

TOPIC: Approval of the Memorandum of Understanding between USM and the Southern Maryland Higher Education Center

COMMITTEE: Committee of the Whole

DATE OF COMMITTEE MEETING: February 9, 2018

SUMMARY: On September 28, 2017 the Board of Governors of the Southern Maryland Higher Education Center (SMHEC) voted to merge SMHEC with the University System of Maryland pending the completion of a satisfactory memorandum of understanding (MOU), and approval of the MOU by both the Board of Regents (BOR) and the SMHEC Governing Board. The Regents were briefed on the anticipated merger, along with a list of issues still to be resolved through the MOU at the Board's October 20, 2017 meeting at UMES. The chair of the SMHEC Board of Governors, Mr. Joe Anderson, along with Dr. Darryll Pines, dean of the A. James Clark School of Engineering at UMCP, spoke in support of the merger at that meeting.

Over the past three months, the leadership and staff of the Southern Maryland Higher Education Center and the USM, in consultation with the Office of the Attorney General, have worked cooperatively to finalize an MOU that, if approved by the BOR, will merge the Southern Maryland Higher Education Center into the USM beginning with the start of the 2019 fiscal year (assuming final authorization by the Maryland General Assembly and Governor). The MOU is attached. Under its terms, all assets currently under control of the Southern Maryland Higher Education Center will transfer to the USM effective July 1, 2018. Staff employed by SMHEC when the MOU is signed will be offered continued employment at the new Center, by the USM institution serving as coordinating institution for the new Center, as set forth in a separate memorandum of understanding to be negotiated between the Chancellor and that institution. The current Board of Governors for SMHEC will be dissolved and a Board of Advisors for the new Center will be appointed by the Chancellor. Finally, institutions currently operating programs at SMHEC, which include both USM institutions and non-USM institutions, will be allowed to continue operating those programs under terms specified in the MOU.

The merger represents the culmination of nearly four years of discussion and planning by the USM and SMHEC over ways the two entities can collaborate more closely to serve the growing economic and postsecondary education needs of the Southern Maryland region. A major focus of those discussions, and a key impetus for the merger, has been the planned construction of an 83,000 square foot general education, engineering, and research facility to be owned and operated by USM on the SMHEC campus. Groundbreaking for the facility is expected to occur this summer, with completion expected in 2020.

Merger of SMHEC into USM will not only create the System's third regional higher education center, it will provide the USM with a well-established partner in bringing advanced education and training opportunities to the St. Mary's County region. The merger will allow the USM to expand and more efficiently manage the array of education and testing programs USM institutions have brought, or plan to bring, to the region (such as UMCP's Unmanned Aircraft Systems Test Site, already in operation near the SMHEC campus). It also will allow for more effective development and operation of an advanced research initiative focused on unmanned and autonomous systems that is being programmed into the new building.

The attached MOU is presented to the Board of Regents for its review and approval. In addition to final Board approval, the Maryland General Assembly and Governor must authorize and approve transfer of

SMHEC to the USM. Vice Chancellor Hogan has been working with the Southern Maryland delegation to develop the appropriate legislation. It will be introduced shortly. Finally, as part of his fiscal 2019 Budget, the Governor has proposed transferring to the USM state funds that have formerly been provided to SMHEC through the Maryland Higher Education Commission (MHEC).

ALTERNATIVE(S): USM could instead develop a separate MOU with SMHEC that outlines the financial and administrative responsibilities for operation of the new facility to be owned by USM but operationally shared with SMHEC. USM institutions would continue to offer programs at SMHEC under current terms and conditions.

FISCAL IMPACT: For the current fiscal year (FY 2018), SMHEC's projected budget was just over \$1.2 million, with total revenues of \$1,217,318 projected against estimated expenses of \$1,214,000. Revenues included \$512,730 from MHEC. The Governor's FY 2019 budget transfers \$512,739 in state support from MHEC to the USM for support of SMHEC operations.

