

AGENDA

III. PROPERTY AND FACILITIES COMMITTEE

January 20 and 21, 2005

Board Room

Mr. Roger H. Ogden, Chair  
Mr. Francis M. Gowen, V. Chair  
Mr. Marty J. Chabert  
Mr. Charles V. Cusimano  
Mr. Louis J. Lambert  
Mr. James P. Roy  
Mr. Charles S. Weems, III

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Property and Facilities Committee

Item 1: Recommendation to amend the 2005 – 2006 Capital Outlay Budget Request and First Year Prioritized Categories for the Louisiana State University System

Executive Summary

At its August 20, 2004 meeting, the LSU Board of Supervisors approved the 2005 – 2006 Capital Outlay Budget Request and First Year Prioritized Categories for the Louisiana State University System. The Health Sciences Center – New Orleans has requested that the Board amend the capital outlay budget request by adding the Health Sciences Center Complex – Renovations for Deans project in the amount of \$4,492,736 and Louisiana State University has requested to amend the capital outlay budget request by adding the New Alex Box Stadium project in the amount of \$23,000,000.

Recommendation

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**“NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College that the 2005 – 2006 Capital Outlay Budget Request and First Year Prioritized Categories for the Louisiana State University System be amended to include the below listed projects:

**LSU Health Sciences Center – New Orleans**  
**Category – Self Generated**

**Health Sciences Center Complex – Renovations for Deans**

**\$4,492,736 – Self Generated**

**Louisiana State University**  
**Category – Revenue Bond Projects**

**New Alex Box Stadium**

**\$23,000,000 – Revenue Bonds”**

## Property and Facilities Committee

### Item 2: Recommendation to execute an Agreement of Lease and Agreement to Construct and Donate Improvements to the University of New Orleans' Privateer Park with Privateer Athletic Foundation in New Orleans, Louisiana

#### Executive Summary

Privateer Park on the University of New Orleans Campus was constructed in 1979 as the home field for the UNO baseball team. Additional seats have been added over time as well as lights and a press box. In 1993 the New Orleans Zephyrs increased the seating capacity to 4,500 and contributed to a new scoreboard. No renovations have been performed since that time, and the steel supporting the grandstand has deteriorated.

Privateer Athletic Foundation is proposing to renovate the grandstand area in Privateer Park by demolishing the existing seating and press box area, erecting proper steel supports for the structure, installing approximately 520 new seats and erecting a roof over the seating area, at a total project cost of \$745,900. The Foundation is in the process of a fundraising effort to raise a portion of the funds required. The Foundation intends to raise the remainder of the funds through a seat donation campaign whereby supporters would donate an amount based on the location of their seats, similar to the donation which has been implemented in Tiger Stadium. The Foundation would collect a donation from the fan for the right to purchase the ticket.

It is proposed that the LSU Board of Supervisors lease the area for the construction to Privateer Athletic Foundation. After completion of the renovations, the Foundation would donate the renovations to the University of New Orleans.

Architectural plans will be presented to the Board for approval at a later date.

#### Recommendation

It is recommended that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College adopt the following resolution:

**“NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby authorize William L. Jenkins, President of the Louisiana State University System, to execute an Agreement of Lease and Agreement to Construct and Donate Improvements to Privateer Park by and between the Board of Supervisors of LSU and Privateer Athletic Foundation, said Agreement to contain such terms and conditions as President Jenkins deems in the best interest of the LSU Board of Supervisors.”

**AGREEMENT OF LEASE AND  
AGREEMENT TO CONSTRUCT AND DONATE  
IMPROVEMENTS TO PRIVATEER PARK**

**THIS AGREEMENT OF LEASE AND AGREEMENT TO CONSTRUCT AND DONATE IMPROVEMENTS TO PRIVATEER PARK** (herein "Lease") is entered into the \_\_\_day of \_\_\_\_\_, 200\_\_, by and between **Board of Supervisors of Louisiana State University and Agricultural and Mechanical College**, a public constitutional corporation organized and existing under the Constitution and laws of the State of Louisiana, domiciled in the Parish of East Baton Rouge, said State, appearing herein through William L. Jenkins, President of the Louisiana State University System, duly authorized and empowered by resolution of said Board of Supervisors (hereinafter referred to as "Board"),

and

**PRIVATEER ATHLETIC FOUNDATION**, a Louisiana non-profit corporation organized and existing under the laws of the State of Louisiana, domiciled in the Parish of Orleans, herein appearing through and represented by Dominick Musso, its duly authorized President (hereinafter referred to as "Foundation"), provides as follows:

**WITNESSETH**

**WHEREAS**, Board is the owner of a certain structure known as Privateer Park in which the University of New Orleans plays its collegiate baseball games, which Stadium is located on land owned by the University;

**WHEREAS**, Foundation desires to lease a portion of the Stadium from Board for purposes of renovating Privateer Park and constructing related improvements all at Foundation's expense;

**WHEREAS**, the improvements to be constructed by Foundation pursuant to the terms of this Lease will be donated by Foundation to Board upon completion of construction and acceptance by Board in accordance with the terms of this Lease;

**WHEREAS**, Board desires to grant to Foundation a lease and certain limited rights of use and access in order to facilitate the Work (hereinafter defined); and

**WHEREAS**, Foundation is a non-profit corporation whose tax exempt purpose is to support the mission and programs of Board, and Foundation will promote that mission by performing the Work and donating the Improvements (hereinafter defined) to Board.

