

**RESOLUTION**

**AFFILIATION AGREEMENT BETWEEN THE UNIVERSITY OF SOUTH ALABAMA  
AND THE UNIVERSITY OF SOUTH ALABAMA JAGUAR ATHLETIC FUND, INC.**

**WHEREAS**, the University of South Alabama Jaguar Athletic Fund, Inc., (“USAJAF”) was established as a non-profit, educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986 for the purposes of serving the University of South Alabama (“University”) and supports University and promotes its mission by, among other things, providing support to University’s educational and athletic functions, including its athletic programs, and

**WHEREAS**, University and USAJAF have a history of interaction and cooperation that has served the interests of University, and

**WHEREAS**, University and USAJAF anticipate that University will provide USAJAF with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other service, support, and assistance USAJAF shall provide University, and

**WHEREAS**, the Board of Directors of USAJAF have approved the Affiliation Agreement as it defines the arrangements concerning services, facilities, premises, and activities between University and USAJAF, and

**WHEREAS**, the Board of Trustees of the University of South Alabama wishes to define the aforementioned arrangements with USAJAF as well,

**THEREFORE, BE IT RESOLVED**, that the Board of Trustees of the University of South Alabama hereby approves and adopts the Affiliation Agreement between University of South Alabama and the University of South Alabama Jaguar Athletic Fund, Inc., as attached hereto.

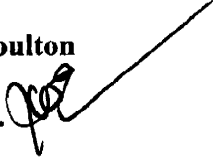


**CAMPUS MEMORANDUM  
UNIVERSITY OF SOUTH ALABAMA**

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**Date:** November 21, 2012

**To:** President V. Gordon Moulton

**From:** Joel W. Erdmann, Ph.D. 

**Subject:** Agenda Item for December 6, 2012, University of South Alabama Board of Trustees Meeting -Affiliation Agreement Between University of South Alabama and the University of South Alabama Jaguar Athletic Fund, Inc.

Attached is a resolution for consideration by the Board of Trustees of the University of South Alabama concerning the adoption of the Affiliation Agreement Between University of South Alabama and the University of South Alabama Jaguar Athletic Fund, Inc., which discusses obligations and expectations of each to the other. This Affiliation Agreement has been approved by the Board of Directors of the University of South Alabama Jaguar Athletic Fund, Inc. With your approval, this item will be presented to Board of Trustees for approval. Further, I recommend the adoption of the resolution by the Board of Trustees.

Attachment

**AFFILIATION AGREEMENT  
BETWEEN  
UNIVERSITY OF SOUTH ALABAMA  
AND THE  
JAGUAR ATHLETIC FUND, INC.**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the Effective Date) by and between University of South Alabama (hereinafter “USA” or “University”), a public body corporate, and the Jaguar Athletic Fund, Inc., a corporation duly organized under the laws of the State of Alabama (hereinafter “JAF”).

**RECITALS**

WHEREAS, USA is a state institution of higher learning established pursuant to the laws of the State of Alabama; and

WHEREAS, JAF 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;” and

WHEREAS, JAF serves University and promotes its mission as indicated in “Exhibit A,” by, among other things, providing support to its educational and athletic functions, including its athletic programs; and

WHEREAS, JAF has the responsibility as an affiliated entity to use its resources in a responsible and effective manner to further the mission of University and to support University; and

WHEREAS, University and JAF have a history of interaction and cooperation that has served the interests of University; and

WHEREAS, University has the authority and right to enter into agreements with affiliated 501(c)(3), not-for-profit organizations; and

WHEREAS, University and JAF anticipate that University will provide JAF with specified services and facilities with which to carry out its responsibilities in exchange for the development, financial, and other service, support and assistance JAF shall provide University; and

WHEREAS, USA and JAF 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, University and JAF do hereby agree as follows:

## **ARTICLE 1. PERSONNEL AND SERVICES**

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

## **ARTICLE 2. JAF OBLIGATIONS**

2.1 JAF agrees to provide the services and compensate University as requested by University.

2.2 JAF agrees that it may only use its resources to advance University's mission as outlined in its Articles of Incorporation.

2.3 JAF agrees to maintain its financial and accounting records in accordance with Generally Accepted Accounting Principles. JAF agrees to retain all books, accounts, reports, files and other records of JAF relating to this Agreement, if any, and make such records available at all reasonable times for inspection and audit by University, or their agents, during the term of and for a period of five years after the completion of this Agreement.

2.4 JAF agrees to submit to an audit, by request of University, of JAF's books, records, and expenditures, if any. University shall have the right to audit all records, financial and otherwise, if any, of JAF to assure that funds, resources and services provided by University are expended for the ultimate benefit of University and are expended by JAF for purposes consistent with the terms of this Agreement. If University funds are expended by JAF for purposes inconsistent with this Agreement, JAF, 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.

