

AFFILIATION AGREEMENT
BETWEEN
MISSISSIPPI VALLEY STATE UNIVERSITY
AND
MISSISSIPPI VALLEY STATE UNIVERSITY
JAMES HERBERT WHITE FOUNDATION

This Agreement is made and entered into effective this 1st day of April, 2021 (the effective date) by and between Mississippi Valley State University, a state institution of higher learning, organized and existing under the laws of the State of Mississippi (the "University"), and The Mississippi Valley State University James Herbert White 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 Articles of Incorporation dated April 28, 2020, a copy of which is attached to this Agreement as Exhibit A;

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

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

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

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

ARTICLE 1. UNIVERSITY PERSONNEL AND SERVICES

1.1 The President of the University and the University's chief advancement officer shall serve *ex officio* as a non-voting member of the Foundation's Board of Directors. No other University employee or other persons directly or indirectly employed by the IHL shall serve as a voting member of the Foundation's Board of Directors.

1.2 Annually, the President of the University shall certify to the Foundation a list of University employees who are authorized to request disbursements from the Foundation. Requests by a duly certified University employee shall constitute a representation or certification by the University employee that the disbursement being requested has been approved in accord with established University procedures.

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

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

1.5 Subject to the availability of funding and the budget process, the University agrees to provide the Foundation with resources suitable in the University's judgment for the accomplishment of the Foundation's activities for the University's benefit, and may include services and supplies, staff support, office space, and such financial support as agreed upon between the parties from time to time. The amount and nature of such resources shall be determined annually, on a fiscal year basis, in connection with the program planning and budget processes of the University and the Foundation. No provision in this Agreement shall be construed to give the Foundation any legal entitlement to any University funding, personnel or other resources in any particular fiscal year. All University assets, including personal property, made available to the Foundation under the terms of this agreement shall remain the property of the University unless sold, conveyed or transferred to the Foundation by way of a separate written agreement.

1.6 The University's name and registered marks and logos have great economic and public relations value to the University, its faculty, staff, alumni and students. The Foundation shall not

assign or delegate the authority to use University's name or registered marks or logos to any person or entity without the written approval of the President of the University and the Director of the University's Licensing Program. To assist the Foundation in discharging its obligations under this Agreement and in soliciting, developing and generating private and corporate support for the University, the University grants the Foundation the following rights:

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

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

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

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

1.7 The Foundations' Board of Directors determines and/or approvals all hiring, assessment, compensation and termination decisions related to the duties of the Foundation's Executive Director. If the Executive Director is an employee of the University, the University President does have the authority to hire or terminate him/her as it relates to his/her official capacity and responsibilities as an employee of the University, but not in relation to his/her duties as the Executive Director of the Foundation. The Executive Director may utilize, with the approval of the University President, such University administrative, professional, and other employees from time to time as are needed to carry out the purposes of the Foundation.

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 Articles of Incorporation and By-laws, which support includes, but is not limited to, researching, raising, receiving, acknowledging, investing, accounting for and administering funds for the University to use for its charitable, scientific and educational purposes.

2.2 The Foundation, acting through its Board of Directors and staff, shall assist the University's Office of Advancement in its fund-raising activities and development programs with individuals, corporations, foundations, governmental and other external organizations.

2.3 The Foundation, acting through its Board of Directors and staff, shall solicit and transfer funds for the purchase of University equipment and supplies; for the construction, renovation and improvement of the University's physical facilities; for the support of faculty, staff and student travel and research; for the support of faculty professorships, lectureships and endowed chairs; for the support of student scholarships; and for the support of other educational, research,

cultural, scientific, public service and charitable programs and activities. When soliciting funds on behalf of the University, the Foundation agrees to accept only those gifts that are consistent with the University's missions, goals and obligations.

2.4 The Foundation agrees that it may only use its resources to advance the University's mission as outlined in its Articles of Incorporation. The Foundation further agrees that it may not amend its Articles of Incorporation or By-Laws during the life of this Agreement unless the University consents to the proposed amendment.