**NOW THEREFORE**, in consideration of the mutual covenants, conditions and agreements which follow, the parties hereby agree:

**1. AGREEMENT OF LEASE AND AGREEMENT TO CONSTRUCT AND DONATE IMPROVEMENTS**

For and in consideration of Ten Dollars and 00/100 (\$10.00) and other good and valuable consideration, Board hereby leases to Foundation those portions of the Stadium reflected on Exhibit "A" hereto as "Grandstand and Staging Area" (hereinafter defined as the "Leased Property") and hereby grants to Foundation such rights of use and access as are necessary for Foundation to perform the Work and as can be mutually agreed by Board Representative and Foundation. Said lease and rights of access and use for construction purposes shall terminate upon the earlier of (a) termination of this Lease, or (b) donation of the Improvements to Board as provided herein.

Foundation agrees to construct the Improvements in accordance with plans and specifications approved by Board and to donate the Improvements to Board after completion of the construction.

## **2. DEFINITIONS**

In addition to such other defined terms as may be set forth in this Lease, the following terms shall have the following meanings:

“Board”—Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

“Board Representative”—the Executive Vice President for the Louisiana State University System or his designee.

“Force Majeure”—any (a) act of God, lightning, hurricane, tornado, and other extraordinarily adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, insurrection, riot or civil disturbance; (b) labor dispute, strike, work slow down or work stoppage; or (c) any other similar cause or similar event beyond the reasonable control of the party claiming an extension caused by such events.

“Foundation”—Privateer Athletic Foundation.

“Improvements”—the structures and Work to be performed and constructed by Foundation on and to Privateer Park pursuant to the term of this Lease.

“Lease”—this Agreement of Lease and Agreement to Construct and Donate Improvements to Privateer Park.

“Leased Property”—those portions of the Stadium reflected on Exhibit “A” hereto as

“Grandstand and Staging Area” and leased to Foundation pursuant to this Lease.

“President”—the President of Louisiana State University System.

“Privateer Park” – The playing field and structures erected on the grounds dedicated by the University for the performance or engagement of baseball, parking facilities and the grounds themselves.

“Stadium”—the stadium located on campus of University in which University plays collegiate baseball games, which stadium is known as Privateer Park.

“University”—University of New Orleans, an institution under the supervision and management of Board.

“Warranty Commencement Date”—the later of the following dates: (1) the fulfillment of the conditions set forth in paragraph 6.1 hereof or (2) the recordation of the donation of the Improvements from the Foundation to Board or (3) occupancy for purposes set forth in this Lease.

“Work”—the renovations of Privateer Park and the construction of related Improvements.

### **3. USE OF PREMISES**

Foundation may use the Leased Property only for construction of the Improvements. Foundation shall not use the Leased Property for the sale, distribution, storage, transportation or handling of petroleum or other similar synthetic products. Foundation shall not make any use of the Leased Property in violation of any applicable statutes, ordinances, regulations or laws and shall not permit any contamination or pollution on or about the Leased Property or increase the fire or insurance hazard by any use thereof. Before beginning any work on the Leased Property, Foundation shall obtain any permits required by the State of Louisiana, the Parish of Orleans and the United States of America or any of their subdivisions or departments. Foundation shall not install or otherwise place storage tanks in or on the Leased Property.

### **4. CONSTRUCTION**

4.1 At its sole cost and expense, Foundation shall construct the Improvements in a good and workmanlike manner, in accordance with the following provisions:

#### **A. Plans and Specifications/Change Orders**

At least thirty (30) days prior to commencement of any construction, final plans and specifications shall be delivered to the Board Representative or his designee for his review and approval. Foundation shall not enter into any contract for architectural or engineering services for the Work without the prior written approval of Board Representative. Board Representative shall approve or disapprove such plans and specifications within thirty (30) days of receipt thereof. Failure by the Board Representative to approve the plans and specifications within such thirty (30) day period shall be deemed disapproval. Any request for change orders to the plans and specifications or to the construction contract shall be made to the Board Representative. He shall approve or disapprove such request within ten (10) working days of having received the request for the change order from the Foundation. If he does not approve the request within such ten (10) working days, the request will be deemed disapproved. No change order to the contract or to the plans and specifications shall be implemented without the prior written consent of the Board Representative.

#### **B. Commencement and Completion of Work**

Unless delayed by Force Majeure, at its own expense, Foundation agrees to (1) commence the Work no later than January 1, 2006, or within thirty (30) days after the Board Representative has given written consent to the notice to commence and (2) complete the Work by December 31, 2006. No work shall commence until the Board Representative has given his written consent to the notice to proceed and his written approval to the plans and specifications. The commencement and completion dates set forth herein may be extended by a written change order issued by the Foundation and approved in writing by the Board Representative.

#### **C. Contract with Contractor**

The work shall be performed on behalf of Foundation, pursuant to written contracts between Foundation and a contractor or contractors. Foundation shall not enter into a construction contract without the prior written approval of the Board Representative. The Board Representative shall approve or disapprove such contract within ten (10) days of receipt of a copy of the contract from Foundation. Failure by Board Representative to approve the contract during such ten (10) day period shall be deemed disapproval. Where appropriate, the contract(s) and

bond(s) shall be recorded properly with the Clerk of Court of Orleans Parish prior to commencement of the work. Foundation shall include a liquidated damages clause acceptable to

Board Representative in its construction contract. Board and Foundation hereby acknowledge the following, and, to the extent practically and legally possible, the contract between Foundation and any contractor or contractors and all subcontracts entered into by the general contractor shall acknowledge expressly that they have been informed of the following:

D. Contract with Contractor

The Work shall be performed on behalf of Foundation, pursuant to written contracts between Foundation and a contractor or contractors. Foundation shall not enter into and construction contract without the prior written approval of the Board Representative. The Board Representative shall approve or disapprove such contract within ten (10) days of receipt of a copy of the contract from Foundation. Failure by Board Representative to approve the contract during such ten (10) day period shall be deemed disapproval. Where appropriate, the contract(s) and bond(s) shall be recorded properly with the Clerk of Court of Orleans Parish prior to commencement of the Work. Foundation shall include a liquidated damages clause acceptable to Board Representative in its construction contract. Board and Foundation hereby acknowledge the following, and, to the extent practically and legally possible, the contract between Foundation and any contractor or contractors and all subcontracts entered into by the general contractor shall acknowledge expressly that they have been informed of the following:

- (i) The Work will be performed solely and exclusively for Foundation.
- (ii) Foundation is a separate legal entity from Board. It is not acting as agent for Board, and Foundation has no authority to obligate Board to any extent whatsoever.
- (iii) Neither Board, the University nor the State of Louisiana shall be liable, directly or indirectly, for the payment of any sums whatsoever or for the performance of any other obligation whatsoever arising out of the Work performed pursuant to this Lease.
- (iv) Foundation has no ownership interest in Stadium in which the Work will be performed or the property on which Stadium is located. Any improvements placed on property of Board shall become property of Board upon completion of the Work. The Work shall not give rise to any rights against Stadium or Board.

E. Performance Bond

Foundation shall require that the contractor provide a performance and labor and materials payment bond with a corporate surety authorized to do business in the State of Louisiana. Said bond shall be for the greater of the full amount of the contract price or the amount of the guaranteed maximum price of the Work. Both Foundation and Board shall be obligees under the bond.

F. Rights Concerning the Property During Construction

To the extent necessary, Foundation and its contractors shall have the right to occupy and use Leased Property, with reasonable ingress to and egress from Leased Property, during the term of this Lease and, with the prior written consent of the Board Representative, shall fence or block off that area of the Leased Property necessary to perform the Work in a safe and secure manner. Foundation assumes all responsibility for the condition of Leased Property used by it during the term of this Lease. Foundation and its contractors shall maintain Leased Property and any improvement or construction thereon in a reasonably prudent manner at all times until the

work is accepted by the President. Board shall not be responsible for any maintenance or repairs to Leased Property during the term of this Lease. The Board Representative and any other Board employees designated by him shall at all times have access to Leased Property and the exercise of all rights as owner except as otherwise provided herein, even those not specifically acknowledged herein, and at all times shall have the right but not the obligation to enter Leased Property and review the Work to determine that it is being performed in compliance with the plans and specifications and in a good and workmanlike manner. Foundation accepts Leased Property for the purposes herein outlined without any warranty of title or recourse whatsoever against Board.

G. Access over Stadium or Adjoining Property during Construction

Board hereby grants to Foundation a servitude of access over and across such other property owned by Board only so far as such is absolutely necessary in order for the Foundation to fulfill its obligations hereunder, provided, however, Foundation shall not interfere with Board's use of such other property.

H. Board Rules and Regulations; Access During Construction

Foundation agrees that it will comply with all Board regulations, policies and mandates with regard to all contractors and personnel entering the Leased Property for purposes of construction, which rules and regulations will be addressed at the pre-construction conference, and Foundation agrees that it will secure, at its own expense, all necessary permits and licenses from all regulatory agencies or bodies. Foundation shall make these same requirements of its contractor or contractors for the Work. The Work shall be subject to inspection by the Board Representative who shall have access to the Work and the Leased Premises at all reasonable times during construction.

I. Signage

Before erecting or placing any sign upon the Leased Property or the Improvements or allowing any contractor, subcontractor or other person to erect or place a sign upon, Foundation shall submit the design specifications of such sign to the Board Representative for approval. Foundation may only erect or place signage hereunder if it has obtained the prior written approval of the Board Representative.

J. Acceptance of Construction

Foundation and Board agree to work together to identify and facilitate completion of all warranty and punch list items within the first year following acceptance of the Work. Foundation will not accept the Work without the written approval of the Board Representative. The President reserves the right to refuse to approve the acceptance of the Work unless monies equal to the value of the punch list deficiencies are held by the Foundation in an escrow account for payment to the contractor upon completion of the punch list items. Upon donation of the Work by Foundation to Board, Foundation hereby agrees that, to the extent allowed by law, Foundation will assign or transfer to Board its right to enforce actions against the contractor(s) and/or the architect arising out of the Work; provided, however, Foundation shall continue to be obligated to complete the punch list items. Final payment shall not be made to the contractor until Board Representative agrees in writing that the punch list items have been completed.



K. Funds for Construction

At the Board Representative's request, prior to the commencement of Work, Foundation shall satisfy the Board Representative that the total amount of money needed to complete the Work has been collected or acquired by the Foundation and is dedicated to that use. At the President's sole option, Foundation may be required to provide a letter of credit, a performance bond, or a dedicated escrow account to guarantee its performance.

L. On Site Construction Inspector

If in Board Representative's sole discretion it becomes necessary, Foundation at Foundation's expense shall hire an on site construction inspector or clerk of the works for full time supervision of the Work.

M. Inspection and Survey

Foundation shall inspect the Land, and arrange for any necessary boundary surveys, topographical surveys, soil borings and other site investigations at its expense. Foundation accepts Leased Property in its present condition.