CHANCELLOR'S RECOMMENDATION: That the Board of Regents approve the attached Memorandum of Understanding between USM and the Southern Maryland Higher Education Center, as presented.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923

MEMORANDUM OF UNDERSTANDING BETWEEN THE SOUTHERN
MARYLAND HIGHER EDUCATION CENTER BOARD OF GOVERNORS AND
THE UNIVERSITY SYSTEM OF MARYLAND

January 31, 2018

I. INTRODUCTION

Based on the terms contained in the Memorandum of Understanding (MOU) signed between the University System of Maryland (USM), the Southern Maryland Higher Education Center (SMHEC) Board of Governors (BoG), and the Southern Maryland Navy Alliance on November 1, 2013, and in accord with the intent of the resolution passed by the SMHEC Board of Governors on September 26, 2013 and the subsequent discussions held between the USM and the SMHEC BoG, the parties to this MOU agree to merge all existing operations, facilities, staff, and resources of the SMHEC into the USM in support of their mutual education, research, and service missions and goals. The merger will take place at the beginning of the 2019 fiscal year (July 1, 2018), assuming agreement by the Maryland Higher Education Commission (MHEC), the final approval of the Governor and the General Assembly, and completion by both parties of the terms and conditions laid out below. The parties engaged in this MOU include the existing SMHEC BOG and the USM. The interim name of the new facility shall be the University System of Maryland Southern Maryland Higher Education Center (“henceforth referred to as the Center”). This name may be changed if a qualified donor or distinguished individual, including a recognized community leader, is subsequently identified per the terms of the USM Board of Regents policy 144.VI-4.00.

The July 1, 2018 date provides the USM and SMHEC leadership with the time required to plan and carry out a smooth and efficient transition of all SMHEC operations to the USM prior to the opening of the new education and research facility on the SMHEC campus. The July 1, 2018 date also ensures that the USM has adequate time to plan, develop, and implement a comprehensive budget strategy, in coordination with the State, which is necessary to support expanded operations of the Center once the new facility opens. Such a strategy is critical to not only being able to enhance the array of academic and training programs currently offered at SMHEC but ensuring the Center is able to take full advantage of the unique research, education, and technology development opportunities available through the new facility once it opens.

II. PURPOSE

The purpose of this MOU is to confirm the terms and conditions agreed upon for the merger of SMHEC into the USM, including shared expectations for the continued operation of the center as a USM regional higher education center under the authority of the USM Board of Regents. Both parties are dedicated to the goal of serving the advanced education, workforce preparation, and professional development as shall be

identified by the Center’s Board of Advisors (BoA), as well as other regional stakeholder groups. This merger expands and enhances the capacity of the existing Center to carry out its current legislatively-authorized mission by integrating its resources and activities into the broader education, research and economic activities – both those statewide and regional -- of the USM and its constituent institutions.

III. ORGANIZATION AND PLACEMENT OF SMHEC WITHIN USM

Upon a date mutually agreed upon by the SMHEC BoG, the USM Board of Regents, and MHEC, the SMHEC shall merge with the USM to become an integral part of the System, subject to governance by the Board of Regents, and expected to conform with all policies and procedures promulgated by the Regents for the operation and success of all USM regional higher education centers. Authority for overseeing the administration and operations of the Center shall rest with the Chancellor of the USM, in accordance with all appropriate state and Board of Regent policies.

As with the other USM regional centers, the Chancellor shall appoint an Advisory Board to provide the Center and its leadership with valuable advice and guidance on the workforce, education, and economic development-related needs of the region, and to advocate on the Center’s behalf with critical stakeholders.

At his discretion, the Chancellor shall appoint a USM institution to serve as the “coordinating institution” for the Center, responsible for providing general administrative support for the operations of the facility and its staff (including human resources operations, information technology support, staff and student safety, facility maintenance, and procurement and financial records). The specific responsibilities of the coordinating institution shall be determined through a separate MOU between the USM and the coordinating institution.

In concert with the coordinating institution, the Chancellor shall appoint an Executive Director for the Center who will report jointly to (i.e., be supervised and evaluated by) both the USM (officer to be designated) and the coordinating institution. Prior to the merger, representatives from the BoA and the BoG shall serve on all search committees for the Executive Director position. The Executive Director shall be responsible for the following:

- Hiring and supervising administrative and support staff for the Center’s central operations (as opposed to the operations of academic or research programs offered by participating partner institutions at the Center), subject to applicable policies and procedures of the USM and the coordinating institution.
- In coordination with those institutions currently operating programs at the Center, or bringing new programs to the Center in the future, identifying the support needs for their academic and research programs and working with the USM to ensure that those needs are met.
- In coordination with the Advisory Board and the institutions participating at the Center, working to identify the education, research, and economic development

needs of the region and, once identified, working with those partner institutions and the USM and subject to BOR policy (See BOR Policy III-9.00 Guidelines on Non-USM Institutions Offering Programs at USM Regional Centers, and VIII-2.61 – Policy on Off-Campus Programs) to recruit and support programs that address those needs.