2.5 The Foundation shall receipt, acknowledge and express appreciation for all contributions of donors made on behalf of the University or of the Foundation, and shall keep accurate and current records of all such contributions made directly to the Foundation. Assets of the Foundation shall be maintained pursuant to the Uniform Management of Institutional Funds Act (UMIFA) or Uniform Prudent Management of Institutional Funds Act (UPMIFA) as promulgated by the State of Mississippi. The University shall have rights of inspection of Foundation records. Such rights shall be afforded to the IHL, if so desired.

2.6 The Foundation may enter into contracts for professional, advisory or other personal services in carrying out its duties, but such contracts shall not exceed 5 years.

2.7 The Foundation agrees to manage all funds in its control in a fiscally sound and prudent manner.

2.8 The Foundation agrees to maintain its financial and accounting records, including thorough documentation of donor intent, in accordance with Generally Accepted Accounting Principles. The Foundation agrees to retain all books, accounts, reports, files and other records of the Foundation relating to this Agreement, the operation and management of the Foundation or any funds contributed to, received by, expended by, or managed by the 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 years after the completion of this Agreement. Such records shall be provided at the University's Office of Advancement, or such other location as designated by the University upon reasonable notice to the Foundation. 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 Foundation, 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.

2.9 The Foundation shall maintain its separate financial and accounting records in accordance with generally accepted accounting principles applicable for its industry. The Foundation must cause to be prepared annual financial statements of its condition, which shall include such detail as the IHL Board may from time to time require; The Foundation must also engage a Certified Public Accounting (CPA) firm to perform annual audits of the its annual financial statements; The Foundation shall submit the audited financial statements, along with a list of its officers, directors or trustees, not later than five months following the completion of the Foundation's fiscal year, to the affiliated university's IEO and to IHL; However, submission of the Foundation's annual audited financial statements will be required when necessary for inclusion in the State of Mississippi's Comprehensive Annual Financial Report (CAFR); Those Entities (including the Foundation) which will be required to submit annual audited financial statements for inclusion in the CAFR, as determined by the IHL Board's Associate Commissioner of Finance and Administration and the external auditing firm hired to perform the annual IHL system audit, must submit annual audited financial statements to the affiliated university's IEO and to the IHL, along with a list of Foundation officers, directors or trustees, by October 15 of each year; The IHL Board's Associate Commissioner of Finance and Administration shall notify the Foundation of the applicability of the October 15 deadline as far in advance of the deadline as possible each year; The CPA firm to be utilized by the Foundation must be in good standing with the Mississippi State Board of Public Accountancy, have substantial experience in auditing like organizations, and must be approved by the IEO or his/her designee; However, at the request of the Foundation, the IEO of a university, with the approval of the IHL Board, may grant a request of the Foundation to waive the requirement of an annual audit by a CPA firm on a showing of adequate grounds, such as a showing that the assets of the Foundation are so limited as to make the expense of engaging a CPA firm to perform an audit financially burdensome to the Foundation and unnecessary; Such a waiver may be conditioned upon such other review of the

financial records of the Foundation in lieu of an audit as the University and the IHL may deem feasible; Such a request for a waiver must be accompanied by (a) the most recent annual audited financial statements of the Foundation (if any such statements exist), (b) the financial statements of the most recently completed fiscal year, (c) a written description of how the Foundation anticipates that the year-end financial statements for the current year will differ from the financial statements as of the end of the most recently completed fiscal year, and (d) a good faith estimate of the cost of engaging an auditor with respect to the statements; The granting of any request to waive the requirement of an annual audit by a CPA firm approved by the IHL is within the sole discretion of the University and the IHL Board; Any waiver of the audit requirement will apply only for one year, and any request to waive the requirement for the next year should be submitted as outlined above.

2.10 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.