N. No Liens; Release of Recorded Liens

Foundation shall not suffer or permit any liens to be filed or enforced against the Leased Property or Board by reason of a failure to pay for any work, labor, services or materials supplied or claimed to have been supplied to Foundation or to anyone through or under the Foundation. If any such liens shall be recorded against the Leased Property, Foundation shall cause the same to be released of record, or in the alternative, if the Foundation in good faith desires to contest the same, Foundation shall be privileged to do so, but in such case, Foundation shall promptly deposit with the Recorder of Mortgages of Orleans Parish a bond guaranteeing payment of any such liens and hereby agrees to indemnify, defend with an attorney of Board Representative's choice, and save Board harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said lien, cause the same to be discharged and released prior to the execution of such judgment.

**5. INSURANCE**

5.1 During the Work and prior to the donation to Board of the Improvements constructed by Foundation, Foundation shall maintain or require its contractor to maintain the following:

A. Builder's Risk Insurance

Contractor shall provide an "All Risk" builder's risk insurance policy, including but not limited to fire and extended coverage insurance, vandalism and malicious mischief, for not less than one hundred (100%) percent of the full replacement value of the Work or property destroyed to protect against any damage or loss during the Work and until final donation of the Improvements to Board and acceptance thereof. This policy shall be taken out prior to commencement of construction and discontinue upon final acceptance by the President of the donation. It shall run in favor of contractor, Foundation and Board, as their interests may appear. The coverage shall include the architect's fee for work required and reconstruction following a loss

during construction. Written evidence of such insurance shall be provided to Board Representative prior to commencement of the Work.

**B. General Liability and Property Damage Insurance**

Foundation and its contractors, before commencing any construction, shall procure such comprehensive liability, including contractually assumed liability coverage, and property damage insurance, including insurance for the operation of motor vehicles, which will cover Foundation's, Board's and the architect's legal liability arising out of the construction performed by Foundation or any of its contractors or subcontractors and by anyone directly or indirectly employed by either of them, for claims for damages for personal injury, including accidental death, as well as claims for property damage, including but not limited to damage to surrounding buildings, which may arise from operations for the construction of the Work, with limits of liability of two million (\$2,000,000.00) dollars. Foundation shall also require its contractors and subcontractors to have in full force and effect a policy of workmen's compensation and employer's liability insurance before proceeding with the construction under this Lease. Written evidence of such insurance shall be provided to Board Representative prior to commencement of the Work.

5.2 Board shall be named as an additional insured on all policies required hereby, with said policies to provide primary coverage to any other policies or coverages available to Board. Certificates of all policies of insurance shall be delivered to the Board Representative upon written request, and said policies shall provide a thirty (30) day written notification to Board prior to the cancellation thereof.

**6. DONATION OF IMPROVEMENTS AND TITLE TO IMPROVEMENTS**

6.1 Foundation agrees to donate the Improvements to Board after (a) final acceptance of the Work by Foundation and written approval by the Board Representative of said final acceptance and (b) the delivery to the Board Representative of either (i) a clear lien certificate as to the Work which certificate has been obtained from the proper parish clerk's office or (ii) evidence that any liens against the Improvements have been adequately bonded. Said Work shall not be considered donated to Board until the events in both (a) and (b) of this paragraph have occurred.

6.2 Upon fulfillment of the conditions set forth in paragraph 6.1 (a) and 6.1 (b) hereof, the Improvements shall be donated to and title and ownership to said Improvements shall be transferred to and shall become owned by Board. Said donation shall occur concurrently with final fulfillment of the conditions set forth in paragraph 6.1 (a) and 6.1 (b), and, upon said donation, Foundation shall have no further responsibilities, obligations or liabilities with regard to the Improvements, Leased Property or the Work except as otherwise specifically set forth herein. Foundation shall bear the risk of loss with respect to the Improvements until acceptance of the donation by the President; provided, however, Foundation's risk shall be limited to available insurance proceeds. Furthermore, prior to such donation, Foundation shall obtain guarantees and warranties from the contractor or contractors and suppliers of equipment, which guarantees and warranties shall be assigned to and shall run in favor of Board upon the donation of the Improvements, provided, however, Foundation itself shall make no warranty as to the condition of the Work. To the extent that such terms are available on commercially reasonable terms, guarantees and warranties for the construction and completion of the Improvements shall run from the later of (1) the fulfillment of the conditions set forth in paragraph 6.1 or (2) the recordation of the donation of the Improvements from the Foundation to Board or (3) occupancy for the purposes set forth herein (the "Warranty Commencement Date"), which warranties shall include but not be limited to the following items and periods if available:

- (a) For one year following the Warranty Commencement Date, all defects in materials and workmanship;
- (b) For ten years following the Warranty Commencement Date, all plumbing, electrical, heating, cooling and ventilating systems; and
- (c) For the length of manufacturers' warranties, all appliances and equipment.

6.3 Upon fulfillment of the conditions set forth in Paragraph 6.1 hereof the parties agree to execute any and all documents necessary to effectuate the donation and the acceptance thereof by the President on behalf of the Board. The parties will record the donation and acceptance in the records of Orleans Parish.

6.4 Notwithstanding anything contained in this Lease, Board at all times will have the absolute right to terminate this Lease by giving no less than thirty (30) days' written notice to Foundation. Upon such termination either Board shall take title to the Improvements, or Board, at its option, may require Foundation to transfer all of its right, title and interest in this Lease, in any funds dedicated to complete the construction of the Improvements, and in the Improvements already constructed to another non-profit corporation or entity which meets the requirements of La. R.S. 17:3390, which is acceptable to Board Representative, and which accepts the obligations of the Foundation hereunder.

