

UAM AGREEMENT OF MERGER AND PLAN OF TRANSITION

THIS AGREEMENT OF MERGER AND PLAN OF TRANSITION, made and entered into this 13th day of November, 1970, by and between THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS, a State institution created by the laws of Arkansas, and THE BOARD OF TRUSTEES OF ARKANSAS AGRICULTURAL AND MECHANICAL COLLEGE, a State institution created by the laws of the State of Arkansas,

WITNESSETH:

WHEREAS, the Board of Trustees of Arkansas Agricultural and Mechanical College has through the years always diligently searched for those ways and means by which the educational effort of that institution might be further enhanced for the benefit of its students, faculty and staff, and for Southeast Arkansas and the State of Arkansas, and out of that aspiration has initiated discussions with the officials of the University of Arkansas resulting in this Agreement; and,

WHEREAS, the Board of Trustees of the University of Arkansas has from time to time expressed its concern as to whether the Statewide responsibility of the University might be achieved in a more positive manner directly for the welfare of Southeast Arkansas and its people; and,

WHEREAS, these Boards have through mutual discussion developed a response which accommodates their concerns through actions which will produce a significant accrual of benefits and economies, both for the State and for each of their institutions, and have identified certain attainable values; and,

WHEREAS, these values include, but are not limited to, economy in operation resulting from unification, the orderly coordination of higher educational functions, the creation of new research opportunities for faculty and students, enhancement of the supportive role of the State to the petroleum industry, the forest industries, and the lower Arkansas River waterways through educational research and service located in proximity thereto, achievement of the more equal distribution of size of student bodies having available university-level education, and an opportunity for an enhanced agricultural mission benefiting soil types and crop varieties applicable to Southeast Arkansas; and,

WHEREAS, a plan has been agreed upon by which these educational enterprises may serve, more effectively and efficiently, the increasing needs of the State relative to educational opportunities for our young people, and also directly benefiting civic, business, industrial and agricultural interests of our State; and,

WHEREAS, the plan provides for the transfer of the institution now known as Arkansas A. & M. College to the Board of Trustees of the University of Arkansas, to be merged into and become a part of the University of Arkansas and administered by its Board of Trustees, and the respective boards of trustees are willing to make the transfer, and to accept it, upon the terms and conditions set out in this Agreement, the same being a plan for quality education;

NOW, THEREFORE, the respective Boards of Trustees of these institutions hereby agree as follows:

I

The following terms when used herein shall have the meanings indicated:

- (a) "A. & M." means Arkansas Agricultural and Mechanical College, Monticello, Arkansas, and/or the Board of Trustees of that State Institution.
- (b) "UA" means the University of Arkansas and/or the Board of Trustees of the University of Arkansas, a State institution existing under the laws of Arkansas.
- (c) "Resulting campus" means A. & M. from and after the effective date of merger, and refers to a major campus of UA located at Monticello, Arkansas.
- (d) "Date of Agreement" means the date of this instrument, as stated above.
- (e) "Effective Date" means the date, following the Date of Transfer, upon which UA shall assume possession and operation of Resulting campus and shall be July 1, 1971, or as soon thereafter as is practicable.

II

Subject to the required legislative actions stated in Paragraph XIII hereafter, until the enactment of which this Agreement of Merger and Plan of Transition is contingent and conditional and is to be effected by both parties hereto, and completed, on the Effective Date only when that condition shall have been satisfied, in consideration of UA agreeing, as it hereby does, to maintain and operate one of its major campuses of higher learning to be located in Southeast Arkansas at Monticello, and to provide for its sound growth and its enhancement as a part of UA, according to a plan of transition calling for specific action by UA stipulated in Paragraphs IV to XIII, inclusive, and XVI through XVIII, inclusive, of this instrument, and in consideration of specified undertakings to be performed by A. & M., hereby agreed to, stipulated in Paragraphs XIV to XV, inclusive, together with the mutual covenants and provisions herein contained, this Agreement of Merger and Plan of Transition is by the parties entered into so that A. & M. will, on the Effective Date, be fully merged into UA, which shall be the surviving legal institution and which shall continue to be governed by the laws of the State of Arkansas, with UA receiving and assuming, at the Effective Date, the assets and liabilities of A. & M. as provided herein.

III

The legal relationship, and the desirable educational direction required by the integration of the former A. & M. into UA are fully understood by both parties to include the governance of the resulting campus by the Board of Trustees of UA and by its chief executive officer, the President of UA. Therefore, the resulting campus cannot be an autonomous educational endeavor and yet be a part of UA.