2.11 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, entitled "Conflict of Interest Transaction," university conflict of interest policies, and which addresses transactions with University or Foundation staff.

2.12 The Foundation shall immediately deposit into the appropriate University account any funds which are sent to the Foundation but which are clearly intended to be funds designated for a University account. In such an instance, the Foundation shall issue, on behalf of the University, a University development receipt. No University assets will be managed by the Foundation.

2.13 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.

2.14 The Foundation shall provide the President reasonable notice of any regular, annual, or special meetings of its board of Directors or of its Executive Committee, and the President or his/her designee shall have the right to attend any such meetings as well as the meeting of any other Foundation committees.

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

2.16 No member of the Foundation may encumber the University's funds or otherwise bind the University in any way.

2.17 The Foundation shall maintain an appropriate methodology under which all gifts, grants, endowments and other assets are accepted and accounted for, an appropriate procedure to determine how income related to those assets is computed and distributed to the University, and the terms under which any portion of such assets or the income related thereto may be used for the operating or other expenses of the Foundation.

2.18 All gifts made to the University shall be accounted for and ownership maintained by the University, even though they may be managed by the Entity.

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

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

ARTICLE 3. COMPLIANCE

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

ARTICLE 4. REPORTING

4.1 The Foundation shall, by December 1 of each year during this Agreement, submit to the University President and to the IHL its annual audited financial statements for the prior fiscal year as set forth in Section 2.9 of this Agreement. Such submission shall also include a list of Foundation officers, directors or trustees.

4.2 The Foundation 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. As to other university employees, no form of additional compensation may be provided by the Foundation without the prior approval by the University President. All such approvals by the University President must be reported to the IHL Board at its next official meeting. The Foundation shall submit an annual report providing a detailed list of any supplemental compensation which was provided to the University for the purpose of providing any additional compensation to administrators, faculty, athletic staff, or other University employees, it being agreed that any such payments shall only be made through the University's payroll system and with Presidential approval.

4.3 The Executive Director 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.

4.4 The 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 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 Executive Director shall re-affirm

that, in the event he/she becomes aware of any such Reportable Events, the Executive Director will immediately notify, in writing, the President of the University.

ARTICLE 5. TERMINATION AND RENEWAL

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

5.2 The governing documents of the Foundation, including but not limited to articles of incorporation, bylaws, or articles of organization shall provide that upon dissolution of the Foundation, 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.

5.3 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 Foundation ninety (90) day notice and work with the staff and board of the Foundation in that period to cure the breach in advance of termination. In the event of termination, 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) 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.

ARTICLE 6. MISCELLANEOUS PROVISIONS

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

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

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

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

6.5 The University and Foundation agree that the Foundation's donor and giving records and any other financial or commercial information possessed by the Foundation or provided by the Foundation to the University concerning individuals or corporations that provide Foundation financial support are confidential and proprietary. Notwithstanding Section 2.12 above, unless required to disclose such information by applicable law, the University and Foundation agree not to disclose to third parties and to keep confidential the giving records, giving history and financial or commercial information of individuals and corporations that provide financial support to the Foundation.

6.6 In the performance of this Agreement, the Foundation agrees to comply with all non-discriminatory laws and policies that the University promulgates and to which the University is subject.

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

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

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

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

6.11 The Foundation's obligations and all provisions set forth pursuant to this Agreement shall apply to any and all entities owned or controlled by the Foundation, with the exception of a special purpose entity created for the sole and specific purpose of utilization as a financing vehicle for the

private financing of university auxiliary facilities by a private developer using the alternate dual-phase design-build privately financed construction method, as specially authorized by Miss. Code Ann. Section 37 101-41, et seq. (1972), as amended. If the use/purpose of any such special purpose entity ever changes, the special purpose entity would then be required to comply with any and all provisions of the affiliation agreement between the university and the Foundation which owns or controls the special purpose entity.