## **7. INDEMNIFICATION**

Foundation, for itself and for its successors, assigns, agents, contractors, employees, invitees, customers and licensees, agrees to indemnify, defend and to hold Board harmless against any loss for damages or injuries that may be suffered by Board or by any person, including but not limited to Foundation's agents, contractors, employees, invitees and licensees, to the extent such loss arises out of or is related to the Work, except with respect to acts or omissions by Board members, officers or employees unless said employees are acting at the direction or request of the Foundation, and Foundation agrees to defend Board with an attorney of Board's choice in any legal action against it and pay in full and satisfy any claims, demands or judgments made or rendered against Board, and to reimburse Board for any legal expenses, including attorney's fees and court costs, which may be incurred by it in defense of any claim or legal action arising thereunder, but Foundation's costs and expenses incurred in fulfilling this indemnity and defense shall be limited to insurance proceeds which are available for this purpose.

## **8. TERMINATION**

This Lease shall terminate upon donation of the Improvements to Board and acceptance by the Board Representative of said donation as set forth in paragraph 6.1(a) and 6.1(b) and paragraph 6.2 hereof or at the latest on December 31, 2007. This Lease may be extended by written consent of both parties, which extension may be granted on behalf of Board by the President of the LSU System and on behalf of Foundation by its President.

**9. NOTICES**

All notices, demands and correspondence made necessary by the provisions of this Lease shall be deemed to be properly given, served and addressed, if and when sent by certified mail, return receipt requested, directed as follows

Board: Board of Supervisors of Louisiana State University and  
Agricultural and Mechanical College  
Attention: President and Executive Vice President  
3810 West Lakeshore Drive  
Baton Rouge, LA 70808  
and  
Chancellor  
University of New Orleans  
2000 Lakeshore Drive  
Lakefront  
New Orleans, LA 70148

Foundation: Privateer Athletic Foundation  
Attention: President  
Lakefront Arena  
6801 Franklin Avenue  
New Orleans, LA 70122

**10. FOUNDATION DEFAULT**

10.1 Board may declare Foundation in default upon one or more of the following events:

A. Failure of Foundation to commence and/or complete the Work as set forth in this Lease, within the time frame allowed, as extended by Force Majeure, unless such time period has been mutually extended in writing by the Board Representative and Foundation, and which failure has continued for a period of thirty (30) days after receipt of written notice from the Board Representative specifying such failure and requesting that it be remedied; or

B. A substantial deviation, unauthorized in writing by the Board Representative, from the plans and specifications for the Work approved by the Board Representative, which deviation has continued for a period of thirty (30) days after receipt of written notice from the Board Representative specifying such failure and requesting that it be remedied; or

C. Failure of Foundation to observe or perform any other covenant, condition or obligation upon its part to be observed or performed under this Lease for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied; or

D. The taking by execution of the Improvements for the benefit of any person or entity other than Board; or

E. A court having jurisdiction shall enter an order for relief in any involuntary case commenced against Foundation, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or the entry of a decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestration, or other similar official of or for Foundation or any substantial part of the properties of Foundation or ordering the winding up or liquidation of the affairs of Foundation, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

F. The commencement by Foundation of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or the consent or acquiescence by Foundation to the commencement of a case under such Code or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestration, or other similar official of or for Foundation or any substantial part of the properties of the Foundation; or

G. Foundation, after commencement of construction but prior to substantially completing construction of the Improvements, abandons (with no intent to continue) construction for a period of ninety (90) consecutive days, excluding delays caused by Force Majeure.

10.2 Whenever any event of default referred to in this section shall have occurred and be continuing and Foundation refuses or fails to take the reasonable and necessary remedial action to cure such default in the time period specified therefor, in addition to any other remedies herein or by law provided, the President on behalf of the Board shall have the right, without any further demand or notice, to declare this Lease terminated. In the event of the termination of this Lease, Foundation expressly waives any notice to vacate. Furthermore, in the event of the termination of this Lease during the Work, Board shall be the owner of all improvements made on or to Stadium, provided, however, at the President's sole option and direction, in the event of the termination of this Lease during the Work, Foundation shall transfer its rights and obligations under this Lease, any Improvements constructed as of the date of transfer and any funds Foundation has dedicated to complete the construction of the Improvements to another non-profit corporation or entity which meets the requirements of La. R.S. 17:3390 and which is acceptable to the President.

## **11. BOARD DEFAULT**

Foundation may declare Board in default upon the failure of Board to observe or perform any covenant, condition or agreement upon its part to be observed or performed under this Lease for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied. This period shall automatically be extended by any failures resulting from Force Majeure. If the default be continuing and Board has not taken any action reasonably anticipated to cure such default, in addition to any other remedies herein or by law provided, Foundation shall have the right, without any further demand or notice to declare this Lease terminated and shall have no further obligation to perform any of the obligations of Foundation under this Lease.

## **12. MISCELLANEOUS**

### **12.1 Relationship of Parties.**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. Board shall not be liable to Foundation, its members, stockholders, officers or employees for any action Board may take in regard to or in connection with this agreement.

#### 12.2 Louisiana Law to Apply.

This Lease shall be construed under and in accordance with the laws of the State of Louisiana, and all obligations of the parties created hereunder are performable in Orleans Parish, Louisiana.

#### 12.3 Nonwaiver.

No waiver by Board or Foundation of a breach of any of the covenants, conditions, or restrictions of this Lease shall constitute a waiver of any subsequent breach of any of the covenants, conditions, or restrictions of this Lease. The failure of Board or Foundation to insist in any one or more cases upon the strict performance of any of the covenants of the Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. No waiver, change, modification or discharge by Board or Foundation of any provision of this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the parties to this Lease.

