approval of Prepayment for Goods or Services, the Board also approved the prepayment of the license fees for the Long Term Care module set at 50% of the total license fee. The amendment cost will be funded by hospital patient revenue. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

5. **UMMC** – Approved the request to enter a Nurse Triage Call Center Services Agreement with TriageLogic, LLC for afterhours nurse triage call center services for pediatric patients.
Under the agreement, parents/guardians of pediatric patients may speak with nurses after regular business hours. UMMC allows outside pediatricians to utilize TriageLogic’s afterhours call services through UMMC for a fee, which recovers a portion of the cost of the agreement with TriageLogic. The term of the agreement is five (5) years and one (1) day, from February 28, 2020, through February 28, 2025. The total estimated cost for the five (5) year, one (1) day term is $921,875. UMMC will pay an annual fixed rate for up to 8,000 calls each year. This rate will increase by 3% each year of the contract term beginning in Year 2. Also, UMMC will be billed for each additional call over the initial 8,000 calls for the year. A breakdown of the estimated annual costs for the initial 8,000 calls and anticipated additional calls are included in the bound February 20, 2020 Board Working File. Pursuant to IHL Board Policy 707.03, Approval of Prepayment for Goods or Services, the Board also approved the prepayment of the fixed monthly fees in advance each month. The agreement will be funded by patient revenues. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

REAL ESTATE
6. UM – Approved the initiation of IHL 207-461, Stockard Hall AC VAV Boxes Replacement & Controls Upgrade, and the appointment of Corbett Legge & Associates, PLLC as the design professional. Since the building was built in 1969 there have been no major renovations to the AC VAV boxes or controls except for needed repairs. The AC VAV system is 50 years old and with the costly repairs, expensive to maintain. The proposed project budget is $1.2 million. Funds are available from Student Housing Revenues and Capital Reserves ($1,200,000).
7. UM – Approved the request to increase the budget for IHL 207-457, Track and Field Locker Rooms, from $2,200,000 to $2,975,000 for an increase of $775,000. The funding source will remain the same. This project will construct a new track and field locker room building on the north side of the existing track. After the schematic design was approved and Weir Boerner Allin was preparing the design development drawings the site survey was received that indicated several main utilities located in the building area that will need to be relocated to avoid the footprint of the building. The design development estimate also saw an increase in the construction cost of almost $100 per square foot used to establish the original submitted budget. Funds are available from Intercollegiate Athletics Revenues and Capital Reserves ($2,975,000).

LEGAL
8. UM – Pending approval from the Office of the Attorney General, the Board approved the request to modify an existing legal services agreement with the law firm of Holland & Knight LLP, who provides legal services in the areas of Title IX risk management and regulatory compliance, including athletic equity in intercollegiate athletics. Under the parties’ existing legal services agreement, the total expenditures may not exceed $40,000. The agreement will be modified to increase the allowable expenditures by an additional $35,000, for a total of $75,000. This increase is necessary because an unanticipated development required the University of Mississippi to seek Holland & Knight’s legal
support with an internal investigation, and that investigation required additional work product, legal advice, and counsel from Holland & Knight that the University had no way of anticipating or otherwise budgeting for when the University initially sought approval of its legal services agreement with Holland & Knight. All other provisions of the agreement remain the same. Specifically, the term of the agreement remains June 30, 2019 through May 31, 2020 at a discounted hourly rate of $525.00. This firm carries professional liability insurance coverage in the amount of $10,000,000 per claim with an annual aggregate of $20,000,000.

9. **UM** – Pending approval from the Office of the Attorney General, the Board approved the request to modify an existing legal services agreement with the law firm of Phelps Dunbar LLP as outside counsel for the provision of legal services in the areas of labor and employment. Under the parties’ existing legal services agreement, the total expenditures may not exceed $35,000. The amendment to the agreement will increase the allowable expenditures by an additional $25,000, for a total of $60,000 in allowable expenditures. This increase is necessary because unanticipated developments required the University of Mississippi to seek Phelps Dunbar’s legal support with an internal investigation and additional labor matters, and these unanticipated matters and investigation required additional work product, legal advice, and counsel from Phelps Dunbar that the University had no way of anticipating or otherwise budgeting for when the University initially sought approval of its legal services agreement with Phelps Dunbar. All other provisions of the current agreement remain the same. Specifically, the term of the agreement remains July 1, 2019 through June 30, 2020 at a discounted hourly rate of $360.00. This firm carries professional liability insurance coverage in the amount of $30,000,000 per claim with an annual aggregate of $60,000,000.

**PERSONNEL REPORT**

10. **Employment**

    **Alcorn State University**
    Malinda Butler; **rehired retiree**; Acting Dean, School of Education and Psychology; salary of $70,000 per annum, pro rata; E&G Funds; 3-month contract; effective February 1, 2020

11. **Sabbatical**

    **University of Mississippi**
    Bahram Alidaee; Professor of Production Operations Management and Professor of Pharmacy Administration; **from** salary $160,827 per annum, pro rata; E&G Funds; 9-month contract; **to** salary $80,414 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

    Robert Barnard; Professor of Philosophy; **from** salary $78,686 per annum, pro rata; E&G Funds; 9-month contract; **to** salary $39,343 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development
Kris Belden-Adams; Associate Professor of Art History; from salary $63,097 per annum, pro rata; E&G Funds; 9-month contract; to salary $31,549 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

James Bos; Associate Professor of Religion; from salary $63,861 per annum, pro rata; E&G Funds; 9-month contract; to salary $31,908 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Gerard Buskes; Professor of Mathematics; from salary $116,431 per annum, pro rata; E&G Funds; 9-month contract; to salary $58,216 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Felice Coles; Professor of Modern Languages; from salary $88,540 per annum, pro rata; E&G Funds; 9-month contract; to salary $44,270 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

John Conlon; Professor of Economics; from salary $121,756 per annum, pro rata; E&G Funds; 9-month contract; to salary $60,878 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Xin Dang; Professor of Mathematics; from salary $90,998 per annum, pro rata; E&G Funds; 9-month contract; to salary $45,499 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Jared Delcamp; Associate Professor of Chemistry and Biochemistry; from salary $83,488 per annum, pro rata; E&G Funds; 9-month contract; to salary $41,744 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Cristin Ellis; Associate Professor of English; from salary $72,800 per annum, pro rata; E&G Funds; 9-month contract; to salary $36,400 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Michael Gardiner; Associate Professor of Music; from salary $62,280 per annum, pro rata; E&G Funds; 9-month contract; to salary $31,140 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Zachary Guthrie; Assistant Professor of History; from salary $58,696 per annum, pro rata; E&G Funds; 9-month contract; to salary $29,348 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development (Contingent on being awarded tenure by July 1.)

Carey Hanson; Professor of Costume Design; from salary $80,804 per annum, pro rata; E&G Funds; 9-month contract; to salary $40,402 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development
Derrick Harriell; Associate Professor of English and African American Studies; *from* salary $81,100 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $40,550 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Jason Hoeksema; Associate Professor of Biology; *from* salary $79,923 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $39,962 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Robert Holt; Professor of Geology and Geological Engineering; *from* salary $104,150 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $52,075 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020 and January 19, 2021 to May 8, 2021; professional development

Erik Hom; Assistant Professor of Biology; *from* salary $66,981 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $33,491 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development (Contingent on being awarded tenure by July 1.)

Valentina Iepuri; Associate Professor of Modern Languages; *from* salary $63,616 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $31,808 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Toshikazu Ikuta; Associate Professor of Communication Sciences and Disorders; *from* salary $83,532 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $41,766 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Willa Johnson; Associate Professor of Sociology; *from* salary $70,065 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $35,033 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021 and August 20, 2021 (or start of contract date) to December 31, 2021; professional development

Kirk Johnson; Associate Professor of African American Studies; *from* salary $75,691 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $37,846 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Benjamin Jones; Assistant Professor of International Relations; *from* salary $65,580 per annum, pro rata; E&G Funds; 9-month contract; *to* salary $32,790 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development (Contingent on being awarded tenure by July 1.)
Samuel Lisi; Assistant Professor of Mathematics; from salary $65,562 per annum, pro rata; E&G Funds; 9-month contract; to salary $32,781 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development (Contingent on being awarded tenure by July 1.)

Amy McDowell; Assistant Professor of Sociology; from salary $60,652 per annum, pro rata; E&G Funds; 9-month contract; to salary $30,326 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development (Contingent on being awarded tenure by July 1.)

Stephanie Miller; Associate Professor of Psychology and Director of Experimental Graduate Program; from salary $68,540 per annum, pro rata; E&G Funds; 9-month contract; to salary $34,270 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Ted Ownby; William F. Winter Professor of History; from salary $125,000 per annum, pro rata; E&G Funds; 9-month contract; to salary $62,500 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Andrew Paney; Associate Professor of Music; from salary $64,147 per annum, pro rata; E&G Funds; 9-month contract; to salary $32,074 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Molly Pasco-Pranger; Chair and Associate Professor of Classics; from salary $92,440 per annum, pro rata; E&G Funds; 12-month contract; to salary $34,665 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Breese Quinn; Professor of Physics and Director of the Multimessenger Astrophysics Center; from salary $91,465 per annum, pro rata; E&G Funds; 9-month contract; to salary $45,733 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020 and January 19, 2021 to May 8, 2021; professional development

Karen Raber; Professor of English; from salary $112,772 per annum, pro rata; E&G Funds; 9-month contract; to salary $56,386 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020 and January 19, 2021 to May 8, 2021; professional development

William Resetarits, Jr.; Professor and Doherty Chair in Freshwater Biology; from salary $175,100 per annum, pro rata; E&G Funds; 9-month contract; to salary $87,550 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development
Darren Sanefski; Associate Professor of Multiple Platform Journalism; from salary $81,070 per annum, pro rata; E&G Funds; 9-month contract; to salary $40,535 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

John Sonnett; Associate Professor of Sociology; from salary $69,816 per annum, pro rata; E&G Funds; 9-month contract to salary $34,908 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Alysia Steele; Assistant Professor of Multiple Platform Journalism; from salary $75,600 per annum, pro rata; E&G Funds; 9-month contract to salary $37,800 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development (Contingent on being awarded tenure by July 1.)

Daniel Stout; Associate Professor of British Literature; from salary $71,948 per annum, pro rata; E&G Funds; 9-month contract to salary $35,974 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Durant Thompson; Professor of Art; from salary $78,575 per annum, pro rata; E&G Funds; 9-month contract to salary $39,288 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Feng Wang; Associate Professor of Computer and Information Science; from salary $95,297 per annum, pro rata; E&G Funds; 9-month contract to salary $47,649 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Brooke White; Professor of Art; from salary $81,927 per annum, pro rata; E&G Funds; 9-month contract to salary $40,964 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Caroline Wigginton; Associate Professor of English; from salary $69,724 per annum, pro rata; E&G Funds; 9-month contract to salary $34,862 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Jessica Wilkerson; Assistant Professor of History and Southern Studies; from salary $59,456 per annum, pro rata; E&G Funds; 9-month contract to salary $29,728 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Amanda Winburn; Associate Professor of Counselor Education and Coordinator Ed.S. Play Therapy Program; from salary $68,267 per annum, pro rata; E&G Funds; 9-month contract to salary $34,134 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development
Jonathan Winburn; Associate Professor of Political Science and Director of Social Science Research Laboratory; from salary $75,800 per annum, pro rata; E&G Funds; 9-month contract; to salary $37,900 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development

Haidong Wu; Professor of Mathematics; from salary $94,263 per annum, pro rata; E&G Funds; 9-month contract; to salary $47,132 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Alexander Yakovlev; Professor of Electrical Engineering; from salary $124,932 per annum, pro rata; E&G Funds; 9-month contract; to salary $62,466 for sabbatical period; E&G Funds; effective January 19, 2021 to May 8, 2021; professional development

Yael Zeira; Croft Assistant Professor of Comparative Politics of the Middle East; from salary $65,192 per annum, pro rata; E&G Funds; 9-month contract; to salary $32,596 for sabbatical period; E&G Funds; effective August 20, 2020 to December 31, 2020; professional development (Contingent on being awarded tenure by July 1.)

REGULAR AGENDAS

FINANCE AGENDA
Presented by Trustee Chip Morgan

On motion by Trustee Morgan, seconded by Trustee McNair, with Trustees Duff and Martin absent and not voting, all Trustees legally present and participating voted unanimously to approve item #1 as submitted on the Finance Agenda. Trustee Alfred McNair recused himself from voting on item #2 on the Finance Agenda by leaving the room before there was any discussion or vote regarding the same. On motion by Trustee Morgan, seconded by Trustee Dye, with Trustees Duff, Martin, and McNair absent and not voting, all Trustees legally present and participating voted unanimously to approve item #2. Trustee McNair returned to the room following the conclusion of the discussion and vote on item #2 on the Finance Agenda. Trustee Gee Ogletree recused himself from voting on items #3 and #4 on the Finance Agenda by leaving the room before there was any discussion or vote regarding the same. On motion by Trustee Morgan, seconded by Trustee Starr, with Trustees Duff and Ogletree absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted unanimously to approve item #3. On motion by Trustee Morgan, seconded by Trustee McNair, with Trustees Duff and Ogletree absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted unanimously to approve item #4. Trustee Ogletree returned to the room following the conclusion of the discussion and vote on items #3 and #4 on the Finance Agenda.
1. **UMMC** – Approved the request to enter an AccessOne Medical Charge Account Agreement with AccessOne MedCard, Inc. (AccessOne) to provide patients an option to pay outstanding balances with medical charge accounts that are established and serviced by AccessOne. The term of the agreement is five (5) years, from March 1, 2020, through February 28, 2025. The total estimated cost of the agreement over five (5) years is $9,000,000. AccessOne’s standard rate under the agreement is a contingency fee of six percent (6%) of actual collections. AccessOne also offers an accelerated payment option, whereby AccessOne will advance the anticipated collections to UMMC for a ten percent (10%) contingency fee. UMMC has included in its cost calculation an estimated thirty-seven percent (37%) of accounts under the accelerated payment option, and the remainder at the standard rate. UMMC has also included a one percent (1%) potential increase in the service fees. The contract will be funded by patient revenue. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

2. **UMMC** – Approved the request to amend its Medical Office Building Lease (Sublease) with Memorial Hospital at Gulfport to extend the term an additional two (2) years, add a requirement to paint the interior, and add indemnification and insurance requirements of MHG. The term of the amended Sublease is forty-seven (47) months and five (5) days, from March 26, 2018, through February 28, 2022. The original Sublease term was twenty-three (23) months and five (5) days. Amendment No. 1 extends the term an additional twenty-four (24) months. The total cost of the amended Sublease is up to $565,000 over the extended term. The original lease was approved for a total cost of $278,451.42. Effective March 1, 2020, UMMC’s base rent will be $8,883.75 per month, plus an estimated $6,555 in operating expense overages. Operating expenses were estimated based on historical use averages at this location, with a three percent (3%) annual inflation adjustment. Pursuant to IHL Board Policy 707.03, Approval of Prepayment for Goods or Services, the Board also approved the prepayment of rent on the first day of each month. The agreement will be funded by patient revenue. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

3. **UMMC** – Approved the request to enter a Product Agreement with Johnson & Johnson Health Care Systems, Inc. to purchase energy sealing and dissection products utilized in surgical procedures for adult and pediatric patients. The Board approved the additional request to enter Amendment #3 to the Master IDN Agreement with Johnson & Johnson to add information security requirements thereto. The term of the Product Agreement is for three (3) years, March 1, 2020 through February 28, 2023. The total estimated cost of the Product Agreement over the three (3) year term is $1,729,014. UMMC has included a 20% increase in Year 2 for potential patient volume growth due to the addition of new operating rooms in the Children’s Hospital. In Year 3, UMMC has included a 10% increase for potential patient volume growth over the prior year of the agreement. Yearly costs are as follows: Year 1 - $491,197; Year 2 - $589,437; and Year 3 - $648,380. The agreement will be funded by hospital patient revenue. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.
4. **UMMC** – Approved the request to enter an agreement with NxStage Medical, Inc. for the rental of equipment used by patients on hemodialysis (HEMO) home therapy, as well as for the purchase of associated dialysis supplies, service of the equipment and technical support. The agreement also includes a provision for loaner equipment and supplies for patient and staff education purposes. The term of the agreement is for three (3) years, February 29, 2020 through February 28, 2023. The total estimated cost of the agreement over the three (3) year term is $1,223,892.36. This amount includes an annual 8% increase for potential volume growth and an annual 2% price increase beginning in Year 2. A breakdown of the annual costs is included in the bound *February 20, 2020 Board Working File*. The agreement will be funded by patient revenues. Legal Staff has reviewed the proposed agreement for compliance with applicable law and finds same to be acceptable. The agreement is on file in the Board Office.

**ADMINISTRATION/POLICY AGENDA**

Presented by Commissioner Alfred Rankins, Jr.

Agenda item #1 was approved as shown below. On motion by Trustee Hooper, seconded by Trustee Morgan, with Trustee Duff absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted unanimously to approve item #2 as submitted on the Administration/Policy Agenda.

1. **SYSTEM** – Election of Vice President of the Board of Trustees for the Term Beginning May 8, 2020. President Parker opened the floor for nominations for the office of Vice President of the Board. Vice President Ford Dye nominated Trustee Walt Starr for the position. There being no further nominations, the nominations were closed. On motion by Trustee McNair, seconded by Trustee Lamar, with Trustee Duff absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted to close the nominations.

On motion by Trustee Dye, seconded by Trustee Lamar, with Trustee Duff absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted in the affirmative, therefore, it was

**RESOLVED**, that Trustee Walt Starr was elected as Vice President of the Board beginning May 8, 2020.

2. **SYSTEM** – Approved the appointment of Trustee Jeanne Luckey as the IHL Board’s representative to the Mississippi Authority for Educational Television A.K.A. Mississippi Public Broadcasting (MPB) Board pending approval by the Senate at its next Legislative session. On May 16, 2019, the IHL Board appointed Dr. William Bynum, President of Jackson State University, to serve as the representative. Dr. Bynum resigned as president. Trustee Luckey will serve the remainder of the term which is February 20, 2020 through June 30, 2023.
INFORMATION AGENDAS
Presented by Commissioner Alfred Rankins, Jr.

FINANCE
1. **UM** - The Mississippi Information Technology Services (MS-ITS) approved Amendment 1 to the Supplement to the Master License and Application Service Provider Agreement with Blackboard, Inc. on behalf of the University of Mississippi (UM). The Attorney General’s staff assigned to MS-ITS reviewed the amendment prior to execution. The agreement and related amendment are between Blackboard, Inc. and MS-ITS behalf of UM.

2. **UMMC** - The Mississippi Information Technology Services (MS-ITS) approved Amendment 13 to the Master Services and License Agreement with OptumInsight, Inc. on behalf of the University of Mississippi Medical Center (UMMC). The purpose of Amendment 13 is to purchase the use of the Current Procedure (CPT) Codes with RVU Subscription data files, the Revenue Code Crosswalk Files, and the HCPCS Dental Subscription files. All of the items are used in the processing and coding of medical and dental claims. The Attorney General’s staff assigned to the MS-ITS reviewed the amendment prior to execution. The Agreement and related amendment are between OptumInsight, Inc. and MS-ITS on behalf of UMMC.

3. **UMMC** - The Mississippi Information Technology Services (MS-ITS) approved Order Forms 00174305.0 and 00197157.0 under the Master Subscription Agreement with Workday, Inc. on behalf of the University of Mississippi Medical Center (UMMC). The purpose of Order Form 00174305.0 is for two (2) deployment tenants and Order Form 00197157.0 is for the purchase of training credits. The Attorney General’s staff assigned to the MS-ITS reviewed the Order Forms prior to approval. The agreement and related order forms are between Workday, Inc. and MS-ITS on behalf of UMMC.

REAL ESTATE
4. **SYSTEM** – The Board received the Real Estate items that were approved by the Board staff subsequent to the January 16, 2020 Board meeting in accordance with Board Policy 904 Board Approval. *(See Exhibit 1.)*

LEGAL
5. **SYSTEM** – The Board received a report of the payment of legal fees to outside counsel. *(See Exhibit 2.)*

ADMINISTRATION/POLICY
6. **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. **MSU** – On January 30, 2020, Commissioner Alfred Rankins, Jr. approved the Lease Amendment between Mississippi State University and the Mississippi Department of Agriculture and Commerce (MDAC). This is the renewal of an existing lease that originated June 3, 2015 with one previous extension. The MDAC is leasing from MSU office and laboratory space at the MSU Delta
Research and Extension Center in Greenville, MS at which to house MDAC’s Weights and Measures Division employee. The term of this renewal period is two years from July 1, 2020 through June 30, 2022 at the original rate of $225 per month. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts.

b. **MVSU** – On January 16, 2020, Commissioner Alfred Rankins, Jr. approved the Lease Agreement between Mississippi Valley State University and Rashad Spurlock for space within the Jacob Aron Student Center in which to offer licensed beautician/barber services. The term of the lease is four months to begin January 15, 2020 and end May 15, 2020 for $125 per month due on or before the first day of each month. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts.

c. **UM** – On January 30, 2020, Commissioner Alfred Rankins, Jr. approved the Facility Use Agreement between the University of Mississippi’s Institute for Public Service and Community Engagement and the Vicksburg Convention Center for use of facility space in which to hold the Mississippi Entrepreneurship Forum scheduled for April 2-3, 2020. The total cost of the agreement is $2,007 and is due in advance. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts and with Board Policy 707.03 Approval of Prepayment for Goods or Services.

d. **UM** – On January 30, 2020, Commissioner Alfred Rankins, Jr. approved the equipment and rental agreement between the University of Mississippi’s Athletics Department and DVSport, Inc. for an HD Instant Replay System. The rental cost for the equipment is $1,500 for a period of one year from July 1, 2019 through June 30, 2020. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts.

e. **SYSTEM** – On January 8, 2020, Commissioner Alfred Rankins, Jr. reviewed and approved the FY 19 Q4 and FY 20 Q1 Quarterly Employment Reports which list all hires and all separations for the periods beginning April 1, 2019 through June 30, 2019, and July 1, 2019 through September 30, 2019, respectively. These reports are required by Board Policies 401.0102 Delegation of Authority and 801.09 Resignations. The Executive Office financial staff has reviewed and approved the institutions’ submissions. A copy of these reports will be maintained in the IHL Department of Finance and Administration.

f. **SYSTEM** – In accordance with Board Policy 401.0103 Salaries and Compensation, each institution is required to submit an annual report of the additional compensation paid to selected employees. Additional compensation includes any institutional pay outside of an employee’s regular contract rate. This could include additional pay for items such as teaching overloads, performing additional duties, athletic camp service, etc. On January 17, 2020, Commissioner Alfred Rankins, Jr.
approved the submitted report for fiscal year 2019. The Executive Office financial staff has reviewed and approved the institutions’ submissions. A copy of the report will be maintained in the IHL Department of Finance and Administration for review.

**g. SYSTEM** - In accordance with Board Policy 702.03 Approval of Tuition, Fees, and Other Student Charges, each institution is required to submit a report of their annual participation/optional fees to the Board through guidelines established by the Commissioner’s Office. Participation/Optional Fees are defined in Board Policy 702.02 Definitions “as assessments for supplies, activities, or services made available to students or as fines for misconduct, violation of institutional policy, or violation of contractual agreements”. The fees became effective July 1, 2019 and remain in effect throughout the fiscal year ending June 30, 2020. On January 17, 2020, Commissioner Alfred Rankins, Jr. approved the FY 2020 Participation and Optional Fees Report. The Executive Office financial staff has reviewed and approved the institutions’ submissions. A copy of this report will be maintained in the IHL Department of Finance and Administration.

**h. SYSTEM** – In accordance with Board Policy 703.04 Institutional Scholarships, Tuition Waivers and Fellowships Subsection F Policy Guidelines, each institution is required to submit an annual summary of actual expended E&G Scholarships, Fellowships and Tuition Waivers for the past fiscal year. Included in this presentation would be a summary of the actual E&G student aid expenditures by financial aid category as well as the number of category award recipients. On January 17, 2020, Commissioner Alfred Rankins, Jr. reviewed and approved the FY 2019 presentation. The Executive Office financial staff has reviewed and approved the institutions’ submissions. A copy of this presentation will be maintained in the IHL Department of Finance and Administration.

REAL ESTATE
COMMITTEE REPORT
Wednesday, February 19, 2020

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

1. The Committee received a presentation by Dr. Rodney Bennett, President of the University of Southern Mississippi, about alternative energy management models. **No action was taken.**

2. By consensus, the Committee adjourned.

The following Committee members were present: Bruce Martin (Chair) (by phone), Dr. Steven Cunningham, Dr. Ford Dye, and Ms. Jeanne Luckey. Committee member Tom Duff was absent.
HEALTH AFFAIRS
COMMITTEE REPORT
Wednesday, February 19, 2020

The meeting was called to order by Chairman Walt Starr at approximately 3:00 p.m. The following items were discussed.

1. The Committee discussed the following topics: graduate studies, monthly financial summary; Strategic Plan Retreat, and quality/patient experience. No action was taken.

2. Executive Session
   On motion by Trustee McNair, all Committee members legally present and participating voted unanimously to close the meeting to determine whether to declare an Executive Session. On motion by Trustee Cunningham, seconded by Trustee McNair, all Committee members legally present and participating voted unanimously to enter Executive Session for the reasons reported to the public and stated in these minutes, as follows:
   - Discussion of strategic business plans related to a public hospital.
   - Discussion of expense management initiatives.
   - Discussion of unfunded/underfunded mandate.

   During Executive Session, the following matters were discussed:
   The Committee discussed the strategic business plans related to a public hospital, expense management initiatives, and unfunded/underfunded mandate. No action was taken.

   On motion by Trustee Morgan, seconded by Trustee McNair, all Committee members legally present and participating voted unanimously to return to open session.

3. By consensus, the Committee adjourned.

The following Committee members were present: Dr. Walt Starr (Chair), Dr. Ford Dye, Ms. Ann Lamar, Dr. Alfred McNair, Mr. Chip Morgan, and Mr. Gee Ogletree.

ANNOUNCEMENTS

- Commissioner Rankins announced that Dr. Mark Keenum, President of Mississippi State University, recently received the Chief Executive Leadership Award from the Council for Advancement and Support of Education, District III, at their conference held recently in Orlando. He was presented the honor based on his outstanding leadership, groundbreaking innovation and insight as a committed leader among universities, colleges and schools. The Board joined the Commissioner in congratulating Dr. Keenum.
- Commissioner Rankins extended condolences on behalf of the IHL Board and the system to the entire family of Alcorn State University and the family of the young men who lost their lives earlier this week.
- Commissioner Rankins welcomed Mr. Thomas Hudson as the Acting President of Jackson State University and thanked him for his willingness to serve.
- Trustee Walt Starr offered condolences on behalf of the IHL Board to the family of the Delta State University student who lost his life earlier this week and to the Delta State community.
• President Hal Parker noted that the next Board meeting will be March 19, 2020 at the Board Office in Jackson, MS.

EXECUTIVE SESSION

On motion by Trustee Hooper, with Trustee Duff absent and not voting and Trustee Martin participating by phone, 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 McNair, with Trustee Duff absent and not voting and Trustee Martin participating by phone, all Trustees legally present and participating voted unanimously to enter Executive Session for the reasons reported to the public and stated in these minutes, as follows:

Discussion of a personnel matter at Delta State University.
Discussion of a personnel matter at Jackson State University.
Discussion of a personnel matter at the IHL Board Office.

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

The Board discussed a personnel matter at Delta State University. No action was taken.

The Board discussed a personnel matter at Jackson State University. No action was taken.

The Board discussed a personnel matter at the IHL Board Office. No action was taken.

On motion by Trustee McNair, seconded by Trustee Hooper, with Trustee Duff absent and not voting and Trustee Martin participating by phone, 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 Luckey, seconded by Trustee Cunningham, with Trustee Duff and Martin 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

<table>
<thead>
<tr>
<th>Exhibit 1</th>
<th>Real Estate items that were approved by the IHL Board staff subsequent to the January 16, 2020 Board meeting.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit 2</td>
<td>Report of the payment of legal fees to outside counsel.</td>
</tr>
</tbody>
</table>
SYSTEM: REAL ESTATE ITEMS APPROVED SUBSEQUENT TO THE JANUARY 16, 2020 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 101-310 – New Faculty and Staff Housing**
   NOTE: This is a Bureau of Building project
   Approval Request #1: Change Order #2
   Board staff approved Change Order #2 in the credit amount of $906.80 and six (6) additional days to the contract of Ergon Construction Group. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.
   Approval Status & Date: APPROVED, January 15, 2020
   Change Order Description: Change Order #2 includes the following item: credit issued to change the underground electric bore service to add a sewer force main overhead service; added rain guards at twelve (12) exterior doors; installed additional fire sprinkler heads; and six (6) days to the contract.
   Change Order Justification: These changes were necessary due to changes in requirements made by the utility company; user/owner requested modifications and weather-related delays.
   Total Project Change Orders and Amount: Two (2) change orders for a total amount of $4,451.20.
   Project Initiation Date: April 20, 2017
   Design Professional: Architecture South, P.A.
   General Contractor: Ergon Construction Group
   Total Project Budget: $10,000,000.00

JACKSON STATE UNIVERSITY

2. **JSU– GS 103-286 – Stewart Renovation**
   NOTE: This is a Bureau of Building project
   Approval Request #1: Change Order #4
   
   Page 1 of 6
Board staff approved Change Order #4 in the amount of $6,772.66 and zero (0) additional days to the contract of Diversified Construction Services, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date: APPROVED, January 16, 2020

Change Order Description: Change Order #4 includes the following items: credit issued for difference in electronic hardware allowance; modifications to the concrete masonry unit in four (4) window openings; modifications to a wall at existing door frames with varying heights; provided furr-downs at three (3) locations under existing beams; and changes in the laundry room to accommodate the new dryers.

Change Order Justification: These changes were necessary due to changes in requirements or recommendations by governmental agencies and latent job site conditions.

Total Project Change Orders and Amount: Four (4) change orders for a total amount of $142,083.85.

Project Initiation Date: November 17, 2016

Design Professional: Foil Wyatt Architects & Planners, PLLC

General Contractor: Diversified Construction Services, Inc.

Total Project Budget: $8,486,526.47

MISSISSIPPI STATE UNIVERSITY

3. **MSU– GS 105-355 – Engineering & Science Complex**

   **NOTE:** This is a Bureau of Building project

   **Approval Request #1: Change Order #5**

   Board staff approved Change Order #5 in the amount of $11,365.36 and zero (0) 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, January 27, 2020

   Change Order Description: Change Order #5 includes the following items: added an American Disabilities Act ramp on Morrill Road; provided an MSU campus standard site sign in lieu of exterior metal letters; provided credit of revisions to the wood lab casework; deleted and revised the site masonry walls; revisions made to the mechanical, electrical and wall enclosures to the environmental chambers; added an ice maker wall box and plumbing connections for the ice maker in the general chemistry storage & prep labs; provided double wall ductwork in lieu of single wall ductwork in the student projects room; deleted the specified hardware sets for various doors; revised the details for a curtain wall window type.

   Change Order Justification: These changes were necessary due to errors and omissions in the plans and specifications; and user/owner requested modifications.

   Total Project Change Orders and Amount: Five (5) change orders for a total amount of $996,157.28.

   Project Initiation Date: June 18, 2015

   Design Professional: Eley guild Hardy Architects – Jackson, P.A.

   General Contractor: West Brothers Construction, Inc.
4. **MSU- IHL 205-260– Expansion & Renovation to Davis Wade Stadium**
   
   **Approval Request #1: Change Order #7**
   
   Board staff approved Change Order #7 in the amount of $262,164.00 and zero (0) additional days to the contract of Harrell Contracting Group, LLC.
   
   **Approval Status & Date:** APPROVED, January 13, 2020
   
   **Change Order Description:** Change Order #7 includes the following items: work done on guardrails; additional paving work done; added an additional power connection; provided tactile warming strips; installed scuppers in lieu of roof drains at the main concourse; elevator work was performed to meet code requirements; doors replaced in two (2) suites; repaired glass in a stairway; cleanup of additional debris done; added a Nana wall sill plan flashing for leaks; and painted stair tower #2 fascia.
   
   **Justification:** This change was necessary due to user/owner requested modifications.
   
   **Total Project Change Orders and Amount:** Seven (7) change orders for a total amount of $3,768,289.27.
   
   **Project Initiation Date:** May 19, 2011
   
   **Design Professional:** LPK Architects, P.A.
   
   **General Contractor:** Harrell Contracting Group, LLC
   
   **Phased Project Budget:** $78,555,762.88
   
   **Total Project Budget:** $80,000,000.00

5. **MSU– IHL 205-301 – Music Building**
   
   **Approval Request #1 (INTERIM):** In accordance with Board Policy §904 (B) Board Approval, *Interim Chair Approval* was granted by Mr. Bruce Martin, Chair of the Real Estate and Facilities Committee on February 7, 2020 to approve the budget increase on the Music Building project from $17,000,000.00 to $21,000,000.00, for an increase of $4,000,000.00.
   
   **Interim Approval Status & Date:** APPROVED, February 7, 2020
   
   **Project Initiation Date:** May 18, 2017
   
   **Design Professional:** Allred Stolarski Architects
   
   **General Contractor:** TBD
   
   **Total Project Budget:** $21,000,000.00

6. **MSU- Storm Drainage Salvage Timber Sale**
   
   **Approval Request #1 (INTERIM):** In accordance with Board Policy §904 (B) Board Approval, *Interim Chair Approval* was granted by Mr. Bruce Martin, Chair of the Real Estate and Facilities Committee on February 7, 2020 to approve the request to sell timber that was damaged by a storm on the Brown Loam Experiment Station. The total sale will be approximately 20 acres and the revenue generated will aid in cleaning up the non-merchantable trees and repairing the fences damaged by the storm.
   
   **Interim Approval Status & Date:** APPROVED, February 7, 2020
MISSISSIPPI UNIVERSITY FOR WOMEN

7. **MUW- GS 104-192– Demolition of Taylor and Keirn Hall**

   NOTE: This is a Bureau of Building project

   **Approval Request #1: Change Order #1**

   Board staff approved Change Order #1 in the amount of $280,000.00 and fifty-five (55) additional days to the contract of M&M Services, Inc.

   **Approval Status & Date:** APPROVED, February 6, 2020

   **Change Order Description:** Change Order #1 includes the following items: installed approximately 430 feet temporary natural gas pipe; the temporary 2-inch service was cased in a 4-inch sleeve within the north perimeter fencing; omitted approximately 430 feet of the 2-inch polypropylene gas pipe south of the west tie-in that is no longer required for building services; installed the work as described in alternate #1 for soil excavation, removal and placement, associated with a future building; pricing to remain as originally bid; and thirty (30) days to the contract.

   **Change Order Justification:** These changes were necessary due to changes in requirements or recommendations by governmental agencies; errors and omissions in the plans and specifications; and for work as indicated herein.

