



Item: VII b.

Wednesday, November 16, 2011

SUBJECT: TECHNICAL AMENDMENT TO PRESIDENT'S EMPLOYMENT AGREEMENT

PROPOSED BOARD ACTION

Approve an amendment to Section 7.2 of President Saunders' Employment Agreement.

BACKGROUND INFORMATION

On June 7, 2010, the Board entered into an employment agreement (the "Agreement") with President Saunders. Pursuant to the Agreement, the University provides President Saunders all standard State of Florida and University employment benefits applicable to the position of President. These benefits include contributions by the University to the President's state retirement account. The University also provides a supplemental deferred compensation benefit at a rate equal to fifteen percent (15%) of President Saunders' annual base salary during each year of the Agreement.

Legislation passed during the 2011 legislative session modified the level of contribution that the University is authorized to make to the President's state retirement account. To conform the Agreement to the new law and maintain the President's overall benefits at the same amount as originally agreed, the supplemental deferred compensation rate will be revised to 17.494%.

IMPLEMENTATION PLAN/DATE

Immediately upon approval by the Board.

FISCAL IMPLICATIONS

The proposed amendment will maintain the overall compensation package at the same amount that the University provided the President under the prior law.

Supporting Documentation: Proposed Amended President's Employment Agreement

Presented by: Bob Stille, Chair, FAU Board of Trustees

PRESIDENT'S FIRST AMENDED EMPLOYMENT AGREEMENT

This President's Employment Agreement (the "Agreement") is entered into by the Florida Atlantic University Board of Trustees (hereinafter referred to as the "Board" or "the Board of Trustees"), a public body corporate of the State of Florida, and Dr. Mary Jane Saunders ("Dr. Saunders").

WHEREAS, the Board, acting on behalf of Florida Atlantic University (the "University"), has the authority to select and employ the President of the University; and

WHEREAS, the Board of Trustees previously has selected Dr. Saunders to serve as President of the University; and

WHEREAS, all prior acts of the Board of Trustees and its Presidential Search Committee were ratified by the Board of Trustees;

NOW, THEREFORE, in consideration of mutual promises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree to this Agreement as follows:

1.0 Appointment as President

1.1 The Board of Trustees appoints and employs Dr. Saunders to be President of the University and to serve as the Chief Executive Officer of the University subject to the laws of the State of Florida, the regulations and policies of the Florida Board of Governors, the regulations and policies of the University, and the regulations, policies and supervision of the Board of Trustees.

1.2 Dr. Saunders shall perform all duties required by law, by University and Board of Trustees policy and regulation, by this Agreement, and by custom and practice to be performed by a University president. Those duties include, but are not limited to:

- 1.2.1 Operating the University;
- 1.2.2 Providing institutional, faculty, and educational leadership;
- 1.2.3 Strategic planning;
- 1.2.4 Acting as corporate secretary to the Board;
- 1.2.5 Preparing a budget request and operating budget;
- 1.2.6 Establishing and implementing policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel;
- 1.2.7 Governing admissions;
- 1.2.8 Approving, executing, and administering contracts for the acquisition of commodities, goods, equipment, services, lease of real and personal property, and planning and construction;
- 1.2.9 Acting as custodian of all University property, including the authority to prioritize the use of University space, property, equipment, and resources;
- 1.2.10 Implementing approved programs for the University;
- 1.2.11 Establishing the internal academic calendar of the University;

- 1.2.12 Administering the University's program of intercollegiate athletics;
- 1.2.13 Recommending the establishment and termination of undergraduate, masters, and doctoral level degree programs within the approved role and scope of the University;
- 1.2.14 Awarding degrees;
- 1.2.15 Recommending a schedule of tuition and fees to be charged by the University;
- 1.2.16 Entering into Agreements for student exchange programs;
- 1.2.17 Approving the internal procedures of student government organizations and providing purchasing, contracting, and budgetary review processes for those organizations;
- 1.2.18 Adjusting property records and disposing of state-owned tangible property;
- 1.2.19 Maintaining all data and information pertaining to the operation of the University and reporting on the attainment by the University of institutional and statewide performance accountability goals;
- 1.2.20 Ensuring compliance with federal and state laws, regulations, and other requirements applicable to the University;
- 1.2.21 Reviewing periodically the operations of the University to determine how effectively and efficiently the University is

being administered and whether it is meeting the goals of its strategic plan;

1.2.22 Organizing the University to achieve the goals of the University efficiently and effectively; and

1.2.23 Recommending the adoption of regulations and policies to successfully implement provisions of law governing the operation and administration of the University and the items listed above.