2.5 To the extent that JAF engages in fundraising on behalf of University, JAF agrees to accept or solicit only those gifts that are consistent with University's missions, goals or objectives.

2.6 JAF shall not accept any gift, donation, grant or enter into any transaction that creates any liability for University, without advance written approval of the University President.

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

2.8 JAF shall adopt and maintain a conflict of interest policy.

2.9 JAF shall provide the University President reasonable notice of any regular, annual, or special meetings of its Board of Directors or of any such Executive Committee as may be formed, and the President or his designee shall have the right to attend any such meetings as well as the meetings of any other JAF committees.

2.10 If JAF should cease to exist, any JAF assets donated to JAF for the benefit of University will be transferred to University for the use of USA Athletics.

2.11 University may from time to time make other requests of JAF or seek other assistance from JAF in accomplishing the mission of University, and JAF agrees that it will not unreasonably deny any such requests or assistance.

### **ARTICLE 3. UNIVERSITY OBLIGATIONS AND OTHER IN-KIND SUPPORT**

3.1 University grants JAF a non-exclusive, non-transferable license to use University trademarks, service marks, and logos consistent with University policy and its agreement with any outside contractors pertaining to the licensing thereof, including but not limited to a license to use marks developed by University for use by JAF.

3.2 University grants JAF an exclusive, transferable license to use University trademarks, service marks, and logos historically associated with JAF or developed by University or JAF for JAF's use.

3.3 University agrees to designate JAF as an official affiliated entity of University.

3.4 University shall provide JAF such other rights, privileges or benefits as it may under applicable law and as the University President, in the President's sole discretion, may determine will assist JAF in discharging its obligations under this Agreement.

3.5 The University President, or his/her designee, shall be a director on the Board of JAF and shall be given reasonable notice of any meeting of the Board or Executive Committee.

3.6 Subject to the availability of funding and the budget process, University agrees to provide JAF with resources suitable in University's judgment for the accomplishment of JAF's activities for 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 University and JAF. No provision in this Agreement shall be construed to give JAF 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 JAF under the terms of this Agreement shall remain the property of University unless sold, conveyed or transferred to JAF by way of a separate written agreement.

3.7 The University President will encourage all parts of University to collaborate with JAF in implementing JAF's programs and services.

3.8 The University President agrees to inform JAF on a regular basis of University's needs and priorities.

#### **ARTICLE 4. COMPLIANCE**

JAF shall comply with any and all applicable federal, state, and local laws and regulations.

#### **ARTICLE 5. INDEMNIFICATION**

JAF 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 of JAF. JAF 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.

#### **ARTICLE 6. INSURANCE**

JAF agrees to carry insurance satisfactory to University through the appropriate and approved University fund or outside agency to cover directors' and officers' liability, special event liability, premises liability, and general liability.

#### **ARTICLE 7. REPORTING**

JAF shall, within one hundred twenty (120) days following the close of its Fiscal Year, submit a detailed annual report of the work and financial condition of JAF to the President of University, and any other reports as required by this Agreement, by the Bylaws of JAF, or by applicable law.

#### **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 This Agreement may be terminated for any reason by written approval and consent of University upon ninety (90) days written notice.

8.3 Either party may terminate this Agreement for cause, including a breach of this Agreement, upon thirty (30) days written notice.

8.4 If this Agreement is terminated for any reason, including because the Agreement has expired without being renewed under Article 8.1, the following articles shall survive the termination: Articles 2.10, 5, 8 and 9.

8.5 The JAF agrees to cease using the University's name, marks and logos in the event the JAF dissolves, ceases to be a non-profit corporation, ceases to be recognized as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, or this Agreement is terminated.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

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

9.2 The parties agree that JAF is not the agent or employee of University, and nothing in this Agreement creates an employment or other agency relationship between the parties. JAF is not a subsidiary of University and is not directly or indirectly controlled by University.

9.3 University and the JAF agree that JAF's donor and giving records and any other financial or commercial information possessed by JAF or provided by JAF to University concerning individuals or corporations that provide JAF financial support are confidential and proprietary. Unless required to disclose such information by applicable law, University and JAF 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 JAF.

9.4 In the performance of this Agreement, JAF shall not deny opportunities, employment or otherwise, to any person on the basis of race, color, religion, national origin, age, sex, sexual orientation, disability status, genetic information or veteran status.

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

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

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

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

University of South Alabama


Jaguar Athletic Fund, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Name: JAMES H SHUMOCK

Title: PRESIDENT

Date: 11/20/2012