#### 12.4 Severability

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

#### 12.5 Authorization

By execution of this Lease, Foundation and Board each represent to the other that they are entities validly existing, duly constituted and in good standing under the laws of the jurisdiction in which they were formed and in which they presently conduct business; that all acts necessary to permit them to enter into and be bound by this Lease have been taken and performed; and that the persons signing this Lease on their behalf have due authorization to do so.

#### 12.6 Use of Marks and Logos

Neither party shall make use of the other party's name, logo or marks without its prior written consent.

#### 12.7 Amendment

No amendment, modification, or alteration of the terms of this Lease shall be binding unless the same is in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto.

#### 12.8 Assignment and Mortgage

Foundation shall not assign this Lease or any part hereof without the prior written consent of the President, and any attempt of assignment without the prior written consent of the President shall be null and void as to Board. Furthermore, Foundation may not mortgage or encumber its rights in or arising out of this Lease or any rights it has or might have in the Stadium or the Work without the prior written consent of the President, and any attempt to mortgage or encumber without the prior written consent of the President shall be null and void as to Board.

#### 12.9 Successors and Assigns

All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns including any successor by merger or consolidation of Board into another educational institution.

#### 12.10 Audits

Board may, at its option and at its own expense, and during customary business hours, conduct internal audits of the books, bank accounts, records and accounts of Foundation to the extent necessary to verify compliance with this Lease. Audits may be made on either a continuous or a periodic basis or both, and may be conducted by employees of Board, or by independent auditors retained by Board desiring to conduct such audit, or by the Louisiana Legislative Auditor or by the Office of the Governor, Division of Administration, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of business affairs by the Foundation. Board covenants with Foundation to keep the results of any such audits confidential except as required by rules and regulations of Board and by any applicable laws.

#### 12.11 Memorandum of Agreement

Foundation agrees not to record this Lease. At the Foundation's request, the parties will execute a Memorandum of this Lease for recording in the records of Orleans Parish, and the cost of recording will be borne by Foundation.

#### 12.12 Entire Agreement

This Lease, together with the exhibits attached hereto, contain the final and entire agreement between the parties hereto with respect to Leased Property and contain all of the terms and conditions agreed upon with respect to Leased Property, and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

**[Remainder of page intentionally left blank.]**

**[Signature page for Agreement of Lease and Agreement to Construction and Donate Improvements to Privateer Park by and between Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and Privateer Athletic Foundation]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease as of the day, month and year hereinabove first written.

**WITNESSES:**

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

\_\_\_\_\_ By: \_\_\_\_\_  
William L. Jenkins, President  
Louisiana State University System

**PRIVATEER ATHLETIC FOUNDATION**

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



## Property and Facilities Committee

### Item 3: Recommendation to authorize a Lease Agreement with the Police Jury of Rapides Parish, Louisiana, for the construction of a new District Livestock Show Facility

#### Executive Summary

The Police Jury of Rapides Parish ("Police Jury") received capital outlay funding for the construction of facilities at the LSU Agricultural Center Dean Lee Research Station due to its joint efforts with the LSU Agricultural Center and responsibility to provide facilities for Livestock Shows for 4-H Educational Programs. The new work which constitutes Phase II of the project will include construction of a new District Livestock Show Facility.

The new District Livestock Show Facility will be a multi-use facility for the LSU Agricultural Center Rapides Parish Cooperative Extension Service Office primarily used to host livestock shows and to provide livestock educational programs to 4-H participants and to adults. The new District Livestock Show Facility will be available for use by LSU Alexandria as needed.

The District Livestock Show Facility will be approximately 65,000 square feet, open-sided, pre-engineered, galvanized metal building that will include large and small animal holding pen areas, a show arena with bleachers, wash racks, and restrooms. Attached to the District Livestock Show Facility will be an enclosed, air-conditioned Sales Arena with sale ring and seating for approximately 400 people, offices, a conference/classroom, restrooms, storage, and a kitchen. This portion of the building will have CMU block walls and serve as the main entrance to the facility.

It is proposed that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College lease property in Rapides Parish to the Police Jury of Rapides Parish for the construction of the District Livestock Show Facility. Upon completion of construction, the Lease will terminate and the improvements will become the property of the Board of Supervisors for the benefit of the LSU Agricultural Center.

#### Recommendation

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**"NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College that William L. Jenkins, President of the Louisiana State University System, or his designee, be and he is hereby authorized on behalf of and in the name of the Board of Supervisors to execute a Lease Agreement with Police Jury of Rapides Parish for the construction of Phase II of facilities located in Rapides Parish, more particularly the construction of a new District Livestock Show Facility, for the benefit of LSU Agricultural Center, said Lease Agreement to contain such terms and conditions as President Jenkins deems to be in the best interest of the Board of Supervisors."

## Property and Facilities Committee

Item 4: Recommendation to consent to and approve the Pipeline Right of Way Agreement for construction and maintenance of a 24" pipeline for the transportation of crude petroleum products, distillate, condensate, liquefied petroleum gas, any hydrocarbon in a liquid state, any product in liquid state which is derived in whole or part from any hydrocarbon, and any mixtures thereof by Shell Pipeline Company LP and the construction and maintenance of a valve site adjacent thereto.

### Executive Summary

Shell Pipeline Company LP has requested the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College grant, for consideration in the amount of \$728,425.00, a right of way and servitude for the construction of a 24" pipeline across property owned by Louisiana State University in East Baton Rouge and Iberville Parishes, and the construction and maintenance of a valve site adjacent thereto. The total area affected by the right of way and servitude is 27,972.35 linear feet for a total of 5.298 miles.