2.0 Best Efforts as President

2.1 Dr. Saunders agrees, subject to Section 2.3 below, to devote her full-time attention and energies to her duties as President of the University.

2.2 The duties of the President shall be performed for all existing and future campuses of the University, and for and at such other place or places as the Board of Trustees deems appropriate for the interests, needs, business, or goals of the University.

2.3 The expenditure of reasonable amounts of time for personal or outside business, as well as non-University related charitable and professional development activities, shall not be deemed a breach of this Agreement, provided such activities do not interfere with the services required to be rendered to the University under the provisions of this Agreement, Part III of Chapter 112 of the Florida Statutes: Code of Ethics for Public Officers

and Employees, and applicable regulations or policies of the Board of Trustees or University.

- 2.4 Dr. Saunders shall not knowingly engage in any activity that may be competitive with and adverse to the best interests of the Board of Trustees or the University.
- 2.5. Dr. Saunders shall seek approval from the Board of Trustees prior to agreeing to serve on any board of directors or to engage in outside employment, business or professional activities subject to the provisions of University Regulation 5.011, or its successor regulation or policy. Any and all income or other compensation earned by Dr. Saunders in connection with approved non-University outside activities shall be paid to and retained by her, and such income or other compensation shall have no effect on the amount of salary, compensation, or benefits she is otherwise entitled to receive under this Agreement.

3.0 Term of Appointment; Evaluation; Renewal

- 3.1 This appointment shall be for a term of five (5) years, commencing on June 7th, 2010 and ending June 6th, 2015, renewable by mutual written consent of the parties. This appointment is subject to prior termination as provided for in this Agreement, and by the applicable laws of the State of Florida, the regulations and policies of the Board of Trustees, the regulations and policies of the University, and the regulations and policies of the Florida Board of Governors.

- 3.2 On or before August 1, 2010 for fiscal year 2010-2011, and on or before June 1 each year thereafter, Dr. Saunders shall provide the Chair of the Board of Trustees ("Chair") with a list of proposed goals and objectives for the next fiscal year, based upon the accountability process implemented pursuant to Florida law including Section 1008.46 of the Florida Statutes and the University's strategic plan. The Chair and Dr. Saunders shall discuss the proposed goals and objectives, and agree upon the goals and objectives for the next fiscal year. The goals shall then be presented to the Board for discussion and approval.
- 3.3 On or before September 1, 2011, and on or before September 1 each year thereafter, Dr. Saunders shall initiate the evaluation process for the fiscal year ending on June 30 by preparing a self appraisal of her performance for submission to the Chair and evaluation by the Board of Trustees, its designee, or both, in accordance with policies and procedures established by the Board of Trustees as the Board may deem appropriate. Dr. Saunders agrees to furnish any additional information requested by the Chair to aid the Board of Trustees in its annual performance review of Dr. Saunders.
- 3.4 The performance of the Board of Trustees of any of its obligations under this contract shall be subject to and contingent upon the availability of funds appropriated by the legislature for the current and future periods.

4.0 Salary

- 4.1 For all services rendered by Dr. Saunders, the Board of Trustees shall pay her a current base salary at the base rate of Three Hundred Forty-Five Thousand Dollars (\$345,000) per year. This amount shall be payable according to the Board of Trustee's payroll policies and procedures and the pay plan applicable to the President's position, with applicable deductions, such as applicable taxes and benefits being withdrawn. Dr. Saunders shall be responsible for any income tax liability incurred as a result of this Agreement.
- 4.2 Dr. Saunders's salary shall be reviewed annually by the Board of Trustees in conjunction with the Board of Trustees' evaluation of job performance, as set forth in Section 3.3 of this Agreement. Dr. Saunders shall be eligible for any legislative salary increase applicable to University employees in her employment classification.
- 4.3 The Board of Trustees authorizes, and Dr. Saunders shall receive, all standard employment benefits, applicable to the position of the President based on her annual base salary.

