

# BOARD OF REGENTS BRIEFING PAPER

## 1. AGENDA ITEM TITLE: Amendment of DRI Letter of Credit Agreement

MEETING DATE: June 8, 2017

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### 2. BACKGROUND & POLICY CONTEXT OF ISSUE:

Nevada System of Higher Education (“NSHE”) issued its Taxable Lease Revenue Bonds Series 2002, in the amount of \$8,460,000 on June 14, 2002 (the “Bonds”). The Bonds are payable from and secured by lease payments due to NSHE under the Federal Government Lease for Real Property between NSHE and the United States of America (the “Government”) Lease No. GS-09B-01075 (the “Lease”) related to the use of a portion of the Desert Research Institute Southern Nevada Science Center by the Government. As a condition of receiving an AA-rating of the Bonds, Fitch requires that NSHE obtain an irrevocable standby letter of credit to pay the principal of and interest on the Bonds if NSHE did not receive timely payments from the Government under the Lease. On July 11, 2003, the System obtained an irrevocable standby letter of credit (the “Letter of Credit”) from Bank of America, pursuant to a Reimbursement Agreement for Standby Letter of Credit between NSHE and the Bank. Within the lease agreement, the Government agreed to pay the costs of obtaining the Letter of Credit as part of “Additional Fixed Rent” up to 4% of the annual revenue bond payments and the parties agree to negotiate in good faith if the costs exceed 4%. The Letter of Credit has been renewed twice since 2003. The last renewal became effective on July 10, 2012 for five years expiring July 10, 2017.

NSHE recently requested an extension proposal from Bank of America. In response, Bank of America proposed to increase the rate from 1% to 1.4% and extend the agreement until May 15 of 2023 to coincide with the final maturity of the 2002 lease revenue bonds when the Fitch rating would no longer be required. The proposed annual fee does not exceed 4% of the annual revenue bond payments under the Lease.

### 3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Vice Chancellor for Finance Vic Redding requests approval of a resolution to allow the Nevada System of Higher Education, on behalf of the Desert Research Institute to enter into an amendment of the Reimbursement Agreement to extend the Letter of Credit with Bank of America through May 15, 2023.

### 4. IMPETUS (WHY NOW?):

The current Letter of Credit expires on July 10, 2017. To maintain the rating on the Bonds, NSHE must obtain a bond or letter of credit with a company that has an A.M. Best rating of “A” or better.

### 5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The extension of the Letter of Credit is needed to maintain the rating on the 2002 Lease Revenue Bonds.
- The cost of the Letter of Credit is paid by the Government under the Lease agreement.

The proposed fees are within the required 4% (of the annual debt service) fee ceiling required by the Lessee.

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

An RFP could be created which may result in a lower quoted price; however, considering the length of time which Bank of America agreed to extend the agreement and the quoted price, it seems unlikely that a significantly better rate would be found. Additionally, the cost of to prepare an RFP and negotiate an agreement would be potentially greater than any savings gained through the bid process.

**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

NSHE could issue a request for proposals to banks to provide a letter of credit. However, it may be difficult to complete the proposal and implement a new LOC by the July 10 deadline.

**8. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title #4 Chapter #9 Section #3
- Amends Current Board Policy: Title #\_\_\_\_ Chapter #\_\_\_\_ Section #\_\_\_\_
- Amends Current Procedures & Guidelines Manual: Chapter #\_\_\_\_ Section #\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes\_\_\_\_ No  Explain: \_\_\_\_\_