The compensation received from Shell Pipeline Company LP in connection with this servitude shall be used for LSU Agricultural Center purposes including, but not limited to, construction of the Phase II expansion of the LSU Agricultural Center's Embryo Biotechnology Laboratory at the Reproductive Biology Center, Iberville Parish.

### Recommendation

**"NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, by virtue of and in conformity with the laws of the State of Louisiana, considered the proposal of Shell Pipeline Company LP, for the construction and maintenance of a 24" pipeline for the transportation of crude petroleum products, distillate, condensate, liquefied petroleum gas, any hydrocarbon in a liquid state, any product in liquid state which is derived in whole or part from any hydrocarbon, and any mixtures thereof.

**BE IT FURTHER RESOLVED** that having reviewed the proposed route of the fifty foot right of way consisting of 27,972.35 linear feet, for a total of 5.298 miles, and the proposed compensation of \$100.00 and other valuable consideration, as well as additional information, and having negotiated the terms of the right of way and servitude in a manner favorable to the University, considered at the meeting of the Board of Supervisors, Properties and Facilities Committee, on the 20th day of January, 2005, in the Louisiana State University System Building, Baton Rouge, Louisiana, said meeting having been duly and legally held. It was determined that the Pipeline Right of Way Agreement and Valve Site Agreement being advantageous and to the best interest of the Board of Supervisors, a copy of which are attached and made a part hereof, are hereby accepted by the Board of Supervisors at the Board of Supervisors meeting held on the 21st day of January, 2005.

**BE IT FURTHER RESOLVED** that the compensation received from Shell Pipeline Company LP in connection with this servitude shall be used for LSU Agricultural Center purposes including, but not limited to, construction of the Phase II expansion of the LSU Agricultural Center's Embryo Biotechnology Laboratory at the Reproductive Biology Center, Iberville Parish.

**BE IT FURTHER RESOLVED** that William L. Jenkins, President, be and he is hereby authorized and empowered for and in the name of the Board of Supervisors, to execute a Pipeline Right of Way Agreement to Shell Pipeline Company LP covering and affecting the described land for the price and consideration and upon the terms and conditions set out in the above described and accepted Pipeline Right of Way Agreement.

**BE IT FURTHER RESOLVED** that William L. Jenkins, President, be and is hereby authorized and empowered for and in the name of the Board of Supervisors, to execute a Valve Site Agreement to Shell Pipeline Company LP covering and affecting the described land for the price and consideration and upon the terms and conditions set out in the above described and accepted Valve Site Agreement.

**BE IT FURTHER RESOLVED** that said Pipeline Right of Way Agreement shall contain such additional provisions and stipulations as the said William L. Jenkins, President, may deem wise and in the best interest of the Board of Supervisors.”

## Property and Facilities Committee

Consent Agenda Item: Recommendation to execute an Addendum to Lease Agreement with the National Science Foundation for the construction of an education and outreach center on property located in Livingston, Louisiana

### Executive Summary

In 1994 the LSU Board of Supervisors entered into an agreement with the National Science Foundation ("NSF") for the construction of the scientific research project entitled "Laser Interferometer Gravitational-Wave Observatory" ("LIGO") on property owned by LSU in Livingston Parish. The LSU Board leased the property to the NSF. The NSF partnered with Cal Tech and MIT for the construction of the facility.

The LIGO project focuses on long-term gravity wave research and detection of gravitational radiation, which are the ripples in space-time produced by distant cosmic cataclysms.

Cal Tech and NSF are now proposing to establish an Educational Outreach Center on the leased property as a part of the LIGO facility. The Center will support programs that will provide information concerning LIGO-related science concepts to the public. In addition, the parties hope to encourage in-service science teaching and to reach a broader student population in Louisiana. In order to construct the Center, it is necessary to revise the original Lease Agreement between the LSU Board and the NSF.

Architectural plans will be presented to the Board for approval at a later date.

### Recommendation

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**"NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby authorize William L. Jenkins, President of the Louisiana State University System, to execute an Addendum to Lease Agreement with the National Science Foundation for the construction of an education and outreach center on property located in Livingston, Louisiana, and owned by the LSU Board of Supervisors, said Addendum to Lease Agreement to contain such terms and conditions as President Jenkins deems to be in the best interest of the LSU Board of Supervisors."

## ADDENDUM TO LEASE AGREEMENT

This Addendum to Lease Agreement entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2005, by and between **BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE**, a public constitutional corporation organized and existing under the constitution and laws of the State of Louisiana, domiciled in the Parish of East Baton Rouge, said state, acting on behalf of Louisiana State University, appearing herein through William L. Jenkins, President of Louisiana State University System, duly authorized and empowered by resolution of said Board of Supervisors (hereinafter referred to as "LSU") and

**THE NATIONAL SCIENCE FOUNDATION**, a federal agency appearing herein through \_\_\_\_\_, its duly authorized and empowered representative by virtue of a certificate of appointment issued by the Director of the Division of Grants and Agreements under authority vested in him by the Director, National Science Foundation, and as authorized by the National Science Foundation Act of 1950 as amended, and applicable policies and authorities (hereinafter referred to as "NSF").

**WHEREAS**, effective as of the 12<sup>th</sup> day of October, 1994, LSU and NSF entered into a Lease Agreement (herein "Lease Agreement") for the lease by LSU of certain land to NSF for use by NSF for the construction of the Laser Interferometer Gravitational-Wave Observatory (hereinafter "LIGO").