- Representing the Center and the USM with all appropriate local, regional or state-level groups, including negotiating and overseeing the appropriate use of the Center’s facilities by these groups, and serving as a liaison for the Center and its programs to these groups (including, all non-USM institutions currently offering programs at the Center or wishing to offer programs).
- Responding on behalf of the Center and the USM to all county, state, federal requests or requirements for accountability-related information, including coordinating all requests as appropriate from other stakeholders (such as state or local news sources).
- In coordination with the USM leadership and the Center’s BoA, developing and implementing appropriate long-term and short-term strategic and operational plans for the Center and its development.

IV. STAFFING

Through a separate attachment, SMHEC has provided USM with a list of all staff currently employed at the Center, including title, salary, and job description. The stability and retention of the current staff between the time of this agreement and up through the merger with USM is critical for the SMHEC to meet the obligations outlined in Section IX of this document and to ensure the mission of providing higher education remains uninterrupted during this transition. To address the uncertainty of future employment, within 60 days of signature of this document the USM will complete the review of the qualifications of the current staff, determine suitability, prepare compensation information and provide offer letters where warranted. USM will make a good faith effort to consider current SMHEC employees for positions at the Center to be effective on and after the merger. USM agrees to dialog with the BoG regarding any SMHEC employees who are not provided offer letters. All final decisions regarding the employment of staff will be made by USM in its sole discretion (through the coordinating institution). If current employees are hired by USM, USM (through the coordinating institution) shall set compensation for each employee in consideration of the employee’s qualifications, salary history, and compensation variables applicable to all USM employees, and the employees will be subject to all personnel rules and policies applicable to USM employees at the coordinating institution. Academic appointments can be made only in accordance with policies and procedures of USM and the coordinating institution. Any SMHEC employee who is hired by USM effective [on the merger date], will thereafter be eligible for, and participate in, employee benefits, including State retirement and pension benefits, which are applicable to USM employees in the job category (i.e., exempt staff, non-exempt staff, contingent I or II, tenure track faculty, etc.) to which the employee is appointed by USM.

V. RECORDS

SMHEC shall provide USM with complete and accurate administrative, financial, and historical records, including those pertaining to its existing BoG, which the USM shall archive and preserve on behalf of the Center and its current BoG in accordance with USM policies and procedures.

The USM shall be responsible for preparing, developing, and maintaining all appropriate administrative, financial, and historical records going forward once the merger is finalized.

VI. DISSOLUTION OF THE SMHEC BoG AND CREATION OF THE CENTER BoA

Fiduciary responsibility for the SMHEC is currently lodged in the BoG, as authorized in Maryland statute. Assuming final approval by MHEC, the General Assembly, and the Governor, the SMHEC BoG shall be dissolved through the appropriate legislative vehicle at a date to be specified and occur simultaneously with all other actions relating to the merger. As of that date, responsibility for the Center will then be transferred to the USM Board of Regents under the terms of this MOU. Dependent on a determination by the Office of the Attorney General whether SMHEC is covered by the Tort Claims Act, SMHEC may be required, prior to the dissolution of the BoG, to purchase general liability insurance and to obtain indemnification agreements and insurance from non-USM users of the SMHEC property satisfactory to the USM and naming the USM as an additional insured. Thereafter, the USM will have no responsibility for any remaining debts or liabilities of the dissolved BoG.

Prior to its dissolution, the BoG shall recommend to the Chancellor and the USM Board of Regents a slate of names for appointment to a new BoA. This recommendation shall include the names of existing Center BoG members who express interest in remaining engaged in a board member capacity. The Chancellor, in appointing the BoA members, may add to or otherwise alter the slate beyond existing BoG members, if he determines it to be in the best interest of the Center.

VII. ROLE OF THE BOARD OF ADVISORS

The Center BoA shall be a formally constituted body established under the auspices of the University System of Maryland Board of Regents.