IV

The resulting campus will be headed by a Chancellor who will be the chief executive officer for the functions of that unit of UA. He shall be employed by the Board of Trustees of UA, and shall serve under and report and be responsible to the President of UA, and through him to the Board of UA. His powers and responsibilities which will be prescribed by the President and the UA Board, will be those usually associated with that educational office and will comport with the fact that he will be the chief executive officer for that unit. As Chancellor he will be expected to attend all meetings of the UA Board as do similar administrative officials of the UA. The position of Chancellor will be offered to President Claude Babin of A. & M. whose experiences in higher education in Arkansas, attributes which would make his leadership invaluable during the transition period and thereafter, and professional qualifications fully merit that rank. UA will assume and honor in full the contract between Dr. Babin and A. & M.

V

UA will assign the name: "UNIVERSITY OF ARKANSAS AT MONTICELLO" to the former A. & M., that name being deemed descriptive of its broad function, its location and the fact that it is a major campus of UA.

VI

During the period of transition while the former A. & M. is being recast as a major unit of UA it is recognized that it will be most valuable for an advisory group to assist in the problems and opportunities arising out of the merger, by way of wise counsel and assistance. Therefore, from and after the Effective Date the five persons who shall at that date constitute the Board of Trustees of A. & M. shall be reconstituted as an uncompensated, honorary advisory group appointed by the Board of Trustees of UA to assist the Chancellor and, through him, communicate their advice to the President, regarding that campus. Since it may be confidently estimated that the merger will be completed and the new procedures instituted following a biennium of operation plus the necessary time required for development of budgets for the following biennium, the advisory group shall cease its existence on and after June 30, 1974. In the event a vacancy or vacancies exist in the membership of the Board of Trustees of A. & M. at the Effective Date of the merger, or that a

vacancy or vacancies occur in the advisory group from and after the Effective Date and prior to June 30, 1974, the Board of Trustees of UA, after consultation with the remaining members of the advisory group, shall appoint persons to fill these vacancies from among the citizens of Southeast Arkansas.

VII

UA, utilizing the present facilities, faculty and staff, and other resources as they become available for this purpose will endeavor, in good faith, to offer the highest possible quality of higher education at the resulting campus located at Monticello. UA will exercise its best efforts to secure the future expansion, growth, and improvement of the resulting campus, realizing that an accredited program of undergraduate and, in the future, graduate instruction, including research and educational services, as dictated primarily by the needs of Southeast Arkansas, by sound educational judgment and by the availability of finances, should be offered on that campus. The determination of the exact program to be established and maintained, including curricula, division into colleges and schools, education for the professions, scope of educational services, library growth plan, research program and continuing (adult) education, are matters of informed educational judgment. Sufficient information is at this time unavailable as a basis for final decisions as to installation of new programs. UA expresses its intent that it will in good faith exercise that judgment from time-to-time with a view to the best welfare of the resulting campus and of UA of which it will be a part, limited only by choices involved in what is needed, justified and within the resources available. Duplication of effort with programs already conducted by UA, or lack of such duplication, shall not be a decisive criteria in these judgments, but the best interest of the State as a whole in its efforts in higher education shall be considered, as well as quality of the programs chosen to be maintained, it being recognized that, consistent with financial limitations, the State may be best served by maintaining programs which at time duplicate existing programs carried on by UA elsewhere, while at other times the exclusive assignment of unique functions may be indicated.

VIII

UA is cognizant of the outstanding contribution A. & M. has made through its undergraduate curriculum in forestry, and it is the intent of the parties hereto that undergraduate instruction in forestry will continue, subject to legislative funding, to be a part of the curriculum of the resulting campus. In an expanded State-wide program in forestry, the role of the Monticello campus will be a significant one since it is recognized that the location of that campus particularly lends itself to academic endeavors in forestry.

UA will initiate, following the Effective Date, an in-depth study regarding instruction, research, and educational services, which might be undertaken in the field of forestry. This will include a review of the present A. & M. program in undergraduate instruction in the field of forestry. The purpose of

the study will be to identify the educational needs and opportunities inherent in an expanded effort, relative to the total program of higher education in Arkansas and comparative needs of the State and its forestry industries. Investigation will be made as to collaboration and support which all UA divisions and campuses might furnish in this regard. Cooperation between the present UA effort in forestry and that of A. & M. will be established. Both A. & M. and UA are aware that a variety of undergraduate and graduate curriculum possibilities, research projects, and programs of continuing education for industry personnel, might be offered subject to the limitations of available institutional resources.