**WHEREAS**, the LIGO project was described in said Lease Agreement as a project designed to give scientists a new view and understanding of the Universe, particularly with regard to the origin, development and behavior of the galaxy;

**WHEREAS**, said facility was constructed and has been in operation for approximately ten (10) years;

**WHEREAS**, NSF and California Institute of Technology (hereafter "Cal Tech") have collaborated and cooperated with NSF to accomplish the construction and operation of the LIGO facility;

**WHEREAS**, Caltech has received NSF funds to build an education and outreach facility (the "Education and the Outreach Center" or "Center") on the land originally leased by LSU to NSF; and

**WHEREAS**, the Center will support programs that will communicate LIGO-related science concepts to the public, strengthen regional pre-service and in-service science teaching, and reach a broad audience of students in Louisiana and elsewhere.

**NOW, THEREFORE**, the parties agree as follows:

### ARTICLE I

LSU and NSF hereby agree that, subject to Article V hereof, NSF, either itself or through Cal Tech, may commence the construction of an Education and Outreach Center on the Property, as said Property is defined in the Lease Agreement.

### ARTICLE II

The approximate location of the Education and Outreach Center on the Property shall be as reflected on Exhibit "A" hereto.

### **ARTICLE III**

Construction on the Education and Outreach Center site shall be completed on or before December 31, 2008, unless extended by the mutual written consent of the Executive Vice President of the Louisiana State University System and the Director of the NSF or their authorized representatives.

### **ARTICLE IV**

All references in the Lease Agreement to the Vice President of Institutional Services shall be deemed to be references to the Executive Vice President for the Louisiana State University System.

### **ARTICLE V**

The provisions of the Lease Agreement applicable to the Facilities and the Property as such terms are defined in said Lease Agreement, other than those provisions which stipulate the date of completion, shall be applicable to the Education and Outreach Center and to the construction of the Center; provided, however, that LSU's right to terminate as set forth in the second paragraph of Section 9 of the Lease Agreement shall not be applicable to the construction of the Education and Outreach Center.

### **ARTICLE VI**

The provisions of the Lease Agreement in section 16 with respect to insurance shall be revised to increase the coverages as follows:

1. General liability coverage required in section 16.A.2(a) shall be in an amount not less than Three Million and 00/100 Dollars (\$3,000,000.00) for bodily injuries, including accidental death, for any one occurrence.
2. Property damage insurance required in section 16.A.2(b) in an amount not less than one hundred percent (100%) of the replacement cost of the Facilities and all other buildings and structures constructed on the Property, including but not limited to the Education and Outreach Center.
3. Automobile liability insurance required in subsection 16.A.2(c) shall be in an amount of Three Million and 00/100 Dollars (\$3,000,000.00) bodily injury per individual, Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence, and Seventy Thousand and 00/100 Dollars (\$70,000.00) property damage per occurrence.

**[The remainder of this page is intentionally left blank.]**

**[Signature Page for Addendum to Lease Agreement By and Between LSU and NSF.]**

**THUS DONE, SIGNED AND READ** on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, but effective as of the \_ day of \_\_\_\_\_, \_\_\_\_\_, in the presence of the hereinbelow signed competent witnesses.

**WITNESSES**

**“LSU”**

**BOARD OF SUPERVISORS OF  
LOUISIANA STATE UNIVERSITY AND  
AGRICULTURAL AND  
MECHANICAL COLLEGE**

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

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

By: \_\_\_\_\_  
William L. Jenkins, President  
Louisiana State University System  
Date: \_\_\_\_\_, 2005

**THUS DONE, SIGNED AND READ** on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, but effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the presence of the herein below signed competent witnesses.

**“NSF”**

**THE NATIONAL SCIENCE  
FOUNDATION**

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, \_\_\_\_\_

## Property and Facilities Committee

Consent Agenda Item: Recommendation to approve naming a laboratory in the Basic Science Laboratory Building at the Pennington Biomedical Research Center, Baton Rouge, Louisiana, the "John S. McIlhenny Laboratory of Botanical Research"

### Executive Summary

Mr. John S. McIlhenny, grandson of Edmund McIlhenny the inventor of Tabasco Sauce, was trained as a research chemist and pursued interests in botany and ornithology.

"Mr. Jack", as he was fondly called, was a true advocate for the Pennington Biomedical Research Center. He would often visit the Center and formed close relationships with a number of the scientists.

Mr. McIlhenny was also a generous donor to other entities of the LSU System, including a 1971 donation of natural history illustrated works to the Louisiana State University Libraries that were started by his uncle, Edward Avery McIlhenny and enhanced by his own additions. He continued to add to this E.A. McIlhenny Natural History Collection until his death.

After his death in 1997, the Coypu Foundation was created from Mr. McIlhenny's estate and continues in his tradition of generosity. Previously, the Coypu Foundation has generously provided the Pennington Biomedical Research Center with both the John S. McIlhenny Professorship in Nutrition and the John S. McIlhenny Endowed Chair in Health Wisdom, as well as funding for other research projects.

The Coypu Foundation has now committed the funding (\$200,000) for the John S. McIlhenny Laboratory of Botanical Research, which will be devoted to the discovery and development of natural product-based pharmaceutical agents that may prove valuable in the treatment of the pre-diabetic state, described as metabolic syndrome, and for treatment of diabetes.

### Recommendation

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**"NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby approve naming a laboratory in the Basic Science Laboratory Building at the Pennington Biomedical Research Center, Baton Rouge, Louisiana, the 'John S. McIlhenny Laboratory of Botanical Research'."