**Summary of Terms and Conditions**  
**Nevada System of Higher Education**  
**April 12, 2017**

<b>BORROWER:</b>	Nevada System of Higher Education (the "Borrower")
<b>LENDER:</b>	Bank of America, N.A. ("Bank of America" or "Bank")
<b>CREDIT FACILITY:</b>	Irrevocable Standby Letter of Credit # 3057340 (the "Letter of Credit") as documented by the Reimbursement Agreement for Irrevocable Standby Letter of Credit dated July 11, 2003 between Bank of America and the University and Community College System of Nevada (currently known as the Nevada System of Higher Education), as amended by the First Amendment to Reimbursement Agreement and Standby Letter of Credit dated September 1, 2009, and the Second Amendment to Reimbursement Agreement For Standby Letter of Credit, together the "Agreement".
<b>AMOUNT OF LETTER OF CREDIT:</b>	The amount of the Letter of Credit shall be unchanged at \$2,100,000.
<b>EXPIRATION DATE:</b>	The Expiration Date of the Letter of Credit shall be extended from its current expiration date of July 10, 2017 to May 15, 2023
<b>LETTER OF CREDIT FEE:</b>	<p>Borrower shall pay a Letter of Credit fee equal to 1.40% per annum.</p> <p>Such fee shall be calculated on the face amount of the Letter of Credit and shall be payable semi-annually in advance.</p>
<b>DOCUMENTATION:</b>	The closing of the extension of the Letter of Credit and Agreement will be subject to the negotiation, execution and delivery of definitive documentation for the amendment to the Letter of Credit and Agreement satisfactory to Bank of America, which shall include, without being limited to: i) the Third Amendment to the Agreement prepared by Bank Counsel; ii) Amendment No. 3 to the Letter of Credit prepared by the Bank; iii) satisfactory opinions of counsel to the Borrower; and iv) such other customary closing documents as Bank of America shall reasonably request.
<b>EXTENSION FEE:</b>	None.
<b>EXPENSES:</b>	Borrower will pay all reasonable costs and expenses incurred by Bank of America associated with the preparation, due diligence, administration and enforcement of all documentation executed in connection with the Letter of Credit and Agreement, including, the legal fees of Squire Patton Boggs, counsel to Bank of America, which are estimate to be \$4,000 and not to exceed \$5,000.

**LEGAL OPINION:**

Borrower to provide Bank of America an unqualified legal opinion of nationally recognized bond counsel, in form and substance acceptable to Bank of America and its legal counsel, that (i) all documents related to the extension of the Letter of Credit and amendment of the Agreement have been properly adopted, authorized and executed; and (ii) all documents related to the extension of the Letter of Credit and amendment of the Agreement constitute a legally binding obligation of the Borrower, enforceable according to their terms.

**ALL OTHER TERMS AND CONDITIONS:**

There shall be no other changes to terms and conditions of the Letter of Credit or the Agreement other than those described above.

**NO ADVISORY or FIDUCIARY ROLE:**

The Borrower acknowledges and agrees that: (i) the transaction contemplated by this Summary of Terms and Conditions is an arm's length, commercial transaction between the Borrower and the Bank in which the Bank is acting solely as a principal and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to the Borrower ; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Bank has to the Borrower with respect to the transaction contemplated hereby expressly are set forth in this Summary of Terms and Conditions; and (v) the Bank is not recommending that the Borrower take an action with respect to the transaction contemplated by this Summary of Terms and Conditions, and before taking any action with respect to the contemplated transaction, Borrower should discuss the information contained herein with its own legal, accounting, tax, financial and other advisors, as it deems appropriate. If Borrower would like a municipal advisor in this transaction that has legal fiduciary duties to Borrower, Borrower is free to engage a municipal advisor to serve in that capacity. This Summary of Terms and Conditions is provided to Borrower pursuant to and in reliance upon the "bank exemption" provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq.*

The terms of this Summary of Terms and Conditions are confidential and, except for disclosure on a confidential basis to the accountants, attorneys and other professional advisors retained by the System in connection with the products and services therein or as may be required by law (including any public meeting or public disclosure law), may not be disclosed by the System or any of such advisers in whole or in part to any other person or entity without our prior written consent.