Should the in-depth study by knowledgeable persons conclude that the Arkansas program in forestry, on the basis of proven needs, should include a fully accredited school of forestry, UA shall develop a plan for such a school, together with cost estimates, and shall present the plan to State officials and to the legislature for funding.

IX

UA will accommodate in good faith the contracts of employment entered into between the faculty and staff members of A. & M. and A. & M., including regular employment contracts agreed to before, tenure rights acquired before, and academic ranks acquired in regular course before, the Effective Date. These contracts shall be acquired from A. & M. as a liability of the resulting campus, and investigation shall be made concerning the funding of appropriate fringe benefits during service with UA generally commensurate with those provided for other UA faculty and staff. Personnel decisions after the Effective Date will be governed by individual qualifications and program offered, and will be made within the context of those educational judgments of UA necessary to make the program on that campus one of high quality and accredited. Reduction of teaching loads and establishment of additional research opportunities for faculty will be given early consideration within the limits of institutional resources, and steps taken as soon as is practicable in an attempt to equalize faculty status at comparable ranks, for attainment and qualifications, as to compensation, perquisites and privileges.

Educational judgment will determine standards for admission of students and for accomplishment for credit instruction at the resulting campus, and credits shall be freely transferable between the resulting campus and other campuses of UA. All degrees awarded at the resulting campus will be degrees from UA, with graduation requirements generally comparable to those on other campuses of UA.

XI

Student tuition and fees at the resulting campus will be set at amounts generally comparable to those charged on other campuses of UA; provided, however, that any tuition and fees which prior to the Effective Date of this merger, shall have been pledged for the discharge of bonded

indebtedness, shall not be reduced so long as the particular indebtedness shall be outstanding. Student tuition and fees collected at the resulting campus shall be used only for the benefit of the resulting campus unless otherwise provided by law.

XII

The Administration of UA, including the Chancellor of the resulting campus, shall move to implement the merger of A. & M. into UA through development of interior policies and procedures for the resulting campus as a major campus of UA. Since it will be impossible at this time, or at the Effective Date to foresee all aspects of the proper integration of A. & M. into UA, the Board of UA hereby declares its intent that the development of the required policies and procedures shall be assessed against the Board's controlling consideration, i.e., that the most effective ways be chosen by which the two institutions may be drawn together so that the resulting campus shall serve adequately the needs of Southeast Arkansas for higher education of quality and excellence.

UA declares its intent that the policies and procedures applied in operating the resulting campus, whether they be of a nature designed to confer benefits or be restrictive in character, will be similar to those applied to other major campuses and divisions of UA. This equality of treatment between campuses and divisions of UA shall, as a principle, be observed by UA and any distinctions in policy and procedure as to the resulting campus shall be made only where there is a considered, rational foundation supporting the difference in classification. Policies and procedures now applicable to the Fayetteville campus will become applicable to the Monticello campus when and as directed by the President.

XIII

After the Date of Agreement, UA, with advice and consent of A. & M., shall draft and present to appropriate State officials the proposed bills for needed legislation required to effectuate the merger agreed to herein; provided, this entire Agreement is contingent and conditioned on the General Assembly enacting the necessary legislation, and it becoming law, which will (a) repeal the statutes under which A. & M. was established and operates; (b) authorize the respective boards of trustees of the two existing institutions to merge; (c) appropriate funds not now available to UA, for the use of the resulting campus, in an amount, based upon the formulae of the Arkansas Commission on Coordination of Higher Educational Finance; and (d) repeal or amend any other laws now applicable to A. & M., which shall be sufficient to operate the resulting campus in the manner that similar educational programs and responsibilities are operated by the State of Arkansas, including the transfer to UA for this purpose of funds and appropriations otherwise available to A. & M. which may become necessary by reason of the merger. When this condition shall have been met, the transfers shall thereafter be completed as provided herein and the merger effected. UA shall perform the liaison function for both parties with the Commission on Coordination of Higher

Educational Finance, the Governor and other State officials, and with the General Assembly and its committees for this legislation as a part of its legislative program.

