



UNIVERSITY OF CENTRAL FLORIDA

Office of the President

University of Central Florida
Board of Trustees Meeting
Agenda
March 13, 2018
Millican Hall, 3rd floor, President's Boardroom
8:15 a.m.
800-442-5794, passcode 463796

- | | | | |
|------|--------------------|----------|---|
| I. | Call to Order | | Marcos Marchena
Chairman, Board of Trustees |
| II. | Roll Call | | Rick Schell
Associate Corporate
Secretary |
| III. | Public Comment | | Rick Schell |
| IV. | New Business | | Chairman Marchena |
| | CL-1 | Approval | Presidential Employment
Agreement |
| V. | Other New Business | | Chairman Marchena |
| VI. | Adjournment | | Chairman Marchena |

ITEM: CL-1

**University of Central Florida
BOARD OF TRUSTEES**

SUBJECT: Presidential Employment Agreement

DATE: March 13, 2018

PROPOSED COMMITTEE ACTION

Approve the presidential employment agreement.

BACKGROUND INFORMATION

This agreement defines the terms of employment for the University of Central Florida's fifth president.

Supporting documentation:

Attachment A: Presidential Employment Agreement

Prepared by: Scott Cole, Vice President and General Counsel

Submitted by: John Sprouls, Chair, Compensation and Labor Committee

Attachment A

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement"), is entered into by and between the University of Central Florida Board of Trustees (the "Board," or the "Board of Trustees"), and A. Dale Whittaker ("Dr. Whittaker") and shall become effective on July 1, 2018. The Board and Dr. Whittaker may hereinafter be collectively referred to as "the Parties."

RECITALS

WHEREAS, the Board of Trustees has conducted an extensive nationwide and public search for the next President of the University of Central Florida (UCF); and

WHEREAS, the Board has offered Dr. Whittaker the position of President of UCF and Dr. Whittaker has accepted such offer subject to execution of this agreement and ratification by the Florida Board of Governors; and

WHEREAS, the parties desire to memorialize the terms and conditions of Dr. Whittaker's employment as President of UCF in this agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1.0 Term. The Board shall employ Dr. Whittaker as its President for a term beginning on July 1, 2018 and ending on June 30, 2022. If this Agreement is not renewed, Dr. Whittaker shall be eligible for any incentive compensation awards earned in accordance with Section 4.3, subject to applicable withholding and employment taxes.

Section 2.0 Powers and Duties. Dr. Whittaker shall be the President of the University, subject to UCF regulations and policies, and supervision by the Board. Dr. Whittaker shall have the powers and duties reserved to the position of President by the Delegation of Authority to the President dated October 26, 2017 and as established from time to time by the Board (collectively, the "Duties").

Section 3.0 Goals/Evaluation.

Section 3.1 Goals. On or before November 1 of each year, Dr. Whittaker shall provide to the Chair of the Board of Trustees' Compensation and Labor Committee (the "Committee Chair") a list of proposed goals and objectives for the upcoming year, as well as the next 36 months. The Committee Chair and Dr. Whittaker shall discuss Dr. Whittaker's proposed goals and objectives, after which time the Board, or a committee

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thereof, shall agree upon finalized goals and objectives for the upcoming year and the next thirty-six (36) month period.

Section 3.2 Evaluation. Dr. Whittaker shall initiate the annual evaluation process by submitting to the Committee Chair a summary his performance during the previous twelve (12) months. Dr. Whittaker will submit the summary by November 1 of each year. This appraisal shall address performance related to each of the goals and objectives established during the previous year. After Dr. Whittaker has submitted this summary, the Board shall evaluate his performance during the previous appraisal period based primarily on his achievement of the mutually agreed upon goals and objectives and to a lesser extent such other criteria as the Board deems appropriate.

Section 4.0 Compensation.

Section 4.1 Annual Base Salary. As compensation for the services to be performed by Dr. Whittaker pursuant to this Agreement, the Board shall pay Dr. Whittaker an initial annual base salary of \$ 506,000. No more of this amount than is allowed by Florida Statutes shall be paid from public funds. The base salary shall be payable according to the pay plan for administrative faculty employees at the University, with appropriate deductions for taxes and benefits. The Board shall review Dr. Whittaker's compensation in connection with the annual evaluation of his performance, as set forth in Section 3.2 of this Agreement.

Section 4.2 Deferred Compensation. While employed as University President, Dr. Whittaker shall receive annual deferred compensation equal to 20% of base salary, payable quarterly. To the maximum extent possible, this sum should be provided through qualified plans (e.g. 403(b), 457, etc.).

Section 4.3 Incentive Compensation. Dr. Whittaker shall be eligible for an annual incentive award, based on the accomplishment of the 36 month goals, established pursuant to section 3.0, for the just concluded three (3) year period in accordance with the Performance Unit Plan (PUP) approved by the Board. If such goals are attained, as determined by the Board, the Board shall pay to Dr. Whittaker a lump sum incentive award. This long-term incentive compensation may be revised for future three-year periods based solely on the discretion of the Board. Amounts earned under the PUP are payable after the conclusion of the three-year performance period and shall be paid in a lump sum (less applicable taxes and deductions) on or before December 31 following the completion of the performance period. As Dr. Whittaker is already a participant in the PUP, on July 1, 2018, Dr. Whittaker shall be awarded additional points under the PUP based upon his new compensation as President and distributions under the PUP shall thereafter be based upon the increased points.