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, the Nevada System of Higher Education (the "System") intends to extend the existing Irrevocable Standby Letter of Credit (the "Letter of Credit") from Bank of America, N.A. (the "Financial Institution") in the amount of \$2,100,000 in connection with the U.S. Government Lease for Real Property between the System and the United States of America, as amended (the "Lease") for certain property at the campus of the Desert Research Institute known as the Southern Nevada Science Center Phase II to provide the full amount of one scheduled annual rent payment under the Lease in the event any portion of the scheduled annual rent payments due under the Lease are not paid in full by the United States of America. The System has entered into a Reimbursement Agreement and Standby Letter of Credit dated as of July 11, 2003, as amended by the First Amendment to Reimbursement Agreement and Standby Letter of Credit dated July 7, 2009, and the Second Amendment to Reimbursement Agreement For Standby Letter of Credit dated May 30, 2012, in order to reimburse the Financial Institution for draws under the Letter of Credit (the "Reimbursement Agreement") between the Financial Institution and the System and a single note signed by appropriate officials at the System, if necessary (the "Note"). In connection with the extension of the Letter of Credit, the System will enter into a Third Amendment to Reimbursement Agreement and Standby Letter of Credit (the "Third Amendment to the Reimbursement Agreement").

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION:**

Section 1. The Proposal attached hereto and made a part hereof is hereby accepted, ratified and approved.

Section 2. The officers of the System are hereby authorized to take all action necessary to effectuate the provisions of this resolution, including, without limitation, negotiation of the terms of the Third Amendment to the Reimbursement Agreement by the Vice Chancellor for Finance with the Financial Institution which terms shall not be materially inconsistent with the terms of the Proposal or for the benefit of the System in the judgment of the Vice Chancellor for Finance, the execution and delivery of the Third Amendment to the Reimbursement Agreement by the Chancellor or the Vice Chancellor for Finance of the System and such certificates as may be necessary to evidence the validity and enforceability of the Third Amendment to the Reimbursement Agreement.

Section 3. This resolution shall be effective on its passage and approval.

**PASSED, ADOPTED AND APPROVED** this June \_\_, 2017.

(SEAL)  
Attest:

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chief of Staff and Special Counsel to the Board of Regents

Exhibit A

(Attach copy of Proposal)

**THIRD AMENDMENT TO REIMBURSEMENT AGREEMENT  
FOR STANDBY LETTER OF CREDIT**

This Third Amendment to Reimbursement Agreement for Standby Letter of Credit (“Amendment”) dated as of June \_\_\_, 2017, is between Bank of America, N.A. (“Bank”) and the Nevada System of Higher Education, formerly known as the University and Community College System of Nevada (“Applicant”).

**RECITALS**

A. Bank and Applicant entered into a certain Reimbursement Agreement, dated as of July 11, 2003, as previously amended by the First Amendment to Reimbursement Agreement and Standby Letter of Credit, dated July 7, 2009, and the Second Amendment to Reimbursement Agreement for Standby Letter of Credit dated May 30, 2012 (together, the “Agreement”), and an Application for a Standby Letter of Credit in the face amount of \$2,100,000.00 (the “Application”). The Standby Letter of Credit No. 3057340 is referred to in this Amendment as the “Letter of Credit.” The Agreement, the Application, the Letter of Credit, and all related documents, attachments and exhibits, are referred to in this Amendment as the “Credit Documents.”

B. The Letter of Credit will expire on July 10, 2017 and Bank and Applicant desire to amend the Letter of Credit to extend the expiration date to May 15, 2023, and make additional changes to the terms and conditions of the Credit Documents.

**AGREEMENT**

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meaning given to them in the Agreement.

2. Amendments. The Credit Documents are hereby amended as follows:

2.1 The expiration date of the Letter of Credit is May 15, 2023. The one-year automatic extension clause of the Letter of Credit is deleted. The maturity date of the Note is May 15, 2023.