Its principal responsibility shall be to represent the interests of the Southern Maryland community and to ensure that higher education and economic development needs of the community--including students, businesses, local and state government entities, other government-related entities and nonprofits--are being addressed in the development and operations of the Center. Within this framework, the Board will provide strategic advice

and guidance to the Executive Director and USM leadership, including the development and operations of the following activities: program identification, advocacy, fund-raising, cooperation and partnership building, marketing and promotion, financial and facilities planning, and evaluation and assessment.

The Center BoA shall be composed of no more than 30 members appointed by the Chancellor of the USM. The purpose of the Center BoA is to support the mission, values and the well-being of the Center as well as to elevate the stature and success of its programs and capabilities. The BoA shall be an advisory body of business, education, government and community leaders that provides counsel to the USM and to the Executive Director on the strategic direction of the Center. Members shall not take any actions which conflict with their roles as BoA members. The Chancellor may remove any member who, in the judgment of the Chancellor, has a conflict of interest. (See <http://www.usmd.edu/regents/bylaws/SectionI/I400.pdf>.)

Because the ultimate success of the Center will depend on how, and how well, the Center meets the education, research, service and economic development needs of its region, the Center BoA shall play a pivotal role in ensuring that these diverse needs are identified, articulated and addressed through the programs and services and advancement of the regional Center. Finally, each member of the Center BoA will be expected to make a personal commitment to serve as an advocate and communicator of the Center's mission and play an integral role in its resource development and partnership-building activities.

VIII. EXISTING RESOURCES, INCLUDING FACILITIES & SPACE

All assets under the control of the BoG of the SMHEC, including title to all land and facilities, shall transfer to the USM for no consideration and subject to approval by the BOR and the Board of Public Works (BPW). The USM commits to ensuring the financial viability of the Center, including building on the successful operation of its programs and services, going forward, subject to its sole discretion.

Subject to its policies and sole discretion, the USM shall continue to provide classroom and office space for programs and institutions currently operating at SMHEC, based on the terms and conditions currently specified in each institution's current operational agreement. For any program operating without a current MOU or agreement, a new MOU may be developed. In addition, the USM reserves the right to alter the terms and conditions of any agreement going forward, as appropriate and necessary to advance the mission and ensure the safety and success of the Center, the students who study at the Center, and the staff and faculty who work there. This includes the development of appropriate data sharing agreements.

IX. CENTER GOVERNANCE AND OBLIGATION OF USM TO NON-USM INSTITUTIONS CURRENTLY OPERATING AT SMHEC

The USM, working with the SMHEC BoG or BoA, as applicable, shall follow the following general governance framework for the Center. This framework establishes and defines the governance principles up to and following a merger with USM:

Pre-Merger

1. The role of the SMHEC BoG in the maintenance and management of the SMHEC facilities and operations shall continue according to current policies, until the merger legislation takes effect, including the terms and conditions of this memorandum. The SMHEC shall actively execute all necessary activities necessary to assure a successful transition. The Center shall transition to existing USM policies and procedures governing such matters at the time of the merger.
2. The role of the existing Executive Director and other staff in locally managing the SMHEC as a regional higher education center shall be dedicated to supporting the higher education, research, and economic development needs of the region as developed and validated by the SMHEC's BoG.
3. SMHEC and the USM shall continue to honor original SMHEC space requirements as stipulated in the SMHEC, USM, and Navy Alliance "Agreement on The Terms of a New Building at The Southern Maryland Higher Education Center."

Time of Merger

4. The role of the Chancellor, the USM leadership, and the Board of Regents in the oversight and governance of the Center, including establishing the roles and responsibilities of the coordinating institution, the Executive Director, the Center's BoA, and a governing structure shall be in accordance with existing policies, practices, and procedures governing other USM Regional Centers.
5. The role and membership of the Center BoA shall be charged with advising the Executive Director, and through that position the USM, on the need for and appropriateness of academic programs and services offered at the Center, including Center-specific policies that impact students studying at the Center and businesses or other entities served by the Center. The BoA may review and comment on the annual budget prepared for the Center and advise the Executive Director, and through that position the USM, on the adequacy of the Center's budget to accomplish its mission and goals. The BoA, working in coordination with the Executive Director, may advocate on behalf of the Center both internally and externally for those resources – including academic and research-related programming, student and faculty support services, administrative staffing and support, or other -- that it determines to be needed to enable the Center to achieve its mission and goals.