Section 5.0 Benefits.

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Section 5.1 Standard Benefits. While employed as University President, Dr. Whittaker shall be eligible to participate in all present and future benefit plans maintained by the University for administrative faculty employees. Such benefits shall include, without limitation, health care, disability and life insurance programs, retirement plans, tax-deferred savings plans, flexible spending accounts, and vacation and sick leave.

Section 5.2 Business/Travel Expenses. While employed as University President, the University shall cover the cost of Dr. Whittaker's reasonable business expenses, including professional dues, meetings, business travel, and entertainment.

Section 5.3 Automobile. While employed as University President, the University shall provide Dr. Whittaker with a monthly automobile allowance of \$800 which will be increased five percent per year.

Section 5.4 Relocation Expenses. The University shall reimburse Dr. Whittaker's reasonable relocation expense in connection with his employment as President of UCF.

Section 5.5 Executive Health and Wellness Program. Dr. Whittaker shall be entitled to participate in a Florida-based executive health and wellness program of his choice and shall be entitled to reimbursement of any amounts not covered by his current health insurance policy.

Section 6.0 Housing. For the benefit and convenience of the University in having the functions of the Office of President most efficiently discharged, while employed as University President, Dr. Whittaker shall be required to reside in the University-owned Burnett House, at the University's expense, during the term of this Agreement. The University shall provide staff with responsibilities for grounds-keeping, repairs, housekeeping services, and general maintenance of the Burnett House and cover all related expenses, including utilities.

For the convenience of the University, the Burnett House shall be available and shall be used for University-related business and entertainment on a regular and continuing basis. Costs associated with such University events shall be paid by the University. If it is not feasible to entertain at the Burnett House due to a large number of invited guests, the University shall provide Dr. Whittaker with another location suitable to host such events and will bear the costs.

Section 7.0 Outside Activities. Dr. Whittaker agrees to faithfully, industriously, and with maximum application of experience, ability, and talent, devote full-time attention and energies to his duties as President. The expenditure of reasonable amounts of time for personal or outside business, as well as charitable and professional development

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activities, shall not be deemed a breach of this Agreement, provided such activities do not interfere with the Duties. Dr. Whittaker shall not engage in any activity that may be competitive with or adverse to the best interests of the Board and the University.

With prior approval from the Board, and subject to state statutes regarding conflicts of interest/commitment, Dr. Whittaker may serve on up to two (2) boards of directors of for-profit or corporations. Any and all income or other compensation earned by Dr. Whittaker in connection with board service shall be paid to and retained by him, and such income or other compensation shall have no effect on the amount of salary, compensation, and benefits (he/she) is otherwise entitled to receive hereunder. Dr. Whittaker shall use annual leave when attending to matters pertaining to such personal service if it is during normal work hours and requires a half day or more. Dr. Whittaker may also serve on any national, state or local boards which further the interests of UCF and such service shall not be deemed personal in nature.

Section 8.0 Tenure. Dr. Whittaker has previously been granted a tenured faculty appointment at the rank of professor in the College of Engineering with all rights and privileges associated with such appointment.

Section 9.0 Termination/Resignation

Section 9.1 Termination for Cause. The Board may terminate this Agreement and Dr. Whittaker's employment hereunder for Cause. Cause for this purpose shall mean any one or more of the following:

- A. Neglect or inattention by Dr. Whittaker to the duties of President of the University or Dr. Whittaker's refusal or unwillingness to perform such duties in good faith and to the best of Dr. Whittaker's abilities after reasonably specific written notice of such neglect or inattention has been given to Dr. Whittaker_ from the Chairman of the Board of Trustees and Dr. Whittaker has continued such neglect or inattention during a subsequent period specified by the Board of not less than ninety (90) days; or
- B. Material, significant or repetitive violation or breach by Dr. Whittaker of this Agreement; or
- C. Conviction, a plea of guilty, or a plea of nolo contendere by Dr. Whittaker to a felony, or to a misdemeanor involving moral turpitude; or
- D. Fraud or dishonesty of Dr. Whittaker_ in the performance of his duties or responsibilities hereunder; or

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- E. Fraud or dishonesty of Dr. Whittaker in the preparation, falsification or alteration of documents or records; or
- F. Knowing failure by Dr. Whittaker to obtain prior approval for outside activities as required by law or this Agreement; or
- G. Commission of or participation in any act, situation, or occurrence by Dr. Whittaker which brings Dr. Whittaker into public disrepute, contempt, scandal or ridicule or failure by Dr. Whittaker_ to conform his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon University's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty, misrepresentation, fraud, or violence that may or may not rise to a level warranting criminal prosecution by the relevant authorities.