ARTICLE 7. INDEMNIFICATION

7.1 The Foundation agrees to indemnify and hold harmless the University, including its agents and employees from any and all claims, demands, suits, or liabilities of any nature, or on account of any of the actions or inactions in or about the licensed premises. The Foundation agrees to reimburse the University and its agents and employees for any expenses incurred by them or as a result of legal action or inaction, including reasonable attorney fees, provided funds are available for such purpose.

ARTICLE 8. INSURANCE

8.1 The Foundation shall maintain the following types of insurance in such amounts as are reasonable and agreed upon by the parties.

1. Directors and Officers liability insurance (in such amount as determined by the Foundation) for the benefit of members of the Board of Directors and Foundation Officers, while performing as such.
2. Commercial General Liability insurance in such amount as reasonably relates to the risk of liability from operations and in such amount as reasonably is acceptable to University.
3. Cyber Liability Insurance in a reasonable amount that covers breach response obligations, including forensics, as well as any liability arising from violation of any privacy laws. This insurance is not required if no data or information, which is/are the subject of privacy laws, is maintained in the Foundation's possession.
4. Workers compensation insurance as required by any applicable laws.

8.2 The University and the Board of Trustees of State Institutions of Higher Learning shall be named additional insureds on the liability policies listed above.

8.3. The insurance policies listed above shall be with insurers authorized to provides such insurance in Mississippi and shall be with insurers have an AM Best's rating of A VIII or better.

8.4 Proof of coverages shall be provided to University upon request and by mail to IHL at: Attn: Risk Management, 3825 Ridgewood Road, Jackson MS 39209.

ARTICLE 9. NOTICE

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

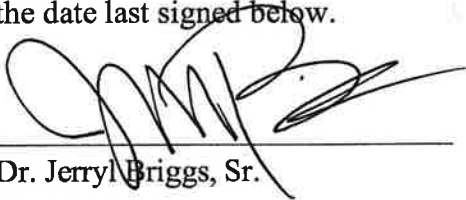
University:
Dr. Jerryl Briggs, Sr.
President
Mississippi Valley State University
Office of the President
14000 Hwy. 82 West #7272
Itta Bena, MS 38941

Foundation:
Jean Cadney
President, Board of Directors
MVSU James H. White Foundation
14000 Hwy, 82 West #7271
Itta Bena, MS 38941

With copy to:
Van Gillespie
Associate Commissioner of Legal Affairs,
Risk Management, and Special Projects
3825 Ridgewood Rd.
Jackson, MS 39211

With copy to:
Dameon A. Shaw
Acting Executive Director
MVSU James H. White Foundation
14000 Hwy, 82 West #7271
Itta Bena, MS 38941

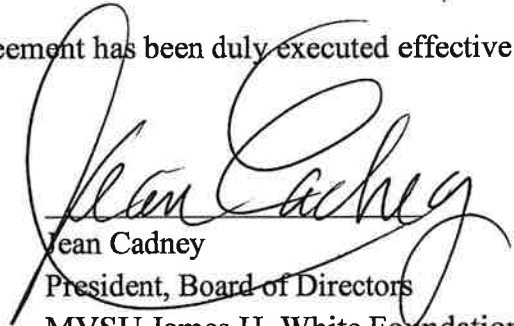
IN WITNESS WHEREOF, this Affiliation Agreement has been duly executed effective on the date last signed below.



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

3/30/21

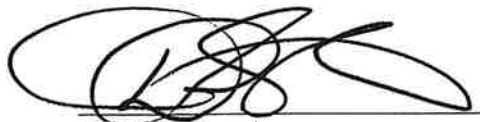
Date



Jean Cadney
President, Board of Directors
MVSU James H. White Foundation
14000 Hwy, 82 West #7271
Itta Bena, MS 38941

4/12/2021

Date



Dameon A. Shaw
Acting Executive Director
MVSU James H. White Foundation
14000 Hwy, 82 West #7271
Itta Bena, MS 38941

3-31-2021

Date