   **Total Project Change Orders and Amount:** One (1) change order for a total amount of $280,000.00.

   **Project Initiation Date:** March 21, 2019

   **Design Professional:** JBHM Architects, P.A.

   **General Contractor:** M&M Services, Inc.

   **Total Project Budget:** $2,900,000.00

UNIVERSITY OF MISSISSIPPI

8. **UM – GS 107-317 – Johnson Commons East Renovation**

   **Approval Request #1: Change Order #5**

   Board staff approved Change Order #5 in the amount of $37,085.25 and one hundred four (104) additional days to the contract of Legacy Construction Services.

   **Approval Status & Date:** APPROVED, January 10, 2020

   **Change Order Description:** Change Order #5 includes the following items: installed power and controls to the smoke dampers; added wiring of speakers and revised the speaker type in the ballroom; installed floor leveling material at the first floor; revisions made to the projection screen at the ballroom; revisions made to the acoustical panels; provided additional room signs; added a steel angle under the base if of the stair stringer; blanking off of the electrical covers behind two (2) markerboards was done; cast stone stair tread replaced at the south portico; railing was replaced at the north stairs; added two (2) additional storm drain inlets at the north side; installed valences for the blackout shades at the ballroom and banquet rooms; applied a special mineral stain on the limestone; revisions made to the site lighting pole base; and one hundred four (104) days to the contract.
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Change Order Justification: These changes were necessary due to errors and omissions in the plans and specifications; latent job site conditions; user/owner requested modifications; seventeen weather-related days and days for work as indicated herein.
Total Project Change Orders and Amount: Five (5) change orders for a total amount of $401,333.51.
Project Initiation Date: November 15, 2012
Design Professional: Belinda Stewart Architects, P.A.
General Contractor: Legacy Construction Services
Total Project Budget: $8,745,000.00

9. **UM – IHL 207-428 – East Campus Electrical Modifications**
   Approval Request #1: Change Order #6
   Board staff approved Change Order #6 in the amount of $0.0 and one hundred eighty (180) additional days to the contract of McInnis Electric Co.
   Approval Status & Date: APPROVED, January 10, 2020
   Change Order Description: Change Order #6 includes the following items: nineteen (19) weather related days plus one hundred sixty (161) days to the contract.
   Change Order Justification: These changes were necessary due to latent jobsite conditions, weather-related delays and user/owner requested modifications for work as indicated herein.
   Total Project Change Orders and Amount: Six (6) change orders for a total amount of $290,971.78.
   Project Initiation Date: June 1, 2017
   Design Professional: Corbett Legge & Associates, PLLC
   General Contractor: McInnis Electric Co.
   Total Project Budget: $2,220,000.00

10. **UM – IHL 207-446.1 – Crosby Hall Exterior Brick Investigative Demolition**
    Approval Request #1: Award of Construction Contract
    Board staff approved the Award of Contract in the amount of $264,941.00 to the apparent low bidder, Barnes & Brower, Inc.
    Approval Status & Date: APPROVED, January 27, 2020
    Project Initiation Date: November 15, 2018
    Design Professional: McCarty Architects
    General Contractor: Barnes & Brower, Inc.
    Phased Project Budget: $379,765.10
    Total Project Budget: $8,800,000.00

11. **UM - IHL #207-456- Brevard Hall 3rd Floor BioMed Department**
    Approval Request #1: Schematic Design Documents
    Board staff approved the Schematic Design Documents as submitted by McCarty Architects, P.A.
    Approval Status & Date: APPROVED, January 17, 2020
    Approval Request #2: Design Development Documents
Board staff approved the Design Development Documents as submitted by McCarty Architects, P.A.
Approval Status & Date: APPROVED, January 31, 2020
Project Initiation Date: August 15, 2019
Design Professional: McCarty Architects, P.A.
General Contractor: TBD
Total Project Budget: $1,300,000.00

12. UM - IHL #207-457- Track and Field Locker Rooms
Approval Request #2: Design Development Documents
Board staff approved the Design Development Documents as submitted by Weir Boerner Allin Architecture.
Approval Status & Date: APPROVED, January 15, 2020
Project Initiation Date: August 15, 2019
Design Professional: Weir Boerner Allin Architecture
General Contractor: TBD
Total Project Budget: $2,200,000.00

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

13. UMMC- IHL 209-559 – School of Population Health
Approval Request #1: Change Order #1
Board staff approved Change Order #1 in the amount of $121,032.72 and one hundred eight (108) additional days to the contract of Fountain Construction Company, Inc.
Approval Status & Date: APPROVED, January 15, 2020
Change Order Description: Change Order #1 includes the following items: added verge wash basins to the restrooms; modifications to the fire and smoke dampers; added blinds pockets; added two (2) receptacles to the reception desk; added an additional wireless access point location; added and relocated data outlets and receptacles; replaced and added fire alarm devices; credit issued for changing a door frame; prepped 2nd floor lobby for the memorial wall; added additional data and power receptacles; added a double arrow exit sign; added fire alarm strobe devices on fifth floor; modular furniture connections done; relocated feature wall power/data; sealed an opening in level six slab at the exhaust duct; added “Do Not Enter” signage inserts; added a fan to the existing energy recovery unit-1; and one hundred eight (108) days to the contract.
Change Order Justification: These changes were necessary due to 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: One (1) change order for a total amount of $121,032.72.
Project Initiation Date: June 15, 2017
Design Professional: Foil Wyatt Architects & Planners, PLLC
General Contractor: Fountain Construction Company, Inc.
Total Project Budget: $5,000,000.00
Legal fees approved for payment to outside counsel in relation to litigation and other matters:

Payment of legal fees for professional services rendered by Armstrong Law (statements dated 2/18/19 and 12/3/19) from the funds of Jackson State University. (These statements, in the amounts of $1,710.00 and $2,710.00, respectively, represent services and expenses in connection with immigration/labor certification.)

TOTAL DUE.................................................$ 4,420.00

Payment of legal fees for professional services rendered by Brunini, PLLC (statements dated 12/16/19 and 12/16/19) from the funds of Mississippi State University. (These statements, in the amounts of $4,562.50 and $3,142.49, represent services and expenses in connection with general legal advice.)

TOTAL DUE.................................................$ 7,704.99

Payment of legal fees for professional services rendered by the Winfield Law Firm (statements dated 12/19/19 and 12/19/19) from the funds of Mississippi State University. (These statements, in the amounts of $264.00 and $214.50, represent services and expenses in connection with legal advice.)

TOTAL DUE.................................................$ 478.50

Payment of legal fees for professional services rendered by Holland & Knight (statement dated 12/6/19) from the funds of the University of Mississippi. (This statement, in the amount of $1,260.00, represents services and expenses in connection with general legal advice.)

TOTAL DUE.................................................$ 1,260.00

Payment of legal fees for professional services rendered by Gore Kilpatrick & Dambrino, PLLC (statements dated 12/27/19, 12/27/19, 12/27/19 and 12/27/19) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $1,485.00, $594.00, $940.50 and $132.00, represent services and expenses in connection with legal advice.)

TOTAL DUE.................................................$ 3,151.50

Payment of legal fees for professional services rendered by Steen, Dalehite and Pace (statement dated 12/19/19) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $2,410.14, represents services and expenses in connection with legal advice.)

TOTAL DUE.................................................$ 2,410.14
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Payment of legal fees for professional services rendered by Watkins & Eager (statements dated 12/10/19, 12/10/19, 12/10/19, 12/30/19 and 12/30/19) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $1,424.50, $1,164.69, $412.50, $1,221.00 and $7,409.31, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE..........................$ 11,632.00

Payment of legal fees for professional services rendered by Whitfield Law Group (statements dated 12/19/19, 12/19/19, 12/19/19 and 12/20/19) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $2,530.50, $543.00, $825.00 and $2,539.50, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE..........................$ 6,438.00

Payment of legal fees for professional services rendered by Butler Snow (statement dated 12/5/19) from the funds of the University of Southern Mississippi. (This statement, in the amount of $2,595.00, represents services and expenses in connection with legal advice.)

TOTAL DUE..........................$ 2,595.00

Payment of legal fees for professional services rendered by Bryan, Nelson, Schroeder, Castigliola & Banahan (statement dated 12/10/19) from the funds of the University of Southern Mississippi. (This statement, in the amount of $4,610.70, represents services and expenses in connection with legal advice.)

TOTAL DUE..........................$ 4,610.70

Payment of legal fees for professional services rendered by Dornan Law Office, PLLC (statement dated 12/12/19) from the funds of the University of Southern Mississippi. (This statement, in the amount of $2,614.50, represents services and expenses in connection with legal advice.)

TOTAL DUE..........................$ 2,614.50

Payment of legal fees for professional services rendered by Wise Carter (statement dated 12/18/19) from the funds of the University of Southern Mississippi. (This statement, in the amount of $526.50, represents services and expenses in connection with legal advice.)

TOTAL DUE..........................$ 526.50

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

Reimbursement of expenses for professional services rendered by Larry Schemmel (statements dated 7/18/19 and 1/2/20) from the funds of Mississippi State University. (These statements
represent expenses incurred in connection with the following patents/trademarks: “MSU Interlocking MS Baseball (Logo) 5-year renewal” - $650.00; and “MSU Trademark Registration Application (Pawprint Logo)” - $225.00, respectively).

TOTAL DUE...........................................................................$ 875.00

Payment of legal fees for professional services rendered by Butler Snow (statements dated 3/7/19, 3/7/19, 3/7/19, 3/7/19, 3/29/19, 3/29/19, 3/29/19 and 12/16/19) from the funds of Mississippi State University. (These statements represent services and expenses in connection with the following patents: “High Power Density, Full-Bridge Parallel Loaded Resonant DC-DC Converter for Low-Voltage, High Current Applications” - $940.00; “Live Attenuated Edwardsiella Ictaluri Vaccine and Method of Using Same” - $3,597.50; “Therapeutics for Breathing Disorders” - $280.00; “Novel Oximes for Reactivating Butyrylcholinesterase” - $944.00; “Live Attenuated Edwardsiella Ictaluri Vaccine and Method of Using Same” - $858.00; “Vibrio Assay Methods and Kits - $910.50; and “Vibrio Assay Methods and Kits” - $825.00, respectively.)

TOTAL DUE...........................................................................$ 8,795.00

Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 12/17/19, 12/17/19 and 12/19/19) from the funds of Mississippi State University. (These statements represent services and expenses in connection with the following patents: “Unsymmetric CC-HNC Pincer Metal Complexes and Methods of Use Thereof” - $6,598.50; “Unsymmetric CC-HNC Pincer Metal Complexes and Methods of Use Thereof” - $867.62; and “Unsymmetric CC-HNC Pincer Metal Complexes and Methods of Use Thereof” - $3,594.00, respectively).

TOTAL DUE...........................................................................$ 11,060.12

Payment of legal fees for professional services rendered by Workman Nydegger (statements dated 11/25/19, 11/25/19 and 12/19/19) from the funds of the University of Mississippi. (These statements, in the amounts of $945.00, $50.00 and $245.00, respectively, represent services and expenses in connection with intellectual property patents.)

TOTAL DUE...........................................................................$ 1,240.00

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 12/12/17, 1/22/18 and 3/20/19) from the funds of the University of Southern Mississippi. (These statements represent services and expenses in connection with the following patents: “Covalent Attachment of Bacteriophages to Plymeric Surfaces” - $1,003.00; “Covalent Attachment of Bacteriophages to Plymeric Surfaces” - $590.00; and “Covalent Attachment of Bacteriophages to Plymeric Surfaces” - $1,745.00).

TOTAL DUE...........................................................................$ 3,338.00
1. **STATE – APPROVAL OF NON-SUBSTANTIVE CHANGE TO NURSING ACCREDITATION STANDARDS**

Board approval is requested for the following amendments to the State Specific Requirements of the Nursing Accreditation Standards. The standards have been edited for deletion of the GRE for graduate degree nursing programs; addition of C-NEA national nursing accrediting body; and clarification regarding fingerprinting, graduate student-to-faculty ratios, and expanded definition of preceptors.

**III. STANDARDS FOR ACCREDITATION**

The accrediting bodies for professional nursing education are Accreditation Commission for Education in Nursing (ACEN), Commission on Collegiate Nursing Education (CCNE) and the Commission for Nursing Education Accreditation (C-NEA).

**STANDARD II. FACULTY AND STAFF**

2. State Specific Requirements
   g. Preceptors (e.g. mentors, guides, coaches) shall be academically/experientially prepared at or beyond the level for which the preceptor service is rendered and shall have a minimum of one year experience.

**STANDARD III: STUDENTS**

2. State Specific Requirements
   a. Associate Degree Nursing Programs.
      3) All students must satisfy a criminal history background check with fingerprinting.
   b. Bachelor Degree Nursing Programs.
      5) All students must satisfy a criminal history background check with fingerprinting.
   c. Graduate Degree Nursing Programs.
      Minimum admission criteria for graduate degree nursing programs (MSN & DNP) are as follows:
      1) An analytic score of at least 3.0 on the Graduate Records Exam (GRE).
      5) All students must satisfy a criminal history background check with fingerprinting.

**STANDARD IV: CURRICULUM**

2. State Specific Requirements
   b. Graduate student-to-faculty ratios must be:
      1. No more than 15 to 1 for total enrollment.
      2. No more than 15 to 1 in graduate clinical courses (non-APRN courses).
      3. No more than 2 to 1 for advanced practice registered nurse (APRN) clinical courses that require direct supervision.
4. No more than 6 to 1 for advanced practice registered nurse (APRN) clinical courses that do not require direct supervision (i.e. precepted experiences).

Board approval is requested for the following new academic units, modifications to academic units, new degree programs, and modifications to degree programs. Chief Academic Officers have reviewed and recommend approval of these requests.

2. SYSTEM – APPROVAL OF NEW ACADEMIC UNITS
A. CENTERS AND INSTITUTES
   1. MSU - Research Institute for Sport Convergence (RISC)
      Unit location: College of Education
      Total number of faculty: 7
      Total number of new faculty: 1
      Total number of staff: 0
      Total number of new staff: 0
      Six-year cost of implementation: $1,658,000 from internal and external sources
      Effective date: April 2020
      Rationale: The establishment of RISC will not only help promote the values and goals of the university, but also support the Department of Kinesiology in its quest to becoming a premier program with an excellent reputation both domestically and internationally.

   2. UM - Institute for Data Science (IDS)
      Unit location: University of Mississippi (Oxford campus)
      Total number of faculty: 10 to 20 faculty will contribute expertise to IDS
      Total number of new faculty: 0
      Total number of staff: 3
      Total number of new staff: 3
      Six-year cost of implementation: $4,000,000 from external funding sources
      Effective date: May 2020
      Rationale: The proposed IDS at UM will attract, retain, develop, and apply expertise to ethically apply data science to advance knowledge, enable enterprise, and improve society. The proposed IDS will help to meet the demand for data scientists, data analysts, and data-savvy professionals in a variety of disciplines and industries.

   3. UM - The University of Mississippi Community First Research Center for Wellbeing and Creative Achievement (UM: C.R.E.W.)
      Unit location: University of Mississippi
      Total number of faculty: 2
      Total number of new faculty: 0
      Total number of staff: 4
      Total number of new staff: 4
      Six-year cost of implementation: $2,020,368
      Effective date: April 2020
Rationale: The UM C.R.E.W. will empower Mississippi communities to create and to use evidence and the arts to improve all aspects of community wellbeing, and will increase the capacity of these communities around the state to engage with faculty and staff of UM as equal partners of interdisciplinary research initiatives that are competitive for large external funding opportunities.

4. **USM - Center for Molecular and Cellular Biosciences (CMCB)**
   Unit location: College of Arts and Sciences
   Total number of faculty: 16 (10 associate faculty from 3 different schools)
   Total number of new faculty: Additional new faculty as hired by schools in discipline
   Total number of staff: 1
   Total number of new staff: 1
   Six-year cost of implementation: $511,264 from external grant funding
   Effective date: April 2020
   Rationale: As a newly designated R1 research intensive institution, it is critical to build areas of strength that will enhance the visibility of research enterprise at USM by obtaining more research grants, publishing more high-quality research articles, and providing high quality education and research to undergraduate and graduate students. The proposed center will be built upon our existing strength in elucidating fundamental biological questions at the molecular and cellular levels, developing biotechnology avenues via genetic engineering and structure-based design.

5. **USM - Institute for Advanced Analytics and Security (IAAS)**
   Unit location: College of Arts and Sciences
   Total number of faculty: 4
   Total number of new faculty: 0
   Total number of staff: 1
   Total number of new staff: 0
   Six-year cost of implementation: $564,184 from external funding and returns from intellectual property. Minimal costs to state.
   Effective date: March 2020
   Rationale: The terms “Big Data” and “Analytics” have become part of the modern vocabulary both inside academic and out. The analytic techniques, and Big Data itself, are subject-agnostic, with particular techniques and models useful across domains, including security. Creating a group focused specifically on the development of these techniques, as well as their implementation for various security applications, will allow for increased academic production, potential licensing and grant opportunities, and curriculum development.
3. SYSTEM – APPROVAL OF MODIFICATIONS TO EXISTING ACADEMIC UNITS

A. RENAMING

1. **MUW** – Current Unit Title: Psychology and Family Studies
   Proposed Unit Title: **Psychology and Family Science**
   Six-year cost of implementation: No change to operating costs
   Effective date: July 2020
   Rationale: To reflect a discipline-wide program renaming trend.

2. **UM** – Current Unit Title: Center for Biomechanics, Device, Design, and Diagnostics
   Proposed Unit Title: **Center for Diagnostics, Design, Devices, and Biomechanics**
   Six-year cost of implementation: No change to operating costs
   Effective date: April 2020
   Rationale: The proposed title change uses the same words but in an order that better reflects the order of work to be accomplished in the center.

3. **UM** - Current Unit Title: Department of Electrical Engineering
   Proposed Unit Title: **Department of Electrical and Computer Engineering**
   Six-year cost of implementation: No change to operating costs
   Effective date: August 2020
   Rationale: The department started offering a new program in computer engineering in fall 2019. The new name succinctly conveys the information that both electrical engineering and computer engineering programs are offered by the department.

4. **UMMC** – Current Unit Title: Department of Otolaryngology and Communicative Sciences
   Proposed Unit Title: **Department of Otolaryngology- Head and Neck Surgery**
   Six-year cost of implementation: $3,000
   Effective date: April 2020
   Rationale: The specialty group, American Board of Medical Specialties, officially changed the name of the discipline. Changing the department name will maintain consistency with national norms at other academic medical centers.

B. REORGANIZATION

1. **MUW** - Current Unit Titles: Division of Education and Outreach; College of Arts, Sciences, and Education
   Proposed Unit Titles: **School of Education; College of Arts and Sciences**
   Six-year cost of implementation: $8,000 per year
   Effective date: July 2020
Rationale: The Division of Education and Outreach (reporting to the College of Arts, Sciences, and Education) will be reorganized into the School of Education (reporting to the Provost/VPAA). With the movement of the education program outside the College, the proposal also requests that the College of Arts, Sciences, and Education be returned to its original name, College of Arts and Sciences. The School of Education will consist of the (a) Department of Education, (b) Office for Outreach and Innovation, (c) Child/Parent Development Center, (d) Mississippi Governor’s School, (e) Summer Discovery, and (f) Complete2Compete. No additional staff will be needed.

4. SYSTEM – APPROVAL OF NEW ACADEMIC DEGREE PROGRAMS

A. UM – Master of Science (MS) in Athletic Training
   CIP code: 51.0913
   Total credit hours: 64
   Effective date: August 2021
   Incremental, six-year cost of implementation: $2,435,970
   Potential six-year, new revenue: $4,684,433
   Institution(s) offering similar program(s): USM
   Rationale: Needs assessment shows there is a gap in Athletic Trainers and general health care coverage of local high schools and clinics in the state of Mississippi.
   Number of students expected to enroll in first six years: 140
   Number of students expected to graduate in first six years: 98
   National supply and demand: Employment of athletic trainers is projected to grow 23% from 2016 to 2026. (source: Mississippi Department of Employment Security)
   Median wage: $47,920 (source: MDES)

B. UM – Bachelor of Fine Arts (BFA) in Film Production
   CIP code: 50.0602
   Total credit hours: 120
   Incremental, six-year cost of implementation: $360,000
   Potential six-year, new revenue: $4,782,516
   Effective date: August 2020
   Institution(s) offering similar program(s): No universities in Mississippi currently offer a BFA in Film Production
   Rationale: This intensive, four-year program includes a strong foundation in the fundamentals of filmmaking to prepare graduates to enter the fast-growing entertainment and media industries.
   Number of students expected to enroll in first six years: 272
   Number of students expected to graduate in first six years: 44
   National supply and demand: Employment in this area is projected to grow 11% from 2018 to 2028. (source: MDES)
C. USM – Master of Science in Athletic Training (MSAT)
   CIP code: 51.0913
   Total credit hours: 70
   Incremental, six-year cost of implementation: $2,457,054
   Potential six-year, new revenue: $3,627,210
   Effective date: May 2021
   Institution(s) offering similar program(s): Currently, no other institutions in MS offer a Bachelor’s or Master’s degree in Athletic Training
   Rationale: USM has offered the baccalaureate-level Athletic Training program but is proposing the new master’s level program will become the minimum professional degree level after the start of the fall term 2022.
   Number of students expected to enroll in first six years: 66
   Number of students expected to graduate in first six years: 45
   National supply and demand: Employment of athletic trainers is projected to grow 23% from 2016 to 2026. (source: MDES)
   Median wage: $47,920 (source: MDES)

D. USM – Master of Science (MS) in Biomedical Sciences
   CIP code: 26.0102
   Total credit hours: 30
   Incremental, six-year cost of implementation: $495,836
   Potential six-year, new revenue: $924,350
   Effective date: April 2020
   Institution(s) offering similar program(s): UMMC, Mississippi College, William Carey University
   Rationale: The accelerated, non-thesis MS in Biomedical Sciences will prepare students for professional careers in the medical field, doctoral studies, K12 or community college teaching careers, and a variety of other professions. No additional human or physical resources are required to implement this degree program until increasing demand warrants it.
   Outcome assessment: Effectiveness of this program will be determined by the number of successful admissions to medical or related professional schools, which is the core focus of the degree.
   Number of students expected to enroll in first six years: 95
   Number of students expected to graduate in first six years: 76

E. USM – Master of Science (MS) in Environmental Science
   CIP code: 03.0104
   Total credit hours: 36
   Incremental, six-year cost of implementation: $835,056
   Potential six-year, new revenue: $1,751,400
   Effective date: April 2020
   Institution(s) offering similar program(s): None
Rationale: The accelerated, non-thesis MS in Environmental Science will prepare students for professional careers in the field of environmental science, doctoral studies, community college teaching careers, and a variety of other professions. No additional human or physical resources are required to implement this degree program until increasing demand warrants it. Outcome assessment: Effectiveness of this program will be determined by the placement of graduates in environmental science related jobs or those graduates who move onto further graduate education.

Number of students expected to enroll in first six years: 105
Number of students expected to graduate in first six years: 84
National supply and demand: Employment in this area is projected to grow 8% from 2018 to 2028. (source: US BLS)
Median wage: $71,130 (source: US BLS)

5. SYSTEM – APPROVAL OF MODIFICATIONS TO EXISTING ACADEMIC DEGREE PROGRAMS
A. RENAMING
1. DSU – Current Program Title: Social Science Education BSE
   Proposed Program Title: Social Studies Education BSE
   Current CIP Code, Sequence: 13.1317, 5097
   Proposed CIP Code: 13.1318
   Total credit hours: 122
   Effective date: August 2020
   Rationale: The request to change the program name is necessary to remain in compliance with the Council for the Accreditation of Educator Preparation (CAEP) Standards. Per CAEP, the program name must align with the Mississippi Department of Education’s licensure program names, which is “Social Studies” and not “Social Science.” The proposed CIP code change aligns with the title change as 13.1317 is “Social Science Teacher Education” and 13.1318 is “Social Studies Teacher Education.”

2. MSU – Current Program Title: Veterinary Medical Sciences MS
   Proposed Program Title: Veterinary and Biomedical Sciences MS
   Current CIP Code, Sequence: 51.2505, 4135 (no change requested)
   Total credit hours: 30
   Effective date: April 2020
   Rationale: This program educates MS students to enable them to contribute to research and compete for positions in various areas of veterinary medical sciences. However, many of the research areas at the College of Veterinary Medicine can also apply to general biomedical research.

3. MSU – Current Program Title: Veterinary Medical Sciences PhD
   Proposed Program Title: Veterinary and Biomedical Sciences PhD
   Current CIP Code, Sequence: 51.2505, 1018 (no change requested)
   Total credit hours: 90 (or MS + 60)
Effective date: April 2020
Rationale: This program educates PhD students to enable them to contribute to research and compete for positions in various areas of veterinary medical sciences. However, many of the research areas at the College of Veterinary Medicine can also apply to general biomedical research.

4. **MUW** – Current Program Title: Family Studies BS
   Proposed Program Title: **Family Science BS**
   Current CIP Code, Sequence: 19.0704, 5744
   Proposed CIP Code, Sequence: 19.0101
   Total credit hours: 120
   Effective date: July 2020
   Rationale: The National Council on Family Relations Certified Family Life Educator program has been promoting changing the name of our discipline on a national level from family studies to family science since 2013. The name change emphasizes the scientific nature of the discipline and reflects what Certified Family Life Educators do in practice.

5. **MUW** – Current Program Title: Bachelor of Arts (BA) in Political Science
   Proposed Program Title: **Bachelor of Science (BS) in Political Science**
   Current CIP Code, Sequence: 45.1001, 5705 (no change requested)
   Total credit hours: 120
   Effective date: July 2020
   Rationale: By moving the Political Science major from a BA to BS, students in the program will be more likely to complete the general education requirements, major requirements, and a minor within four years; transfer students can complete the major and a minor within two years. The change will also enable the creation of program concentrations tailored to student career goals. Additionally, this will allow MUW to more fully align the Political Science program with the contemporary state of the field and political science research.

6. **UM** – Current Program Title: Managerial Finance BBA
   Proposed Program Title: **Finance BBA**
   Current CIP Code, Sequence: 52.0801, 5406 (no change requested)
   Total credit hours: 120
   Effective date: August 2020
   Rationale: The proposed name change is more representative of the program’s general finance curriculum. Managerial finance is one area of study in finance, but the study of finance is very diverse.
7. **UMMC** – Current Program Title: Health Sciences BS  
   Proposed Program Title: **Bachelor of Science in Health Systems Administration (BSHSA)**  
   Current CIP Code, Sequence: 51.9999, 5769  
   Proposed CIP Code: 51.0701  
   Total credit hours: 120  
   Effective date: May 2021  
   Rationale: Changing the program name from Health Sciences to Health Systems Administration will more appropriately reflect current trends within health care and allow the program to be competitive with other programs nationally.

8. **UMMC** – Current Program Title: Master of Health Sciences (MHS)  
   Proposed Program Title: **Master of Health Systems Administration (MHSA)**  
   Current CIP Code, Sequence: 51.0701, 4549 (no change requested)  
   Total credit hours: 36  
   Effective date: May 2021  
   Rationale: Changing the program name from Health Sciences to Health Systems Administration will more appropriately reflect current trends within health care and allow the program to be competitive with other programs nationally.

**STAFF RECOMMENDATION:** Board staff recommends approval of items 1-5.
1. **IHL EXECUTIVE OFFICE – REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH LEON CONSULTING, LLC DBA LK MARKETING SERVICES**

   **Agenda Item Request:** The Executive Office request approval to enter into an agreement with Leon Consulting, LLC dba LK Marketing Services for the systems’ management, integrated marketing strategy, call center supervision general support and reporting for Mississippi’s Complete 2 Compete initiative.

   **Contractor’s Legal Name:** Leon Consulting, LLC dba LK Marketing Services (LK)

   **History of Contract:** In April 2017, the Board approved a three (3) year agreement between the IHL Executive Office and Leon Consulting, LLC dba LK Marketing Services for the purpose of providing the program management, marketing and system services for Mississippi’s Complete 2 Compete initiative. The total approved cost was $1,334,181. In May 2019, the Board approved an amended to increase the total expenditure amount to $1,750,000. In January 2020, the Board approved an amendment to increase the total expenditure amount to $1,816,164 through March 31, 2020 to continue services while proposals from a new RFP were being accepted and a new agreement awarded.

   In December 2019, a new RFP was released to provide services to sustain Mississippi’s Complete 2 Compete initiative. Leon Consulting, LLC dba LK Marketing Services was the only proposal received.

   **Specific Type of Contract:** Professional services contract.

   **Purpose:** The purpose of this request is to provide systems’ management, integrated marketing strategy, call center supervision general support and reporting for Mississippi’s Complete 2 Compete initiative.

   **Scope of Work:** The services are to support IHL along with the Mississippi Community College Board, the 8 public universities and the 15 community/junior colleges with the services needed to sustain the Complete 2 Compete initiative.

   **Term of Contract:** The initial term of the agreement is March 19, 2020 through September 30, 2020, with the option to renewal for up to four additional one-year terms through September 30, 2024. At the time of each renewal, proposal prices and scope may be revised as needed for changes in project. Approval is requested for the full-term beginning March 19, 2020 and ending September 30, 2024.

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

   - by either party upon 10 days written notice;
   - by IHL for non-availability of funds; and
   - failure by LK to comply with the federal E-Verify Program.
Contract Amount: The total estimated cost of the initial term of the agreement is $381,364. If the options to renew for the four additional one-year periods are exercised, the estimated additional cost would be approximately $3,060,000. The Executive Office is requesting approval up to $3,441,364 for the full term of the agreement March 19, 2020 through September 30, 2024.

Funding Source of Contract: Mississippi Department of Human Services grant for Complete 2 Compete.

Contractor Selection Process: IHL released an RFP No. 2019:1206 in December and received one proposal.

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. Legal Staff has reviewed the proposed Amendment between IHL and Leon Consulting, LLC for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

2. MSU-REQUEST APPROVAL TO ENTER INTO A SERVICES AGREEMENT WITH FRONTIER STRATEGIES, LLC

Agenda Item Request: Mississippi State University requests approval on behalf of its Office of Nutrition Education (ONE) for a contract/services agreement between Mississippi State University (MSU) and Frontier Strategies, LLC, for advertising agency services for the implementation of the social marketing campaign HappyHealthy, which was developed in 2017 pursuant to a contract previously entered into between MSU and this company.

Contractor’s Legal Name: Frontier Strategies, LLC

History of Contract: This is a new contract for professional services.

Specific Type of Contract: Professional Services Agreement

Purpose: The purpose of the professional services agreement is to provide advertising agency services to MSU Office of Nutrition Education for implementation of the social marketing campaign, HappyHealthy.

Scope of Work: Frontier Strategies will provide expertise in areas including consultation, advertising, communications, signage/printing, etc., for ONE as ONE moves forward with a comprehensive social marketing campaign, HappyHealthy, implemented throughout the state of Mississippi with key messages to reduce obesity and chronic disease. The messages of the social marketing campaign uniquely meet the needs
of ONE and are designed to increase awareness among persons eligible for SNAP in Mississippi and encourage healthier food choices and more physically active lifestyles. Before beginning any task, a detailed proposal must be submitted to ONE for approval by ONE Project Director. No work shall be done without the approval of and written authorization from ONE to proceed with each individual scope of work.

**Term of Contract:** Original contract start date: 3/23/2020 End date: 9/30/2020. The agreement may be renewed for a period of one (1) year upon agreement of both parties in writing, not to exceed a total agreement life of five (5) years.

**Termination Options:** The continuance of the Contract with MSU is based upon the availability of funds. Therefore, the 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. In the event either party materially breaches the contract, the non-breaching party may terminate upon thirty (30) days written notice to the breaching party.

**Contract Amount:** The grant budget is $3,000,000. MSU budgeted the amounts below for FY2020 based on actual expenditures in FY2018:

<table>
<thead>
<tr>
<th>Implementation of the Social Marketing Campaign - HappyHealthy.MS</th>
<th>$1,000,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Television Advertising Placement in Selected Markets for 10 months (Oct.-Nov. 2019 and Jan-Aug. 2020)</td>
<td></td>
</tr>
<tr>
<td>Online/Social Media Advertising Placement for 10 months</td>
<td></td>
</tr>
<tr>
<td>Facebook and Instagram ($20,000/month)</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>Pre-roll Video Campaign ($20,000/month)</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>Display Mobile Banner Campaign ($25,000/month)</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>Online Radio Stations ($4,700/month)</td>
<td>$47,000.00</td>
</tr>
<tr>
<td>Total Online/Social Media Adv. for 10 months</td>
<td>$747,000.00</td>
</tr>
<tr>
<td>Production of 80 Web Videos (40 Recipes, 10 &quot;How To&quot;, 14 Physical Activity, and 16 Today’s Mom)</td>
<td>$640,000.00</td>
</tr>
<tr>
<td>Production Services (Graphic Design, Creative Development, Management, etc.)</td>
<td>$262,570.00</td>
</tr>
<tr>
<td><strong>Total for Implementation of Social Marketing Campaign</strong></td>
<td><strong>$2,649,570.00</strong></td>
</tr>
</tbody>
</table>

MSU is preparing a modification of the FY2020 budget narrative to add an additional $350,000 to $400,000 to the above in case costs have increased since FY2018. Since the contract did not begin in October as planned, MSU is also planning to request an extension of the funding through December 31, 2020.

Frontier’s hourly rates are included in their cost proposal as well as the contract. MSU anticipates paying for advertising on a weekly/monthly basis. Frontier will invoice monthly for production services.

**Funding Source for Contract:** The contract is funded by a subgrant between the Mississippi Department of Human Services (MDHS) and Mississippi State University Office of Nutrition Education (ONE). The funding source for the subgrant is the United States Department of Agriculture (USDA). The funding for this agreement was approved.
by USDA on September 16, 2019. This funding is approved and awarded on a year-to-year basis from October 1st through September 30th; therefore, MSU is unable to enter into a long-term contract.

**Contractor Selection Process:** On December 19, 2019 MSU initiated a Request for Proposals (RFP) 20-11 for advertising agency services for implementation of the social marketing campaign *HappyHealthy*. After being duly advertised for 2 weeks, submitted proposals were received and opened by MSU Office of Procurement and Contracts on January 15, 2020 at 2:00 p.m. All submitted proposals were evaluated and scored, based upon, experience with similar projects, success with SNAP-eligible audience, staff qualifications, and cost. Frontier Strategies, LLC, was the successful bidder.

**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. Legal Staff has reviewed the proposed Agreement between MS State University and Frontier Strategies, LLC for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

3. **UM- REQUEST APPROVAL TO ENTER INTO A SUBLEASE BETWEEN KAPPA ALPHA THETA FRATERNITY, INC. AND TAU OF OMEGA FRATERNITY HOUSE CORPORATION**

**Agenda Item Request:** The University of Mississippi (“UM”) requests that the Board of Trustees of State Institutions of Higher Learning (“IHL”) approve a sublease between Kappa Alpha Theta Fraternity, Inc. (“KAT”) and Tau of Chi Omega Fraternity House Corporation (“Chi Omega”).