2.2 Applicant shall pay in advance a nonrefundable fee in the amount of 1.40% per annum of the face amount of the Letter of Credit as of July 11 of each year (the “Fee”), payable in two equal semiannual installments due on July 11 and the succeeding January 11 of each year, commencing on July 11, 2017 (with the final payment due on January 11, 2023 being prorated to May 15, 2023, computed upon actual number of days elapsed over a 360-day year). The Fee is based on Applicant’s current long-term unenhanced revenue bond debt ratings of Aa2/AA- from Moody’s and Standard & Poor’s, respectively. The Fee percentage will remain in effect as long as the Applicant’s rating maintained by Moody’s and Standard & Poor’s (the “Rating”) is at least A2/A, as applicable (the “Minimum Rating(s)"). The Fee will increase by .10% for each downgrade of a Rating below a Minimum Rating. The increase will be applied on the first date of each downgrade of a Rating below the Minimum Rating. If any Rating is withdrawn or suspended, the Fee will increase by 1.5%. The Fee will not increase if a

downgrade by one rating agency is followed by a downgrade to the same level by the other rating agency. The Fee will increase by 1.5% upon the occurrence of an Event of Default. Any increase of the Fee as provided in this section will be due to Bank within 15 Business Days of the event resulting in the increase of the Fee.

2.3 New Sections 7 and 8 are added to the Agreement, as follows:

“7. No Advisory or Fiduciary Relationship. In connection with all aspects of the transaction contemplated hereby, including in connection with any amendment, waiver or other modification of this Agreement, the Credit or the Application (together, the “Credit Documents”), Applicant acknowledges and agrees, and acknowledges its affiliates’ understanding, that: (a) (i) the services regarding this Agreement provided by Bank or its affiliates are arm’s-length commercial transactions between Applicant, on the one hand, and Bank and its affiliates, on the other hand, (ii) applicant has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) applicant is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (b) (i) Bank and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Applicant, and (ii) neither Bank nor any of its affiliates has any obligation to Applicant with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (c) Bank and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Applicant, and neither Bank nor any of its affiliates has any obligation to disclose any of such interests to Applicant. To the fullest extent permitted by law, Applicant hereby waives and releases any claims that it may have against Bank or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.”

“8. Patriot Act; Government Regulations. (a) Bank hereby notifies Applicant that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107.56 (signed into law October 26, 2001)) (the “Patriot Act”), Bank is required to obtain, verify and record information that identifies Applicant, which information includes the name and address of Applicant and other information that will allow Bank to identify Applicant in accordance with the Patriot Act.

(b) Applicant shall ensure that no person who controls Applicant is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists identified by Bank to Applicant that are maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders that



prohibit or limit Bank from making any advance or extension of credit to Applicant or from otherwise conducting business with Applicant. Applicant agrees to provide documentary and other evidence of Applicant's identity as may be requested by Bank at any time to enable Bank to verify Applicant's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act."

3. Representations and Warranties. When Applicant signs this Amendment, Applicant represents and warrants to the Bank that: (a) there is no event which is, or with notice or lapse of time or both would be, a default under the Credit Documents except those events, if any, that have been disclosed in writing to Bank or waived in writing by Bank, (b) the representations and warranties in the Credit Documents are true as of the date of this Amendment as if made on the date of this Amendment, (c) this Amendment does not conflict with any law, agreement or obligation by which Applicant is bound and (d) this Amendment is within Applicant's powers, has been duly authorized and does not conflict with any of Applicant's organizational documents.

4. Conditions. This Amendment will be effective when Bank receives the following items, in form and content acceptable to Bank: (a) Resolution of the Board of Regents of the Nevada System of Higher Education authorizing this Amendment, and (b) opinion of counsel regarding the due authorization, execution, delivery and enforceability of this Amendment.

5. Expenses. Applicant will pay all reasonable costs and expenses incurred by Bank associated with the preparation, due diligence, administration and enforcement of all documentation executed in connection with this Amendment, including, the legal fee of counsel to the Bank not exceeding \$5,000. Applicant is responsible separately for the cost of its bond counsel.

6. Effect of Amendment. Except as provided in this Amendment, all of the terms and conditions of the Credit Documents shall remain in full force and effect.

7. Counterparts. This Amendment may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

This Amendment is executed as of the date stated at the beginning of this Amendment.

BANK OF AMERICA, N.A.

NEVADA SYSTEM OF HIGHER  
EDUCATION, formerly known as the  
University and Community College System  
of Nevada

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_