5.0 Tenure and Return to Faculty Appointment

- 5.1 Dr. Saunders shall be granted a tenured faculty appointment at the rank of Professor in the Charles E. Schmidt College of Science upon her appointment as President (or as soon thereafter as practicable) in accordance with the University's tenure upon appointment procedures,

and shall be accorded all the rights and privileges afforded to such appointment.

- 5.2 If Dr. Saunders is eligible pursuant to this Agreement and chooses to return to professorial duties after completion of a minimum of five (5) years of service as President, she shall be eligible for a one-year sabbatical leave immediately after her service ends as President and prior to returning to the faculty. During this sabbatical period, if taken, Dr. Saunders shall earn a 12-month base salary equal to ninety percent (90%) of her last base salary as President in accordance with Chancellor's Memorandum CM-M-05.00 (08/96).
- 5.3 For the first three (3) years of service as Professor (or for years 2 and 3 if a sabbatical is taken), Dr. Saunders shall earn a 12-month Professor base salary equal to eighty percent (80%) of her last base salary as President. If appointed to a 9-month academic year assignment by the dean, the 12-month salary will be adjusted according to Chancellor's Memorandum CM-M-05.00 (08/96).
- 5.4 If Dr. Saunders continues to serve as a full-time tenured faculty member after the expiration of this three (3) year period, her base salary shall be adjusted to the average 9-month base salary rate paid at the time to the three (3) most highly paid full-time non-clinical tenured faculty members in the assigned college. This base salary shall be adjusted accordingly in the event Dr. Saunders is assigned a 12-month appointment.

6.0 Other Compensation

- 6.1 Dr. Saunders shall receive a relocation allowance of Fifteen Thousand dollars (\$15,000) payable within the first 180 days of employment for moving and other associated expenses incurred in moving to Boca Raton, Florida.
- 6.2 The Board of Trustees, at its sole discretion, may award an annual merit bonus of up to Fifty Thousand dollars (\$50,000) to Dr. Saunders for achievement of bonus criteria set by the Chair on an annual basis. The bonus criteria may include the annual goals and objectives agreed to pursuant to Section 3.2, the evaluation results pursuant to Section 3.3 and/or other bonus criteria set by the Chair. The Chair may assign a percentage value to each bonus criteria, and may award a prorated bonus for partial bonus criteria accomplishment after a minimum benchmark is met at his/her discretion. Such annual bonus, if awarded, shall be paid to Dr. Saunders within 90 days of the date on which the bonus is awarded.
- 6.3 During the term of this Agreement and contingent upon the availability of funds, the Board shall not be responsible for, but authorizes and shall use its best efforts to cause the Florida Atlantic University Foundation, Inc. ("FAU Foundation") to contribute to Dr. Saunders the portions of all payments provided for in this Agreement that exceed the limits set forth in Florida Statutes Section 1012.975.

7.0 Other Benefits

- 7.1 Dr. Saunders shall be eligible for all applicable State of Florida and University developed benefits and perquisite programs as authorized by the legislature or other authorized governing bodies. The Board of Trustees further agrees that Dr. Saunders shall be entitled, at all times, to the state sponsored life insurance benefits applicable to executive service personnel.
- 7.2 The Board of Trustees authorizes a retirement benefit of supplemental deferred compensation equal to ~~fifteen percent~~ (17.4945%) of Dr. Saunders's annual base salary during each year of this Agreement. This supplemental deferred compensation shall be in addition to regular state benefits and applied towards ~~a qualified~~ deferred compensation accounts of Dr. Saunders's choosing for the specific purpose of Dr. Saunders's retirement. The supplemental deferred compensation shall be paid in accordance with regular payroll practices.
- 7.3 The Board of Trustees authorizes, and shall use its best efforts, to cause the FAU Foundation to provide funds for Dr. Saunders's spouse for travel to official functions in accordance with regular state and University travel policies. Funding for spouse travel is only authorized in conjunction with Dr. Saunders's travel outside of the University service area.