XIV

When the legislation which is a condition precedent to the execution of this Agreement shall have been passed, A. & M. agrees, in consultation with UA, to take or to abstain from, as the case may be, the following actions:

- (a) Cause an audit to be made, if deemed necessary by the Vice President for Business of UA, either by independent Certified Public Accountants' examination or by the State Auditors, to such an extent that he may adequately determine the financial condition, including assets and liabilities, of A. & M. at or near the Effective Date. Chancellor of resulting campus shall certify that as of Effective Date all assets shown are on hand and intact less and except expenditures for normal operations since date of audit, with these expenditures accounted for in full to UA.
- (b) Transfer title, by warranty deeds, bills of sale, and other appropriate legal instruments, to all assets, real, personal, tangible and intangible, held in its name, whether of record or not, including all books, papers, abstracts, records and files under custody or control of A. & M., together with all funds, bank accounts, accounts receivable, bequests, trusts, endowments, investments, securities, grants, pledges, contracts, and other entitlements of A. & M., said transfers to be made irrevocably and accepted by UA on behalf of the State of Arkansas, provided, however, that (1) UA shall have the option to refuse to accept delivery of instruments of transfer as to any item or items of assets involving duties and responsibilities inconsistent with UA policies or involving duties and responsibilities adjudged by UA to be too onerous to justify acceptance, and (2) any assets originally received by bequest, pledge, devise, gift or trust containing conditions and restrictions, if assignable by A. & M. without incurring liability thereby, shall, if accepted by UA, be accepted and held by UA upon the same conditions and restrictions as imposed by the donor or donors.
- (c) From and after the passage of the legislation referred to above, A. & M. will not contract or incur any additional debt or contractual obligation which in each instance may exceed ten thousand dollars (\$10,000.00) without advance approval of UA, nor shall A. & M. thereafter add any new college, school, department, or program unless it shall have the prior specific approval of UA, or proceed otherwise than in the usual course of its business as then conducted, with the purpose of transferring A. & M. in an "as is" status on the Effective Date.

- (d) A. & M. will resolve before the transfer of assets any questions relating to restrictions on use, nonassignability or title provisions which might be drawn into question in the consummation of the merger herein provided, to the end that A. & M. will warrant, at the time of transfer, that it has clear title to all of the assets which are acceptable to UA.
- (e) A. & M. will furnish all data needed by UA in order to plan an orderly transition and merger both prior to the Effective Date, and thereafter.

XV

From and after the Effective Date, the Board of Trustees of A. & M. shall relinquish all control, responsibility and supervision vested by law, or exercised in fact, over and to the institution and assets now known as Arkansas A. & M. College which shall thereafter be both owned and operated by UA, a State institution, as provided by law and in this Agreement.

XVI

UA agrees that all property and funds conveyed or transferred to it by A. & M. under the terms of this Agreement, or the proceeds thereof, will be used by UA after the Effective Date for the benefit of the resulting campus, attempting thereby to assure the continued high quality and excellence of the program at the resulting campus.

XVII

UA agrees to remain in existence and to continue its corporate purposes, including the resulting campus, subject only to the will of the people of the State of Arkansas.

XVIII

UA, as the institution into which A. & M. shall merge as a major campus, agrees that it may be served with process in the State of Arkansas in any proceeding for enforcement of any obligation of A. & M. which it shall assume pursuant to this Agreement, as well as for enforcement of any obligation arising from this Agreement of Merger and Plan of Transition, and irrevocably appoints its Secretary of the Board of Trustees as agent to accept service of process at the following Address: Mr. Fred S. Vorsanger, Secretary, Board of Trustees, Administration Building, University of Arkansas, Fayetteville, Arkansas 72701.

XIX

Anything herein or elsewhere to the contrary notwithstanding, this Agreement of Merger and Plan of Transition may be terminated and abandoned by the parties hereto at any time prior to the Effective Date if the merger becomes inadvisable by reason of new legislation, federal or state, by reason of litigation against either or both of the parties, by reason of a material, adverse change in financial condition of either party, or because of a material loss or damage to property or assets, whether or not covered by insurance, which change, loss or damage would substantially affect or impair the ability to perform of the other institution on the Effective Date.

XX

A. & M. and UA each obligates itself at any time, and from time-to-time, execute all necessary papers, documents, legal conveyances and other instruments required to effectuate the purposes and intents of this Agreement.

XXI

This Agreement embodies the entire Agreement between UA and A. & M. with respect to the merger of these heretofore separate State institutions, and there have been, and are, no agreements, representations or warranties relating thereto between the parties other than those set forth herein or herein provided. Either may waive any inaccuracies in the representations by the other and compliance by the other with any of the covenants or conditions herein; and such waiver by either shall be sufficiently authorized for the purpose of this Agreement if authorized or ratified in writing by the party granting the waiver.

XXII

All notices, requests, demands and other communications herein shall be in writing and shall be deemed to be duly given if delivered or mailed, first class, registered or certified mail, (1) if to UA to: President David W. Mullins, Administration Building, University of Arkansas, Fayetteville, Arkansas 72701; (2) if to A. & M. to: President Claude Babin, College Heights, Arkansas 71655.