**Contractor’s Legal Name:** Kappa Alpha Theta Fraternity, Inc. (Assignee of Epsilon Zeta House Corporation of Kappa Alpha Theta)

**History of Contract:** On May 21, 1979, Epsilon Zeta House Corporation of Kappa Alpha Theta (“the KAT House Corporation”) and the IHL/UM entered into a lease for sorority lot #252 on the University of Mississippi’s Oxford campus. The KAT House Corporation erected a sorority residential facility on the lot. In December 2018, the Epsilon Zeta Chapter of KAT closed its chapter operations at UM. As of May 12, 2019, the sorority residential facility was unoccupied. In May 2019, UM sought and obtained IHL approval of: (i) an assignment and assumption of the lease between KAT House Corporation and KAT, and (ii) a sublease between KAT and the Delta Rho Chapter House Association of Kappa Kappa Gamma/Fraternity (“KKG House Association”). The sublease between KAT and KKG House Association expires June 30, 2020.

**Specific Type of Contract:** This is the second sublease of the existing lease between KAT and the IHL.
**Purpose:** Because the Epsilon Zeta Chapter of Kappa Alpha Theta Fraternity, Inc. ceased its chapter operations on UM’s campus in December 2018, the house corporation affiliated with the sorority – the KAT House Corporation – was dissolved. Before its dissolution, the KAT House Corporation assigned and conveyed all of its rights, title and interest in its primary lease with the IHL to KAT, the national fraternity with which the Epsilon Zeta Chapter and the KAT House Corporation are affiliated. Moreover, because the sorority residential facility occupied by the Epsilon Zeta Chapter would be vacant as of May 2019, the KAT House Corporation (through its assignee KAT) subleased the facility to the Delta Rho Chapter House Association of Kappa Kappa Gamma/Fraternity. The IHL’s approval of the Assignment and Assumption of Lease and the Sublease was necessary because the primary lease between the KAT House Corporation and the IHL expressly provided that the KAT House Corporation may not sublease the property, or sell, assign, or mortgage the leasehold estate to any person, corporation, society, or body without the consent of the IHL in writing. Now that the IHL has approved the Assignment and Assumption of Lease between KAT House Corporation and KAT, and also approved the Sublease between KAT and KKG House Association, and that Sublease is set to expire June 30, 2020, KAT (assignee of KAT House Corporation) seeks to enter into a second sublease with Chi Omega.

**Scope of Work:** The following is a listing of Stakeholders listed within contract.

- **Location of Premises:** 592 Rebel Dr Oxford, MS 38677
- **Prime Landlord:** Board of Trustees of State Institutions of Higher Learning
- **Sublandlord:** Kappa Alpha Theta Fraternity, Inc, an Indiana non-profit corporation
- **Subtenant:** Tau of Chi Omega Fraternity House Corporation, a MS nonprofit corporation

**Term of Contract:** The primary lease between the IHL/UM and KAT (assignee of the KAT House Corporation) is for a fifty-year term, from May 21, 1979 to May 20, 2029. The primary lease contains an option to renew the lease for an additional twenty-five years, thereby extending the lease term to year 2054, if the option is exercised. The assignment and assumption of lease that the IHL previously approved between the KAT House Corporation and KAT is permanent and has no term. The term of the sublease between KAT and Chi Omega is for one year, from July 20, 2020 to June 30, 2021.

**Termination Options:** The IHL/UM may terminate the primary lease with KAT (assignee of KAT House Corporation) if its initial fifty (50) year term expires and the lease is not renewed. UM may also terminate the primary lease for breach of any of the express conditions listed. These express conditions include building specifications, use of the building, building improvements, running of and paying for utilities, maintenance of building and grounds, and building insurance. The sublease between KAT and Chi Omega may be terminated for the non-payment of rent or if one of the other conditions specified in the sublease is triggered such as failure of Chi Omega, as subtenant, to observe or perform
any provision of sublease within 30 days of notice, abandonment of the leased premises, involuntary petition in bankruptcy, or attachment, execution or other judicial seizure of Chi Omega’s assets or interest in sublease, or if Chi Omega admits its inability to pay generally its debts, damage and destruction, eminent domain, non-availability of funds for UM to care for and maintain the property, force majeure, or if UM’s consent has not been obtained by the thirtieth (30th) day after the mutual execution and delivery of the sublease.

**Contract Amount:** The primary lease between the IHL/UM and KAT (assignee of the KAT House Corporation) imposes an annual $50 lease payment to UM. The base rent under the sublease between KAT and Chi Omega is $135,000 per year, payable in equal monthly installments, plus a one-time $11,250 security deposit.

**Funding Source for Contract:** Not applicable

**Contractor Selection Process:** Not applicable

**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. Legal Staff has reviewed the proposed Sublease Agreement between Kappa Alpha Theta Fraternity, Inc and Tau of Chi Omega Fraternity House Corporation for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

### 4. UMMC – REQUEST FOR APPROVAL TO AMEND AN END USER AGREEMENT WITH AIR PRODUCTS AND CHEMICALS, INC.

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to amend its End User Agreement with Air Products and Chemicals, Inc. to add a new oxygen system to supply the Children’s Hospital Expansion and to include provisions regarding indemnification, insurance, and confidential information. The Agreement is for the purchase of bulk liquid oxygen and rental of the tanks used to house the liquid oxygen. Bulk liquid oxygen provides a safe, reliable supply option for high-purity oxygen used by adult and pediatric inpatient and outpatients at UMMC.

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

**History of Contract:** On November 16, 2017, the Board approved a five (5) year End User Agreement with Air Products for a total cost of $1,193,359.53. The Agreement will expire on March 11, 2023.

**Specific Type of Contract:** Amendment to the End User Agreement.

**Purpose:** The purpose of the amendment is to add a new oxygen system to supply the Children’s Hospital Expansion and to include provisions regarding indemnification, insurance, and confidential information. 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 amended 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 the pressure vessels (tanks) used to house the bulk liquid oxygen, including piping, controls, and other instrumentation and devices required,
- provide a certificate of analysis upon each delivery certifying the purity of the oxygen provided, and
- perform annual inspections as required.

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 remains unchanged at sixty (60) months, beginning on the date of first delivery, which was March 12, 2018, through March 11, 2023. The amendment will take effect on the date of first delivery of the new system for the Children’s Expansion, expected to be on or about June 1, 2020. The expiration date remains unchanged.

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
  (a) are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs,
(b) 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,

(c) are not, nor have ever been included on the Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons list,

(d) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Supplier being excluded from participation in the Federal Healthcare Programs or any state healthcare programs and

(e) if Air Products is to receive any patients' personal health information, that it has implemented safeguards to ensure that the privacy and confidentiality of patients' personal health information is protected

in the event Air Products fails to comply with the federal E-Verify Program, and

by Air Products if Air Products determines that the delivery of the product would be unsafe or in violation of applicable law due to a condition present at UMMC’s site and UMMC does not promptly remove the condition.

Contract Amount: The total estimated cost of the amended agreement is $1,400,000. The estimated cost of the original Agreement was $1,193,359.53. During the term of the amended agreement, UMMC anticipates the need for an additional $206,640, which includes but is not limited to the monthly tank rental fee, annual inspection costs, and the annual delivery charges.

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

Contractor Selection Process: UMMC is currently contracted with Air Products

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. Legal Staff has reviewed the proposed Agreement between the University of Mississippi Medical Center and Air Products and Chemicals, Inc. for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

5. UMMC-REQUEST APPROVAL TO ENTER INTO A LETTER AGREEMENT WITH CISCO SYSTEMS, INC.

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to enter into a Letter Agreement with Cisco Systems, Inc. for the end user license of its Digital Network Architecture (DNA) software operated in conjunction with equipment used in UMMC’s network infrastructure. Pursuant to IHL policy 707.03 Approval of
Prepayment for Goods or Services, UMMC also requests a waiver to prepay the three (3) year license fee.

Contractor’s Legal Name: Cisco Systems, Inc. (Cisco)

History of Contract: This is a new Agreement for an end user license of the DNA software and associated network hardware. UMMC currently utilizes Cisco networking equipment throughout the institution. The DNA licenses under the proposed Agreement are for UMMC’s new Children’s Hospital Expansion, providing for an internet-based network and accelerating and simplifying enterprise network operations. The licensed networking equipment will connect computers, printers and medical equipment to the UMMC network. The software and hardware are being purchased through Cisco’s authorized reseller MoreDirect, Inc. d/b/a Connection.

Specific Type of Contract: Letter Agreement for an end user license agreement.

Purpose: The purpose of the Agreement is to provide the DNA licenses and associated network hardware for use in the Children’s Hospital Expansion, delivering an internet-based network and accelerating and simplifying enterprise network operations. The licensed networking equipment will connect computers, printers and medical equipment to the UMMC network. Network connectivity is needed for communication, access to the electronic health record, and interface of medical equipment with the electronic health record system.

Scope of Work: Under the agreement, Cisco will provide a non-exclusive, non-transferable license to use the object code versions of the DNA software for UMMC’s internal operations. This license allows for an internet-based network that connects computers, printers and medical equipment to the UMMC network. The software accelerates and simplifies enterprise network operations. The software and hardware are being purchased through Cisco’s authorized reseller MoreDirect, Inc. d/b/a Connection.

Under the Agreement, UMMC agrees it will not and will not allow a third party to:

- transfer, sublicense, or assign its rights under the license to any other person or entity, unless expressly authorized by Cisco in writing,
- modify, adapt or create derivative works of the software or documentation,
- reverse engineer, decompile; decrypt; disassemble of otherwise attempt to derive the source code for the software,
- make the functionality of the software available to third parties, whether as an application service provider, or on rental, service bureau, cloud service, hosted service, or other similar basis unless expressly authorized by Cisco in writing,
- use software that is licensed for a specific device, whether physical or virtual, on another devise, unless expressly authorized by Cisco in writing, or
• remove, modify, or conceal any product identification, copyright, proprietary, intellectual proprietary notices or other marks on or within the software.

**Term of Contract:** The term of the Agreement will be for a period of thirty six (36) months, beginning upon execution of the Agreement by both parties, which is estimated to be on or about April 1, 2020, through March 31, 2023.

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

- by UMMC at any time by ceasing use of or destroying all copies of the software,
- immediately if UMMC breaches the terms of the EULA or if UMMC fails to pay any portion of the applicable license fees, and UMMC fails to cure the payment breach within thirty (30) days of notice,
- following a permitted transfer, UMMC’s license to the software will be automatically terminated, and
- failure of Cisco to comply with the federal E-verify provision.

**Contract Amount:** The total cost of the Agreement is $596,948.15, including the network equipment and end user licenses.

**Funding Source of Contract:** The agreement will be funded by Children’s expansion project funds.

**Contractor Selection Process:** Cisco provides the network equipment and DNA licenses for purchase through its authorized reseller MoreDirect, Inc. d/b/a Connection, who 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 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. Legal Staff has reviewed the proposed Agreement between the University of Mississippi Medical Center and Cisco Systems, Inc. for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

**UMMC-REQUEST APPROVAL TO AMEND SUBSCRIPTION AGREEMENT WITH ELSEVIER B.V.**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval of the third amendment to the subscription agreement with Elsevier B.V. (Elsevier) for science, technology, and medical journals on the ScienceDirect platform.
Contractor’s Legal Name: Elsevier B.V.

History of Contract: On November 19, 2015, the Board approved a five (5) year journal subscription agreement with Elsevier, from January 1, 2016, through December 31, 2020. In May 2016, the Board approved the First Amendment to the Subscription Agreement to add additional journals under the ScienceDirect platform. In November 2018, the Board approved the Second Amendment to the Subscription Agreement to provide access to an additional journal, Kidney International journal, under the ScienceDirect platform. The total estimated cost of the amended agreement was $4,676,661.92.

Specific Type of Contract: This is the Third Amendment to the Subscription Agreement.

Purpose: The purpose of the Third Amendment is to access an additional journal now offered under the ScienceDirect platform, the Annals of Oncology journal. The ScienceDirect platform allows access to unique titles for science, technology and medicine and for archival access to titles that were transferred to Elsevier in 2016.

Scope of Work: The Third Amendment will add the Annals of Oncology journal to the current electronic access under the ScienceDirect platform.

Term of Contract: The term of the Third Amendment is ten (10) months, from March 20, 2020 through December 31, 2020. The total term of the amended agreement remains unchanged at five (5) years, from January 1, 2016, through December 31, 2020.

Termination Options: Termination options include the following:

- By UMMC in the event of any reduction in available funds, the contract may be terminated without penalty to UMMC; or
- By UMMC upon sixty (60) days written notice if Elsevier commits a material breach of the agreement and the breach has not been cured within ten (10) days of notice.

Contract Amount: The estimated total cost of the Third Amendment is $2,589.00. The total estimated cost of the amended agreement is $4,679,250.92.

Funding Source for Contract: The agreement will be funded by state funds.

Contractor Selection Process: UMMC is currently contracted with Elsevier.

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. Legal Staff has reviewed the proposed Agreement
7. UMMC-REQUEST APPROVAL TO AMEND A PURCHASE AGREEMENT WITH NUMEDRX PHARMACY SOLUTIONS, LLC

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to amend its Radiopharmaceutical Purchase Agreement with NuMedRx Pharmacy Solutions, LLC to revise the commitment requirement to purchase radiopharmaceutical drugs from NuMedRx and add information security requirements. The amendment excludes any purchases related to the Mind Center ARIC Study and/or any research related product purchase from required purchases under the Agreement. Additionally, UMMC requests approval to add and/or remove drugs listed in the Agreement without seeking prior Board approval as long as adequate funds are available.

Contractor’s Legal Name: NuMedRx Pharmacy Solutions, LLC (NuMedRx)

History of Contract: On August 16, 2018, the Board approved the Radiopharmaceutical Purchase Agreement with NuMedRx to purchase radiopharmaceutical drugs used in Nuclear Medicine and Positron Emission Tomography (PET) imaging for diagnostic and therapeutic purposes in pediatric and adult patients. The original Agreement requires that UMMC purchase ninety-five percent (95%) of its radiopharmaceutical needs from NuMedRx. However, UMMC has received external grant funding for research that will require purchases to be made from another vendor. NuMedRx has agreed to revise the commitment requirement to exclude purchases related to the Mind Center ARIC Study and/or any research related product purchase.

Specific Type of Contract: Amendment to the Radiopharmaceutical Purchase Agreement.

Purpose: The purpose of the amendment is to revise the commitment requirement to purchase radiopharmaceutical drugs from NuMedRx and add information security requirements. The amendment excludes any purchases related to the Mind Center ARIC Study and/or any research related product purchase from required purchases under the Agreement.

Scope of Work: Under the amended agreement, NuMedRx will:

- supply and deliver radiopharmaceuticals to UMMC imaging locations under the following terms,
  - unlimited local weekday deliveries, including STAT deliveries, during normal business hours at no charge,
  - one local scheduled delivery at no charge on weekends and holidays,
Under the amended Agreement, UMMC commits to purchase ninety-five percent (95%) of the contract products from NuMedRx, excluding all purchases related to the Mind Center ARIC Study and/or any research related product purchase from required purchases under the Agreement.

**Term of Contract:** The term of the agreement remains unchanged at sixty (60) months, from September 1, 2018, through August 31, 2023.

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

- by either party upon 90 days’ written notice,
- UMMC may terminate the agreement if NuMedRx is unable to provide the required services for thirty (30) consecutive days as a result of a continuing force majeure event, and
- by UMMC in the event NuMedRx improperly uses or discloses protected health information.

**Contract Amount:** There is no additional cost for the amendment. The estimated cost of the Agreement remains $13,397,227.39 over the five (5) year term.

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

**Contractor Selection Process:** NuMedRx is currently contracted with UMMC.

**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. Legal Staff has reviewed the proposed Agreement between the University of Mississippi Medical Center and NuMedRx Pharmacy Solutions, LLC for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.
8. **UMMC-REQUEST APPROVAL TO ENTER INTO A PRODUCT SUPPLY AGREEMENT WITH PETNET SOLUTIONS, INC.**

**Agenda Item Request:** The University of Mississippi Medical Center (UMMC) requests approval to enter into a Product Supply Agreement with **PETNET Solutions, Inc.** 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.

**Contractor’s Legal Name:** PETNET Solutions, Inc. (PETNET)

**History of Contract:** In August 2018, UMMC entered into a five (5) year Agreement with NuMedRx for the purchase of radiopharmaceutical drugs used in Positron Emission Tomography (PET) imaging for diagnostic and therapeutic purposes at a ninety-five percent (95%) purchase commitment level. In 2019, UMMC received external grant funding for a multisite study of the use of Amyvid, including UMMC, Johns Hopkins NIH Research-Hagerstown, and Johns Hopkins NIH Research-Wake Forest. NuMedRx’s delivery capabilities do not extend outside of Mississippi. PETNET was identified as the only supplier with the capability of providing the drug and delivery to all of the study sites.

**Specific Type of Contract:** Product 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. In 2019, UMMC received external grant funding for a multisite study of the use of Amyvid. PETNET will provide Amyvid for the ARIC-NCS Study across all study sites.

**Scope of Work:** Under the agreement, PETNET will provide Amyvid for the ARIC-NCS Study across all study sites, including UMMC, Johns Hopkins NIH Research-Hagerstown and Johns Hopkins NIH Research-Wake Forest.

**Term of Contract:** The term of the Agreement is five (5) years, from March 20, 2020, through March 19, 2025.

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

- by PETNET if UMMC uses a single dose of product for more than one patient,
- by either party if the other party breaches a material term of the Agreement and such breach remains uncured for a period of 30 days upon receipt of written notice, and
- by either party upon sixty (60) days’ written notice to the other party.

**Contract Amount:** The total estimated cost of the Agreement is $2,305,178. Each dose of Amyvid is $3,029.00, plus the cost of delivery for the various study sites.
Funding Source of Contract: The agreement will by grant funds.

Contractor Selection Process: The radiopharmaceutical products qualify as clinical commodities under Mississippi Code Ann. §31-7-1, which are exempted 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. Legal Staff has reviewed the proposed Agreement between the University of Mississippi Medical Center and PETNET Solutions, Inc. for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

9. UMMC – REQUEST APPROVAL TO AMEND A SERVICES AGREEMENT WITH SELLERS DORSEY & ASSOCIATES, LLC

Agenda Item Request: The University of Mississippi Medical Center (UMMC) requests approval to amend its Services Agreement with Sellers Dorsey & Associates, LLC (Sellers Dorsey) to extend the term of the Agreement, revise the insurance section, and add a new provision regarding information security. The Agreement is for the design of an alternative managed care payment program for children with medically complex conditions. This model will reduce costs of serving the population of children with complex care needs, improve care coordination, and result in improved outcomes for the children served.

Contractor’s Legal Name: Sellers Dorsey & Associates, LLC

History of Contract: On June 20, 2019, the Board approved a nine (9) month Services Agreement with Sellers Dorsey for a total cost of $261,750. The agreement will expire on March 31, 2020. The amendment extends the term for three (3) additional months through June 30, 2020.

Specific Type of Contract: Amendment to the Services Agreement.

Purpose: The purpose of the amendment is to extend the term of the Agreement, revise the insurance section, and add a new provision regarding information security. The purpose of the Agreement is to design an alternative managed care payment program for children with medically complex conditions. This model will reduce costs of serving the population of children with complex care needs, improve care coordination, and result in improved outcomes for the children served.

Scope of Work: Under the amended agreement, Sellers Dorsey will:
• research and analyze UMMC’s current program attributes, successes, and team expertise, and research how other national models serving children with complex medical needs define their population,
• review available data of children with complex needs in the broader Mississippi Medicaid population and served within the UMMC Complex Care Clinic to inform the target population,
• develop the care management model, considering a multitude of factors including selection of evidence-based interventions and related goals, performance metrics to assess the pilot’s effectiveness, mapping of the clinical workflow, and associated costs for the target population,
• evaluate best practice interventions using a systematic process to identify which should be incorporated into the model,
• identify any recommendations for additional infrastructure required by UMMC or any other certifications or accreditations needed for the pilot’s success, along with the related cost of obtaining such infrastructure or certifications, and
• create a comprehensive implementation plan.

Term of Contract: The term of the amended agreement is one (1) year, from July 1, 2019, through June 30, 2020. The original agreement was for a term of nine (9) months, expiring March 31, 2020. The amendment extends the term for three (3) additional months through June 30, 2020.

Termination Options: Termination options include the following:
• by agreement of the parties,
• upon thirty (30) days’ written notice by either party with or without cause,
• if Sellers Dorsey refuses or fails to perform any of the provisions of the contract or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract, and fails to cure the breach within ten (10) days of receiving written notice from UMMC,
• immediately upon Sellers Dorsey’s breach of any of the following ongoing representations and warranties that Sellers Dorsey, 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,
  o are not, nor have ever been included on the Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons list,
  o are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Sellers Dorsey being excluded from
participation in the Federal Healthcare Programs or any state healthcare programs, and
  ○ if Sellers Dorsey is to receive any patients' personal health information, Sellers Dorsey represents and warrants that it has implemented safeguards to ensure that the privacy and confidentiality of patients' personal health information is protected.

- in the event of a reduction in or no funds available,
- in the event of an adverse change in law and the parties cannot agree upon renegotiated terms within thirty (30) days, and
- in the event Sellers Dorsey improperly uses or discloses protected health information.

**Contract Amount:** The total cost of the amended Agreement remains unchanged at $261,750. This cost includes all labor and travel expenses, as well as actuarial services.

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

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

**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. Legal Staff has reviewed the proposed Agreement between the University of Mississippi Medical Center and Sellers Dorsey & Associates, LLC for compliance with applicable law and find same to be acceptable. Board staff recommends approval of this item.

10. **USM – REQUEST APPROVAL TO ENTER INTO A SERVICES AGREEMENT WITH EAB GLOBAL, INC.**

**Agenda Item Request:** The University of Southern Mississippi requests Board approval of an enrollment management support services agreement with **EAB Global, Inc.** for its undergraduate enrollment and admissions department. Also, in accordance with IHL Board Policy 707.03 Approval of Prepayment for Goods or Services, USM requests the Board’s approval to make partial payments in advance in accordance with the terms of the agreement.

**Contractor’s Legal Name:** EAB Global, Inc.

**History of Contract:** This is an extension of an existing contract. The last contract with EAB/Royall & Company was approved by the IHL Board in May 2017 for a period of three years. Note: In late 2017 Royall & Company was sold to Avatar Purchaser, Inc. and a corporate filing renamed Avatar Purchaser, Inc. as EAB Global, Inc. At that point, EAB Global, Inc. assumed Royall’s contracts.
Specific Type of Contract: This is a service agreement to provide enrollment management support services.

Purpose: The purpose of the contract is to provide enrollment management support services in the form of direct marketing via paper, email, and online communication channels.

Scope of Work: The scope of work involves various services. In summary, EAB Global, Inc. will perform the following by using EAB’s proprietary methods and procedures:

- Targeting recommendations for optimal results (including, as applicable, list recommendations and list order placement from varied testing agencies)
- Creative development: copy and design, including multiple versions, electronic and paper
- Production of printed materials
- Development and hosting of program response sites
- Exchange of data via secure FTP
- Mailing and mail tracking
- Email deployment and delivery tracking
- Interim and final analyses

Term of Contract: Start date: 7/1/2020   End date: 6/30/2025.

Termination Options: The contract may be terminated under the following conditions:

USM can terminate after giving 60 days’ written notice to EAB Global with or without cause; however, USM will be liable to EAB for a termination fee equal to the Multi-Year EAB investment of the then current fiscal year. Also, if the EAB fails to remain compliant with the Mississippi Employment Protection Act (E-Verify), if applicable, USM can terminate the contract without penalty. Under force majeure, if an event continues uninterrupted for a period exceeding six (6) calendar months, either party may elect to terminate this contract upon notice to the other, but such right of termination, if not exercised, shall expire immediately upon the discontinuance of the event of force majeure. Additionally, either party may terminate the contract immediately upon written notice if the other party materially breaches the contract and thereafter fails to cure the breach within thirty (30) days after receiving written notice thereof. Finally, in the event any past due invoice remains unpaid by USM for thirty (30) days or more, EAB Global reserves the right to terminate the agreement, or suspend the provision of any Services until the account is brought current.

Contract Amount: The total estimated cost of the contract with EAB Global over the five-year term is $2,884,219.00. The digital media costs over the five-year term are estimated to be $87,868.00. The postage costs over the five-year term are estimated to be
$154,431.00. Any surplus digital media and postage monies not used by Facebook/Google and the Postal Service, respectively, will be returned to USM as a credit. A two percent contingency has been included in the chart below in the event unforeseen charges are required such as increases in postage and/or digital media costs. The estimated total inclusive of contingencies is $2,941,903.38.

<table>
<thead>
<tr>
<th>Programming Costs</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>TOTAL</th>
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<tr>
<td>Application/Inquiry Gen</td>
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<td>$501,965.00</td>
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<td>Two Percent Contingency</td>
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<td>$10,985.60</td>
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<td>Yearly Cost w/Conting.</td>
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<td>$560,265.60</td>
<td>$588,276.84</td>
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<td>$642,078.78</td>
<td>$2,941,903.38</td>
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</table>

**Funding Source for Contract:** The cost of these services will be paid using E & G funds.

**Contractor Selection Process:** A Request for Proposals #17-27 was issued in February 2017. Four proposals were received and were evaluated for the following criteria: Qualifications and Experience, Project Work Plan, Approach and Methodology, Financial Proposal, and their Written Proposal. Two did not meet all the requested requirements, but two did, RNL and Royall & Company. Royall & Company scored higher overall than RNL. It was determined that Royall & Company was the best overall proposal, as the firm has had significantly more experience in the field regarding their project work plan, as well as with their methodology and approach to enrollment support services. EAB/Royall & Company has provided exceptional service, therefore the University desires to extend the contract for five years.

**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. Legal Staff has reviewed the proposed Agreement between the University of Southern Mississippi and EAB Global, Inc. for compliance with applicable law and finds same to be acceptable. 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 detail 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

BUREAU OF BUILDING PROJECTS ............................................................

1. USM – GS 108-296 – Kinesiology Building Renovation

Project Request: The University of Southern Mississippi requests approval to initiate a project, Kinesiology Building Renovation, and to appoint Albert and Robinson Architects, PLLC as the design professional.

Proposed Project Professional: Albert and Robinson Architects, PLLC

Purpose: The University of Southern Mississippi is seeking to initiate the project and appoint the design professional as required by Board Policy in order to proceed with the pre-plan phase of the project.

Project Scope: The project scope includes the renovation, furnishing and equipping of classrooms, laboratories, offices, and student areas in the Kinesiology Building. The project will also include modifications to restrooms, elevator, HVAC, mechanical, electrical, and communications systems of the building. The renovations will bring the facilities into compliance with applicable codes (IBC, ADA, life safety, etc.) and current programming requirements.

History: Relocation of the School of Criminal Justice and Forensic Science from its current location in Arthell Kelley Hall has been an institutional priority due to its proneness to flooding. As such, the School’s needs were previously included in the original space programming for the renovation of Greene Hall. The University’s recent academic reorganization impacted Greene Hall during early phases of construction. The School of Criminal Justice and Forensic Science was removed
from the project and replaced by another unit that was more closely aligned with the new College of Education and Human Sciences. This project is a by-product of that impact. It will provide the School of Criminal Justice and Forensic Science with functional space, carefully designed labs, increased faculty office space, a self-contained building identity, and a location convenient to adjacent programs with which the unit interfaces.

The University of Southern Mississippi is seeking to initiate the project and 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:** March 19, 2020

**Date of Original Construction:** 1949

**Date of Last Renovation:** 1989

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Cost</td>
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<tr>
<td>Architectural and Engineering Fees</td>
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<tr>
<td>Misc. Project Costs</td>
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</tr>
<tr>
<td>Furniture &amp; Equipment Costs</td>
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</tr>
<tr>
<td>Contingency</td>
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</tr>
<tr>
<td><strong>Total Project Budget</strong></td>
<td>$133,000.00</td>
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</tbody>
</table>

**Proposed Funding Source(s):** SB 3065, Laws of 2019 ($133,000)

**Staff Recommendation:** Board staff recommends approval of this item.
APPROVAL OF OTHER REAL ESTATE REQUESTS

2. MSU – Award of Timber Sales - John W. Starr Memorial Forest

Project Request: Mississippi State University requests approval to advertise and award the sale to the highest and best bid for timber sales 20-01NX58, 20-02TW39, 20-03NPT, and 20-04SPT from the John W. Starr Memorial Forest.

Sale 20-01NX58 is a final harvest on 29.4 acres of over mature timber in the SW ¼ of Section 5, Township 16N, Range, 14E, Winston County, MS, Noxubee Unit of the John W. Starr Memorial Forest. The sale is of an estimated volume of 323 thousand board feet of pine sawtimber, 182 tons of pine chip’s saw, and 735 tons of pine pulpwood and topwood.

Sale 20-02TW39 is a final harvest on 59.5 acres of a 1983-1984 pine plantation in the SW ¼ of Section 5, Township 17N, Range, 14E, Oktibbeha County, MS, Talking Warrior Unit of the John W. Starr Memorial Forest. The sale is of an estimated volume of 296 thousand board feet of pine sawtimber, 714 tons of pine chip’s saw, and 1,545 tons of pine pulpwood and topwood.

Sale 20-03NPT is primarily a first thinning to be conducted on 209 acres of pine plantations in seven separate stands of the Talking Warrior Unit of the John W. Starr Memorial Forest, Oktibbeha County, MS. The sale is of an estimated volume of 935 tons of pine chip’s saw and 6,524 tons of pine pulpwood.

Sale 20-04SPT is first and second thinnings to be conducted on 301 acres of pine plantations in six separate stands of the Talking Warrior Unit of the John W. Starr Memorial Forest, Oktibbeha County, MS. The sale is of an estimated volume of 4,495 tons of pine chip’s saw and 6,710 tons of pine pulpwood.

Timber Sale Process: The timber sale process on the John W. Starr Memorial Forest, 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 Deal 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 this item for compliance of applicable state law and finds it acceptable. Board staff recommends approval of this item. The university shall submit to the Office of Real Estate and Facilities a final executed agreement.

3. **MSU – Delete from Inventory – Building #0107 – Forest Products Building #4 – Starkville, MS**

**Project Request:** Mississippi State University requests approval to delete from inventory Building #0107, a wood framed two story building (3,000 GSF on each floor) with wood siding on the exterior wall. The building is located on the MSU main campus in Starkville, MS.

**Justification:** A portion of the roof collapsed on the Forest Products Building #4 (Building #0107) on December 16, 2019. The building was used for research purposes. The building will be demolished and disposed of upon approval.

The approval letter has been received from the Mississippi Department of Archives and History stating Building #0107 was not eligible for designation as a Mississippi Landmark. All legal documentation will be kept on file in the Office of Real Estate and Facilities. Mississippi State University is acting in accordance with Board Policy §919 Prerequisites for Building Modification or Demolition, that requires Board approval prior to building modification or demolition.

Staff Recommendation: Board staff recommends approval of this item.
4. **MSU – Sigma Alpha Epsilon House – Approval of Exterior Design**

**Project Request:** Mississippi State University requests approval of the exterior design for the proposed Sigma Alpha Epsilon house on the campus of MSU.

**Purpose:** Mississippi State University is seeking approval of the exterior rendering for the proposed Sigma Alpha Epsilon house project as required by board policy. This project is entirely funded by the SAE Fraternity and is being built on leased university land.

**Project Scope:** Sigma Alpha Epsilon will construct a new fraternity house on the campus of MSU.

Mississippi State University is 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.

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

*Front of Proposed SAE House:*
Back of Proposed SAE House:

![Back of Proposed SAE House](image1)

Back of Proposed SAE House:

![Back of Proposed SAE House](image2)
5. **USM – Approval of Purchase of Property – 214 North 35th Avenue – Hattiesburg, Mississippi**

**Project Request:** The University of Southern Mississippi requests approval to purchase real property located at 214 North 35th Avenue, Hattiesburg, Mississippi at a purchase price of $200,000 which is the average of the two appraisals.

**Purpose:** The University of Southern Mississippi is seeking to purchase property located between two parcels of land currently owned by the university. This parcel is the only parcel of land in the block that the university doesn’t currently own.

**Appraisals:** The University of Southern Mississippi received two independent property appraisals for the property. The first appraisal was in the amount of $200,000. The second appraisal was in the amount of $200,000. The average of the two appraisals was $200,000. The University of Southern Mississippi is purchasing the property for $200,000 which is the average of the two appraisals.

**Property Description:** The property is the Daycare Center known as “Bettie’s ABC Advanced Childcare and Learning Center located at 214 North 35th Avenue and is legally defined as Section 7, Township 4 North, Range 13 West, Hattiesburg, Mississippi.

**Terms:** The University of Southern Mississippi will purchase the real property for $200,000. The closing shall be held on or before April 30, 2020.

**Termination Options:** Purchaser shall have the right to terminate this agreement should the seller default on the requirements established within the purchase agreement.

**Environmental Phase I:** A Phase I Environmental Site Assessment (ESA) was conducted and no recognized environmental conditions existed.

A copy of the property description and all legal documentation are on file with the Office of Real Estate and Facilities. The University of Southern Mississippi is acting in accordance with Board Policy §905(A), Real Estate Management, that requires an institution acquiring or disposing of real property to receive two independent appraisals. The purchase price of property to be acquired shall not be above the average of the two appraisals.

**Staff Recommendation:** *The Attorney General’s Office has reviewed this item for compliance with applicable law and found it to be acceptable. Board staff recommends approval of this item.*
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 adopted certain amendments to IHL Board Policy 301.0806 effective August 2019 resulting in the need for each University to make substantive changes to their existing Affiliation Agreements in compliance with the policy amendments. At this time, the various universities are seeking Board approval of the below agreements in order to comply with IHL policy.

1. **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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATED AFFILIATION AGREEMENT BETWEEN DELTA STATE UNIVERSITY AND DELTA STATE UNIVERSITY FOUNDATION, INC.**

This Amended and Restated Agreement is made and entered into effective as of the 1st day of April, 2020 (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 academic priorities of the University;

WHEREAS, the Foundation is responsible for identifying potential donors 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 fund-raising 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 fund-raising 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 fund-raising 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 fund-raising 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, audio-visual, 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 The Executive Director of the Foundation is an employee of the University and reports to the University President with respect to responsibilities as a University employee and to the Foundation’s Board of Directors with respect to the operation of the Foundation as a 501(c)(3) not-for-profit corporation. It is expected that the University President and the Foundation’s Board of Directors will work cooperatively with respect to the hiring, assessment, compensation and termination decisions related to the Executive Director; however, the University President shall have the final decision-making authority relating to the Executive Director’s employment as a University employee and the Foundation’s Board of Directors shall have the final decision-making authority with respect to the executive leadership of the 501(c)(3) not-for-profit-corporation.

Foundation staff shall be employees of the University and eligible for all University employment benefits.

1.9 The President and Vice President for 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.

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 fund raising 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 consistent with University policy historically associated with the
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 President.

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 fund-raising 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 fund-raising 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 fund-raising projects with the University;

c. Provide expertise, assistance, and training for the University's administration, faculty, and staff for development and fund-raising 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
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. 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. 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 including thorough documentation of donor intent 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, titled Conflict of Interest Transaction, University conflict of interest policies, and which addresses transactions with University or Foundation staff.

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. The Foundation will abide by a gift acceptance policy to be jointly endorsed by the University and Foundation. Further the University will assure that the gift funds distributed by the Foundation are used in a timely manner in compliance with donor intent and the University will provide the Foundation staff and auditors access to records and accounts needed to monitor and verify use of gift funds.

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 Sections 1.2, 1.11 and 2.12. 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, or trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information), 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.