8.0 Use of University-Owned Facility

8.1 The Board of Trustees requires Dr. Saunders to reside in the University's Eleanor R. Baldwin House, 555 NW 20th Street, Boca Raton, FL 33431, at the University's expense to enable her to efficiently carry out her duties, including its use for various official University functions.

9.0 Automobile

9.1 The Board of Trustees shall use its best efforts to cause the FAU Foundation to provide Dr. Saunders with the use of a suitable full size automobile to be provided, insured and maintained by the FAU Foundation, consistent with past practice for University presidents.

9.2 The Board of Trustees shall use its best efforts to cause the FAU Foundation to replace the automobile furnished to Dr. Saunders at least once every three (3) years.

10.0 Professional Dues, Meeting and Entertainment

10.1 The Board of Trustees will authorize and provide for reasonable expenses incurred by Dr. Saunders for University-related professional or service organizations and activities. The Board of Trustees may fulfill this obligation through the use of available FAU Foundation funds.

11.0 Expense Receipts and Documentation

11.1 Dr. Saunders agrees to maintain and furnish to the Board of Trustees an accounting of reimbursable expenses and membership dues and fees provided for in this Agreement in reasonable detail and consistent with University and State policies, standards, and procedures on no less than a monthly basis. Following Dr. Saunders's submission of an accounting, the Board of Trustees shall make prompt reimbursement to Dr. Saunders of such expenses and membership dues and fees in accordance with applicable University and State policies, standards, and procedures.

12.0 Termination of the Contract for Cause

12.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that, upon a vote of two thirds (2/3) of the Board of Trustees, the Board of Trustees may terminate this Agreement at any time for "just cause" (as hereinafter defined).

12.2 "Just cause" shall be defined as: (i) a deliberate or material violation by Dr. Saunders of the duties set forth in this Agreement or her refusal or unwillingness to perform such duties in good faith, during her full business time, or to the best of her abilities if, within thirty (30) days following Dr. Saunders's receipt of the written notice of what the Board of Trustees considers to be the violation, Dr. Saunders fails to cure the same; (ii) materially harmful neglect of essential responsibilities; (iii) grave dishonesty that adversely affects the University; (iv) the commission of

any felony or of a misdemeanor involving moral turpitude; or (v) a material, significant, or repetitive breach of this Agreement.

- 12.3 In the event of termination for “just cause” by the Board of Trustees, Dr. Saunders’s employment with the University and tenure status shall cease, and she shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for benefits required to be continued by law.

13.0 Termination Without Cause

- 13.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that upon a vote of two thirds (2/3) of the Board of Trustees, the Board may terminate the Agreement at any time prior to its term expiration without cause, provided that Dr. Saunders is given ninety (90) days prior written notice. If Dr. Saunders has served as President for at least twenty-four (24) months prior to receiving notice of termination without cause, she may choose to take a six (6) month sabbatical at her President’s base salary immediately after her service ends as President and prior to returning to the faculty, in lieu of receiving the ninety (90) days prior notice above.
- 13.2 Dr. Saunders may terminate the Agreement at any time prior to its term expiration without cause, provided that Dr. Saunders gives ninety (90) days prior written notice to the Board of Trustees.

13.3 If this Agreement is terminated without cause by either party, Dr. Saunders shall be eligible to assume the duties of full Professor with tenure.

14.0 Termination Due to President's Resignation, Death or Disability

14.1 Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate upon Dr. Saunders's resignation from employment at the University, death or "permanent disability" (as hereinafter defined). Such termination shall be deemed to have occurred for "just cause" and Dr. Saunders employment with the University and tenure status shall cease, and she shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for benefits required to be continued by law. For purposes of this Agreement, "permanent disability" shall be defined as Dr. Saunders's inability to perform the duties set forth in Section 1.2 for a minimum of six (6) continuous months.