Post Merger

6. With respect to the role of the institutions or approved organizations offering programs at the Center, including any non-USM institutions currently offering programs or approved to offer programs in the future, the USM shall follow the recommendation of the Southern Maryland Higher Education Council, published in 2013, that SMHEC should continue to be “open to all accredited and independent institutions.” Therefore, subject to USM policies and in its sole and absolute discretion, the USM commits to using good faith effort to maintain the current status of the Center as one that is open to “all accredited and independent institutions” to the extent that the continued presence of any non-USM institution contributes to the overall success of the Center and its ability to meet the needs of the students and stakeholders of the Southern Maryland region for high quality, affordable education and training programs, including needed support services. To assure a smooth transition, all existing non-USM programs in operation at the time of the merger shall be grandfathered, subject to USM policies and MHEC approval. Non-USM institutions must be willing to acknowledge and support practices, policies and procedures established by the Board of Regents for governing USM’s regional centers and ensuring the safety and well-being of those who study, teach, work, and/or attend programs and events at such regional centers.
7. As new or expanded programs are sought and developed for the Center, the BoA shall work with the Executive Director to identify and present the Center’s academic program and professional development/training needs to the USM. Should USM institutions be unable to adequately meet the identified needs, the Center, following the process outlined in the Board of Regents Policy III-9.00 “Guidelines on Non-USM Institutions Offering Programs at USM Regional Centers,” (See <http://www.usmd.edu/regents/bylaws/SectionIII/III900.html>) shall work with MHEC to seek out through a request for proposals (RFP) process non-USM providers able to provide quality programs that respond to the identified unmet need(s). The Center may then enter into an MOU agreement with a non-USM provider who, it is determined by the Center leadership, is best able to satisfy the criteria of 1) meeting the need and 2) providing a quality program, as outlined in BOR policy, subject to MHEC prior approval for all offerings and satisfactory enforcement of all stipulations in the Board Policy regarding charges and costs to non-USM institutions.
8. The Center’s BoA shall advise the Executive Director and the USM on the education and economic development needs of the region, how the Center can best serve those needs, and advocate for support for the Center.

X. CONTINGENCIES AND APPROVALS

The merger of the SMHEC into the USM is contingent upon the following: 1) approval of this MOU by the SMHEC BoG and the USM Board of Regents (as testified to by the

signatures of their representatives below); 2) the approval of MHEC, the General Assembly, and the Governor; 3) the development and execution of an agreement between the USM, MHEC, and the Department of Budget and Management to transfer to the USM the full amount of state funds requested by SMHEC as part of its FY 19 budget, as appropriated by the General Assembly and approved by the Governor, to be used for the continued support of the Center in FY 19; 4) insurance, indemnification, and funds for unfunded liabilities required under Section VI above; 5) transfer of a deed for all real and personal property in form and substance satisfactory in all respects to USM; and 6) statutory authorization, including the repeal or revision of Subtitle 3 of Title 24 of the Education Article of the Annotated Code or other authorizing statutory action.

SMHEC warrants that the sole retirement or pension plan which it sponsors is the Southern Maryland Higher Education Center Section 403(b) Plan (the SMHEC Plan). SMHEC shall take all steps necessary, to the satisfaction of USM, to terminate the SMHEC plan, and USM shall have no liability for the SMHEC Plan or any other pension, retirement or other employment-based plan or benefit in which any SMHEC employees participate.

For fiscal year 2020 and beyond, the USM will make good faith efforts to request that the General Assembly appropriate and the Governor approve state funding for the Center, as part of the USM's budget, sufficient to allow the USM to further expand the array of academic programs and related support services offered through the Center and begin developing the world-class research and technology development/technology transfer activity envisioned for the Center by the Southern Maryland community, the USM, the Southern Maryland Navy Alliance, and the State of Maryland.

For the University System of Maryland

Dr. Robert L. Caret, Chancellor, University System of Maryland

For the Southern Maryland Higher Education Center

Mr. Joseph Anderson, Chair, Southern Maryland Higher Education Center Board of Governors