2.17 The IHL, acting upon its minutes, may require the Foundation to provide information or allow inspection of its records as required by the IHL to determine that the Foundation is in compliance with this agreement and that the funds held for the University or for its benefit are appropriately utilized and protected. No such request for information will be made by individual IHL members to the University or to the University President.

IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of the Foundation informally.

However, IHL may determine, acting upon its minutes, 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 agreement and
that funds intended to be used for the benefit of the University 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 Foundation by persons selected by the IHL, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined. Further, the Foundation will fully cooperate with any such inquiries.

Though the IHL will not unnecessarily disclose or disseminate any confidential and trade secret information relating to the Foundation, and in particular, any information related to donors to the Foundation or trade secrets associated with donors or entity function, in some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct the investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, the Foundation recognizes that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and any decision to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. No individual IHL Board member or employee of the IHL will release such information without authorization from the Board.

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.

5.4 If the Foundation maintains any information or data subject to privacy laws, the Foundation shall maintain a policy of cyber liability insurance. Such policy shall have commercially reasonable limits and shall include coverage for breach investigation and response, as well as liability, legal defense, regulatory and statutory penalties, PCI standard penalties, and regulatory defense.

5.5 The above-described liability policies shall name the University and the Board of Trustees of State Institutions of Higher Learning (IHL) as additional insureds, and such policies shall be primary to any program of self-insurance maintained by the University or IHL. Proof of coverage shall be mailed to IHL at: Office of Risk Management, 3825 Ridgewood Road, Jackson, MS 39211. Proof of coverage shall be provided to the University upon request.

5.6 All policies of insurance shall meet or exceed the equivalent of a Best’s Rating of A VIII.

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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the President or his/her designee.

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 University President, 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 March 31, 2025 and shall automatically renew for successive five (5) year terms unless terminated as provided for herein.

7.2 This Agreement may be terminated by the University President with the prior approval of the IHL Board, for specified material non-compliance with or breach of the Agreement or applicable policies of the University or IHL. In such cases, the University President must provide the Foundation ninety (90) days’ notice and work with the staff and board of the Foundation during that time to secure the breach in advance of termination.

7.3 In the event of termination the Foundation shall take the following actions:

   a. Remit all unrestricted gift funds to the University or such entity as designated by the University President subject to the requirements of section 501(c)(3) of the Internal Revenue Code provided such purposes are exclusively for the use and benefit of the University.
   b. Cease to use the University’s name or registered marks and logos with prior written consent of the University President.
   c. Provide the IHL, University or other designated entity with records, accounts or other materials requested by the University President or IHL subject to appropriate restrictions as to confidentiality or Trade Secret Information.

7.4 The governing documents of the Foundation will provide that upon dissolution of the Foundation all of its assets will be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity.
identified by the University President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the university and that any exceptions to this requirement be approved by the IHL Board.

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: To the Foundation:
William N. LaForge Rick Munroe
President Executive Director
Delta State University Delta State University Foundation
DSU Box A-1 DSU Box 314
Cleveland, MS 38733 Cleveland, MS 38733

With a Copy to:

Keith Parsons
c/o Jones Walker
Suite 800
190 E. Capitol St.
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, the President of the Foundation and Executive Director of the Foundation respectively, execute this Agreement as of the _____day of _____________, 2020.
STAFF RECOMMENDATION: Board staff recommends approval of this item.

2. 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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AFFILIATION AGREEMENT
BETWEEN
MISSISSIPPI STATE UNIVERSITY
AND THE
MISSISSIPPI STATE UNIVERSITY ALUMNI ASSOCIATION

THIS AMENDED AND RESTATED AFFILIATION AGREEMENT ("Agreement") is entered into as of the 1st day of May, 2020, 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. It is understood by the parties that the Alumni shall not accept gifts on behalf of the University.

**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 the President 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;
- Managing all funds in its control in a fiscally sound and prudent manner;
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, including an executive director, 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. The Alumni shall engage a certified public accounting firm that is in good standing with the Mississippi State Board of Public Accountancy, having substantial experience in auditing like organizations, to audit these financial records. Such firm must be approved by the University’s President or his/her designee. 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.

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 or trade secrets associated with 
Alumni functions (collectively, “Confidential and Trade Secret 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.

The IHL, acting upon its minutes, may require the Alumni to provide information or allow 
inspection of its records as required by the IHL to determine that the Alumni is in 
compliance with this agreement and that the funds held for the University or for its benefit 
are appropriately utilized and protected. No such request for information will be made by 
individual IHL members to the University or to the University President.

IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of 
the Alumni informally. In accordance with IHL policy, the decision of whether and how to 
respond to informal requests is within the discretion of the governing authority of the 
Alumni. The expectation is that normally any question from IHL can be resolved through 
informal procedures.

However, IHL may determine, acting upon its minutes, that informal measures are or will 
be untimely, insufficient, or inappropriate to secure information necessary to allow the 
Board to determine that the Alumni is appropriately complying with the agreement and that 
funds intended to be used for the benefit of the University are appropriately maintained and 
expended. If the Board makes such a finding, the Alumni will permit an audit, inspection 
or review of the financial and other records of the Alumni by persons selected by the IHL, 
which persons shall have the power to determine the appropriate scope of the investigation 
and the records to be examined. Further, the Alumni will fully cooperate with any such 
inquiries.

Though the IHL will not unnecessarily disclose or disseminate any confidential and trade 
secret information relating to the Alumni, and in particular, any information related to 
donors to the Alumni or trade secrets associated with donors or entity function, in some 
circumstances, however, such as those involving alleged misuse or misappropriation of 
funds, appropriately limited disclosure of information related to donors may be necessary 
in order to conduct the investigation and to recover the funds, or to allow prosecution with 
respect to any misappropriation of funds. Thus, the Alumni recognizes that the final 
determination as to the appropriate extent of any disclosure or other use of the information 
is in the discretion of the IH and any decision to release any information that would 
identify any particular donor shall be made by the IHL acting upon its minutes. No 
individual IHL Board member or employee of the IHL will release such information 
without authorization from the Board.
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 May 1, 2020, and end on December 31, 2024, if not renewed by mutual consent of the parties before that date.

The President may, with prior approval of the IHL Board, terminate this Agreement for specified material noncompliance with or breach of this Agreement or applicable policies of the University or IHL. In such case, the President must provide the Alumni ninety (90) days notice and work with the staff and board of the Alumni in that period to cure the breach in advance of termination.
The By-Laws of the Alumni shall state that upon dissolution of the Alumni, all of the Alumni’s assets shall be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. The IHL Board must approve any exception to the aforementioned requirement.

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: the Alumni has materially breached any of its contractual obligations under this 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.

Insurance.

General Liability Insurance. Alumni shall maintain commercial general liability insurance, through one or more policies, in an amount not less than $1,000,000 per occurrence. To the extent feasible, the University and The Board of Trustees of State Institutions of Higher Learning (IHL) shall be named additional insureds under such policy unless the University requests in writing that the University or IHL be removed as additional insureds. This liability coverage shall be primary and noncontributory with respect to any insurance or program of self-insurance maintained by MSU or IHL.

Proof of Insurance. Certificates of insurance, which list all applicable endorsements, shall be provided to MSU upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211.

Insurer Quality. All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

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. 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, entitled “Conflict of Interest Transaction”, University conflict of interest policies, and which addresses transactions with University or Alumni staff.

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.
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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATED AFFILIATION AGREEMENT BETWEEN MISSISSIPPI STATE UNIVERSITY AND MISSISSIPPI STATE UNIVERSITY FOUNDATION, INC.

THIS AMENDED AND RESTATED AFFILIATION AGREEMENT ("Agreement") is entered into as of the 1st day of May, 2020, 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. The Chief Executive Officer (CEO) of the Foundation shall report directly to the Foundation Board of Directors. On at least an annual basis, the Chair of the Foundation shall seek input from the President on the performance of the CEO. The Chair of the Foundation shall also seek the President’s input in the hiring, compensation and termination of this position as such decisions are being made by the Foundation Board of Directors.

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. The Foundation shall only accept or solicit gifts for the benefit of the University that are consistent with the University’s mission, goals and objectives.

   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. All funds in the control of the Foundation shall be managed in a fiscally sound and prudent manner. 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 limitation, 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.

D. Ensure that donor gift funds distributed by the Foundation to the University are used in a timely manner in compliance with donor intent. The University shall provide Foundation staff and Foundation auditors with access to records and accounts needed to monitor and verify the use of donor gift funds.

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. The Foundation shall maintain and abide by a Gift Acceptance Policy that is jointly endorsed by the University and the Foundation. The Gift Acceptance Policy shall describe the method by which the Foundation will keep the University informed about endowment performance, endowment spending policy and anticipated accumulation and distribution of funds.

5. Financial Statements. The Foundation shall maintain financial and accounting records, including thorough documentation of donor intent, 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. The Foundation shall engage a certified public accounting firm that is in good standing with the Mississippi State Board of Public Accountancy, having substantial experience in auditing like organizations, to audit these financial records. Such firm must be approved by the University’s President or his/her designee. 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.
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, or trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information”), 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.

The IHL, acting upon its minutes, may require the Foundation to provide information or allow inspection of its records as required by the IHL to determine that the Foundation is in compliance with this agreement and that the funds held for the University or for its benefit are appropriately utilized and protected. No such request for information will be made by individual IHL members to the University or to the University President.

IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of the Foundation informally. In accordance with IHL policy, the decision of whether and how to respond to informal requests is within the discretion of the governing authority of the Foundation. The expectation is that normally any question from IHL can be resolved through informal procedures.

However, IHL may determine, acting upon its minutes, 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 agreement and that funds intended to be used for the benefit of the University 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 Foundation by persons
selected by the IHL, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined. Further, the Foundation will fully cooperate with any such inquiries.

Though the IHL will not unnecessarily disclose or disseminate any confidential and trade secret information relating to the Foundation, and in particular, any information related to donors to the Foundation or trade secrets associated with donors or entity function, in some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct the investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, the Foundation recognizes that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and any decision to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. No individual IHL Board member or employee of the IHL will release such information without authorization from the Board.

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 May 1, 2020, and end on December 31, 2024, if not renewed by mutual consent of the parties before that date.

   A. The President may, with prior approval of the IHL Board, terminate this Agreement for specified material noncompliance with or breach of this Agreement or applicable policies of the University or IHL. In such case, the President must provide the Foundation ninety (90) days notice and work with the staff and board of the Foundation in that period to cure the breach in advance of termination.

   B. In the event of termination under Subparagraph (A), the Foundation (1) will remit all unrestricted gift funds to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated by the President for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) 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, (3) provide the IHL, the University or another entity designated by the IHL or President with any records, accounts or other materials requested by the President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

   C. The By-Laws of the Foundation shall state that upon dissolution of the Foundation, all of the Foundation’s assets shall be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. The IHL Board must approve any exception to the aforementioned requirement.
D. 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 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 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. Insurance

A. General Liability Insurance. The Foundation shall maintain commercial general liability insurance, through one or more policies, in an amount not less than $1,000,000 per occurrence. To the extent feasible, the University and The Board of Trustees of State Institutions of Higher Learning (IHL) shall be named additional insureds under such policy unless the University requests in writing that the University or IHL be removed as additional insureds. This liability coverage shall be primary and noncontributory with respect to any insurance or program of self-insurance maintained by MSU or IHL.

B. Proof of Insurance. Certificates of insurance, which list all applicable endorsements, shall be provided to the University upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211.
C. **Insurer Quality.** All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

17. **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", University conflict of interest policies, and which addresses transactions with University or Foundation staff.

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.

4. 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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATED AFFILIATION AGREEMENT
BETWEEN
MISSISSIPPI STATE UNIVERSITY
AND
MISSISSIPPI STATE UNIVERSITY
RESEARCH AND TECHNOLOGY CORPORATION

THIS AMENDED AND RESTATED AFFILIATION AGREEMENT ("Agreement") is entered into as of the 1st day of May, 2020, 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, including a managing director, 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.
D. Ensure that donor gift funds, if any distributed by MSU-RTC to the University are used in a timely manner in compliance with donor intent. The University shall provide MSU-RTC staff and MSU-RTC auditors with access to records and accounts needed to monitor and verify the use of donor gift funds.

4. Financial Statements. The MSU-RTC shall maintain financial and accounting records, including thorough documentation of donor intent, in accordance with Generally Accepted Accounting Principles, which records shall be maintained separately from the records of the University. The MSU-RTC shall engage a certified public accounting firm that is in good standing with the Mississippi State Board of Public Accountancy, having substantial experience in auditing like organizations, to audit these financial records. Such firm must be approved by the University’s President or his/her designee. 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.

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. The President shall promptly notify the Board and Commissioner of Higher Education if the MSU-RTC refuses or fails to produce any information requested by the President.

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. The MSU-RTC shall maintain and abide by a Gift Acceptance Policy that is jointly endorsed by the University and the MSU-RTC. The Gift Acceptance Policy shall describe the method by which the MSU-RTC will keep the University informed about endowment performance, endowment spending policy and anticipated accumulation and distribution of funds.

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 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 May 1, 2020, and end on December 31, 2024, and shall continue thereafter from year to year.

A. The President may, with prior approval of the IHL Board and without prior notice to the MSU-RTC, terminate this Agreement for specified material noncompliance with or breach of this Agreement or applicable policies of the University or IHL. In such cases, the President must provide the MSU-RTC ninety (90) days’ notice and work with the staff and board of the MSU-RTC in that period to cure the breach in advance of termination.

B. The MSU-RTC may not terminate this Affiliation Agreement without the consent of the President and the IHL.

C. In the event of termination under Subparagraph (A), MSU-RTC (1) will remit all unrestricted assets to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated by the President for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are
exclusively for the use and benefit of the University, (2) 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, (3) provide the IHL, the University or another entity designated by the IHL or President with any records, accounts or other materials requested by the President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

D. The By-Laws of the MSU-RTC shall state that upon dissolution of the MSU-RTC, all of the MSU-RTC’s assets shall be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. The IHL Board must approve any exception to the aforementioned requirement.

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

With a copy to:
General Counsel
Mississippi State University
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.

14. Insurance

A. **General Liability Insurance.** MSU-RTC shall maintain commercial general liability insurance, through one or more policies, in an amount not less than $1,000,000 per occurrence. To the extent feasible, MSU and The Board of Trustees of State Institutions of Higher Learning (IHL) shall be named additional insureds under such policy unless the University requests in writing that the University or IHL be removed as additional insureds. This liability coverage shall be primary and noncontributory with respect to any insurance or program of self-insurance maintained by MSU or IHL.

B. **Proof of Insurance.** Certificates of insurance, which list all applicable endorsements, shall be provided to MSU upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS  39211.

C. **Insurer Quality.** All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

15. Miscellaneous.

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", University conflict of interest policies, and which addresses transactions with University or MSU-RTC staff.

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 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.

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 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 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.
5. **MSU - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE MISSISSIPPI STATE UNIVERSITY ASSURE RESEARCH AND DEVELOPMENT CORPORATION**

Mississippi State University requests Board approval of the below proposed affiliation agreement between the University and the Mississippi State University ASSURE Research and Development Corporation. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATED AGREEMENT BETWEEN MISSISSIPPI STATE UNIVERSITY AND MISSISSIPPI STATE UNIVERSITY ASSURE RESEARCH AND DEVELOPMENT CORPORATION**

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is entered into as of the 1st day of May, 2020, by and between MISSISSIPPI STATE UNIVERSITY ("University") and MISSISSIPPI STATE UNIVERSITY ASSURE RESEARCH AND DEVELOPMENT CORPORATION ("MSU-ARDC").

WHEREAS, the University is an institution of higher education, and an agency of the State of Mississippi; and

WHEREAS, the MSU-ARDC 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 activities arising from research and technology innovations and to promote economic development in the State of Mississippi through, among other things, contractual arrangements with business, industry, and state and federal government 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-ARDC to provide support to the University and desires to engage the services of the MSU-ARDC 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-ARDC 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-ARDC is to be administered and operated for the benefit of the University. However, the MSU-ARDC is not a subsidiary of the University and is not controlled by the University. The Board of Directors of the MSU-ARDC is entitled to make all decisions regarding the business and affairs of the MSU-ARDC. Moreover, the assets of the MSU-ARDC are the exclusive property of the MSU-ARDC and do not belong to the University.

2. **MSU-ARDC Services.** During the term of this Agreement, the MSU-ARDC shall be responsible for conducting on behalf of the University, as specifically requested by the University, research and development related contracting and related services (“Services”). MSU-ARDC shall consult with and coordinate with the University regarding the MSU-ARDC’s means and methods for providing such Services. In its operations and in performing services for the University, the MSU-ARDC shall comply with all applicable state and federal law. The services performed by MSU-ARDC 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. Accept, manage, hold and administer research contracts, grants, and gifts at the request of the University.
   
   C. Manage all funds in its control in a fiscally sound and prudent manner.
   
   D. 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-ARDC under this Agreement, and in consideration of the agreements of the MSU-ARDC contained herein, the University shall, at no additional cost to the MSU-ARDC, during the term of this Agreement:

   A. Provide to the MSU-ARDC all personnel, including a managing director, 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-ARDC as necessary and appropriate for the performance of the services required hereunder.

C. Reimburse the MSU-ARDC for certain reasonable business expenses, which the MSU-ARDC may incur on the University's behalf.

D. Ensure that donor gift funds, if any distributed by MSU-ARDC to the University are used in a timely manner in compliance with donor intent. The University shall provide MSU-ARDC staff and MSU-ARDC auditors with access to records and accounts needed to monitor and verify the use of donor gift funds.

4. Financial Statements. The MSU-ARDC shall maintain financial and accounting records, including thorough documentation of donor intent, in accordance with Generally Accepted Accounting Principles, which records shall be maintained separately from the records of the University. The MSU-ARDC shall engage a certified public accounting firm that is in good standing with the Mississippi State Board of Public Accountancy, having substantial experience in auditing like organizations, to audit these financial records. Such firm must be approved by the University’s President or his/her designee. These statements shall contain such detail as the IHL Board may from time to time require. The MSU-ARDC 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-ARDC officers and directors by October 15 of each year.

5. Confidential Records. Certain information and contracts maintained in furtherance of the MSU-ARDC’s activities and other services is recognized to be the property of the MSU-ARDC 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-ARDC before disclosure to afford the University and the MSU-ARDC 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-ARDC shall provide any and all information relating to the operation or management of the MSU-ARDC or any funds contributed to, received by, expended by, or managed by the MSU-ARDC. 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. The President shall promptly notify the Board and
Commissioner of Higher Education if the MSU-ARDC refuses or fails to produce any information requested by the President.

6. **Grant and Gift Receipting and Ownership.** All grants and gifts made to the University but managed by the MSU-ARDC shall be accounted for and ownership maintained by the University. All grants and gifts made to the MSU-ARDC shall be accounted for and ownership maintained by the MSU-ARDC. However, checks made payable to the University will be transferred to the MSU-ARDC if a grant or gift agreement or expectancy exists between the grantor/donor and the MSU-ARDC. If a check is made payable to the University and no grant or gift agreement or expectancy exists between the MSU-ARDC 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-ARDC 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. The MSU-ARDC shall maintain and abide by a Gift Acceptance Policy that is jointly endorsed by the University and the MSU-ARDC. The Gift Acceptance Policy shall describe the method by which the MSU-ARDC will keep the University informed about endowment performance, endowment spending policy and anticipated accumulation and distribution of funds.

7. **Independent Contractor.** It is understood and agreed that the MSU-ARDC, its officers, employees, and agents, if any, shall act solely in the capacity of an independent contractor and not as agents for the University.

8. **MSU-ARDC Funding.** The MSU-ARDC, 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 to the provisions for termination set forth below, the term of this Agreement shall begin on May 1, 2020, and end on December 31, 2024. In the event IHL adopts a significant change to the Policy during the term, the Agreement will be amended by the parties to reflect such changes.

   A. The President may, with prior approval of the IHL Board and without prior notice to the MSU-ARDC, terminate this Agreement for specified material noncompliance with or breach of this Agreement or applicable policies of the University or IHL. In such cases, the President must provide the MSU-ARDC ninety (90) days’ notice and work with the staff and board of the MSU-ARDC in that period to cure the breach in advance of termination.

   B. The MSU-ARDC may not terminate this Affiliation Agreement without the consent of the President and the IHL.

   C. In the event of termination under Subparagraph (A), MSU-ARDC (1) will remit
all unrestricted assets to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated by the President for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) 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, (3) provide the IHL, the University or another entity designated by the IHL or President with any records, accounts or other materials requested by the President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

D. The By-Laws of the MSU-ARDC shall state that upon dissolution of the MSU-ARDC, all of the MSU-ARDC’s assets shall be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. The IHL Board must approve any exception to the aforementioned requirement.

E. MSU and MSU-ARDC expect there to exist a cooperative relationship between them. In the event that the MSU President determines that the relationship with MSU-ARDC 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-ARDC 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-ARDC 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-ARDC 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
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-ARDC President shall promptly notify the President and the IHL, in writing, if any of the following events ("Reportable Events") occur:

   i. The MSU-ARDC has materially breached any of its contractual obligations under the Agreement;

   ii. The MSU-ARDC 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-ARDC 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-ARDC 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-ARDC;

   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-ARDC or upon its status as a tax exempt organization; or

   vi. The MSU-ARDC 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-ARDC, 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-ARDC 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-ARDC 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-ARDC 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-ARDC shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, the MSU-ARDC President will immediately notify, in writing, the President of the University.

14. **Insurance**

A. **General Liability Insurance.** MSU-ARDC shall maintain commercial general liability insurance, through one or more policies, in an amount not less than $1,000,000 per occurrence. To the extent feasible, MSU and The Board of Trustees of State Institutions of Higher Learning (IHL) shall be named additional insureds under such policy unless the University requests in writing that the University or IHL be removed as additional insureds. This liability coverage shall be primary and noncontributory with respect to any insurance or program of self-insurance maintained by MSU or IHL.

B. **Proof of Insurance.** Certificates of insurance, which list all applicable endorsements, shall be provided to MSU upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211.

C. **Insurer Quality.** All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

15. **Miscellaneous.**

A. The parties acknowledge that the MSU-ARDC has, and the MSU-ARDC 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," University conflict of interest policies, and which addresses transactions with University or MSU-ARDC staff.
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-ARDC 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-ARDC without prior approval of the IHL Board. This provision does not apply to transfers from the MSU-ARDC 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-ARDC 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 supersedes a similar agreement between the MSU-ARDC 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-ARDC, 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 MSU-ARDC 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.
6. **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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATED AFFILIATION AGREEMENT BETWEEN MISSISSIPPI STATE UNIVERSITY AND THE BULLDOG CLUB, INC.**

THIS AMENDED AND RESTATED AFFILIATION AGREEMENT ("Agreement") is entered into as of the 1st day of May, 2020, 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. (“Foundation”), 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. The Bulldog Club does not manage Institutional Assets.

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. The records of the Club shall be maintained separately from the records of the University.
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. The Club will submit to the IHL an annual report providing a detailed list of supplemental compensation provided to the University athletics employees.

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, including an executive director, 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.

F. Ensure that donor gift funds distributed by the Club to the University are used in a timely manner in compliance with donor intent. The University shall provide the Club staff and auditors with access to records and accounts needed to monitor and verify the use of donor gift funds.

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, including thorough documentation of donor intent, in accordance with Generally Accepted Accounting Principles, which records shall be maintained separately from the records of the University. These statements shall contain such detail as the IHL Board may from time to time require. The Club shall engage a certified public accounting firm that is in good standing with the
Mississippi State Board of Public Accountancy, having substantial experience in auditing like organizations, to audit these financial records. Such firm must be approved by the University’s President or his/her designee. 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 in the 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 Associate 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 Associate 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 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, or trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information”) 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. The IHL, acting upon its minutes, may require the Club to provide information or allow inspection of its records as required by the IHL to determine that the Club is in compliance with this agreement and that the funds held for the University or for its benefit are appropriately utilized and protected. No such request for information will be made by individual IHL members to the University or to the University President.

IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of the Club informally. In accordance with IHL policy, the decision of whether and how to respond to informal requests is within the discretion of the governing authority of the Club. The expectation is that normally any question from IHL can be resolved through informal procedures.

However, IHL may determine, acting upon its minutes, that informal measures are or will be untimely, insufficient, or inappropriate to secure information necessary to allow the Board to determine that the Club is appropriately complying with the agreement and that funds intended to be used for the benefit of the University are appropriately maintained and expended. If the Board makes such a finding, the Club will permit an audit, inspection or review of the financial and other records of the Club by persons selected by the IHL, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined. Further, the Club will fully cooperate with any such inquiries. Though the IHL will not unnecessarily disclose or disseminate any confidential and trade secret information relating to the Club, and in particular, any information related to donors to the Club or trade secrets associated with donors or entity
function, in some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct the investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, the Club recognizes that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the IH and any decision to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. No individual IHL Board member or employee of the IHL will release such information without authorization from the Board.

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 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. The Club shall maintain and abide by a Gift Acceptance Policy that is jointly endorsed by the University and the Club. The Gift Acceptance Policy shall describe the method by which the Club will keep the University informed about endowment performance, endowment spending policy and anticipated accumulation and distribution of funds.

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 May 1, 2020, and ending on December 31, 2024, and shall continue thereafter from year to year.

   A. The President may, with prior approval of the IHL Board, terminate this Agreement for specified material noncompliance with or breach of this Agreement or applicable policies of the University or IHL. In such case, the President must provide the Club ninety (90) days notice and work with the staff and board of the Club in that period to cure the breach in advance of termination.

   B. In the event of termination under Subparagraph (A), the Club (1) will remit all unrestricted gift funds to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated by the President for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) will cease to use and will 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, (3) will provide the IHL, the University or another entity designated by the IHL or President with any records, accounts or other materials requested by the President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

   C. The By-Laws of the Club shall state that upon dissolution of the Club, all of the Club’s assets shall be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the
corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. The IHL Board must approve any exception to the aforementioned requirement.

D. 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: President
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. **Insurance**

A. **General Liability Insurance.** The Club shall maintain commercial general liability insurance, through one or more policies, in an amount not less than $1,000,000 per occurrence. To the extent feasible, the University and The Board of Trustees of State Institutions of Higher Learning (IHL) shall be named additional insureds under such policy unless the University requests in writing that the University or IHL be removed as additional insureds. This liability coverage shall be primary and noncontributory with respect to any insurance or program of self-insurance maintained by MSU or IHL.

B. **Proof of Insurance.** Certificates of insurance, which list all applicable endorsements, shall be provided to the University upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211.

C. **Insurer Quality.** All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

19. **Miscellaneous.**

A. It is recognized that the Foundation 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 Foundation 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, entitled “Conflict of Interest Transaction,” University conflict of interest policies, and which addresses transactions with University or Club staff.

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. No form of additional compensation for other university employees may be provided or paid by the Club without the prior approval of the President.

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

STAFF RECOMMENDATION: Board staff recommends approval of this item.

7. **MUW - APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH MISSISSIPPI UNIVERSITY FOR WOMEN ALUMNI ASSOCIATION**

Mississippi University for Women requests Board approval of the below proposed affiliation agreement between the University and the Mississippi University for Women Alumni Association. The proposed agreement meets the requirements of Board Policy 301.0806 Foundation/Affiliated Entity Activities. The Attorney General’s Office has
reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATED AFFILIATION AGREEMENT
BETWEEN
MISSISSIPPI UNIVERSITY FOR WOMEN
AND THE
MISSISSIPPI UNIVERSITY FOR WOMEN ALUMNI ASSOCIATION

This Affiliation Agreement (Agreement), dated __________, is between Mississippi University for Women (the University), and the Mississippi University for Women Alumni Association (the Association) and entered into effective this 1st day of April, 2020.

RECITALS

1. This Amended and Restated Agreement is mandated by the Board of Trustees of the State Institutions of Higher Learning (IHL), as set forth in IHL Policy 301.0806.

2. The University is a state institution of higher learning established pursuant to the laws of the State of Mississippi. The Association is a Mississippi non-profit corporation and is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code.

3. The University has a strong interest in maintaining a favorable relationship with its graduates, former students, and friends of the University.

4. The Association exists to promote the mission of the University by (i) establishing and maintaining a quality relationship between the University and its alumni, former students, and friends; (ii) service to the University through awards and other appropriate recognition to students, alumni, and faculty for their contributions to the University and community, and (iii) promoting the general welfare and interests of the University by alumni service to the University.

5. The Association serves the University by attracting, organizing, and encouraging graduates, former students, and friends throughout Mississippi and the world to advance the University’s mission.

6. The University and the Association desire to interact and cooperate to serve the interests of the University.

7. The Association requires services from the University. The University is willing and able to provide those services to the Association. This relationship benefits not only the Association, but the University by facilitating the Association’s achievement of the Association’s mission to benefit the University.
8. The University and the Association, by this Agreement, recognize the relationship between the University and the Association, clarify the respective rights and responsibilities of the University and the Association, and identify emerging areas of collaboration.

9. The University and the Association desire to define the arrangements concerning services, use of facilities, and activities as set forth in this Agreement.

In consideration of these recitals and the mutual covenants contained in this Agreement, the University and the Association agree, as follows:

ARTICLE 1. RELATIONSHIP, PERSONNEL AND SERVICES

The Association may use, with the approval of the University President, such administrative, professional, and other University employees from time to time as are needed to carry out the purposes of the Association as agreed by the University.

ARTICLE 2. THE ASSOCIATION’S OBLIGATIONS

2.1 The Association agrees to provide an organizational framework for volunteer service to the University through geographic area alumni groups or 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 that it will use its resources for the sole and express purpose of advancing the University’s mission. 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.

2.3 The Association agrees to provide volunteers to serve the University and to assist the University in developing and supporting programs and services, including, but not limited to, administration, maintenance, and enhancement of the alumni database; operation of homecoming and reunion programs; maintenance of a faculty awards; participation in 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.
2.4 At least thirty days before the end of each Fiscal Year (June 30) during this Agreement, the Association shall submit an annual budget for the forthcoming Fiscal Year to the University President.

2.5 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 University 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.

2.6 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, including any trademarks, trade names, logos, and service marks historically associated with or used by the Association. The Association may only use the University’s name, symbols, trademarks, trade names, logos, and service marks consistent with the University policy, including but not limited to any symbols, trademarks, trade names, logos, and service marks developed by the University for use by the Association. Upon termination of this Agreement the Association shall be prohibited from using the name, symbols, trademarks, trade names, logos, and service marks of the University.

2.7 The Association shall maintain a Funds Management Agreement with Mississippi University for Women Foundation, Inc. (the Foundation) to provide for the Foundation’s receipting and accounting for gifts, documentation of donor intent, membership dues and miscellaneous income designated for the Association, any current local chapters and any local chapters formed by the Association after the date of this Agreement. The Funds Management Agreement initially entered into on October 25, 2012 and subsequently renewed on October 25, 2017 by its term is incorporated herein and attached as Appendix A. This agreement is necessary to assure that any funds are received and accounted for consistent with the policies and practices adopted by the Foundation and consistent with the Affiliation Agreement between the University and the Foundation and to provide for the Foundation’s management on behalf of the Association of all Association assets. The Association will abide by a gift acceptance policy jointly endorsed by the University and the Association describing the method by which the Association will keep the University informed about endowment performance, endowment spending policy, and anticipated accumulation and distribution of funds. Pursuant to the relationship between the Foundation and the Association, an annual financial statement will be prepared on the condition of the entities, which shall include such detail as the IHL Board may from time to time require.
The Association, through the Foundation, will satisfy its obligation to engage a Certified Public Accounting (CPA) firm to perform annual audits of the entities’ financial statements which are to be submitted, along with a list of officers, directors and trustees, to the University President and IHL not later than five months following the completion of the entities’ fiscal year. As the Association’s funds will be maintained and included in the financial statement of the Foundation, all obligations stated in IHL Policy 301.0806, as may be amended from time to time, will be satisfied through the Foundation’s compliance with the same policy.

2.8 The Association shall provide the University President reasonable notice of any regular, annual, or special meetings of the Association (including, but not limited to, meetings of the governing board, any committee and the membership), and the University President (or the President’s designee) shall have the right to attend any such meetings.

2.9 The University may from time to time make requests of the Association or seek assistance from the Association in accomplishing the University’s mission, and the Association agrees that it will use its best efforts to provide such assistance.

2.10 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.

2.11 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, working with the University Director of Alumni Relations, shall provide to the University, not less often than annually, the following information:

1. A report specifying how the 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 and the approval of the University’s Director of Alumni Relations; and

3. The Association’s current financial policies, procedures and controls, if any, as set forth in its Articles of Incorporation or By-Laws.

2.12 The Association agrees to maintain its financial and accounting records, if any, in accordance with generally accepted accounting principles. The records shall be maintained separately from those of the University. The University President shall have
the right upon two days’ notice to inspect the books and records of the Association during normal office hours.

The Association agrees to retain all books, accounts, reports, files and other records of the Association relating to this Agreement, if any, and make such records available at all reasonable times for inspection and audit by the University, or their agents, 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 Office of Development and Alumni in Columbus, Mississippi, 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 University 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 trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information”), 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 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. The University President shall promptly notify the Board and Commissioner of Higher Education if the Association refuses or fails to produce information requested by the University President. 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.

2.13 The University’s Office of Development and Alumni shall work with the Association in setting goals for the Association in conjunction with the University’s goals and priorities.

2.14 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, the
University’s conflict of interest policies, and which addresses transactions with University and the Office of Development and Alumni’s staff.

2.15 The Association may establish a dues structure for its membership. The Association shall not enter into any transaction that creates any liability for the University.

2.16 No member of the Association can 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 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.

2.19 The parameters of the Association’s fund raising activities are: All fundraising by the Association must be approved and coordinated by the University’s Office of Development and Alumni;

2.20 The Association may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed five years.

2.21 The Association’s By-Laws shall specify, among other things, a process for selecting or electing members of the governing board that requires the Association to use best efforts to achieve racial, gender, and generational diversity in composition of the governing board.

2.22 The process for nominations for the Association Officers shall be an inclusive process designed to achieve representation that reflects the membership of the alumni.

2.23 The Association must obtain written approval from the University President for any formal merger or affiliation between the Association and any other entity.

2.24 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.

2.25 The Association agrees to manage all funds in its control in a fiscally sound and prudent manner.
2.26 Affiliation Agreements must require that governing documents of the affiliated entity, including but not limited to, articles of incorporation, bylaws, or articles of organization provide that upon dissolution of the entity all of its assets be transferred to the university for one or more public purposes exclusively for the use and benefit of the university or another entity identified by the IEO and approved by the IHL board or identified by the IHL board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the university. Any exceptions to this requirement must be approved by the IHL board.

ARTICLE 3. THE UNIVERSITY’S OBLIGATIONS AND IN-KIND SUPPORT

3.1 The University grants the Association a non-exclusive, non-transferable license to use University trademarks, trade names, 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.

3.2 The University grants the Association an exclusive, transferable license to use University trademarks, trade names, service marks, and logos 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 University President, in the University 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 governing board and shall be given reasonable notice of any meeting of the governing board, as required by Section 2.9 of this Agreement.

3.6 Subject to the availability of funding and the budget process, the University agrees in good faith 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 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 or, if necessary, as the need arises.