14.2 In the event of Dr. Saunders's death during the term of this Agreement, her spouse or, if none, her estate, shall receive all accrued benefits as of the date of her death to the extent permitted by law.

15.0 Non-binding Mediation

15.1 The Board of Trustees and Dr. Saunders agree that if any dispute arises concerning this Agreement, they will first attempt in good faith to resolve

the dispute to their mutual satisfaction. If they are unable to do so, the Board and Dr. Saunders agree that they will submit the dispute to non-binding mediation in Boca Raton, Florida, in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect. The University and Dr. Saunders will use their best efforts, to the extent permitted under Florida law, to keep any disputes and any efforts to resolve disputes confidential, informing only their respective legal counsel and other persons determined in good faith to have a need to know. To the extent permitted under Florida law, they will use their best efforts to ensure that such persons do not further disclose any such information. The University and Dr. Saunders agree that no mediator or arbitrator may have any material ongoing relationship with the University.

16.0 Notice

16.1 Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to the University:

Chairperson
Florida Atlantic University Board of Trustees
777 Glades Road
Boca Raton, Florida 33431

If to Dr. Saunders:

Dr. Mary Jane Saunders
Florida Atlantic University
777 Glades Road
Boca Raton, Florida 33431

With a copy to:

General Counsel
Florida Atlantic University Board of Trustees
777 Glades Road
Boca Raton, Florida 33431

17.0 Entire Agreement: Modification

17.1 This Agreement constitutes the entire understanding of the parties and supersedes any and all prior or contemporaneous representations or Agreements, whether written or oral, between the parties. There are no other promises, understandings, obligations, inducements, or considerations between the parties or owed by either party to the other that are not set forth in this Agreement.

17.2 This Agreement cannot be changed or modified unless accomplished in writing and signed by the parties.

18.0 Severability

18.1 The terms of this Agreement are severable, meaning that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable to the extent possible.

19.0 Governing Law and Forum

19.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida.

19.2 Notwithstanding any other terms and conditions of this Agreement, either party may bring an action for the sole and limited purpose of enforcing the terms and conditions of this Agreement in any court of competent jurisdiction. Venue shall be in Palm Beach County, Florida.

20.0 Understanding of the Agreement

20.1 Both parties represent that they have thoroughly read this Agreement, that they understand it to be a binding contract, that they understand each provision, term, and condition of this Agreement as well as its legal effect, and that they have signed the Agreement voluntarily and of their own free will with the intention to comply with its terms. Both parties have participated in the preparation of this Agreement. Therefore, the Agreement shall not be construed against or in favor of either party based upon which party was responsible for the drafting of the Agreement.

21.0 Public Disclosure of the Agreement

21.1 Both Parties agree and acknowledge that this Agreement may be subject to the Florida public records law, Chapter 119, or other provisions, and may, therefore, be subject to disclosure by and in the manner provided by law.

22.0 Waiver

22.1 No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement.

23.0 Assignment

23.1 This Agreement is not assignable, but shall be binding upon the heirs, administrators, personal representatives, successors, and assigns of both parties.

24.0 Execution and Counterparts

24.1 This Agreement may be executed in counterparts and by the parties on separate counterparts each of which, when so executed, shall constitute but one and the same instrument.

25.0 No Trust Fund

25.1 Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that Dr. Saunders acquires a right to receive payments from the University, such rights shall be no greater than the right of any unsecured, general creditor of the University.

26.0 Miscellaneous

26.1 The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms “Board,” “Board of Trustees” and “University,” where applicable or appropriate, shall include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

THEREFORE, Dr. Mary Jane Saunders and [Mr. Robert Stilley](#)~~Nancy Blosser~~, Chair and authorized representative of the Florida Atlantic University Board of Trustees, have executed this Agreement on the dates appearing below.

Florida Atlantic University Board of Trustees

[Robert Stilley](#)~~Nancy Blosser~~,
Chairperson

Date

Dr. Mary Jane Saunders

Date