XXIII

UA and A. & M. both understand, and agree, that further refinement of this Agreement may be desirable, and both pledge themselves to accept amendments hereto reflecting such matters.

XXIV

Each trustee of the Board of Trustees of UA and each trustee of the Board of Trustees of A. & M. shall be deemed to be acting, in the execution and performance of this Agreement, in his official and representative capacity and not as an individual.

XXV

The parties hereto are deeply sensible that the success of the merger herein contemplated depends upon the good faith and integrity of the respective Boards and their executive officers, and to the end that opportunities for quality higher education in Arkansas be advanced for the benefit of the youth of the State, the parties hereto pledge that they will work in harmony for the accomplishment of the aims of this Agreement.

IN WITNESS WHEREOF, the parties hereto, pursuant to authority given to their respective Boards have caused this agreement of Merger and Plan of Transition to be entered into and signed by their respective officers in their official names, and their respective seals to be affixed hereunto, and to be attested by their respective Secretaries or Assistant Secretaries, all in accordance with their respective Resolutions, copies attached, which authorized this action and designated the officers to executing to act in that capacity, all as of the day and date above set forth.

BOARD OF TRUSTEES OF THE
ARKANSAS AGRICULTURAL AND
MECHANICAL COLLEGE

BY: LAWRENCE DERBY, JR., Chairman
Board of Trustees
Arkansas Agricultural and Mechanical College

ATTEST:

Secretary

- S E A L -

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS

BY: D. P. RANEY, Chairman
Board of Trustees
University of Arkansas

ATTEST:

Secretary

- S E A L -

RESOLUTION - Arkansas A. & M. - Adopted November 9, 1970

WHEREAS, this Board of Trustees has previously directed its administrative officials, in consultation with a Special Committee from this Board, to draft for our consideration a proposed Agreement of Merger pursuant to which Arkansas Agricultural and Mechanical College, Monticello, Arkansas, would be merged into, and become a part of, the University of Arkansas, said direction being set out in a Joint Resolution adopted September 25, 1970, by both Boards of Trustees of these State institutions; and,

WHEREAS, the Special Committee from this Board has now reported to it that an acceptable Agreement of Merger has been drafted and is at this time recommended by the Committee; that it is recommended also by the Special Committee from the Board of Trustees of the University of Arkansas, and by both Presidents of these institutions; and, that it will be placed before the Board of Trustees of the University of Arkansas at its next meeting on November 13, 1970, for approval;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF ARKANSAS A. & M. COLLEGE:

An instrument entitled "Agreement of Merger and Plan of Transition", providing for the merger of Arkansas Agricultural and Mechanical College into the University of Arkansas and for the transfer of its legal control to the Board of Trustees of the University of Arkansas, said Agreement being conditioned on the approval of, and enactment of necessary legislation by, the General Assembly of Arkansas, is hereby approved.

The Chairman of the Board of Trustees and the Secretary, or the Assistant Secretary, of the Board of Trustees are hereby authorized to execute the said Agreement on behalf of this Board and to affix the seal of the Board thereto.

RESOLUTION - University of Arkansas - Adopted November 13, 1970

WHEREAS, this Board of Trustees has previously directed its administrative officials, in consultation with a Special Committee from this Board, to draft for our consideration a proposed Agreement of Merger pursuant to which Arkansas Agricultural and Mechanical College, Monticello, Arkansas, would be merged into, and become a part of, the University of Arkansas, said direction being set out in a Joint Resolution adopted September 25, 1970, by both Boards of Trustees of these State institutions; and,

WHEREAS, the Special Committee from this Board has now reported to it that an acceptable Agreement of Merger has been drafted and is at this time recommended by the Committee; that it is recommended also by the Special Committee from the Board of Trustees of Arkansas A. & M. College, and by both Presidents of these institutions; and, that it has now been executed by the Board of Trustees of Arkansas A. & M. College;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS:

An instrument entitled "Agreement of Merger and Plan of Transition", providing for the merger of Arkansas Agricultural and Mechanical College into the University of Arkansas and for the transfer of its legal control to the Board of Trustees of the University of Arkansas, said Agreement being conditioned on the approval of, and enactment of necessary legislation by, the General Assembly of Arkansas, is hereby approved.

The Chairman of the Board of Trustees and the Secretary, or the Assistant Secretary, of the Board of Trustees are hereby authorized to execute the said Agreement on behalf of this Board and to affix the seal of the Board thereto.