3.9 The Executive Director of Development and Alumni (“Executive Director”) is the chief executive of the Association and is appointed by the President of the University. The Executive Director oversees, coordinates, and evaluates the work of the office of Development and Alumni Relations to ensure effective operation. The Executive Director shall be charged with the daily operation of the Development and Alumni Office, which shall from time to time compromise such duties and obligations as authorized by the Alumni Association Board of Directors or the President of the Board. In the event of vacancy in the office of the Executive Director, the President of the University, in consultation with the Alumni Association Board of Directors, shall appoint an Interim Executive Director of the Development and Alumni until such time as the position is filled.

ARTICLE 4. COMPLIANCE

4.1 The Association shall comply with all federal and state laws and regulations and shall comply with any compliance, financial, accounting, audit, and regulatory guidelines as may be required by IHL.

4.2 The provisions of 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 this Agreement between the University and the Association, which owns or controls the special purpose entity.

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. 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 to the President, and any other reports as required by this Agreement, the By-Laws of the Association, the policies of the University’s governing board or by other applicable law 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 2.5 and 2.6 of this Agreement.

6.2 The Association shall promptly notify the University 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 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 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 University President and the IHL, as required in Article 6.2 above. In this certification the Association’s 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 University President.

ARTICLE 7. TERMINATION AND RENEWAL

7.1 This Agreement shall have a term of five years, if not renewed by mutual consent of the parties before that date.

7.2 The University may terminate this Agreement for specified material non-compliance with or breach of the Affiliation Agreement or applicable policies of the University or IHL (“for cause”) without notice to the Association but with notice to the IHL and prior approval of the IHL, acting upon its minutes. In such cases, the IEO must provide the affiliated entity ninety (90) days’ notice and work with the staff and board of the affiliated entity in that period to cure the breach in advance of termination. The Association may not terminate the agreement without the consent of the University President and the IHL Board.

7.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 7.1, Articles 2.7, 2.13, 2.19, 5, 7, and 8 shall survive the termination.

7.5 “In the event of termination the Association: 1) will remit all unrestricted gift funds to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated by the President for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University; 2) cease to use the University’s name or registered marks or logos without the written approval of the President; and 3) provide the IHL, the University, or other entity designated by the IHL or President with any records, accounts, or other materials requested by the President or IHL subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

7.6 The University and the Association desire to work together in an environment of mutual cooperation and support. In addition, 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.
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 The parties agree that the Association is a private, independent entity and, as such, is not governed by the IHL. To ensure 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.

8.4 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 2.13 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.

8.5 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, veteran’s status, or any other category protected by law. The Association agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

8.6 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.

8.7 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.
8.8. 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.

8.9 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 as outlined in Section 4.2 of this Agreement.

ARTICLE 9. INSURANCE

9.1 The Alumni Association Board of Directors shall maintain insurance coverage as deemed appropriate by the Alumni 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.

9.2 Certificates of insurance, which list all applicable endorsements, shall be provided to the University upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211.

9.3 All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

ARTICLE 10. NOTICE

10.1 Any notice to either party hereunder shall be in writing signed by the party giving 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: 
President Nora Miller
Mississippi University for Women
1100 College Street, MUW-1600
Columbus, MS 39701

To the M: 
President, MUW Alumni Association Board
MUW Development and Alumni
1100 College Street, MUW-1618
Columbus, MS 39701

STAFF RECOMMENDATION: Board staff recommends approval of this item.
8. **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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATED AFFILIATION AGREEMENT BETWEEN MISSISSIPPI UNIVERSITY FOR WOMEN AND THE MISSISSIPPI UNIVERSITY FOR WOMEN FOUNDATION**

This Amended and Restated Agreement is made and entered into effective this 1st day of April, 2020 (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.
CONSENT AGENDA
LEGAL
MARCH 19, 2020

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 will abide by a gift
acceptance policy to be jointly endorsed by the University and Foundation and describing
the method by which the Foundation will keep the University informed about endowment
performance, endowment spending policy, and anticipated accumulation and distribution
of funds.

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.
The Foundation shall maintain its separate financial and accounting records including thorough documentation of donor intent 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 President 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 President 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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the President or his/her designee. However, at the request of the Foundation, the President 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.

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, the University’s conflict of interest policies, and which addresses transactions with University or Foundation staff.

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 and the University will provide the Foundation staff and auditors access to records and accounts needed to monitor and verify use of gift funds. 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 or trade secrets associated with donors or Foundation functions, (collectively “Confidential and Trade Secret Information”, 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.

2.13 The IHL, acting upon its minutes, may require the Foundation to provide information or allow inspection of its records as required by the IHL to determine that the Foundation is in compliance with this agreement and that the funds held for the University or for its benefit are appropriately utilized and protected. No such request for information will be made by individual IHL members to the University or to the University President.

IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of the Foundation informally.
However, IHL may determine, acting upon its minutes, 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 agreement and that funds intended to be used for the benefit of the University 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 Foundation by persons selected by the IHL, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined.

Though the IHL will not unnecessarily disclose or disseminate any confidential and trade secret information relating to the Foundation, and in particular, any information related to donors to the Foundation or trade secrets associated with donors or entity function, in some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct any investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, the Foundation recognizes that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and any decision to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. No individual IHL Board member or employee of the IHL will release such information without authorization from the Board.

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.
4.2 The Foundation shall maintain workers’ compensation insurance as required by applicable law.

4.3 The Foundation shall maintain commercial general liability insurance, through one or more policies, in an amount not less than $1,000,000 per occurrence. To the extent the coverage form can add the University and IHL as additional insureds, the University and IHL shall be named additional insureds under such policy. This liability coverage shall be primary and noncontributory with respect to any insurance maintained by the University or IHL.

4.4 The Foundation shall maintain a commercially reasonable amount of professional liability (or Directors and Officers liability) insurance.

4.5 Certificates of insurance, which list all applicable endorsements, shall be provide to the University upon request and by mail to IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211.

4.6 All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater, and such insurers must be licensed or authorized to provide insurance in the State of Mississippi.

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 March 31, 2025, if not renewed by mutual consent of the parties before that date.

6.2 The Agreement may be terminated by the President with the prior approval of the IHL Board for specified material non-compliance with or breach of the Affiliation Agreement or applicable; policies of the University or IHL. In such cases, the President must provide the affiliated entity ninety (90) days notice and work with the staff and Foundation Board in that period to cure the breach in advance of termination.

6.3 Upon termination of this Agreement, the Foundation (1) 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) 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) 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) 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) shall provide the IHL, the University, or other entity designated by the IHL or President with any records, accounts, or other materials requested by the President or IHL subject to appropriate restrictions set forth in a confidentiality agreement as to protection of confidential or trade secret information.

6.4 The governing documents of the Foundation will provide that upon dissolution of the Foundation all of its assets will be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University and that any exceptions to this requirement be approved by the IHL Board.
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. 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 this 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.

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 In performance of this Agreement, the Foundation shall not deny employment opportunities to any person on the basis of race, color, religion, ethnicity, sex, age, disability, veteran’s status, or any other category protected by law. 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 pursuant to Section 3.2 of this Agreement.

7.12 The Executive Director of the Foundation shall be the Chief Development Officer of the University and is appointed by the President of the University. The Executive Director oversees, coordinates, and evaluates the work of the office of Development and Alumni Relations to ensure effective operation. The Executive Director shall be charged with the daily operation of the Foundation, which shall from time to time comprise such duties and obligations as authorized by the Board of Directors of the Foundation or the Chairman of the Board. In the event of vacancy in the office of the Executive Director, the President of the University, in consultation with the Foundation Board, shall appoint an Interim Executive Director of the Foundation until such time as the position is filled. However, hiring, assessment, compensation and termination decisions related to the Executive Director are made by the President.

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:

President Nora Miller
Mississippi University for Women
1100 College Street, MUW-1600
Columbus, MS 39701

To the Foundation:

Dr. Jayne Perkins-Brown
Chair, Board of Directors
MUW Foundation
1100 College Street, MUW-1618
Columbus, MS 39701

or to such other addressee as may be hereafter designated by written notice.
ARTICLE 10. CYBERSECURITY

10.1 The Foundation shall be responsible for establishing and maintaining an information security program that is designed to: (a) ensure the security and confidentiality of data transmitted by the University to the Foundation or data otherwise obtained by the Foundation from or about the University (“University Data); (b) protect against any anticipated threats or hazards to the security or integrity of University Data, and (c) protect against unauthorized access to or use of University Data that could result in substantial harm or inconvenience to the University or any of its stakeholders. The Foundation shall establish, employ and at all times maintain physical, technical and administrative security safeguards and procedures sufficient to prevent any unauthorized processing of and/or use, access, alteration, disclosure, erasure, copying, exhibition, transmission, or destruction of University Data while such information is in the Foundation’s possession or control and will ensure that such information is not processed in other ways contradictory to privacy and/or data protection laws. The Foundation will maintain sufficient procedures to detect and respond to security breaches involving University Data and will inform the University immediately when it suspects or learns of malicious activity involving University Data, including an estimate of the activity’s effect on the University and the correction action taken. Such procedures shall include, but not be limited to, logging of all access to confidential or sensitive data, use of firewalls for all external data connections, and timely implementation of updates and patches.

10.2 At a minimum, the Foundation’s safeguards for the protection of University Data shall include: (a) limiting access to University Data to authorized personnel of the Foundation and utilizing policies that promote the least internal access; (b) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (c) implementing network, device application, database and platform security; (d) securing information transmission, storage and disposal; (e) implementing authentication (two-factor or more secure method) and access controls within media, applications, operating systems and equipment; (f) encrypting (with AES-256 bit or better encryption) University data stored on any mobile media; (g) encrypting University Data transmitted over public or wireless networks; (h) strictly segregating University Data from information of the Foundation so that University Data is not commingled with other types of information; (i) implementing appropriate personnel security and integrity procedures and practices, including but not limited to, conducting background checks consistent with applicable law; and (j) providing appropriate privacy and information security training to Foundation employees.

10.3 The Foundation must obtain the written approval of the University before subcontracting any portion of this Agreement. All subcontracts shall incorporate the terms of this Agreement so as to require subcontractors to meet or exceed the Foundation’s security obligations, including all data security requirements. 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 and the Executive Director of the Foundation, respectively, execute this Agreement on ___ day of ______, 2020.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

9. **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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATE Affiliation Agreement between MISSISSIPPI VALLEY STATE UNIVERSITY and MISSISSIPPI VALLEY STATE UNIVERSITY NATIONAL ALUMNI ASSOCIATION**

This agreement is made and entered into this 1st day of April, 2020 (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, which shall be reviewed for approval by the Board of Trustees at least every five (5) years, or whenever the
Agreement is changed (other than changes for non-substantive, conforming or purely administrative matters).

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 There may be established a position of Chief Executive Officer (CEO) or Executive Director of the Association. The President of the Association shall seek the President’s input in the hiring, compensation, and termination of this position as such decision are being made by the Association’s Board of Directors. The individual in this position shall report directly to the Board of Directors; however, on at least an annual basis, the President of the Association shall seek input from the President on the performance of the CEO or Executive Director. The Chief Executive Officer of 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.14 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 (30) 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, including thorough documentation of donor intent, 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.
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 University President 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 University President 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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the President or his/her designee; However, at the request of the Association, the President of the 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 Board. Any such request for approval shall be made through the IHL Commissioner to the IHL Board. 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 official 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, such as professorships, chairs, and other programmatic support 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, entitled “Conflict of Interest Transaction,” university conflict of interest policies, and which addresses transactions with University or Association staff;

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 The Association may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed two years.

2.22 The Association, pursuant to a jointly endorsed Gift Acceptance Policy, will keep the University informed about endowment performance, endowment spending policy, and anticipated accumulation and distribution of funds.

2.23 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.

2.24 The University shall ensure that gift funds distributed by the Association are used in a timely manner in compliance with donor intent and that the university provide the Association’s staff and auditors access to records and accounts needed to monitor and verify use of gift funds.
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 (hereinafter “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, ASSET DISTRIBUTION, 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 governing documents of the Association, including but not limited to articles of incorporation, bylaws, or articles of organization shall provide that upon dissolution of the Association, all of its assets be transferred to the university for one or more public purposes exclusively for the use and benefit of the university or another entity identified by the President and approved by the IHL board or identified by the IHL board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the university. Any exceptions to this requirement must be approved by the IHL board.

8.3 This Agreement may be terminated by the President with prior approval of the IHL Board, for specified material non-compliance with or breach of the Agreement or applicable policies of the University or IHL. In such cases, the President must provide the Association ninety (90) day notice and work with the staff and board of the Association in that period to cure the breach in advance of termination. In the event of termination, the Association 1) will remit all unrestricted gift funds to the university for one or more public purposes exclusively for the use and benefit of the university or to another entity designated by the President for one or more exempt purposes within the meaning of section 501 (c ) (3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the university, 2) cease to use the university’s name, or registered marks or logos without the written approval of the President, and 3) provide the IHL, the university, or other entity designated by the IHL or President with any records, accounts, or other materials requested by the President or IHL subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.
8.4 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.

**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 ensure 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 If requested by the IHL Board, the Association shall provide information or allow inspection of its records as required by the Board to determine that the Association is in compliance with the 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 or to any entity or to a university president.

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.

9.10 Any notice to either party hereunder shall 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 or express, or accomplished by hand delivery to the following:

To the University
Dr. Jerryl Briggs, Sr., President
Mississippi Valley State University
14000 Highway 82 West, #7272
Itta Bena, MS 38941

To the Association
Mr. Charlie Tolliver, President of the Board of Directors
MVSU National Alumni Association
Post Office Box 401
Itta Bena, MS 38941
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.

10. MVSU – APPROVAL OF PROPOSED AFFILIATION AGREEMENT WITH THE MVSU V-CLUB

Mississippi Valley State University requests Board approval of the proposed affiliation agreement between the University and the MVSU V-Club. The proposed affiliation agreement meets the requirements of Board policy 301.0806 University Foundation/Affiliated Entity Activities. The Attorney General’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AFFILIATION AGREEMENT
    BETWEEN
    MISSISSIPPI VALLEY STATE UNIVERSITY
    AND THE
    MVSU V-CLUB

This agreement is made and entered into this ____ day of ________, 20__ (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 MVSU V CLUB, 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, which shall be reviewed for approval by the Board of Trustees at least every five (5) years, or whenever the
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’s Board determines and/or approves all hiring, assessment, compensation and termination decisions related to the duties of the Association’s Executive Director. If the Executive Director of the Association is an employee of the University, the University President does have the authority to hire or terminate him/her as it relates to his or her official capacity and responsibilities as an employee of the University, but not in relation to his or her duties as the Executive Director of the Association. The Executive Director of 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.
IHL Board Policy 301.0806 D.14 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.

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 fundraising 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, special interest alumni groups and local businesses. 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.

The Association agrees to assist the University in developing and supporting programs and services, including, but not limited to, administration, maintenance, and enhancement of athletics; 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 and By-Laws. 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, Athletics Director 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 Athletics Department 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 (30) 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, including thorough documentation of donor intent, 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 Office of Advancement and/or Athletics 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 trade secrets associated with donors or entity functions, or with respect to any personal, commercial or proprietary information provided to the Association by third parties (collectively “Confidential and Trade Secret Information”), such information shall be treated as confidential by the President and by any designee who may review or acquire such information. The President 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. The University and/or the University’s Executive Officers shall promptly notify the Board and Commissioner of Higher Education if the entity refuses or fails to produce and information requested by the University and/or the University’s Executive Officers.

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 University President 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 University President 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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the President or his/her designee; However, at the request of the Association, the President of the 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 Board. Any such request for approval shall be made through the IHL Commissioner to the IHL Board. 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, such as professorships, chairs, and other programmatic support 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, entitled “Conflict of Interest Transaction,” university conflict of interest policies, and which addresses transactions with University or Association staff;

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 The Association may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed two years.

2.22 The Association, pursuant to a jointly endorsed Gift Acceptance Policy, will keep the University informed about endowment performance, endowment spending policy, and anticipated accumulation and distribution of funds.

2.23 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.

2.24 The University shall ensure that gift funds distributed by the Association are used in a timely manner in compliance with donor intent and that the university provide the Association’s staff and auditors access to records and accounts needed to monitor and verify use of gift funds.

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.
6.7 Fidelity / Crime Coverage. Association shall maintain a commercially reasonable amount of insurance covering theft and loss due to employee dishonesty. Such coverage shall include loss due to fraudulent instruction and electronic theft (such as phishing or malware), unless such coverage would duplicate coverage maintained under a separate policy.

6.8 Cyber Liability Insurance. If Association maintains information or data that is subject to privacy laws, Association shall maintain a cyber liability policy, in a commercially reasonable amount, which shall include coverage for PCI fines, regulatory penalties, liability, and breach investigation and response. To the extent the coverage form can add University and IHL as additional insureds, the policy shall add University and IHL as additional insureds for incidents arising from the services contemplated by this Agreement.

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 (hereinafter “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 reaffirm 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.

7.4 All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified U.S. Mail, postage prepaid, return receipt requested, to the persons at the addresses shown below. The parties agree to notify the other in writing of any change of address.

For MVSU: President Mississippi Valley State University 14000 Hwy. 82 West, MVSU 7272 Itta Bena, MS 38941
For the MVSU V-Club: Executive Director MVSU V-Club 14000 Hwy. 82 West, MVSU 7226 Itta Bena, MS 38941

ARTICLE 8. TERMINATION, ASSET DISTRIBUTION, 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 governing documents of the Association, including but not limited to articles of incorporation, bylaws, or articles of organization shall provide that upon dissolution of the Association, all of its assets be transferred to the university for one or more public purposes exclusively for the use and benefit of the university or another entity identified by the President and approved by the IHL board or identified by the IHL board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of
any future tax code provided such purposes are exclusively for the use and benefit of the university. Any exceptions to this requirement must be approved by the IHL board.

8.3 This Agreement may be terminated by the President with prior approval of the IHL Board, for specified material non-compliance with or breach of the Agreement or applicable policies of the University or IHL. In such cases, the President must provide the Association ninety (90) day notice and work with the staff and board of the Association in that period to cure the breach in advance of termination. In the event of termination, the Association 1) will remit all unrestricted gift funds to the university for one or more public purposes exclusively for the use and benefit of the university or to another entity designated by the President for one or more exempt purposes within the meaning of section 501 (c )(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the university, 2) cease to use the university’s name, or registered marks or logos without the written approval of the President, and 3) provide the IHL, the university, or other entity designated by the IHL or President with any records, accounts, or other materials requested by the President or IHL subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

8.4 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.

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 ensure 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 If requested by the IHL Board, the Association shall provide information or allow inspection of its records as required by the Board to determine that the Association is in compliance with the 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 or to any entity or to a university president.

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.

11. **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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATED AFFILIATION AGREEMENT BETWEEN UNIVERSITY OF MISSISSIPPI AND THE ALUMNI ASSOCIATION OF THE UNIVERSITY OF MISSISSIPPI**

This amended and restated agreement is made and entered into this 1st day of April, 2020 (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 d/b/a Ole Miss Alumni Association (hereinafter referred to as “OMAA”).

**RECITALS**

1. The University is a state institution of higher learning established pursuant to the laws of the State of Mississippi.

2. OMAA 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 into an affiliation agreement with OMAA 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. OMAA 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 OMAA have a history of interaction and cooperation that has served the interests of the University.

7. OMAA 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 OMAA anticipate that the University will provide OMAA with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other services, support, and assistance OMAA shall provide the University.

9. The University and OMAA 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 OMAA do hereby agree, as follows:

ARTICLE 1. PERSONNEL AND SERVICES

OMAA 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 OMAA as agreed by the University.

ARTICLE 2. OMAA OBLIGATIONS

2.1 OMAA agrees to provide an organizational framework for volunteer service to the University through local alumni clubs, professional chapters, and special interest alumni groups. OMAA 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 OMAA control of or authority over other affiliates supporting the University and its constituent units. OMAA 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 OMAA 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 OMAA agrees to provide volunteers to serve the University.

2.4 OMAA agrees that it may only use its resources to advance the University’s mission as outlined in its Articles of Incorporation. OMAA 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 OMAA or seek other assistance from OMAA in accomplishing the mission of the University, and OMAA agrees that it will not unreasonably deny any such requests for assistance.

2.6 OMAA shall reimburse the University for expenses the University incurs as a result of OMAA’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, OMAA shall provide an annual report to the Chancellor of the University, including the following information:

(a) How University resources and services were used, and the benefits (both financial and intangible) to the University arising from that use;

(b) 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; and

(c) OMAA’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 OMAA to participate in setting goals for OMAA 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, OMAA shall submit an annual budget for the forthcoming Fiscal Year to the Chancellor.

2.10 OMAA agrees to manage all funds in its control in a fiscally sound and prudent manner.

2.11 OMAA agrees to maintain its financial and accounting records, including thorough documentation of donor intent, separate from the records of the University and in accordance with Generally Accepted Accounting Principles. OMAA agrees to retain all books, accounts, reports, files and other records of OMAA relating to this Agreement, the operation and management of OMAA or any funds contributed to, received by, expended by, or managed by OMAA, 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 OMAA. 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, any personal, commercial or proprietary information provided to OMAA by third parties, or trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information”), 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. OMAA will not unnecessarily disclose or disseminate any Confidential and Trade Secret Information related to donors or trade secrets associated with donors or OMAA functions. If upon such inspection or audit the University determines that University funds or resources have been expended for purposes inconsistent with this Agreement, OMAA, 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.

2.12 The IHL, acting upon its minutes, may require OMAA to provide information or allow inspection of its records as required by the IHL to determine that OMAA is in compliance with this agreement and that the funds held for the University or
for its benefit are appropriately utilized and protected. No such request for information will be made by individual IHL members to the University or to the Chancellor.

IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of the Foundation informally.

However, IHL may determine, acting upon its minutes, that informal measures are or will be untimely, insufficient, or inappropriate to secure information necessary to allow the Board to determine that OMAA is appropriately complying with the agreement and that funds intended to be used for the benefit of the University are appropriately maintained and expended. If the Board makes such a finding, OMAA will permit an audit, inspection or review of the financial and other records of OMAA by persons selected by the IHL, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined. Further, OMAA will fully cooperate with any such inquiries.

Though the IHL will not unnecessarily disclose or disseminate any confidential and trade secret information relating to OMAA, and in particular, any information related to donors to OMAA or trade secrets associated with donors or entity function, in some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct the investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, OMAA recognizes that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and any decision to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. No individual IHL Board member or employee of the IHL will release such information without authorization from the Board.

2.13 OMAA 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. OMAA must also engage a Certified Public Accounting (CPA) firm to perform annual audits of its annual financial statements. OMAA 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 OMAA’s fiscal year, to the Chancellor of the University 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 OMAA’s annual audited financial statement will be required for inclusion in the State of Mississippi’s Comprehensive Annual Financial Report (CAFR), then OMAA must submit annual audited financial statements, along with a list of OMAA officers, directors or trustees, by October 15 of each year. The IHL’s Associate Commissioner of Finance and Administration shall notify OMAA of the applicability of the October 15 deadline to OMAA as far in advance of the deadline as possible each year. The CPA firm to be utilized by OMAA must be in good standing with the Mississippi State Board
of Public Accountancy, have substantial experience in auditing like organizations, and must be approved annually by the University’s Chancellor or his/her designee. However, at the request of OMAA, 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 OMAA’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 OMAA’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 OMAA 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. OMAA 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 OMAA 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 OMAA 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, OMAA 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 OMAA at the IHL’s next meeting. This provision does not apply to transfers to the University by OMAA 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.

2.15 To the extent OMAA engages in fundraising on behalf of the University, OMAA agrees to accept or solicit only those gifts that are consistent with the University’s missions, goals, or objectives. OMAA shall maintain and abide by a Gift Acceptance Policy, and such policy will be jointly endorsed by the University and OMAA and will describe the method by which OMAA will keep the University informed about endowment performance, endowment spending policy, and anticipated accumulation and distribution of funds.
2.16 OMAA 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 OMAA or any local clubs or professional chapters, to assure that any such gifts, grants, and endowments are received and accounted for consistent with the Gift Acceptance Policy, and other 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 OMAA of all OMAA endowments and other non-cash assets. All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by OMAA.

2.17 OMAA 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.

2.18 No member of OMAA may encumber the University’s funds or otherwise bind the University in any way.

2.19 No University assets will be managed by OMAA.

2.20 OMAA 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 OMAA, including all such trademarks, service marks, and trade names historically associated with OMAA.

2.21 OMAA 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, the University’s conflict of interest policies and which shall address transactions with the University or OMAA staff.

2.22 OMAA 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 has the right to attend any such meetings as well as the meetings of any other OMAA committees.

2.23 If OMAA should cease to exist, any OMAA assets donated to OMAA for the benefit of the University must be transferred to the University or to another non-profit entity designated by the University.

2.24 OMAA may enter into 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.
3.1 The University shall ensure that donor gift funds are used in a timely manner in compliance with donor intent. The University shall provide OMAA staff and OMAA auditors with access to records and accounts needed to monitor and verify the use of donor gift funds.

3.2 The University grants OMAA 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 OMAA. The University grants OMAA an exclusive, transferable license to use University trademarks, service marks, and trade names historically associated with OMAA or developed by the University or OMAA for OMAA’s use.

3.3 The University agrees to designate OMAA as an official affiliated entity of the University. The University shall provide OMAA such other rights, privileges or benefits as the Chancellor, in the Chancellor’s sole discretion, may determine will assist OMAA in discharging its obligations under this Agreement.

3.4 The OMAA Executive Director of Alumni Affairs reports to the Chancellor. The Chancellor is responsible for the hiring, assessment, compensation, and termination of the OMAA Executive Director. The OMAA President and President-elect are empowered to make recommendations to the Chancellor as to the selection of the Executive Director, and the Executive Director so appointed, who is also Treasurer of OMAA, shall be directly responsible to the Executive Committee and the Board of Directors. The Executive Director and Treasurer are also responsible to the members of OMAA when in session.

3.5 The University Chancellor shall be an ex-officio non-voting member of OMAA'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 OMAA with resources suitable in the University's judgment for the accomplishment of OMAA'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 OMAA. No provision in this Agreement shall be construed to give OMAA 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 OMAA under the terms of this agreement shall remain the property of the University unless sold, conveyed or transferred to OMAA by way of a separate written agreement.

3.7 The University’s Chancellor will encourage all parts of the University to collaborate with OMAA in implementing OMAA’s programs and services.

3.8 The University Chancellor agrees to inform OMAA on a regular basis of the University’s needs and priorities.

ARTICLE 4. COMPLIANCE

OMAA 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 University or IHL.

ARTICLE 5. INDEMNIFICATION

OMAA agrees to indemnify and hold harmless the University, including its agents and employees, and the Board of Trustees of State Institutions of Higher Learning, 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. OMAA 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 OMAA 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. The general liability policy shall add the University and the IHL as additional insureds. Such policy shall be primary and non-contributory in regard to insurance or self-insurance maintained by the University or the IHL. OMAA agrees to waive any rights of subrogation against the University or the IHL.

6.2 OMAA shall maintain Automobile Liability insurance providing at least $1,000,000 per accident or occurrence for bodily injury and property damage.

6.3 OMAA shall maintain Property insurance in an amount sufficient to provide full replacement of all insured property, and in the event that OMAA 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 OMAA shall maintain Directors and Officers Liability insurance on members of the OMAA Board of Directors and Officers, while performing as such.

6.5 OMAA shall maintain Commercial Excess or Umbrella Coverage: OMAA 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 OMAA 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 OMAA shall maintain a commercially reasonable amount of Fidelity/Crime Coverage insurance covering theft and loss due to employee dishonesty. Such coverage shall include loss due to fraudulent instruction and electronic theft (such as phishing or malware), unless such coverage is being maintained under a separate policy.

6.8 If OMAA maintains information or data that is subject to privacy laws, OMAA shall maintain a Cyber Liability policy, in a commercially reasonable amount, which shall include coverage for PCI fines, regulatory penalties, liability, and breach investigation and response. To the extent the coverage form can add the University and IHL as additional insureds, the policy shall add the University and IHL as additional insureds for incidents arising from the services contemplated by this Agreement.

6.9 Although in some circumstances an OMAA 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 OMAA 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.

6.10 The above-required policies of insurance shall be with insurers rated by A.M. Best as A VIII or greater and which are licensed to provide the insurance in the State of Mississippi. Certificates of insurance, which list all applicable endorsements, shall be provided to the University upon request and by mail to the IHL via the following: Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211. No material change in coverages may occur for the University or the IHL without sixty (60) days advanced notice.
ARTICLE 7. REPORTING

7.1 OMAA 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 OMAA 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 OMAA, 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 OMAA shall promptly notify the Chancellor of the University and the IHL, in writing, if any of the following events (“Reportable Events”) occur:

(a) OMAA has materially breached any of its contractual obligations under the Agreement;

(b) OMAA 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) OMAA 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 OMAA 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 OMAA;

(e) Any state or federal regulatory body begins any investigation of any matter that may have a significant financial or regulatory effect on OMAA or upon its status as a tax exempt organization; or

(f) OMAA has contracted with or entered into any business or pecuniary relationship with any of its board members, other than a full time employee of OMAA, 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 OMAA to report any such transaction but does not suggest or imply that all such transactions are either prohibited or permitted.

7.3 OMAA’s Executive Director shall submit to the Chancellor and to the IHL a signed certification statement annually, before January 31 of each year, which affirmatively states that OMAA 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 OMAA’s Executive Director shall re-affirm that, in the event he/she becomes aware of any such Reportable Events, OMAA’s Executive Director will immediately notify, in writing, the Chancellor of the University.

7.4 Any notice required or permitted under this Agreement shall be in writing, addressed to the parties listed below and delivered by certified mail (return receipt requested), United States mail (postage prepaid), or expedited delivery (signature required upon delivery). Notice by any other means is neither valid nor binding.

For the University:

Chancellor Glynn Boyce  
The University of Mississippi  
Office of the Chancellor  
P.O. Box 1848  
123 Lyceum  
University, MS 38677-1848  
(662) 915-1100

With Copy to:

The Office of the General Counsel  
The University of Mississippi  
209 Lyceum  
University, MS 38677  
(662) 915-7014

For OMAA:

Kirk Purdom, Executive Director  
Ole Miss Alumni Association  
P.O. Box 1848  
651 Grove Loop  
University, MS 38677-1848  
(662) 915-7375

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 Chancellor, with prior approval of the IHL Board, may terminate this Agreement, for specified material noncompliance with or breach of this Agreement or
applicable policies of the University or the IHL. In such cases, the Chancellor must provide OMAA ninety (90) days notice and work with the OMAA staff and Board in that period to cure the breach in advance of the termination.

8.3 Upon termination of this Agreement pursuant to paragraph 8.2 herein: (1) OMAA will remit all unrestricted gift funds to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated by the Chancellor for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) OMAA 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, and (3) OMAA shall provide the IHL, the University or another entity designated by the IHL or Chancellor with any records, accounts or other materials requested by the Chancellor or IHL, subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

8.4 The Bylaws of OMAA shall state that upon dissolution of OMAA, all of OMAA’s assets shall be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the Chancellor and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. The Bylaws of OMAA shall further provide that the IHL must approve any exception to the aforementioned requirement.

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 OMAA 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 OMAA is a private, independent entity and, as such, is not governed by the IHL. To insure the independence of OMAA, no IHL employee shall hold a voting position on OMAA Board. Senior University administrators should only participate on OMAA’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 OMAA agree that OMAA’s donor and giving records and any other financial or commercial information possessed by OMAA or provided by OMAA to the University concerning individuals or corporations that provide OMAA financial support are confidential and proprietary. Unless required to disclose such information by applicable law and except as provided otherwise in Article 2.12 of this Agreement with respect to actions by IHL acting upon its minutes, the University and OMAA 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 OMAA.

9.5 In the performance of this Agreement, OMAA 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 OMAA’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 OMAA agree that it is intended for title to all personal property and contents purchased by OMAA for the use of the University to be conveyed to The University at the time of delivery to The University. Therefore, OMAA shall be under no duty to purchase property insurance coverage for personal property and contents which are purchased by OMAA for the use of The University.
9.11 The University and OMAA agree that neither the University nor OMAA 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 OMAA may provide perquisites and supplemental compensation to some University employees, OMAA is doing so at the direction of the University under the affiliation agreement. OMAA and the University agree that OMAA is not the employer of any University employees and does not control, direct or supervise the work of any the University employees.

9.12 OMAA agrees to cease using the University’s name, marks, and logos in the event OMAA dissolves, ceases to be a non-profit corporation, or ceases to be recognized as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code. OMAA 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.

ARTICLE 10. INFORMATION SECURITY

10.1 OMAA shall be responsible for establishing and maintaining an information security program that is designed to: (a) ensure the security and confidentiality of data transmitted by the University to OMAA or data otherwise obtained by OMAA from or about the University (“University Data”), (b) protect against any anticipated threats or hazards to the security or integrity of University Data, and (c) protect against unauthorized access to or use of University Data that could result in substantial harm or inconvenience to the University or any of its stakeholders. OMAA shall establish, employ and at all times maintain physical, technical and administrative security safeguards and procedures sufficient to prevent any unauthorized processing of and/or use, access, alteration, disclosure, erasure, copying, exhibition, transmission, or destruction of University Data while such information is in OMAA’s possession or control and will ensure that such information is not processed in other ways contradictory to privacy and/or data protection laws. OMAA will maintain sufficient procedures to detect and respond to security breaches involving University Data and will inform the University immediately when it suspects or learns of malicious activity involving University Data, including an estimate of the activity’s effect on the University and the corrective action taken. Such procedures shall include, but not be limited to, logging of all access to confidential or sensitive data, use of firewalls for all external data connections, and timely implementation of updates and patches.

10.2 At a minimum, OMAA’s safeguards for the protection of University Data shall include: (a) limiting access to University Data to authorized personnel of OMAA and utilizing policies that promote the least internal access; (b) securing business
facilities, data centers, paper files, servers, back-up systems (at a strategically located off-site location) and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (c) implementing network, device application, database and platform security; (d) securing information transmission, storage and disposal; (e) implementing authentication (two-factor or more secure method) and access controls within media, applications, operating systems and equipment; (f) encrypting (with AES-256 bit or better encryption) University Data stored on any mobile media; (g) encrypting University Data transmitted over public or wireless networks; (h) strictly segregating University Data from information of OMAA or its other customers so that University Data is not commingled with any other types of information; (i) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (j) providing appropriate privacy and information security training to OMAA’s employees.

10.3 OMAA must obtain the written approval of the University before subcontracting any portion of this Agreement. All subcontracts shall incorporate the terms of this Agreement so as to require subcontractors to meet or exceed the OMAA’s security obligations, including all data security requirements.

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.

12. 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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATED 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 April 2020 (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 and approved pursuant to Miss. Code Ann. § 37-147-15 for the purposes outlined in its Amended and Restated 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” or “IHL Board”);

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 as needed to fulfill the missions and programs of UM.

ARTICLE 2. PERSONNEL AND SERVICES

2.1 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 UM employees who perform work for or under the direction of RF Board or RF employees, if any.

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 (July 1 – June 30) 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, with respect to any personal, commercial or proprietary information provided to RF by third parties, or trade secrets associated with donors or RF functions (collectively, “Confidential and Trade Secret Information”), such information shall be treated as confidential by UM, 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. The IHL, acting upon its minutes, may require the Foundation to provide information or allow inspection of its records as required by the IHL to determine that the Foundation is in compliance with this Agreement and that the funds held for the University or for its benefit are appropriately utilized and protected. No such request for information will be made by individual IHL members to the University or to the Chancellor.

3.5 IHL will attempt, when appropriate, to resolve any issues or concerns about the activities of the Foundation informally. However, IHL may determine, acting upon its minutes, 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 agreement and that funds intended to be used for the benefit of the University 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 Foundation by persons selected by the IHL, which persons shall have the power to determine the appropriate scope of the investigation and the records to be examined. Further, the Foundation will fully cooperate with any such inquiries.

3.6 Though the IHL will not unnecessarily disclose or disseminate any confidential and trade secret information relating to the Foundation, and in particular, any information related to donors to the Foundation or trade secrets associated with donors or entity functions, in some circumstances, however, such as those involving alleged misuse or misappropriation of funds, appropriately limited disclosure of information related to donors may be necessary in order to conduct the investigation and to recover the funds, or to allow prosecution with respect to any misappropriation of funds. Thus, the Foundation recognizes that the final determination as to the appropriate extent of any disclosure or other use of the information is in the discretion of the IHL and any decision to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes. No individual IHL Board member or employee of the IHL will release such information without authorization from the Board.”
3.7 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, including thorough documentation of any donor intent. 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 RF 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 in good standing with the Mississippi State Board of Accountancy, have substantial experience in auditing like organizations, and must be approved annually by the Chancellor or his/her designee. 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 UM 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 UM 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.

3.8 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 an UM employee for expenses consistent with policies or procedures established between UM and RF.

3.9 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.

3.10 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, UM conflict of interest policies, and which shall address transactions with UM or RF staff.

3.11 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. All gifts made to the UM shall be accounted for and ownership maintained by UM, even though they may be managed by the RF.

3.12 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.

3.13 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.

3.14 RF further agrees that it may not amend its Articles of Incorporation during the life of this Agreement unless UM consents in writing to the proposed amendment.

3.15 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.
3.16 RF shall reimburse UM for expenses UM incurs as a result of RF 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 RF shall be the rate that is charged to UM departments for such services.

3.17 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 UM 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.

3.18 RF agrees to regularly seek input from UM’s Chancellor in defining RF’s objectives.

3.19 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.

3.20 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. RF shall maintain and abide by a Gift Acceptance Policy, and such policy will be jointly endorsed by UM and RF and will describe the method by which RF will keep UM informed about endowment performance, endowment spending policy, and anticipated accumulation and distribution of funds.

3.21 RF agrees to manage all funds and/or assets in its control in a reasonably sound and prudent manner.

3.22 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 ensure that any donor gift funds distributed by RM to UM are used in a timely manner in compliance with donor intent. UM shall provide RM’s staff, if any, and auditors with access to records and accounts needed to monitor and verify the use of donor gift funds.

4.5 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.

4.6 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 UM administrators and other UM employees.

4.7 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.

4.8 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.

4.9 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, and the IHL Board from and against any and all claims, 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 RF or its staff, if any. This provision shall continue beyond termination or expiration of this Agreement.

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. The general liability policy shall add UM and IHL as additional insureds. Such policy shall be primary and non-contributory in regard to insurance or self-insurance maintained by UM or IHL. RF agrees to waive any rights of subrogation against UM or IHL.

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, 7.3, 7.4, and 7.7, if any.

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 To the extent RF maintains data in its possession and control which is subject to privacy laws, RF shall maintain a commercially reasonable amount of cyber
breach insurance, which shall include coverage for liability, data breach investigation and response, and regulatory defense.

7.8 The above policies of insurance shall be with insurers rated by A M Best as A VIII or greater and which are licensed to provide the insurance in the State of Mississippi. Certificates of insurance, which list all applicable endorsements, shall be provided to UM upon request and by mail to IHL via Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Jackson, MS 39211. No material change in coverages may occur for UM or IHL without sixty (60) days advanced notice.

7.9 Although in some circumstances an RF employee may be considered a UM 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 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.

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 March 31, 2025, if not renewed by mutual consent of the parties before that date.

9.2 The Chancellor, with prior approval of the IHL Board, may terminate this Agreement, for specified material noncompliance with or breach of this Agreement or applicable policies of UM or the IHL. In such cases, the Chancellor must provide RF ninety (90) days notice and work with RF’s staff, if any, and its Board in that period to cure the breach in advance of the termination.

9.3 Upon termination of this Agreement pursuant to paragraph 9.2 herein: (a) RF will remit all unrestricted gift funds to UM for one or more public purposes exclusively for the use and benefit of UM or to another entity designated by the Chancellor for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of UM, (b) 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, and (c) RF shall provide the IHL, UM or another entity designated by the IHL or Chancellor with any records, accounts or other materials requested by the Chancellor or IHL, subject to
appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

9.4 If this Agreement is terminated for any reason, including because the Agreement expired without being renewed under Article 9.1, Articles 6, 9, and 10 shall survive the termination.

9.5 RF’s governing documents, including but not limited to its articles of incorporation and bylaws, if any, shall provide that upon dissolution of RF, all of RF’s assets shall be transferred to UM for one or more public purposes exclusively for the use and benefit of UM or another entity identified by the Chancellor and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of UM. RF’s governing documents shall further provide that the IHL must approve any exception to the aforementioned requirement.

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 an 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 ex-officio, non-voting capacity. The IHL may allow, upon written request by UM, exceptions to this restriction regarding IHL/UM 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, gender, sex, pregnancy, sexual orientation, gender identity or expression, religion, citizenship, national origin, age, disability, veteran status, or genetic information.

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 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.

10.8 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. § 37-101-41 (1972), et seq., as amended from time to time. 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 Any notice required or permitted under this Agreement shall be in writing, addressed to the parties listed below and delivered by certified mail (return receipt requested), United States mail (postage prepaid), or expedited delivery (signature required upon delivery). Notice by any other means is neither valid nor binding.

For the University:

Chancellor Glynn Boyce
10.12 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 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.

13. **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 UMMC 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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AFFILIATION AGREEMENT**

**BETWEEN**

**UNIVERSITY OF MISSISSIPPI MEDICAL CENTER**
This agreement is made and entered into this _____ day of April, 2020 (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 formed for the purpose of supporting research, developing and administering enterprises arising from research and technology innovations, commercialization of intellectual property including its development and translation, and managing and licensing certain assigned intellectual property in order to take advantage of opportunities of scientific, educational and economic development on behalf of 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 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 UMMC shall, at no additional cost to the RDF, provide offices, furniture, equipment, utilities and other support for the RDF as necessary and appropriate for the performance of the services required hereunder, as needed by RDF and available from UMMC.

1.2 UMMC may request RDF to relocate or relinquish use of the facilities provided by UMMC at such time that said facilities are needed to fulfill the missions and programs of UMMC. UMMC will give at least sixty (60) days’ notice before any relocation or relinquishment.

ARTICLE 2. PERSONNEL AND SERVICES

2.1 RDF may utilize, with the approval of the UMMC Vice Chancellor for Health Affairs (hereinafter Vice Chancellor), 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/Affiliated Entity Activities 301.0806.

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 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.

2.4 UMMC shall ensure that gift funds distributed by RDF are used in a timely manner in compliance with donor intent. UMMC will provide RDF staff and auditors reasonable access to records and accounts needed to monitor and verify use of gift funds.

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 research, developing and administering enterprises arising from research and technology innovations, commercialization of intellectual property including its development and translation, and managing and licensing certain assigned intellectual property in order to take advantage of opportunities of scientific, educational and economic development on behalf of
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 abide by a gift acceptance policy jointly endorsed by UMMC and RDF, which describes the method by which RDF will keep UMMC informed about endowment performance, endowment spending policy, and anticipated accumulation and distribution of funds.

3.6 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, including thorough documentation of donor intent, 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.

3.7 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.

3.8 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, or trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information”), 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.

3.9 RDF agrees to maintain separate financial and accounting records from UMMC in accordance with generally accepted accounting principles, including thorough documentation of donor intent. RDF shall manage all funds in its control in a fiscally sound and prudent manner.

3.10 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.

3.11 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 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 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 Vice Chancellor and to the IHL, along with a list of RDF officers, directors or trustees, by October 15 of each year. The IHL Board's Associate Commissioner of Finance and Administration shall notify each such RDF of the applicability of the October 15 deadline to such RDF as far in advance of the deadline as possible each year. The CPA firm to be utilized by RDF must be in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the Vice Chancellor or his/her
designee. However, at the request of RDF, the Vice Chancellor, with the approval of the IHL Board, may grant a request of the RDF 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 RDF are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the RDF 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;

3.12 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.

3.13 DF 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.

3.14 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.

3.15 RDF shall maintain a conflict of interest policy that complies with all requirements of Miss. Code Ann. §79-11-269 (1972), as amended, and UMMC conflict of interest policies, and which addresses transactions with UMMC or RDF staff.
3.16 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.

3.17 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.

3.18 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.

3.19 RDF agrees to regularly seek input from UMMC's Vice Chancellor in defining RDF's objectives.

3.20 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.

3.21 The RDF President shall report directly to the RDF Board of Directors. Notwithstanding this reporting relationship, it is expected that the RDF President shall work closely with the Vice Chancellor in serving the interests of UMMC. On at least an
annual basis, the Chair of the RDF Board of Directors shall seek input from the Vice Chancellor on the performance of the RDF President. The Chair of the RDF Board of Directors shall also seek Vice Chancellor input in the hiring, compensation and termination of this position as such decisions are being made by the RDF Board of Directors.

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 use of facilities and personnel as described in Articles 1 and 2 above.

4.2 The designation as an UMMC official affiliated entity.

4.3 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.

4.4 An exclusive, transferable license to use UMMC trademarks, service marks, and trade names historically associated with RDF.

4.5 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.

4.6 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.

4.7 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.

4.8 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 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 March 31, 2025, if not renewed by mutual consent of the parties before that date.

9.2 If RDF fails to materially comply with the provisions of this Agreement or applicable policies of UMMC or IHL, or commits any other substantial breach of this Agreement, UMMC may notify RDF in writing of this non-compliance and if not cured in ninety (90) days or any longer time specified in writing by UMMC, UMMC may terminate this Agreement with prior approval by IHL.

9.3 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.

9.4 Upon termination or expiration of this Agreement, RDF 1) will remit all unrestricted gift funds to UMMC for one or more public purposes exclusively for the use and benefit of UMMC or to another entity designated by the Vice Chancellor for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the UMMC, 2) cease to use UMMC’s name or registered marks or logos without the written approval of the Vice Chancellor, and 3) provide the IHL, UMMC, or other entity designated by the IHL or Vice Chancellor with any records, accounts, or other materials requested by the Vice Chancellor or IHL subject to appropriate restrictions set forth in a confidentiality agreement as to protection of Confidential and Trade Secret Information.

9.5 The RDF Board of Directors will be appointed in accordance with Miss. Code § 37-147-15(2) and Miss. Code § 79-11-245(1) & (7).

9.6 RDF agrees that its governing documents, including but not limited to, articles of incorporation, bylaws, or articles of organization, shall provide that, upon dissolution of RDF, all of its assets be transferred to UMMC for one or more public purposes exclusively for the use and benefit of UMMC or another entity identified by the Vice Chancellor and approved by the IHL or identified by the IHL for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of UMMC.

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 Any notices under this agreement shall be sent to:

To RDF: To UMMC:
UMMC Research Development Foundation UMMC Office of the
2500 North State Street Vice Chancellor
Jackson, MS 39216-4505 2500 North State Street
Jackson, MS 39216-4505

With a copy to: General Counsel at the same address

10.5 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.

10.6 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 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.

10.8 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.

IN WITNESS WHEREOF, the parties hereto have 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.
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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

**AMENDED AND RESTATED AFFILIATION AGREEMENT BETWEEN THE UNIVERSITY OF SOUTHERN MISSISSIPPI AND THE UNIVERSITY OF SOUTHERN MISSISSIPPI ALUMNI ASSOCIATION**

This Amended and Restated Affiliation Agreement (this “Agreement”) is made and entered into this 1st day of April, 2020 (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 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 IHL Board acknowledges that the independent nature of the Association provides flexibility to the University in fiscal management and responsiveness;
5. The University has a strong interest in maintaining a favorable relationship with its graduates, former students, and friends of the University.

6. 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.

7. The University and the Association have a history of interaction and cooperation that has served the interests of the University.

8. 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.

9. 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.

10. 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 HUBs, 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 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 an 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, including thorough documentation of donor intent, 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, or trade secrets associated with donors or Association functions (collectively, “Confidential and Trade Secret Information”), 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 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 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. The President shall promptly notify the Board and Commissioner of Higher Education if the Association refuses or fails to provide any information requested by the President. 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 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 Association 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 Association 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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the University President or his/her designee.

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. The Association will submit to the IHL an annual report providing a detailed list of supplemental compensation provided to administrators, faculty, athletic staff, and other employees. 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 in accordance with a gift acceptance policy endorsed by the University and Association.

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, the University’s conflict of interest policies, and which addresses transactions with University and Association staff.

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.

2.21 The Association may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed five (5) years.

2.22 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.

2.23 The Executive Director of the Association is an employee of the University and reports to the University’s Vice President for External Affairs with respect to the operation of the Office of Alumni Affairs, and to the Association’s Board of Directors with respect to the operation of the Association as a 501(c)(3) not-for-profit corporation. Hiring, assessment, compensation and termination decisions related to the Executive Director is the responsibility of the Vice President for External Affairs with respect to University employment, and the Association’s Board of Directors with respect to the executive leadership of the 501(c)(3) not-for-profit corporation. The Vice
President for External Affairs reports to the University President.

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 agencies, 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 serve as an ex-officio non-voting member of the Association's Board of Directors and shall be given reasonable notice of any meetings of the Board pursuant to the bylaws of the Association. No University employee or other personnel directly or indirectly employed by the IHL shall serve as a voting member of the Association’s Board of Directors.

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’s leadership 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 applicable to the Association and shall comply with any compliance and regulatory guidelines as may be required by the IHL.

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. The minimum amounts of such coverage are set forth herein, as follows:

5.2 The Association shall maintain general liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate.

5.3 The Association shall maintain property insurance in an amount sufficient to provide replacement of its insured property; to insure against the loss of the real property; and, any improvements associated with the insured premises.

5.4 The Association shall maintain directors and officers liability insurance covering members of its Board of Directors and officers, while performing as such.

5.5 To the extent required by applicable law, the Association shall maintain workers’ compensation insurance for the benefit of its employees.

5.6 The above-described general liability policy shall name the University and the Board of Trustees of State Institutions of Higher Learning (IHL) as additional insureds, and such policies shall be primary to any insurance or program of self-insurance maintained by the University or IHL. Proof of coverage shall be mailed to IHL at: Office of Risk Management, 3825 Ridgewood Road, Jackson, MS 39211. Proof of coverage shall be provided to the University by mail at 118 College Drive Box 5003, Hattiesburg, MS 39406.
5.7. All policies of insurance shall meet or exceed the equivalent of an AM Best’s Rating of A VIII.

ARTICLE 6. REPORTING

6.1 The Association shall, by December 1 of each year during this Agreement, submit to the University’s President and its Vice President for Finance and Administration and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.12 of this Agreement. Such submission shall also include a list of Association officers and directors.

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 University 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 June 30, 2024, if not renewed by mutual consent of the parties before that date.

7.2 The University President, with the prior approval of the IHL Board, may terminate this Agreement for specified material non-compliance with or breach of the Agreement or applicable policies of the University or IHL. In such cases, the University President must provide ninety (90) days’ notice and work with the Association staff and Board of Directors to cure the breach in advance of termination.

7.3 The Bylaws of the Association, shall provide that upon dissolution of the Association, all of its assets will be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or other entity identified by the University President with approval by the IHL, or identified by the IHL for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code, provided such purposes are exclusively for the use and benefit of the University. Any exception to this requirement must be approved by the IHL Board.

7.4 Upon termination of this Agreement, (1) the Association shall remit any and all unrestricted funds held for the benefit of the University to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity as designated in writing by the University President on behalf of the University for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) 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, (3) the Association shall provide the IHL, the University or other entity designated by the IHL or University President with any records, accounts or other materials of the Association requested by the University President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement for the protection of Confidential and Trade Secret Information, as are necessary to continue the business and/or wind up the affairs of the Association.

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.

15. USM – APPROVAL OF PROPOSED 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
BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
CONSENT AGENDA
LEGAL
MARCH 19, 2020

Foundation as required by Board policy 301.0806. The Attorney General’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATED AFFILIATION AGREEMENT
BETWEEN
THE UNIVERSITY OF SOUTHERN MISSISSIPPI
AND THE
THE UNIVERSITY OF SOUTHERN MISSISSIPPI FOUNDATION

This Amended and Restated Affiliation Agreement (the “Agreement”) is made and entered into effective this 1st day of April, 2020 (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, as amended;

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 charitable gifts intended for non-athletic purposes, including endowment and current use 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 The University shall ensure that funds made available for spending by the Foundation shall be used in a timely manner in compliance with donor intent. The University will provide Foundation staff and auditors access to records and accounts needed to monitor and verify the use of funds provided by the Foundation. Annually, the President of the University, or his/her designee, shall certify to the Foundation a list of University employees, who by their positions are authorized to request disbursements from the Foundation per the donor fund agreements. 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, the University President and/or the Vice President for External Affairs 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 priorities.

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 in concert with donor intent and directives, and in accordance with the needs and priorities as determined by the University President. The Foundation agrees to consider these needs and priorities and communicate to the University President its ability and plans related to its fundraising activities.

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. The Foundation agrees to accept only those gifts that are consistent with the University’s missions, goals and objectives pursuant to Foundation policies and in accordance with a gift acceptance policy to be jointly endorsed by the University and the Foundation.

2.4 The Foundation shall receipt, acknowledge and express appreciation for all contributions from donors made through the Foundation and shall keep accurate and current records of all such contributions made to the Foundation. The Foundation shall manage all funds in its control in a fiscally sound and prudent manner. 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
Foundation will inform the University about endowment performance, endowment spending policy and spending allocations available for distribution on an annual basis.

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 three (3) years.

2.6 The Foundation agrees to maintain financial and accounting records, including documentation of donor intent. Such records shall be separate from the records of the University and kept in accordance with Generally Accepted Accounting Principles applicable for its industry. The Foundation agrees to prepare and 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 Foundation 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 of 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 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 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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the University President or his/her designee.

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, the University’s conflict of interest policies, and which addresses transactions with University or Foundation staff.
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. Any gifts received by the University may be immediately forwarded to the Foundation for acknowledgment to ensure proper receipting and recording of all gifts received by the Foundation. 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. The intent of the donor or donor representative will control the ownership of the gifts. Gifts for the benefit of the University will be directed to the Foundation if a gift agreement, pledge or expectancy exists between the donor and the Foundation, or where the gift is intended to be held by the Foundation. If a gift is directed to the University and no gift agreement, pledge or expectancy exists between the donor and the Foundation, it will be presumed that donor intent is for such funds to be managed by the Foundation, unless donor intent to the contrary is clearly evidenced. 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. If a situation exists where the University has accepted a gift intended by the donor or donor representative solely for the Foundation, the University shall immediately account to the Foundation 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 University President or such person as the University President may designate. To the extent that information is inspected, reviewed or received by the President of the University or his/her designee 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, or trade secrets associated with donors or Foundation functions (collectively, “Confidential and Trade Secret Information”), 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. The President shall promptly notify the IHL Board and Commissioner of Higher Education if the Foundation refuses or fails to provide any information requested by the President. 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 Confidential and Trade Secret Information or to release any information that would identify any particular donor shall be made by the IHL acting upon its minutes.

2.13 The Executive Director of the Foundation is an employee of the University and reports to the University’s Vice President of External Affairs with respect to University development operations, and to the Foundation’s Board of Directors with respect to the operation of the Foundation as a 501(c)(3) not-for-profit corporation. Hiring, assessment, compensation and termination decisions related to the Executive Director is the responsibility of the Vice President of External Affairs with respect to University employment, and the Foundation’s Board of Directors with respect to the executive leadership of the 501(c)(3) not-for-profit corporation. The Vice President for External Affairs reports to the University President.
3.1 The Foundation shall comply with any and all federal and state laws and regulations applicable to the Foundation and shall comply with any compliance and regulatory guidelines as may be required by the IHL.

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. The minimum amounts of such coverage are set forth herein, as follows:

4.2 The Foundation shall maintain general liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate.

4.3 The Foundation shall maintain property insurance in an amount sufficient to protect the value of its insured property; to insure against the loss of the real property; and, any improvements associated with the insured premises.

4.4 The Foundation shall maintain directors and officers liability insurance covering members of its Board of Directors and officers, while performing as such.

4.5 To the extent required by applicable law, the Foundation shall maintain workers’ compensation insurance for the benefit of its employees.

4.6 The above-described general liability policy shall name the University and the Board of Trustees of State Institutions of Higher Learning (IHL) as additional insureds, and such policies shall be primary to any insurance or program of self-insurance maintained by the University or IHL. Proof of coverage shall be mailed to IHL at: Office of Risk Management, 3825 Ridgewood Road, Jackson, MS 39211. Proof of coverage shall be provided to the University by mail at 118 College Drive Box 5003, Hattiesburg, MS 39406.

4.7 All policies of insurance shall meet or exceed the equivalent of an AM Best’s Rating of A VIII.

ARTICLE 5. REPORTING

5.1 The Foundation shall, by December 1 of each year during this Agreement, submit to the University’s President and it’s Vice President for Finance and Administration 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.

5.2 The Foundation shall submit to the IHL an annual report providing a detailed list of supplemental compensation provided to the University for 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. The provisions for the annual reporting and approval of additional compensation does not apply to transfers from the Foundation to the University for items such as professorships, chairs and other programmatic support that are routinely paid directly to the University and are included in its budget. 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.

5.3 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.

5.4 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 June 30, 2024 if not renewed by mutual consent of the parties before that date.

6.2 The University President, with the prior approval of the IHL Board, or the Foundation Board of Directors may terminate this Agreement for specified material non-compliance with or breach of the Agreement or applicable policies of the University or
IHL. In such cases, the University President or the Foundation Board of Directors must provide ninety (90) days’ notice and work with the Foundation staff and Board of Directors, or the University President, as applicable, to cure the breach in advance of termination.

6.3 The Bylaws of the Foundation, shall provide that upon dissolution of the Foundation, all of its assets will be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or other entity identified by the University President with approval by the IHL, or identified by the IHL for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code, provided such purposes are exclusively for the use and benefit of the University. Any exception to this requirement must be approved by the IHL.

6.4 Upon termination of this Agreement, (1) the Foundation shall remit all unrestricted funds to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated in writing by the University President for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) the Foundation shall cease to use the University’s name or registered marks or logos without the written approval of the University President, (3) the Foundation shall provide the IHL, the University or other entity designated by the IHL or University President with any records, accounts or other materials of the Foundation requested by the University President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement for the protection of Confidential and Trade Secret Information, as are necessary to continue the business and/or wind up the affairs of the Foundation.

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:
President Executive Director
The University of Southern Mississippi USM Foundation
118 College Drive, #5001 118 College Drive, #5210
Hattiesburg, Mississippi 39406 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, the President of the Board of Directors and the Executive Director of the Foundation, respectively, execute this Agreement effective the 1st day of April, 2020.

STAFF RECOMMENDATION: Board staff recommends approval of this item.

16. 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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATED AFFILIATION AGREEMENT
BETWEEN
THE UNIVERSITY OF SOUTHERN MISSISSIPPI
AND THE
UNIVERSITY OF SOUTHERN MISSISSIPPI RESEARCH FOUNDATION
This Amended and Restated Affiliation Agreement is made and entered into on this, the 1st day of April 2020, 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. No University employee or other person directly or indirectly employed by the IHL shall hold a voting position on the Research Foundation Board of Directors, unless approved by IHL in accordance with IHL Policy 301.0806(B).

   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 four (4) 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.

J. The Executive Director of the Research Foundation is an employee of the University and reports to the University’s President with respect to responsibilities as a University employee, and to the Research Foundation’s Board of Directors with respect to the operation of the Research Foundation as a 501(c)(3) not-for-profit corporation. Hiring, assessment, compensation and termination decisions related to the Executive Director is the responsibility of
the University President with respect to University employment, and the Research Foundation’s Board of Directors with respect to the executive leadership of the 501(c)(3) not-for-profit corporation.

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. Acceptance of gifts will be in accordance with a gift acceptance policy jointly endorsed by University and Research Foundation, which will describe the method by which the Research Foundation will keep the University informed about endowment performance, endowment spending policy, and anticipated accumulations and distribution of funds.” Research Foundation will maintain documentation of donor intent with respect to any gift funds, and require that any gift funds distributed to University are utilized in a timely manner and in compliance with donor intent, and University will provide Research Foundation staff and auditors access to records and accounts needed to monitor and verify use of gift funds.

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, including thorough documentation of donor intent, 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 or business, or with respect to any personal, commercial or proprietary information provided to the Research Foundation by third parties, or trade secrets associated with donors or entity functions (collectively, “Confidential and Trade Secret Information”), 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. It is the policy of the IHL Board that it will not unnecessarily disclose or disseminate any Confidential and Trade Secret Information relating to the Research Foundation, and in particular, any information related to donors to the Research Foundation or trade secrets associated with Research Foundation functions. 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. No individual IHL Board member or employee of the IHL will release such information without authorization from the IHL Board.

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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the University President or his/her designee. 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 entitled Conflict of Interest Transaction, university conflict of interest policies, and which addresses transactions with university of Research Foundation staff.

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 of 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 from April 1, 2020 until December 31, 2024.

   B. The University President, with the prior approval of the IHL Board, may terminate this Agreement for specified material non-compliance with or breach of the Agreement or applicable policies of the University or IHL. In such cases, the University President must provide ninety (90) day notice and work with the Research Foundation staff and board in that period to cure the breach in advance of termination.

   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 the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated in writing by the University President for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the 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 provide the IHL, the University or other entity designated by the IHL or University President with any records, accounts or other materials of the Research Foundation requested by the University President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement for the protection of Confidential and Trade Secret Information, as are necessary to continue the business and/or wind up the affairs of the Research Foundation.

D. The Research Foundation’s governing documents, including but not limited to its articles of incorporation and bylaws, if any, shall provide that upon dissolution of the entity all of its assets be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the University President and approved by the IHL board or identified by the IHL board for one or more exempt purposes within the meaning of section 501(C)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. Any exceptions to this requirement must be approved by the IHL board.

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 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.

21. **Insurance:** The Research Foundation shall maintain insurance in the minimum amounts set forth herein, as follows:

   A. The Research Foundation shall maintain general liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate.

   B. The Research Foundation shall maintain property insurance in an amount sufficient to protect the value of its insured property; to insure against the loss of the real property; and, any improvements associated with the insured premises.

   C. The Research Foundation shall maintain directors and officers liability insurance covering members of its Board of Directors and officers, while performing as such.
D. To the extent required by applicable law, the Research Foundation shall maintain workers’ compensation insurance for the benefit of its employees.

E. The above-described general liability policy shall name the University and the Board of Trustees of State Institutions of Higher Learning (IHL) as additional insureds, and such policies shall be primary to any insurance or program of self-insurance maintained by the University or IHL. Proof of coverage shall be mailed to IHL at: Office of Risk Management, 3825 Ridgewood Road, Jackson, MS 39211. Proof of coverage shall be provided to the University by mail at 118 College Drive Box 5003, Hattiesburg, MS 39406.

F. All policies of insurance shall meet or exceed the equivalent of an AM Best’s Rating of A VIII.

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.

17. USM – APPROVAL OF PROPOSED 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’s Office has reviewed the agreement and found it to be in compliance with applicable law and IHL Board of Trustees Policies and Bylaws.

AMENDED AND RESTATE Affiliation Agreement
BETWEEN
THE UNIVERSITY OF SOUTHERN MISSISSIPPI
AND
THE UNIVERSITY OF SOUTHERN MISSISSIPPI ATHLETIC FOUNDATION

This Amended and Restated Affiliation Agreement (this “Agreement”) is made and entered into effective this 1st day of April, 2020 (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 not-for-profit 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
BOARDS OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING
CONSENT AGENDA
LEGAL
MARCH 19, 2020

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 State Institutions of Higher Learning in the State of
Mississippi (“IHL”) in accordance with IHL Policy 301.0806 (the “Policy”);

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 educational programs of the University and to aid the
University’s Department of Intercollegiate Athletics as outlined in Athletic Foundation’s
Articles of Incorporation;

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

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;

WHEREAS, the University has determined that it is in the best interest for athletic
fundraising and other services to be coordinated through the Athletic Foundation to
increase efficiency and to expand the current sources of support for the University
athletic programs;

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.

1.3 The President of the University or his/her designee shall serve ex-officio as a non-voting member of the Athletic Foundation’s Board of Directors pursuant to the bylaws of the Athletic Foundation. No University employee or other person directly or indirectly employed by the IHL shall hold a voting position on the Athletic Foundation Board of Directors, unless approved by IHL in accordance with IHL Policy 301.0806(B).

1.4 The Chief Executive Officer of the Athletic Foundation is an employee of the University and reports to the University’s President with respect to responsibilities as Athletic Director and University athletic operations, and to the Athletic Foundation’s Board of Directors with respect to the operation of the Athletic Foundation as a 501(c)(3) not-for-profit corporation. Hiring, assessment, compensation and termination decisions related to the Chief Executive Officer is the responsibility of the University President with respect to University employment, and the Athletic Foundation’s Board of Directors with respect to the executive leadership of the 501(c)(3) not-for-profit corporation.

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 objectives, and in accordance with a gift acceptance policy to be jointly endorsed by the University and Athletic Foundation. 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. The Athletic Foundation will inform the University of its fundraising activities, as well as anticipated accumulation and distribution of funds.
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. The University will ensure that gift funds distributed by the Athletic Foundation to University are used in a timely manner in compliance with donor intent. Athletic Foundation support 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. The University agrees to provide the Athletic Foundation with and its auditors access to records and accounts needed to monitor and verify use of gift funds.

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 financial and accounting records, including thorough documentation of donor intent. Such records shall be separate from the records of the University and kept 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, or trade secrets associated with donors or Athletic Foundation functions (collectively, “Confidential and Trade Secret Information”), 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. It is the policy of the IHL Board that it will not unnecessarily disclose or disseminate any Confidential and Trade Secret Information relating to the Athletic Foundation, and in particular, any information related to donors to the Athletic Foundation or trade secrets associated with donors or Athletic Foundation functions. 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. No individual IHL Board member or employee of the IHL will release such information without authorization from the IHL Board.

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 prepare and 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 Athletic Foundation’s 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 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 in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the University President or his/her designee. 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, University conflict of interest policies, and which addresses transactions with University or Athletic Foundation staff.
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.

2.19 The Athletic Foundation shall administer, including marketing, production and distribution of, any and all (1) radio and television networks and programming for University athletic programs; and (2) publications for appropriate University athletics programs. The Athletic Foundation shall furthermore sell all University athletic program advertising and sponsorships for such broadcasting, programming and publications, and receive revenues, if any, derived therefrom.

2.20 The Athletic Foundation shall (1) administer, including marketing and selling, all corporate advertisements and sponsorships for University athletic events and venues within guidelines agreed to by the University and (2) receive all revenue, if any, derived therefrom.

2.21 The Athletic Foundation shall (1) administer all athletic team apparel and footwear uses and sponsorships and (2) receive all revenue, if any, derived therefrom.

ARTICLE 3. SEATING PRIORIT Y 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.

3.9 The University shall grant to the Athletic Foundation for the University athletics programs the exclusive multi-media advertising and sponsorship rights, including the right to administer, market, sell, and transfer such rights. 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 venue and related promotional and sponsorship rights for the University’s athletics programs.

3.10 The University shall grant the Athletic Foundation exclusive athletic team apparel and footwear use and sponsorship rights for the University’s athletics programs.

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. The minimum amounts of such coverage are set forth herein, as follows:

5.2 The Athletic Foundation shall maintain general liability insurance providing insurance coverage of at least $1,000,000 per occurrence and $2,000,000 annual aggregate.

5.3 The Athletic Foundation shall maintain property insurance in an amount sufficient to provide replacement of its insured property; to insure against the loss of the real property; and, any improvements associated with the insured premises.

5.4 The Foundation shall maintain directors and officers liability insurance covering members of its Board of Directors and officers, while performing as such.

5.5 To the extent required by applicable law, the Foundation shall maintain workers’ compensation insurance for the benefit of its employees.

5.6 The above-described general liability policy shall name the University and the Board of Trustees of State Institutions of Higher Learning (IHL) as additional insureds, and such policies shall be primary to any insurance or program of self-insurance maintained by the University or IHL. Proof of coverage shall be mailed to IHL at: Office of Risk Management, 3825 Ridgewood Road, Jackson, MS 39211. Proof of coverage shall be provided to the University by mail at 118 College Drive Box 5003, Hattiesburg, MS 39406.

5.7. All policies of insurance shall meet or exceed the equivalent of an AM Best’s Rating of A VIII.

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 effective from the date shown until June 30, 2024, if not renewed by mutual consent of the parties before that date.

7.2 The University President, with the prior approval of the IHL Board, may terminate this Agreement for specified material non-compliance with or breach of the Agreement or applicable policies of the University or IHL. In such cases, the University President must provide ninety (90) days notice and work with the Athletic Foundation staff and board in that period to cure the breach in advance of termination.

7.3 The governing documents of the Athletic Foundation, including but not limited to articles of incorporation, bylaws, or articles of organization provide that upon dissolution of the entity all of its assets be transferred to the University for one or more public purposes exclusively for the use and benefit of the University or another entity identified by the University President and approved by the IHL Board or identified by the IHL Board for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University. Any exceptions to this requirement must be approved by the IHL Board.

7.4 Upon termination of this Agreement, (1) the Athletic Foundation shall remit all unrestricted funds to the University for one or more public purposes exclusively for the use and benefit of the University or to another entity designated in writing by the University President for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code provided such purposes are exclusively for the use and benefit of the University, (2) the Athletic Foundation shall cease to use the University’s name or registered marks or logos without the written approval of the University President, (3) the Athletic Foundation shall provide the IHL, the University or other entity designated by the IHL or University President with any records, accounts or other materials of the Foundation requested by the University President or IHL, subject to appropriate restrictions set forth in a confidentiality agreement for the protection of Confidential and Trade Secret Information, as are necessary to wind up the affairs of the Athletic 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 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 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 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:  

Dr. Rodney D. Bennett  
President  
The University of Southern Mississippi  
118 College Drive, #5001  
Hattiesburg, Mississippi 39406

To the Athletic Foundation:  

Jeremy McClain  
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.

IN WITNESS WHEREOF, the University and the Athletic Foundation, 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.
18. **MSU – APPROVAL TO EXTEND CONTRACT WITH WARE IMMIGRATION AS OUTSIDE COUNSEL**

Mississippi State University requests approval to modify a contract with Ware Immigration to provide services necessary in preparing labor certification documents on behalf of Mississippi State University for its employees who seek permanent residence status and related immigration matters. This contract originated March 21, 2013, renewed by Modifications 1-6, extending the term for one (1) year at each renewal, with Modification #6 extending through March 20, 2020. Modification #7 will extend the term of the contract for one (1) year or through March 20, 2021. The current fee schedule is set out below and the maximum amount payable during the extension period shall not exceed $50,000. This firm carries professional liability insurance coverage in the amount of $3,000,000 per claim with an annual aggregate of $3,000,000. All other provisions of the Agreement for Legal Services dated March 21, 2013 shall remain in effect. Approval of this request is contingent on approval by the Attorney General.

**Schedule of Legal Fees for Academia**

**Nonimmigrant Petitions and Processes**

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
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<tbody>
<tr>
<td>H-1B petition</td>
<td>$1500.00</td>
</tr>
<tr>
<td>H-1B extension or amendment petitions (we handled original petition)</td>
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<tr>
<td>TN petition or border/consulate processing</td>
<td>$1500.00</td>
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<tr>
<td>TN extension petition (we handled original)</td>
<td>$1000.00</td>
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<tr>
<td>E-3 petition or consular processing</td>
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<tr>
<td>E-3 extension petition (we handled original)</td>
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<tr>
<td>O-1 petition</td>
<td>$4000.00</td>
</tr>
<tr>
<td>O-1 extension or amendment petition (we handled original)</td>
<td>$1500.00</td>
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</table>

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

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
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</thead>
<tbody>
<tr>
<td>J-1 waiver (IGA or hardship)</td>
<td>$6,000.00</td>
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<tr>
<td>J-1 waiver (Conrad)</td>
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**Permanent Residence Process with Labor Certification: Faculty**

<table>
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<th>Fee</th>
<th>Description</th>
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<tr>
<td>$2000.00</td>
<td>Special Handling labor certification</td>
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<tr>
<td>$2500.00 if position must be readvertised</td>
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</tr>
<tr>
<td>$500-1500.00</td>
<td>Additional fee if audited</td>
</tr>
<tr>
<td>$2500.00</td>
<td>Immigrant petition</td>
</tr>
</tbody>
</table>
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

Permanent Residence Process: Outstanding Professors and Researchers

$6000.00 Immigrant petition

Permanent Residence Process: National Interest Waiver

$6000.00 Immigrant petition

Adjustment of Status, any Employment-Based Permanent Residence Matter

$2000.00 Adjustment of status and related applications (I-765, I-131, etc.) for employee
$2500.00 Standalone AOS and related applications, principal.
$1000.00 Adjustment of status and related applications, spouse, if together with principal application and I 140.
$750.00 Adjustment of status of each child, concurrent with I 140.
$1500.00 “Standalone” adjustment of status, spouse (not concurrent with I 140).
$1000.00 “Standalone” adjustment of status, child.

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 $300 per hour billed.
WI Partners $250 per hour billed.
Associate Attorneys: $175 per hour billed.
Paralegals: $100 per hour billed.

STAFF RECOMMENDATION: Contingent on approval by the Office of the Attorney General, Board staff recommends approval of this item.
19. **MSU – APPROVAL OF INTERLOCAL AGREEMENT WITH OKTIBBEHA COUNTY**

Mississippi State University requests approval of an Interlocal Cooperative Agreement between MSU and Oktibbeha County, Mississippi to allow the University and Oktibbeha County to work cooperatively to improve and expand Blackjack Road including improvements to the existing drainage appurtenance on Stone Boulevard. The total estimated cost of the project is $10,000,000 with the Mississippi Development Authority (MDA) committing $3,000,000, the University committing $1,200,000 and the County paying the remaining balance. Pursuant to the Agreement, MSU will transfer $1.2 million to the County for the project. The County and the University will work together to attempt to obtain a $2,000,000 bond during the 2020 legislative session. If such bond funding is obtained, the County will reimburse the University $900,000. This request has been approved by Office of the Attorney General.

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN MISSISSIPPI STATE UNIVERSITY AND OKTIBBEHA COUNTY, MISSISSIPPI**

This Interlocal Cooperative Agreement is made and entered into this _____ day of ____________, 2020 by and between Mississippi State University (the “University”) and Oktibbeha County, Mississippi (the “County”) acting by and through its governing body, the Oktibbeha County Board of Supervisors. These parties witnesseth:

WHEREAS, this Agreement is made under the authority of Sections 17-13-1 et seq, Mississippi Code of 1972, as amended, and shall not take effect unless approved by the Mississippi Attorney General, and if so approved, until it is filed with the chancery clerk of Oktibbeha County and with the Secretary of State;

WHEREAS, the University and the County (collectively the “Parties”) are local government units authorized to enter into this Agreement pursuant to Miss. Code Ann. § 17-13-7;

WHEREAS, the University, pursuant to Miss. Code Ann. § 37-101-15 and §37-113-3, and the County, pursuant to Miss. Code Ann. § 65-7-1 et seq., are authorized independently and cooperatively to exercise the power, authority and responsibility to engage in the functions and perform the services outlined below; and

WHEREAS, the Parties desire to enter into an Interlocal Agreement for the purpose of improving and expanding Blackjack Road which shall include improvements to the existing drainage appurtenance on Stone Boulevard. This project is referred to as the Office of State Aid Road – DECD-0053 (15) BO (the “Improvements”);
WHEREAS, the County has applied for and received funding from the Mississippi Development Authority ("MDA") to design and construct the Improvements; and

WHEREAS, the County reasonably estimates that the total cost of construction will be approximately $10,000,000 with $3,000,000 coming from MDA;

WHEREAS, the University and the County mutually agree to attempt to obtain State of Mississippi bond funding for the Improvements during the 2020 session of the Mississippi Legislature in the amount of $2,000,000;

WHEREAS, the University and the County mutually agree that it is in their best interest to take action now to begin the Improvements before bond funding can be secured in order to accept the lowest and best bid which will expire prior to end of the 2020 legislative session;

WHEREAS, the University agrees to contribute funds towards the costs of improvements to the existing drainage appurtenance on Stone Boulevard and will transfer $1,200,000 to the County for the Project so that the Improvements can begin;

WHEREAS, the University and the County mutually agree that should bond funding be secured for the Improvements, $900,000 of this transfer from the University shall be returned to the University;

WHEREAS, the University and the County mutually agree that should the Improvements not be undertaken, the $1,200,000 shall be returned by the County to the University;

WHEREAS, the Parties have found that the Improvements are feasible, beneficial, and within the financial resources of the Parties, and will benefit the Parties, and in turn, the general public; and

WHEREAS, the Parties desire to work in coordination and cooperation with each other in a government-to-government relationship for their benefit; and

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the Parties do hereby agree as follows:

1. PURPOSE. This Agreement establishes the protocol and defines the responsibilities and obligations of the Parties in connection with their joint and cooperative efforts to complete the Improvements. The County shall construct the Improvements with the funds outlined above. The County will oversee all aspects of the construction of the Improvements in coordination with the University.
2. ADMINISTRATION AND RESPONSIBILITIES OF THE PARTIES

A. The County agrees as follows:
   1. To construct the Improvements in accordance with the plans and specifications prepared for Office of State Aid Road – DECD-0053 (15) BO in accordance with all applicable state and federal laws.
   2. To provide construction management for the Improvements and to administer the Improvements’ construction contract or contracts, including making all payments to the contractors.
   3. To work with the University to minimize the disruption to campus operations in completing the Improvements.
   4. To use the above-described funds provided by MDA and the University to complete the construction of the Improvements along with other legally available funds of the County.
   5. To use its best efforts to obtain Mississippi bond funding in the amount of $2,000,000, and to reimburse the University $900,000, if such bond funding is obtained within 60 days of obtaining the bond funding and to reimburse the University $1,200,000 if the Improvements are not undertaken.
   6. There will be no separate legal or administrative entity created by this Interlocal Agreement.

B. The University agrees as follows:
   1. To assist the County in every reasonable and appropriate manner by providing the County with access to the property necessary to construct the Improvements.
   2. To transfer $1,200,000 to the County no later than April 1, 2020.
   3. To use its best efforts to aid the County in obtaining the bond funding described herein.

3. AMENDMENTS. This Agreement may only be amended in writing as mutually agreed upon by the Parties.

4. DISPOSITION OF PROPERTY. Throughout the operation of this Agreement, and following its expiration, all property attendant to the Improvements shall remain the property of the original owner.
5.  **SEVERABILITY.** Should any provision of this Agreement be found to be unconstitutional, or otherwise contrary to the laws of the State of Mississippi or the United States of America, to the extent that it is reasonable possible to do so, the remainder of this Agreement shall remain in full force and effect.

6.  **AUTHORITY.** Authority for this Agreement has been granted by the Mississippi Legislature pursuant to Miss. Code Ann. § 17-13-7.

7.  **TERMINATION.** This Agreement will remain in effect until the completion of the Improvements unless earlier terminated by mutual agreement through proper action of the governing authorities of the Parties.

**WITNESS** the signatures of the duly authorized officers of Oktibbeha County, Mississippi and Mississippi State University as of the ________ day of __________________, 2020.

**STAFF RECOMMENDATION:** Board staff recommends approval of this item.
APPROVAL OF PERSONNEL ACTION REQUESTS

1. **Employment**

   **Alcorn State University**
   Cornelius Wooten; Senior Vice President for Finance, Administrative Services and Operations/Chief Financial Officer (CFO); salary $185,000 per annum, pro rata; E&G Funds; 12-month contract; effective March 2, 2020

2. **Change of Status**

   **Alcorn State University**
   Keith McGee, *from* Associate Dean of Research and Administration; salary $135,000 per annum, pro rata; Ag Appropriations, Ag-Rest & E&G; *to* Interim Provost and Executive Vice President for Academic Affairs; salary $175,000 per annum, pro rata; E&G Funds; 12-month contract; effective January 20, 2020

   Donna Williams; *from* Interim Vice Provost for Academic Affairs and Professor of Business; salary $140,000 per annum, pro rata; E&G Funds; 12-month contract; *to* Dean and Professor of Business; no change in salary; E&G Funds; 12-month contract; effective January 1, 2020

   John Igwebuike; *from* Interim Provost and Executive Vice President for Academic Affairs; salary $175,000 per annum, pro rata; E&G Funds; 12-month contract; *to* Professor of Business; salary $110,000 per annum, pro rata; E&G Funds; 12-month contract; effective January 1, 2020

   **Jackson State University**
   Mario Azevedo; *from* Dean and tenured Professor, College of Liberal Arts; salary $156,519 per annum, pro rata; E&G Funds; 12-month contract; *to* tenured Professor of History, College of Liberal Arts; salary $118,156 per annum, pro rata; E&G Funds; 9-month contract; effective January 1, 2020

   Candis Pizzetta; *from* Interim Chair and Associate Professor, Department of English, Foreign Languages & Speech Communications; salary $111,544 per annum, pro rata; E&G Funds; 12-month contract; *to* Interim Dean and Associate Professor, College of Liberal Arts; salary $135,000 per annum, pro rata; E&G Funds; 12-month contract; effective January 1, 2020

3. **Sabbatical**

   **Mississippi State University**
   Sandra Orozco Aleman; Associate Professor of Finance and Economics; *from* salary of $101,123.00 per annum, pro rata; E&G Funds; 9-month contract; *to* salary of $50,561.50 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development
Rachel Allison; Assistant Professor of Sociology; from salary of $69,176.00 per annum, pro rata; E&G and Designated Funds; 9-month contract; to salary of $34,588.00 for sabbatical period; E&G and Designated Funds; effective August 16, 2020 to December 31, 2020; professional development

Salvador Bartera; Assistant Professor of Classical and Modern Languages and Literatures; from salary of $58,281.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $29,140.50 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Robert L. Boyd; Professor of Sociology; from salary of $96,094.00 per annum, pro rata; E&G and Designated Funds; 9-month contract; to salary of $48,047.00 for sabbatical period; E&G and Designated Funds; effective August 16, 2020 to December 31, 2020; professional development

Pamela Scott Bracey; Associate Professor of Instructional Systems and Workforce Development; from salary of $65,696.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $32,848.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Michael Clifford; Professor of Philosophy and Religion; from salary of $88,950.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $44,475.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Brandon N. Cline; Associate Professor of Finance and Economics; from salary of $227,350.00 per annum, pro rata; E&G Funds, Designated Funds and Restricted Funds; 9-month contract; to salary of $113,675.00 for sabbatical period; E&G Funds, Designated Funds and Restricted Funds; effective August 16, 2020 to December 31, 2020; professional development

Brian Counterman; Associate Professor of Biological Sciences; from salary of $74,948.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $37,474.00 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development

Brian Davisson; Associate Professor of Classical and Modern Languages and Literatures; from salary of $63,825.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $31,912.50 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development
Stephen Demarais; Professor of Wildlife, Fisheries and Aquaculture; from salary of $134,213.00 per annum, pro rata; E&G and Restricted Funds; 12-month contract; to salary of $67,106.50 for sabbatical period; E&G and Restricted Funds; effective August 16, 2020 to December 31, 2020; professional development

Lamiaa El-Fassi; Assistant Professor of Physics and Astronomy; from salary of $70,610.00 per annum, pro rata; E&G and Designated Funds; 9-month contract; to salary of $35,305.00 for sabbatical period; E&G and Designated Funds; effective January 1, 2021 to May 15, 2021; professional development

Becky Hagenston; Professor of English; from salary of $76,037.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $38,018.50 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Margaret A. Hagerman; Assistant Professor of Sociology; from salary of $68,841.00 per annum, pro rata; E&G and Designated Funds; 9-month contract; to salary of $34,420.50 for sabbatical period; E&G and Designated Funds; effective January 1, 2021 to May 15, 2021; professional development

Mark D. Hersey; Associate Professor of History; from salary of $74,252.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $18,563.00 for sabbatical period; E&G Funds; effective August 16, 2020 to May 15, 2021; professional development

Bryan A. Jones; Associate Professor of Electrical and Computer Engineering; from salary of $97,015.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $48,507.50 for sabbatical period; E&G Funds; effective August 16, 2020 to May 15, 2021; professional development

Shengfa F. Liao; Associate Professor of Animal and Dairy Sciences; from salary of $78,350.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $39,175.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Melanie Loehwing; Associate Professor of Communication; from salary of $71,834.00 per annum, pro rata; E&G and Designated Funds; 9-month contract; to salary of $35,917.00 for sabbatical period; E&G and Designated Funds; effective January 1, 2021 to May 15, 2021; professional development

Timothy McCourt; Professor of Art; from salary of $75,272.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $37,636.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development
Beth Richardson Miller; Professor of Interior Design; from salary of $104,855.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $52,427.50 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

D. Shane Miller; Assistant Professor of Anthropology and Middle Eastern Cultures; from salary of $63,668.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $31,834.00 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development

Mabel C. Okojie; Professor of Instructional Systems and Workforce Development; from salary of $82,746.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $41,373.00 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development

Donna M. Pierce; Associate Professor of Physics and Astronomy; from salary of $75,380.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $37,690.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

John George Poros; Professor of School of Architecture; from salary of $83,540.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $41,770.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Chuanxi Qian; Professor of Mathematics and Statistics; from salary of $98,787.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $49,393.50 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Kenneth Deon Roskelley; Professor of Finance and Economics; from salary of $170,246.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $85,123.00 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development

J. Edward Swan II; Professor of Computer Science and Engineering; from salary of $130,943.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $65,471.50 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development

Eric Vivier; Assistant Professor of English; from salary of $61,434.00 per annum, pro rata; E&G and Designated Funds; 9-month contract; to salary of $30,717.00 for sabbatical period; E&G and Designated Funds; effective January 1, 2021 to May 15, 2021; professional development
Mark E. Welch; Professor of Biological Sciences; from salary of $86,098.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $43,049.00 for sabbatical period; E&G Funds; effective August 16, 2020 to December 31, 2020; professional development

Jonathan Ross Woody; Associate Professor of Mathematics and Statistics; from salary of $85,852.00 per annum, pro rata; E&G Funds; 9-month contract; to salary of $42,926.00 for sabbatical period; E&G Funds; effective January 1, 2021 to May 15, 2021; professional development

Mississippi University for Women
Amy Pardo; Professor of English: from $59,261 per annum; pro rata; E&G Funds; 9-month contract; to salary $29,630.50 for sabbatical period; E&G Funds; effective January 4, 2021 to May 19, 2021; professional development

University of Southern Mississippi
Jonathan Barron; Professor of English; from salary of $75,330 per annum, pro rata; E&G Funds; 9-month contract; to salary of $37,665 for sabbatical period; E&G Funds; effective August 17, 2020 to December 31, 2020; professional development

Douglas Bristol; Associate Professor of History; from salary of $64,442 per annum, pro rata; E&G Funds; 9-month contract; to salary of $32,221 for sabbatical period; E&G Funds; effective August 17, 2020 to December 31, 2020; professional development

Ching-Shyang Chen; Professor of Mathematics; from salary of $104,118 per annum, pro rata; E&G Funds; 9-month contract; to salary of $52,059 for sabbatical period; E&G Funds; effective August 17, 2020 to December 31, 2020; professional development

Hao Xu; Associate Professor of Cellular and Molecular Biology; from salary of $64,223 per annum, pro rata; E&G Funds; 9-month contract; to salary of $32,111 for sabbatical period; E&G Funds; effective August 17, 2020 to December 31, 2020; professional development

Robin Aronson; Professor of Theatre; from salary of $64,123 per annum, pro rata; E&G Funds; 9-month contract; to salary of $32,061 for sabbatical period; E&G Funds; effective January 4, 2021 to May 14, 2021; professional development

Jennifer Brannock; Professor of Special Collections; from salary of $61,509 per annum, pro rata; E&G Funds; 9-month contract; to salary of $30,754 for sabbatical period; E&G Funds; effective January 4, 2021 to May 14, 2021; professional development

Westley Follett; Associate Professor of History; from salary of $59,416 per annum, pro rata; E&G Funds; 9-month contract; to salary of $29,708 for sabbatical period; E&G Funds; effective January 4, 2021 to May 14, 2021; professional development
Edward Hafer; Associate Professor of Music; from salary of $57,104 per annum, pro rata; E&G Funds; 9-month contract; to salary of $28,552 for sabbatical period; E&G Funds; effective January 4, 2021 to May 14, 2021; professional development

Luis Iglesias; Associate Professor of English; from salary of $80,000 per annum, pro rata; E&G Funds; 9-month contract; to salary of $40,000 for sabbatical period; E&G Funds; effective January 4, 2021 to May 14, 2021; professional development

Janet Gorzegno; Professor of Art and Design; from salary of $67,034 per annum, pro rata; E&G Funds; 9-month contract; to salary of $33,517 for sabbatical period; E&G Funds; effective August 17, 2020 to May 14, 2021; professional development
1. **JSU – APPROVAL TO AWARD TWO HONORARY DEGREES**

   The university requests approval to bestow two honorary degrees posthumously at its May 2020 commencement ceremony. Supporting documents are on file at the Board Office.

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

2. **MSU – APPROVAL TO AWARD TWO HONORARY DEGREES**

   The university requests approval to bestow one honorary degree at its May 2020 commencement ceremony and one honorary degree at its May 2021 commencement ceremony. Supporting documents are on file at the Board Office.

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

3. **USM – APPROVAL TO AWARD ONE HONORARY DEGREE**

   The university requests approval to bestow one honorary degree at its May 2020 commencement ceremony. Supporting documents are on file at the Board Office.

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

4. **SYSTEM – APPROVAL OF PROPOSED AMENDMENT TO BOARD POLICY 301.0705 COMMISSIONER ASSESSMENT/EVALUATION AND WAIVER OF SECOND READING**

   Board approval is requested for waiver of first reading and for final approval of the proposed amendment to Board Policy 301.0705 Commissioner Assessment/Evaluation.

   **301.0705  Commissioner Assessment/Evaluation**

   The Board shall evaluate the Commissioner annually.

   **STAFF RECOMMENDATION:** Board staff recommends approval of this item.
BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING  
REGULAR AGENDA  
ACADEMIC AFFAIRS  
MARCH 19, 2020

1. **SYSTEM – APPROVAL FOR FIRST READING OF PROPOSED AMENDMENT TO BOARD POLICY 600 SECTION B – STUDENT AFFAIRS AND ADMISSIONS; SUBSECTIONS 602B AND 602C**

Board approval for first reading is requested for proposed amendments to Board Policy 602 – Section B Freshman Admission Requirement for University System Institutions and Section C Academic Placement Resulting From Various Deficiencies. These proposed amendments are needed (1) to clarify how the College Preparatory Curriculum (CPC) grade point average (GPA) is calculated, (2) to change the Full Admission policy from using ACT composite scores to using ACT superscores and to allow the use of SAT superscoring, too, and (3) to allow the utilization of the student’s highest ACT or SAT subtest scores from the ACT or SAT superscore in determining the appropriate IHL-recognized intervention strategy for students who successfully complete the Summer Developmental Program and receive full admission to a university.

The ACT composite score, which is currently used by IHL, is the average of the individual section scores from one test administration, rounded to the nearest whole number. The ACT superscore is a composite score which utilizes the highest individual section scores across multiple test attempts. The highest individual section scores are averaged to create a superscore. The SAT superscore is calculated in the same manner.

**602 FRESHMAN ADMISSION REQUIREMENTS FOR UNIVERSITY SYSTEM INSTITUTIONS**

**B. FULL ADMISSION**

The College Preparatory Curriculum (CPC) grade point average (GPA) is calculated on a 4.0 scale using the course requirements listed on 602.A. High School Course Requirements.

Full admission will be granted to the following:

(1) All students completing the College Preparatory Curriculum (CPC) with a minimum of a 3.20 high school grade point average (GPA) on the CPC; or

(2) All students completing the College Preparatory Curriculum (CPC) with (a) a minimum of a 2.50 high school GPA on the CPC or a class rank in the top 50%, and (b) a score of 16 or higher on the ACT (Composite); or
(3) All students completing the College Preparatory Curriculum (CPC) with (a) a minimum of a 2.00 high school GPA on the CPC and (b) a score of 18 or higher on the ACT (Composite); or

(4) All students satisfying the NCAA Division I standards for student athletes who are “full-qualifiers” or “academic redshirts”.

In lieu of ACT scores, students may submit equivalent SAT scores. Students scoring below 16 on the ACT (Composite) or the equivalent SAT are encouraged to participate in the Year-Long Academic Support Program during their freshman year.

Institutions will use the highest ACT or SAT subject test scores from the same test type when scores from more than one test date are submitted. This process is known as superscoring. A combination of ACT and SAT subtest scores cannot be combined to calculate a superscore.

(BT Minutes, 9/93; 1/98; 3/2019)

C. ACADEMIC PLACEMENT RESULTING FROM VARIOUS DEFICIENCIES

Those Mississippi residents who applied and failed to meet Full Admission Standards along with any Mississippi high school graduate regardless of academic performance may, as a result of review, be admitted to the summer or fall semester. The ACT is not a requirement in this category. The review shall involve a consideration of high school performance, ACT scores (if available), placement testing, special interests and skills as well as other non-cognitive factors. The review shall result in placement in one of the following categories:

1. Full Admission
   As a result of the review, students in this category may be placed as if admitted under Section B. In addition, students may be required to enroll in selected college level courses in science and social science equivalent to high school courses in which their background is inadequate. These courses will yield institutional credit.* Other students in this category may be required to participate in the Year-Long Academic Support Program.

2. Full Admission with Academic Deficiencies

   Students who have not demonstrated adequate readiness in English or Reading or Mathematics will be granted Full Admission with Academic Deficiencies to the
Summer Developmental Program. This is an intensive program that concentrates on high school subject areas (English, Reading, and Mathematics) that are applicable to success in first-year college courses. These courses carry institutional credit.* Students who successfully complete the summer program, by passing the developmental courses that they are determined to be deficient and the Learning Skills Laboratory courses, will receive admission to the fall term with mandatory participation in the Year-Long Academic Support Program or some other IHL-recognized intervention strategy to promote success in the courses in which they are not fully prepared, according to their highest ACT or SAT subtest subject test scores. Students who fail to successfully complete the Summer Developmental Program are not eligible for enrollment in the regular academic year and will be counseled to explore other postsecondary opportunities, including those offered by community colleges.


STAFF RECOMMENDATION: Board staff recommends approval of these items for first reading.
1. **MSU – REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT WITH REFRESHMENTS, INC.**

   **Agenda Item Request:** Mississippi State University is requesting approval to enter into a contract with *Refreshments, Inc.* to provide snack vending services on the MSU, Starkville, Campus.

   **Contractor’s Legal Name:** Refreshments, Inc.

   **History of Contract:** MSU issued an RFP for snack vending services and entered into a contract with Clark Beverages in June of 2010 to provide these services. In June of 2012, Clark Beverages sold their snack vending services, and the rights to the MSU contract, to Refreshments, Inc. Refreshments, Inc. has been servicing the campus since that time. The contract expires June 30, 2020 and MSU wishes to enter into a new contact with Refreshments, Inc.

   **Specific Type of Contract:** Snack Vending Services

   **Purpose:** Provide Snack Vending Services to campus to allow students, faculty and staff to have access to snacks and to provide a source of revenue to MSU.

   **Scope of Work:** Contractor will provide snack vending machines and will stock the machines as needed. Contractor will also provide preventive maintenance as well as repairs to the machines.

   **Term of Contract:** July 1, 2020 to June 30, 2030

   **Termination Options:** Either party may cancel the contract without cause with 90 days written notice to the other party.

   In the event either party materially breaches the contract, the non-breaching party may terminate the contract upon thirty (30) days written notice to the breaching party.

   MSU may terminate the Contract for Contractor’s failure to comply with the Mississippi Employment Protection Act.

   The Contract may be terminated by either party upon the occasion of a Force Majeure event.

   The Contract may be terminated upon 90 days written notice if Contractor is denied a request to increase prices.

   **Contract Amount:** Contractor will pay MSU 25% of net sales to MSU monthly. It is anticipated that MSU will receive in excess of $750,000 over the course of the agreement.
**Funding Source of Contract:** This is a revenue contract, no MSU funding is required.

**Contractor Selection Process:** MSU has been using Contractor for the past 8 years and is very satisfied. There is very little competition in the Starkville area for this type of business and MSU feels it is getting good service at a fair and reasonable price.

**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. Legal Staff has reviewed the proposed Agreement between Mississippi State University and Refreshments, Inc., for compliance with applicable law and finds same to be acceptable. Board staff recommends approval of this item.

2. **MUW – REQUEST FOR APPROVAL TO PARTICIPATE IN THE NEXT IHL MASTER LEASE-PURCHASE PROGRAM SERIES**

**Agenda Item Request:** Mississippi University for Women requests Board approval to participate in the next master lease purchase series through the State Institutions of Higher Learning’s (IHL’s) master lease program, pursuant to Miss. Code Ann. Section 37-101-413. MUW has a need for lease-purchase of up to $1,334,855 during fiscal year 2020. MUW’s participation in the IHL’s master lease program through its issuer HilltopSecurities, Inc. would enable it to meet its current need for technological equipment, licenses and software. The anticipated interest rate is approximately between two and one-half percent (2.5%) and three and one-half percent (3.5%) over a five (5) year lease-purchase term.

**History of Contract:** The Legislature authorized the creation of an equipment leasing and purchasing program by the Board of Trustees in April 2007 under Miss. Code Ann. Section 37-101-413. Previous uses of the program includes purchase of three aircraft by Delta State University for $1.8 million in 2011. Additionally, institutions have participated in a similar program operated by the Department of Finance and Administration including MUW in 2013 for $750,000 for various equipment, JSU in 2014 for $1.2 million for transportation equipment, ASU in 2015 for $1 million for a lease-purchase of transportation equipment, JSU in 2015 for $500,000 for band equipment, and MVSU in 2016 for police vehicles and other transportation equipment.

In January 2020, the Board authorized UMMC to participate in the next master lease-purchase program in the amount of $7.5 million.

**Specific Type of Contract:** Intermediate term lease

**Purpose:** To purchase equipment of up to $1,334,855 during fiscal year 2020.
Scope of Work: Funds to procure and reimburse for medical equipment

Term of Contract: 5 year lease-purchase term

Contract Amount: Authority to enter into lease agreements not to exceed $1,334,855.

Funding Source for Contract: University revenues

Board Staff Recommendation: Miss. Code Ann. Section 37-101-413 allows the Board of Trustees to establish an equipment leasing and purchase program for the use of the state institutions of higher learning. Among the actions the Board may perform includes “entering into lease financing agreements in connection with purchases made under the authority of this section.”

The form of lease documents will be presented at a subsequent meeting. Legal review will be provided at that time. Board staff recommends approval of this item.
1. **SYSTEM – 2020 HEADWAE HONOREES**

The Legislature established the Higher Education Appreciation Day, Working for Academic Excellence (HEADWAE) Program by resolution in 1988 as a way to thank students and faculty members for their commitment to the future of Mississippi. The HEADWAE recipients received special recognition from the Mississippi Legislature on March 2, 2020, where Lieutenant Governor Delbert Hosemann was the guest speaker. System honorees for 2020 are listed below.

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>STUDENT HONOREE</th>
<th>FACULTY HONOREE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASU</td>
<td>Makayla Nicole Wiley</td>
<td>Melissa Christine Mason</td>
</tr>
<tr>
<td>DSU</td>
<td>Elizabeth Chandler Swindle</td>
<td>Eckward N. McKnight</td>
</tr>
<tr>
<td>JSU</td>
<td>Patrick L. Stanley</td>
<td>Ronica Arnold Branson</td>
</tr>
<tr>
<td>MSU</td>
<td>Jacob Scott Manning</td>
<td>James C. Giesen</td>
</tr>
<tr>
<td>MUW</td>
<td>Hallie Grace Cole</td>
<td>Krista DiClemente</td>
</tr>
<tr>
<td>MVSU</td>
<td>Derica S. Pitters</td>
<td>John Q. Zheng</td>
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<tr>
<td>UM</td>
<td>Barron Charles Mayfield</td>
<td>John Young</td>
</tr>
<tr>
<td>UMMC</td>
<td>Jared Michael Akers</td>
<td>Jennifer Craft Bain</td>
</tr>
<tr>
<td>USM</td>
<td>Ryan Johnson</td>
<td>Alan M. Shiller</td>
</tr>
</tbody>
</table>

2. **SYSTEM – CERTIFICATE PROGRAMS**

A. **INTENT TO OFFER**

1. **JSU – Program Title: Endorsement: K3**
   - Responsible Academic Unit: College of Education and Human Development
   - Level: Post-baccalaureate
   - Total credit hours: 18
   - CIP Code: 13.1202
   - Effective Date: August 2020

2. **JSU – Program Title: Endorsement: K6**
   - Responsible Academic Unit: College of Education and Human Development
   - Level: Post-baccalaureate
   - Total credit hours: 18
   - CIP Code: 13.1209
   - Effective Date: August 2020

3. **JSU – Program Title: Endorsement: Mild/Moderate 7-12**
   - Responsible Academic Unit: College of Education and Human Development
   - Level: Post-baccalaureate
   - Total credit hours: 18
   - CIP Code: 13.1018
   - Effective Date: August 2020
4. **JSU – Program Title: Endorsement: Gifted K-12**  
   Responsible Academic Unit: College of Education and Human Development  
   Level: Post-baccalaureate  
   Total credit hours: 18  
   CIP Code: 13.1004  
   Effective Date: August 2020

5. **JSU – Program Title: Endorsement: Emotional Disabilities**  
   Responsible Academic Unit: College of Education and Human Development  
   Level: Other (Class AA 221 5-yr educator license or MS degree)  
   Total credit hours: 18  
   CIP Code: 13.1005  
   Effective Date: August 2020

6. **JSU – Program Title: Graduate Certificate in Biostatistics**  
   Responsible Academic Unit: College of Health Sciences, School of Public Health  
   Level: Post-baccalaureate  
   Total credit hours: 15  
   CIP Code: 26.1102  
   Effective Date: August 2020

7. **JSU – Program Title: Graduate Certificate in Data Analytics**  
   Responsible Academic Unit: College of Health Sciences, School of Public Health  
   Level: Post-baccalaureate  
   Total credit hours: 15  
   CIP Code: 30.7101  
   Effective Date: August 2020

8. **JSU – Program Title: Graduate Certificate in Epidemiology**  
   Responsible Academic Unit: College of Health Sciences, School of Public Health  
   Level: Post-baccalaureate  
   Total credit hours: 15  
   CIP Code: 26.1309  
   Effective Date: August 2020

9. **JSU – Program Title: Graduate Certificate in Nursing Informatics**  
   Responsible Academic Unit: College of Health Sciences, School of Public Health  
   Level: Post-baccalaureate  
   Total credit hours: 18  
   CIP Code: 51.2706  
   Effective Date: August 2020
10. UM – Program Title: Certificate in Media Leadership
   Responsible Academic Unit: School of Journalism and New Media
   Level: Post-baccalaureate
   Total credit hours: 12
   CIP Code: 90.01001
   Effective Date: July 2020

11. UM – Program Title: Graduate Certificate in Business Leadership
   Responsible Academic Unit: School of Business Administration
   Level: Post-baccalaureate
   Total credit hours: 12
   CIP Code: 52.0201
   Effective Date: August 2020

12. UMMC – Program Title: Direct Operational Medical Support
   Responsible Academic Unit: Department of Health Sciences, School of Health Related Professions
   Level: Post-baccalaureate
   Total credit hours: 10
   CIP Code: 51.0904
   Effective Date: August 2020

13. UMMC – Program Title: Leadership and Management Post-Baccalaureate Certificate Program
   Responsible Academic Unit: School of Health Related Professions
   Level: Post-baccalaureate
   Total credit hours: 12
   CIP Code: 51.0701
   Effective Date: August 2020

B. MODIFY
   1. USM – Current Program Title: Unmanned Marine Systems
      Proposed Program Title: Unmanned Maritime Systems
      Responsible Academic Unit: School of Ocean Science and Engineering
      Level: Pre-Baccalaureate (Less than 1 year)
      Total credit hours: 10
      CIP Code, Sequence: 29.0306, 8095
      Effective Date: August 2019
C. DELETE
   1. USM – Program Title: Community College Leadership Graduate Certificate
      Responsible Academic Unit: School of Education, College of Education and Human
      Sciences
      Level: Post-baccalaureate
      Total credit hours: 12
      CIP Code, Sequence: 13.0401, 8040
      Effective Date: December 2019

3. SYSTEM – INTENT TO OFFER AN EXISTING DEGREE PROGRAM BY DISTANCE LEARNING
   1. JSU – Master of Social Work (MSW)
      Total credit hours: 57
      CIP Code, Sequence: 440701, 4425
      Cost to offer by distance learning: $0
      Effective date: January 2020

   STAFF RECOMMENDATION: Board staff recommends approval of items 1-2.
1. **USM - NOTIFICATION OF PROCLAMATION OF EXISTENCE OF EMERGENCY BY INSTITUTIONAL EXECUTIVE OFFICER OF THE UNIVERSITY OF SOUTHERN MISSISSIPPI**

The Institutional Executive Officer of the University of Southern Mississippi has issued a Proclamation of Existence of Emergency as a result of the “coronavirus disease 2019.” This proclamation is required by Ms. Code Ann. Section 31-7-13(j) and provides that required rules for competitive bidding practices may be disallowed during the time of the emergency. State law requires that the Board of Trustees be notified of such proclamations. The text of the proclamation is shown below.

**PROCLAMATION OF EXISTENCE OF EMERGENCY**

**BY INSTITUTIONAL EXECUTIVE OFFICER OF THE UNIVERSITY OF SOUTHERN MISSISSIPPI**

**MARCH 13, 2020**

Whereas, health authorities worldwide have been dealing with an outbreak of a novel coronavirus, now named “coronavirus disease 2019” (abbreviated “COVID-19”); and

Whereas, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (“WHO”) declared the outbreak a “public health emergency of international concern”; and

Whereas, on January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19; and

Whereas, on March 11, 2020, WHO publicly characterized COVID-19 as a pandemic; and

Whereas, the first confirmed case of COVID-19 in Mississippi was announced by local health authorities in Forrest County, Mississippi on March 11, 2020; and

Whereas, since that time, 2 other cases of COVID-19 have been identified in Forrest County; and

Whereas, the City of Hattiesburg and Forrest County have each separately declared a state of emergency under date of March 13, 2020, in accordance with
applicable state law, copies of which are attached to this Proclamation as Exhibits A and B, respectively.

NOW, THEREFORE, I, as the Institutional Executive Officer of The University of Southern Mississippi, do find and declare that an extreme emergency exists on the campus of the University as a result of the outbreak of COVID-19 in the area, which has created a risk of extreme peril to the safety of persons and property and a severe disruption of the educational process as a result of potential exposure to the viral disease.

WHEREAS, I further find and declare that as a result of the extreme situation existing on campus, and the severe disruption of the educational process resulting from the outbreak and its effects on faculty, staff and students, an emergency situation exists as authorized and defined by Section 31-7-13 (j) of the Mississippi Code Annotated. I further determine that the emergency exists with respect to the purchase of commodities and repair contracts such that any delay incident to giving an opportunity for competitive bidding would be detrimental to the interests of the State and The University of Southern Mississippi and its faculty, staff and students.

I further determine pursuant to Section 31-7-13 (j) that the rules relating to competitive bidding should not apply and that the University and its designated officers should be authorized to make purchases and enter into appropriate contracts while such emergency continues.

I further proclaim that said emergency shall be deemed to continue until such time as the emergency is abated so as to allow faculty, staff and students to resume normal educational activities.

RODNEY D. BENNETT, PRESIDENT

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See Exhibits 1 & 2
EXHIBIT 1

PROCLAMATION OF EXISTENCE OF A LOCAL EMERGENCY

(by City Council, Board of Alderman, County Board of Supervisors, or University Officials)

WHEREAS, CITY OF HATTIESBURG City Council does here by find that conditions of extreme peril to the safety of persons and property have arisen within said City, caused by a Pandemic Event (COVID-19)

Commencing on or about 4 pm on the 13 day of March, 2020; and

WHEREAS, the aforesaid conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency in order to provide for the health and safety of the citizens and the protection of their property within the affected jurisdiction;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that in accordance with Section 33-15-17(d), Mississippi Code of 1972, as amended, a local emergency now exists throughout said City; and shall be reviewed every thirty (30) days until such local emergency is no longer in effect and proclaimed terminated by the City Council of the City of HATTIESBURG, State of Mississippi.

IT IS FURTHER PROCLAIMED AND ORDERED that all City agencies and departments shall render all possible assistance and discharge their emergency responsibilities as set for the in the County Emergency Operations Plan.

DATE: 3-13-2020

President of City Council

ATTEST:

__________________________
Councilperson

__________________________
Councilperson

__________________________
Councilperson

HATTIESBURG

City, State of Mississippi

__________________________
Councilperson

Mayor

Page 298 of 319
EXHIBIT 2

PROCLAMATION OF EXISTENCE OF A LOCAL EMERGENCY

(By City Council, Board of Alderman, County Board of Supervisors, or University Officials)

WHEREAS, FORREST COUNTY Board of Supervisors does here by find that conditions of extreme peril to the safety of persons and property have arisen within said County, caused by a Pandemic Event (COVID-19)

Commencing on or about 4 pm on the 13 day of March, 2020; and

WHEREAS, the aforesaid conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency in order to provide for the health and safety of the citizens and the protection of their property within the affected jurisdiction;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that in accordance with Section 33-15-17(d), Mississippi Code of 1972, as amended, a local emergency now exists throughout said County; and shall be reviewed every thirty (30) days until such local emergency is no longer in effect and proclaimed terminated by the Board of Supervisors of the County FORREST, State of Mississippi.

IT IS FURTHER PROCLAIMED AND ORDERED that all County agencies and departments shall render all possible assistance and discharge their emergency responsibilities as set for the in the County Emergency Operations Plan.

DATE: 3-13-20

President of Board of Supervisors

ATTEST:

SUPERVISOR

CLERK

SUPERVISOR

FORREST

County, State of Mississippi
SYSTEM: REAL ESTATE ITEMS APPROVED SUBSEQUENT TO THE FEBRUARY 20, 2020 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.
DELTA STATE UNIVERSITY

1. DSU-GS 102-258 – Sillers Coliseum 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 $23,169.60 and thirty-two (32) additional days to the contract of E Cornell Malone Corporation. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

Approval Status & Date: APPROVED, February 20, 2020

Change Order Description: Change Order #1 includes the following items: remove the existing metal roof from one (1) vent; install 1” ISO over the existing substrate; install .080 mil TPO over the insulation, turning the membrane down at the outer edges; install termination bar and seal; remove the existing sealant or mortar at the exterior masonry control joints behind the downspout locations; install a silicone sealant at the exterior masonry control joints at the downspout locations; disconnect the power and kill at the nearest junction box for exhaust fans on the front entrance canopy; demo the existing exhaust fans and replace with new insulated roof curb and cap; demo and replace three (3) gravity ventilators; and thirty-two (32) days to the contract.

Change Order Justification: These changes were necessary due to latent job site conditions; and days for work as indicated herein.

Total Project Change Orders and Amount: One (1) change order for a total amount of $23,169.60.

Project Initiation Date: October 16, 2014
Design Professional: Cooke Douglas Farr Lemons Architects & Engineers, P.A.
General Contractor: E Cornell Malone Corporation
Phased Project Budget: $2,668,798.73
Total Project Budget: $2,850,000.00
2. **DSU– GS 102-267 – Campus Roofing (REBID)**

   **NOTE:** This is a Bureau of Building project

   **Approval Request #1: Change Order #1**

   Board staff approved Change Order #1 in the amount of $12,933.60 and eight (8) additional days to the contract of Norman Enterprises, Inc. Approval is requested from the Bureau of Building, Grounds, and Real Property Management.

   **Approval Status & Date:** APPROVED, February 20, 2020

   **Change Order Description:** Change Order #1 includes the following items: installed a new expansion joint on a roof; installed a new metal window sill flashing; and eight (8) days to the contract.

   **Change Order Justification:** These changes were necessary due to latent job site conditions; and days for work as indicated herein.

   **Total Project Change Orders and Amount:** One (1) change order for a total amount of $12,933.60.

   **Project Initiation Date:** November 17, 2016
   **Design Professional:** Burris/Wagnon Architects, P.A.
   **General Contractor:** Norman Enterprises, Inc.
   **Total Project Budget:** $1,515,000.00

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**MISSISSIPPI STATE UNIVERSITY**

3. **MSU– IHL 205-291 – Transit Facility**

   **Approval Request #1: Design Development Documents**

   Board staff approved the Design Development Documents as submitted by Shafer-Zahner-Zahner

   **Approval Status & Date:** APPROVED, February 19, 2020

   **Project Initiation Date:** June 18, 2015
Design Professional: Shafer-Zahner-Zahner  
General Contractor: TBD  
Total Project Budget: $4,500,000.00

4. **MSU- IHL 205-300– Summer 2020 Various Parking Lots**

   **Approval Request #1: Schematic Design Documents**
   
   Board staff approved the Schematic Design Documents as submitted by Neel Schaffer, Inc.
   
   Approval Status & Date: APPROVED, February 25, 2020

   **Approval Request #2: Waiver Design Development Documents**
   
   Board staff approved the Design Development Documents as submitted by Neel Schaffer, Inc.
   
   Project Initiation Date: May 19, 2011  
   Design Professional: Neel Schaffer, Inc.  
   General Contractor: TBD  
   Total Project Budget: $2,000,000.00

5. **MSU- IHL 413-002 – Forest & Wildlife Facilities**

   **Approval Request #1: Design Development Documents**
   
   Board staff approved the Design Development Documents as submitted by Schafer-Zahner-Zahner.
   
   Approval Status & Date: APPROVED, February 19, 2020
   
   Project Initiation Date: March 1, 2019  
   Design Professional: Shafer-Zahner-Zahner  
   General Contractor: TBD  
   Total Project Budget: $4,172,500.00
MISSISSIPPI UNIVERSITY FOR WOMEN

6. MUW- GS 104-197– Electrical System Upgrade

Approval Request #1: Award of Construction Contract

Board staff approved the Award of Contract in the amount of $2,500,000.00 to the apparent low bidder, Webster Electric Co., LLC.

Approval Status & Date: APPROVED, February 13, 2020

Project Initiation Date: November 15, 2018
Design Professional: Atwell & Gent, P.A.
General Contractor: Webster Electric Co., LLC
Total Project Budget: $2,500,000.00

UNIVERSITY OF MISSISSIPPI

7. UM – IHL 207-372 – South Campus Recreation Facility & Transportation Hub

Approval Request #1: Change Order #17

Board staff approved Change Order #17 in the amount of $43,458.83 and zero (0) additional days to the contract of Zahner construction, LLC.

Approval Status & Date: APPROVED, February 24, 2020

Change Order Description: Change Order #17 includes the following items: reimbursed the contractor for mechanical equipment warranty and filter maintenance due to extended timeframe of construction; credit issued due to transposition of numbers.

Change Order Justification: These changes were necessary due to errors and omissions in the plans and specifications; and user/owner requested modifications.

Total Project Change Orders and Amount: Seventeen (17) change orders for a total amount of $2,714,407.25.

Project Initiation Date: November 15, 2012
Design Professional: JBHM Architects, P.A.
General Contractor: Zellner Construction Services, LLC
Phased Project Budget: $30,773,995.67
Total Project Budget: $33,250,000.00


   **Approval Request #1: Change Order #2**

   Board staff approved Change Order #2 in the amount of $3,971.92 and seven (7) additional days to the contract of Barnes & Brower, Inc.

   **Approval Status & Date:** APPROVED, February 10, 2020

   **Change Order Description:** Change Order #2 includes the following items: added two (2) additional smoke detectors in the bottom of the elevator pit; added another smoke detector in the ceiling of the elevator machine room; installed cabling in the elevator shaft for future CCTV cameras; and seven (7) days to the contract.

   **Change Order Justification:** These changes were necessary due to changes in requirements or recommendations by governmental agencies; 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 $4,672.72.

   **Project Initiation Date:** November 15, 2018
   **Design Professional:** Corbett Legge & Associates, PLLC
   **General Contractor:** Barnes & Brower, Inc.
   **Total Project Budget:** $1,200,000.00

9. **UM – IHL 207-449 – Lyceum Exterior Window Restoration**

   **Approval Request #3: Contract Documents**

   Board staff approved Contract Documents as submitted by Eley Guild Hardy Architects, P.A.

   **Approval Status & Date:** APPROVED, February 28, 2020

   **Approval Request #4: Advertise**
Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, February 28, 2020

Project Initiation Date: February 21, 2019
Design Professional: Eley Guild Hardy Architects, P.A.
General Contractor: NA
Total Project Budget: $1,725,000.00

10. UM - IHL #207-453- South Oxford Center – Film Studio

Approval Request #1: Change Order #1

Board staff approved Change Order #1 in the amount of $20,027.75 and eleven (11) additional days to the contract of D C Services, LLC.

Approval Status & Date: APPROVED, February 12, 2020

Change Order Description: Change Order #1 includes the following items: added sheetrock for furr downs in stage area; relocated an office door; raised a roof drain and hot water piping in a classroom; added VCT flooring in stage area; added stainless steel sink in the green room; added a tv monitor in the green room; door access control changes done; and eleven (11) days to the contract.
Change Order Justification: These changes were necessary 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: One (1) change order for a total amount of $20,027.75.

Project Initiation Date: May 16, 2019
Design Professional: McCarty Architects, P.A.
General Contractor: D C Services, LLC
Total Project Budget: $1,750,000.00
11. UM – IHL 207-456 – Brevard Hall 3rd Floor BioMed Department

Approval Request #3: Contract Documents

Board staff approved Contract Documents as submitted by McCarty Architects, P.A.

Approval Status & Date: APPROVED, March 2, 2020

Approval Request #4: Advertise

Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, March 2, 2020

Project Initiation Date: August 15, 2019
Design Professional: McCarty Architects, P.A.
General Contractor: TBD
Total Project Budget: $1,300,000.00

12. UM- IHL 207-461– Stockard Hall – AC VAV Boxes Replacement & Controls Upgrade

Approval Request #1: Schematic Design Documents

Board staff approved the Schematic Design Documents as submitted by Corbett Legge & Associates PLLC.

Approval Status & Date: APPROVED, February 28, 2020

Approval Request #2: Waiver Design Development Documents

Board staff approved the Waiver of Design Development Documents as submitted by Corbett Legge & Associates PLLC.

Approval Request #3: Contract Documents

Board staff approved Contract Documents as submitted by Corbett Legge & Associates, PLLC

Approval Status & Date: APPROVED, March 4, 2020
Approval Request #4: Advertise

Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, March 4, 2020

Project Initiation Date: May 19, 2011
Design Professional: Corbett Legge & Associates, PLLC
General Contractor: TBD
Total Project Budget: $1,200,000.00

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

13. UMMC- IHL 209-576 – MS Center for Medically Fragile Children

Approval Request #1: Schematic Design Documents

Board staff approved the Schematic Design Documents as submitted by Eley Barkley Dale – A Joint Venture.

Approval Status & Date: APPROVED, February 19, 2020

Project Initiation Date: June 15, 2017
Design Professional: Eley Barkley Dale – A Joint Venture
General Contractor: TBD
Total Project Budget: $12,500,000.00

14. IHL SYSTEM OFFICE – GS 111-060 – Restroom & Plumbing Improvements

NOTE: This is a Bureau of Building project

Approval Request #1: Contract Documents

Board staff approved Contract Documents as submitted by JBHM

Approval Status & Date: APPROVED, February 25, 2020

Approval Request #2: Advertise
Board staff approved request to advertise for receipt of bids.

Approval Status & Date: APPROVED, February 25, 2020

Project Initiation Date: November 21, 2018
Design Professional: JBHM
General Contractor: NA
Total Project Budget: $300,000.00
**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 (statement dated 11/1/19) from the funds of Alcorn State University. (This statement, in the amount of $42.65, represents services and expenses in connection with immigration/labor certification.)

**TOTAL DUE**.......................................................... $ 42.65

Payment of legal fees for professional services rendered by Ware Immigration (statement dated 2/1/20) from the funds of Jackson State University. (This statement, in the amount of $4,000.00, represents services and expenses in connection with immigration/labor certification.)

**TOTAL DUE**.......................................................... $ 4,000.00

Payment of legal fees for professional services rendered by Brunini, PLLC (statements dated 1/13/20, 1/13/20, 2/19/20 and 2/19/20) from the funds of Mississippi State University. (These statements, in the amounts of $7,750.00, $3,750.00, $1,437.50 and $3,187.50, respectively, represent services and expenses in connection with general legal advice.)

**TOTAL DUE**.......................................................... $ 16,125.00

Payment of legal fees for professional services rendered by Butler Snow (statements dated 1/6/20 and 2/17/20) from the funds of Mississippi State University. (These statements, in the amounts of $15,000.00 and $3,923.50, respectively, represent services and expenses in connection with general legal advice.)

**TOTAL DUE**.......................................................... $ 18,923.50

Payment of legal fees for professional services rendered by Ware Immigration (statement dated 2/1/20) from the funds of Mississippi State University. (This statement, in the amount of $2,000.00, represents services and expenses in connection with immigration/labor certification.)

**TOTAL DUE**.......................................................... $ 2,000.00

Payment of legal fees for professional services rendered by McDonald Hopkins (statement dated 12/16/19) from the funds of Mississippi Valley State University. (This statement, in the amount of $2,080.00, represents services and expenses in connection with legal advice.) Mississippi Valley State University is responsible for only $1,670.00 of this invoice.

**TOTAL DUE**.......................................................... $ 1,670.00
Payment of legal fees for professional services rendered by Evans Petree, PC (statement dated 12/3/19) from the funds of the University of Mississippi. (This statement, in the amount of $5,657.50, represents services and expenses in connection with general legal advice.)

TOTAL DUE...............................................................$ 5,657.50

Payment of legal fees for professional services rendered by Hogan Lovells (statements dated 12/19/19 and 1/15/20) from the funds of the University of Mississippi. (These statements, in the amounts of $8,029.50 and $2,782.50, respectively, represent services and expenses in connection with general legal advice.)

TOTAL DUE...............................................................$ 10,812.00

Payment of legal fees for professional services rendered by Mayo|Mallette (statements dated 12/10/19, 12/10/19, 1/14/20, 1/14/20 and 1/15/20) from the funds of the University of Mississippi. (These statements, in the amounts of $2,667.50, $7,741.00, $4,770.00, $7,678.34 and $1,025.55, respectively, represent services and expenses in connection with general legal advice.)

TOTAL DUE...............................................................$ 23,882.39

Payment of legal fees for professional services rendered by Phelps Dunbar, LLP (statement dated 12/31/19) from the funds of the University of Mississippi. (This statement, in the amount of $8,468.39, represents services and expenses in connection with legal advice.)

TOTAL DUE...............................................................$ 8,468.39

Payment of legal fees for professional services rendered by Baker Donelson Bearman Caldwell & Berkowitz, PC (statement dated 1/7/20) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $386.00, represents services and expenses in connection with legal advice.)

TOTAL DUE...............................................................$ 386.00

Payment of legal fees for professional services rendered by Butler Snow LLP (statements dated 1/13/20, 1/13/20, 1/13/20, 1/15/20, 1/16/20, 1/16/20, 2/6/20, 2/12/20, 2/12/20, 2/12/20, 2/12/20, 2/12/20 and 2/12/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $9,882.50, $885.00, $678.50, $1,563.50, $13,186.50, $17,984.89, $1,858.50, $18,702.30, $3,334.30, $5,896.40, $619.50, $2,330.50, $5,076.00, $599.00 and $1,121.00, respectively, represent services and expenses in connection with legal advice.)
Payment of legal fees for professional services rendered by Currie Johnson & Myers, P.A. (statements dated 1/29/20, 1/30/20, 1/30/20, 1/31/20 and 2/12/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $17,497.86, $2,970.50, $13,547.27, $3,206.30 and $1,275.00, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE……………………………………………………………$ 82,718.39

Payment of legal fees for professional services rendered by Gore Kilpatrick & Dambrino, PLLC (statements dated 1/27/20, 1/27/20, 1/27/20 and 1/27/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $2,937.00, $2,739.00, $33.00 and $132.00, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE……………………………………………………………$ 38,496.93

Payment of legal fees for professional services rendered by Hagwood Adelman Tipton, PC (statements dated 1/8/20, 1/8/20, 1/8/20, 1/8/20, 2/6/20, 2/6/20, 2/6/20, 2/6/20 and 2/6/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $82.50, $49.50, $412.50, $3,069.00, $66.00, $18.00, $18.00, $18.00 and $50.10, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE……………………………………………………………$ 5,841.00

Payment of legal fees for professional services rendered by Page Kruger & Holland (statement dated 2/3/20) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $66.00, represents services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………………………$ 3,801.60

Payment of legal fees for professional services rendered by Steen, Dalehite and Pace (statements dated 1/1/20, 1/13/20, 1/13/20, 1/13/20, 1/22/20 and 1/31/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $1,564.34, $1,782.00, $6,435.00, $2,590.50, $693.55, and $13,232.56, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE………………………………………………………………$ 26,297.95

Payment of legal fees for professional services rendered by Taylor Wellons Plitz Duhe, APLC (statements dated 1/21/20, 1/31/20, 1/31/20, 1/31/20, 2/20/20, 2/20/20, 2/20/20, 2/20/20 and 2/20/20) from the funds of the University of Mississippi Medical Center. (These statements, in the
amounts of $337.50, $2,238.75, $364.50, $337.50, $553.50, $301.50, $99.00 and $648.00, respectively, represent services and expenses in connection with legal advice.)

**TOTAL DUE**...........................................................................................................................................$ 4,880.25

Payment of legal fees for professional services rendered by Waller Lansden Dortch & Davis, LLP (statement dated 1/13/20) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $826.00, represents services and expenses in connection with legal advice.)

**TOTAL DUE**...........................................................................................................................................$ 826.00

Payment of legal fees for professional services rendered by Watkins & Eager (statements dated 1/3/20, 1/14/20 and 1/17/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $41,711.00, $4,008.00 and $49.50, respectively, represent services and expenses in connection with legal advice.)

**TOTAL DUE**...........................................................................................................................................$ 45,768.50

Payment of legal fees for professional services rendered by Whitfield Law Group (statements dated 1/3/20, 1/21/20, 1/21/20, 1/21/20, 2/4/20, 2/5/20, 2/10/20, 2/10/20 and 2/10/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $17,505.20, $2,447.80, $2,254.50, $1,867.80, $24,976.07, $5,287.00, $2,610.00, $2,083.40 and $2,026.50, respectively, represent services and expenses in connection with legal advice.)

**TOTAL DUE**...........................................................................................................................................$ 61,058.27

Payment of legal fees for professional services rendered by Bryan, Nelson, Schroeder, Castigliola & Banahan (statements dated 1/13/20 and 2/13/20) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $1,678.20 and $3,231.50, respectively, represent services and expenses in connection with legal advice.)

**TOTAL DUE**...........................................................................................................................................$ 4,909.70

Payment of legal fees for professional services rendered by Butler Snow (statement dated 2/13/20) from the funds of the University of Southern Mississippi. (This statement, in the amount of $4,904.00, represents services and expenses in connection with legal advice.)

**TOTAL DUE**...........................................................................................................................................$ 4,904.00

Payment of legal fees for professional services rendered by Dornan Law Office, PLLC (statement dated 2/3/20) from the funds of the University of Southern Mississippi. (This
statement, in the amount of $2,194.50, represents services and expenses in connection with legal advice.)

TOTAL DUE..........................................................$ 2,194.50

Payment of legal fees for professional services rendered by Mayo Mallette PLLC (statement dated 2/12/20) from the funds of the University of Southern Mississippi. (This statement, in the amount of $97.50, represents services and expenses in connection with legal advice.)

TOTAL DUE..........................................................$ 97.50

Payment of legal fees for professional services rendered by Ware Immigration (statements dated 1/1/20, 1/1/20, 1/1/20 and 2/1/20) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $34.50, $42.08, $1,500.00, and $156.13, respectively, represent services and expenses in connection with immigration/labor certifications.)

TOTAL DUE..........................................................$ 1,732.71

Payment of legal fees for professional services rendered by Wise Carter Child & Caraway, P.A. (statements dated 11/4/19 and 2/7/20) from the funds of the University of Southern Mississippi. (These statements, in the amounts of $2,847.00 and $526.50, respectively, represent services and expenses in connection with legal advice.)

TOTAL DUE..........................................................$ 3,373.50

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

Payment of legal fees for professional services rendered by Mendelsohn Dunleavy (statement dated 1/27/20) from the funds of Mississippi State University. (This statement represents services and expenses in connection with the following patent: “Occidiofungin, a Unique Antifungal Glycopeptide Produced by a Strain of Burkholderia Contaminans” - $196.04)

TOTAL DUE..........................................................$ 196.04

Payment of legal fees for professional services rendered by Stites & Harbison (statement dated 1/22/20) from the funds of Mississippi State University. (This statement represents services and expenses in connection with the following patent: “Unsymmetrical Salts, CCC-NHC Pincer Metal Complexes and Methods of Making Same” - $38.00.)

TOTAL DUE..........................................................$ 38.00
Payment of legal fees for professional services rendered by Armstrong|Teasdale (statement dated 1/6/20) from the funds of the University of Mississippi. (This statement represents services and expenses in connection with the following patent: “Systems and Methods for Detecting Transient Acoustic Signals” - $1,615.12.)

TOTAL DUE..............................................$ 1,615.12

Payment of legal fees for professional services rendered by Butler|Snow (statements dated 10/7/19, 10/7/19 and 11/21/19) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Cache Mapping Technology Matter” – $3,156.50; “Stuttering Inhibition Device” - $800.00; and “Cache Mapping Technology Matter” - $1,580.92, respectively.)

TOTAL DUE..............................................$ 5,537.42

Payment of legal fees for professional services rendered by Hershkovitz & Associates (statements dated 10/19/19, 10/19/19, 10/25/19, 10/26/19, 11/4/19, 11/19/19, 11/19/19, 11/19/19, 11/20/19, 11/20/19, 11/20/19, 11/21/19, 11/21/19, 11/21/19, 11/21/19, 11/21/19, 11/26/19, 11/27/19, 11/27/19, 12/3/19, 12/5/19, 12/12/19, 12/19/19, 12/19/19, 1/4/20 and 1/4/20) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $711.00; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $526.00; “Synthesis of β-Fluoro-, β-Unsaturated Amides” - $1,894.55; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $695.00; “Biologically Active Cannabidiol Analogs” - $646.71; “Potent Immunosstimulants from Microalgea” - $2,362.00; “Potent Immunosstimulants from Microalgea” - $2,572.00; “Potent Immunosstimulants from Microalgea” - $1,260.00; “Isolation of Pure Cannabinoids from Cannabis” - $1,972.05; “Potent Immunosstimulants from Microalgea” - $1,309.00; “Isolation of Pure Cannabinoids from Cannabis” - $6,313.58; “Biologically Active Cannabidiol Analogs” - $1,032.50; “Potent Immunosstimulants from Microalgea” - $1,254.00; “Compositions for Prevention/Prophylactic Treatment of Poison Ivy Dermatitis” - $665.00; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $584.00; “Isolation of Pure Cannabinoids from Cannabis” - $1,907.15; “Biologically Active Cannabidiol Analogs” - $1,141.46; “Biologically Active Cannabidiol Analogs” - $2,202.50; “Biologically Active Cannabidiol Analogs” - $4,142.85; “Highly Selective Sigma Receptor Ligands and Radioligands as Probes” - $913.72; “Compositions for Prevention/Prophylactic Treatment of Poison Ivy Dermatitis” - $952.55; “Synthesis of β-Fluoro-, β-Unsaturated Amides” - $761.40; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $1,036.00; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $727.00; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $824.00; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $682.00; “Compositions Containing Delta-9-THC-Amino Acid Esters and Process of Preparation” - $5,537.42

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and Process of Preparation” - $1,068.00; “Biologically Active Cannabidiol Analogs” - $3,167.00; “Compositions from Prevention/Prophylactic Treatment of Poison Ivy Dermatitis” - $587.00; and “Biologically Active Cannabidiol Analogs” - $587.00, respectively.)

TOTAL DUE..............................................................................$ 44,498.02

Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 10/24/19, 10/24/19, 10/24/19, 10/24/19, 10/24/19, 10/24/19, 10/24/19, 10/24/19, 10/24/19, 11/15/19, 11/15/19, 11/15/19, 12/16/19, 12/16/19, 12/16/19, 12/16/19, and 12/16/19) from the funds of the University of Mississippi. (These statements represent services and expenses in connection with the following patents: “Delivery of Medicaments to the Nail” - $342.00; “Highly Purified Amphotericin B” - $342.00; “Highly Purified Amphotericin B” - $342.00; “Highly Purified Amphotericin B” - $342.00; “Highly Purified Amphotericin B” - $342.00; “Solubilization & Disposal of Radioactive Scale & Sludge” - $4,042.00; “Indolizine-Based Donors as Organic Sensitizer Components for Dye-Sensitized Solar Cells” - $467.50; “Use of Trans-Gnetin H or Extracts Containing Genetic H as Lactic Acid Production Inhibitor” - $461.50; “Anticancer Formulation” - $8,613.00; “Amphotericin Loaded Pegylated Lipid Nanoparticles and Methods of Use” - $424.50; “Indolizine-Based Donors as Organic Sensitizer Components for Dye-Sensitized Solar Cells” - $576.00; “Anticancer Formulation” - $38.00; “Delivery of Medicaments to the Nail” - $399.00; “Highly Purified Amphotericin B” - $977.00; “Highly Purified Amphotericin B” - $1,753.00; “Highly Purified Amphotericin B” - $716.00; “Highly Purified Amphotericin B” - $694.00; “Highly Purified Amphotericin B” - $489.00; and “Amphotericin Loaded Pegylated Lipid Nanoparticles and Methods of Use” - $419.00, respectively).

TOTAL DUE..............................................................................$ 22,121.50

Payment of legal fees for professional services rendered by Stites & Harbison (statements dated 1/22/20, 1/22/20, 1/22/20, 1/29/20, and 1/29/20) from the funds of the University of Mississippi Medical Center. (These statements, in the amounts of $175.00, $624.00, $371.00, $1,046.00 and $1,113.50, respectively, represent services and expenses in connection with intellectual property patents.)

TOTAL DUE..............................................................................$ 3,329.50

Payment of legal fees for professional services rendered by Workman Nydegger (statement dated 1/24/20) from the funds of the University of Mississippi Medical Center. (This statement, in the amount of $64.00, represents services and expenses in connection with intellectual property patents.)

TOTAL DUE..............................................................................$ 64.00
1. **SYSTEM – COMMISSIONER’S NOTIFICATION OF APPROVAL**

The following items have been approved by the Commissioner on behalf of the Board and are available for inspection in the Board Office.

a. **ASU** – In accordance with Board Policy 701.06 Budget Escalations and Revisions, all revisions to annual budgets which do not increase the total amount of the budgets must be approved by the Commissioner prior to implementation and subsequently reported to the Board. On February 19, 2020, Commissioner Alfred Rankins, Jr. approved the revisions to several FY 2020 Ayers academic programs budgets submitted by ASU after conducting a mid-year review of their Ayers programs. It appears that these revisions were necessary to align 2020 budgets to individual program needs over the remaining months of the year. Per IHL Ayers administrative guidelines, the institutions are required to either report these revisions to the IHL Executive Office (i.e. self-approved revisions) or have certain proposed budgetary revisions pre-approved by the IHL Executive Office. The requested revisions do not fit under the pre-approval by the IHL Executive Office policy section of the guidelines. The Executive Office financial and academic staff have reviewed and approved these revisions. These revisions contain no increases to the total budget but rather reallocations among individual expense categories. A copy of the documents is on file at the Board Office.

b. **DSU** – On February 10, 2020, Commissioner Alfred Rankins, Jr. approved the Amendment No. 5 to the Agreement for Bookstore Services between Delta State University and Barnes & Noble College Booksellers, LLC, which extends the current agreement between these parties by 4 months. The current agreement expires on February 29, 2020. The purpose of this extension is to provide students with uninterrupted access to a bookstore provider while the terms of a new contract can be negotiated. This extension will result in additional revenues for the university. All terms of the current agreement remain unchanged during this 4-month extension period. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts.

c. **JSU** – In accordance with Board Policy 701.06 Budget Escalations and Revisions, all revisions to annual budgets which do not increase the total amount of the budgets must be approved by the Commissioner prior to implementation and subsequently reported to the Board. On February 19, 2020, Commissioner Alfred Rankins, Jr. approved the revisions to several FY 2020 Ayers academic programs budgets submitted by JSU after conducting a mid-year review of their Ayers programs. It appears that these revisions were necessary to align 2020 budgets to individual program needs over the remaining months of the year. Per IHL Ayers administrative guidelines, the institutions are required to either report these revisions to the IHL Executive Office (i.e. self-approved revisions) or have certain proposed budgetary revisions pre-approved by the IHL Executive Office. The requested revisions do not fit under the pre-approval by the IHL Executive Office.
Office policy section of the guidelines. The Executive Office financial and academic staff have reviewed and approved these revisions. These budget revisions contain no increases in total budget but rather reallocations among individual expense categories. A copy of the documents is on file at the Board Office.

d. **MVSU** – In accordance with Board Policy 701.06 Budget Escalations and Revisions, all revisions to annual budgets which do not increase the total amount of the budgets must be approved by the Commissioner prior to implementation and subsequently reported to the Board. On February 19, 2020, Commissioner Alfred Rankins, Jr. approved the revisions to several FY 2020 Ayers academic programs budgets submitted by MVSU after conducting a mid-year review of their Ayers programs. It appears that these revisions were necessary to align 2020 budgets to individual program needs over the remaining months of the year. The requested revisions involve moving funds between programs and from the Salary and Fringes line item that do fit under the pre-approval by the IHL Executive Office policy section of the guideline. Available funds will move from Computer & Information Science, Special Education (Graduate), Bioinformatics, and Institute for Effective Teaching to Mathematic and Biology to provide assistance in funding scholarships to students. The Executive Office financial staff have reviewed and approved these revisions. These budget revisions contain no increases in total budget but rather reallocations among individual expense categories. A copy of the documents is on file at the Board Office.

e. **UMMC** – On February 11, 2020, Commissioner Alfred Rankins, Jr. approved the Rental Agreement between the University of Mississippi Medical Center and Abbott Laboratories, Inc. for specialty equipment and supplies related to Ventricular Assist Devices. These devices and equipment will be rented by UMMC on an as-needed basis as back-up when similar devices currently owned by UMMC are in use or are being serviced. The term of the agreement is five years beginning upon execution of the agreement. The cost to rent the various pieces of equipment and supplies is set out in Exhibit A of the agreement. The total cost of the agreement over the five-year term will not exceed $95,000. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts.

f. **UMMC** – On February 11, 2020, Commissioner Alfred Rankins, Jr. approved the Lease Agreement between the University of Mississippi Medical Center and the Mississippi Fair Commission for the use of the Mississippi Coliseum at which to hold its 2020 commencement ceremony. The term of the Lease is three days beginning May 20, 2020 through May 22, 2020 at a one-time cost of $7,500. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts.

g. **UMMC** – On February 11, 2020, Commissioner Alfred Rankins, Jr. approved the Lease Agreement between the University of Mississippi Medical Center and Oktibbeha County Hospital and the request for approval to make prepayments as part of that agreement. The lease is for approximately 1,273 square feet of clinic
space at 107 Brandon Road in Starkville for use as a dermatology clinic one (1) day a week. The initial term of the agreement is one year beginning February 17, 2020, with two additional one-year automatic renewal terms through February 16, 2023, at a cost of $278.29 per month due in advance on the first day of each month. The IHL Associate Commissioner for Legal Affairs reviewed this item and found it compliant with Board Policy 707.01 Land, Property, and Service Contracts and 707.03 Approval for Prepayment for Goods or Services.

h. **SYSTEM** – On February 28, 2020, Commissioner Alfred Rankins, Jr. reviewed and approved the FY 20 Q2 Quarterly Employment Reports which lists all hires and all separations for the periods beginning October 1, 2019 through December 31, 2019. This report is required by Board Policies 401.0102 Delegation of Authority and 801.09 Resignations. The Executive Office financial staff has reviewed and approved the institutions’ submissions. A copy of the report will be maintained in the IHL Department of Finance and Administration.