In the event the Board determines there are grounds to terminate Dr. Whittaker for cause pursuant to sub-paragraphs B through G, the Board may terminate Dr. Whittaker's employment in any capacity with UCF. and Dr. Whittaker shall no longer be entitled to receive any compensation under this agreement and shall forfeit any additional compensation accrued but not earned pursuant to paragraph 8.5. The Board may suspend Dr. Whittaker for a period not to exceed ninety (90) days for any one or more of the acts or omissions representing grounds for termination for cause under this sub-paragraph without waiving the right of termination. During a period of suspension under this sub-paragraph, Dr. Whittaker shall only be entitled to receive the base salary provided by section 4.1. If the Board terminates Dr. Whittaker's employment for Cause pursuant to sub-paragraph A, Dr. Whittaker may continue to be employed by UCF as a full professor with the compensation described in paragraph 9.3

Section 9.2 Termination Without Cause. The University may terminate this agreement without cause at any time for the convenience of the University upon thirty (30) days prior written notice to Dr. Whittaker. In that event, Dr. Whittaker shall be entitled to receive a lump sum payment equal to twenty weeks of base salary or return to faculty at a salary of 85% of base salary. Dr. Whittaker's death or permanent disability as defined in Section 9.4, shall not constitute termination without cause.

Section 9.3 Resignation as President. In the event Dr. Whittaker resigns his employment as President of the University in a timely manner that is acceptable to the Board, and elects to return to the tenured faculty in a teaching, research or service role, Dr. Whittaker shall be paid 85 % of his base salary and shall have the option of spending the first academic year (two semesters) immediately following his resignation on sabbatical, to prepare for his return to faculty, providing that such sabbatical is subject to

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the terms and conditions of the University's sabbatical program, including, without limitation, Dr. Whittaker's agreement to repay the University any salary he receives while on sabbatical if he does not return to the University for at least two consecutive semesters (excluding summers) immediately following participation in the sabbatical program. No other benefits or compensation referenced in this Agreement shall continue. However, Dr. Whittaker shall be eligible for any incentive compensation awards heretofore granted in accordance with Section 4.3.

Section 9.4 Death/Permanent Disability. In the event Dr. Whittaker is unable to complete the term of this Agreement due to death or permanent disability as defined in section 409A of the Internal Revenue Code, (he/she) or his estate shall be entitled to receive an amount equal to one year of base salary (Section 4.1) due under the Agreement. In the case of disability, the one year period shall be calculated beginning with the initial date of disability, and payable on a bi-weekly basis. In the case of death, the payment shall be made within thirty (30) days of due notice by the proper estate authority.

In the event of Dr. Whittaker's death during his service as President, his spouse shall be entitled to remain in the University-owned residence for up to sixty (60) days after Dr. Whittaker's death. The Board, in its sole discretion, may extend this sixty (60) day period.

Section 10.0 Dispute Resolution. The Board and Dr. Whittaker 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. Whittaker agree that they will submit the dispute to binding arbitration in Orlando, Florida, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The Board and Dr. Whittaker agree that an arbitrator may not be a University employee or have any material ongoing relationship with the University. The filing fee and all costs of the arbitration and the arbitrator(s) fees shall be divided equally between the parties. Each party shall bear their own costs of any legal fees associated with the dispute and the arbitration proceeding.

Section 11.0 Notice. 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 to:

If to the University:
Chair, Board of Trustees
University of Central Florida

If to Dr. Whittaker:
Dr. A. Dale Whittaker, President
University of Central Florida

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4365 Andromeda Loop N.
Suite 360
Orlando, FL 32816

4365 Andromeda Loop N.
Suite 360
Orlando, FL 32816

Section 12.0 Severability and Waiver. If any portion of this Agreement shall be held to be invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

Section 13.0 Governing Law. This Agreement shall be interpreted and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of Florida, excluding its choice of law rules.

Section 14.0 Counterparts. This Agreement may be executed in counterparts, and by the parties on separate counterparts each of which, when so executed, shall constitute but one in the same instrument.

Section 15.0 Modification of Agreement. This Agreement represents the complete understanding of the parties and supersedes any previous or contemporaneous written or oral representations made by either party. There are no other promises, understanding, obligations, inducements, undertakings, or considerations between the parties or owed by either party to the other that are not set forth in this Agreement. This Agreement may be modified or amended only by mutual written consent of the parties.

Section 16.0 Personal Contract. The obligations and duties of Dr. Whittaker shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Whittaker and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

Section 17.0 No Trust Fund. 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. Whittaker acquires a right to receive payments from the University under this Agreement, the University's obligation to make such payments represents an unfunded promise or covenant to pay such amount running from the University to Dr. Whittaker.

Section 18.0 Understanding of the Agreement. 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

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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.

Section 19.0 Disclosure of the Agreement. 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 for by law.

Section 20.0 Section 409A. The parties intend that benefits under this agreement are to be either exempt from, or comply with, the requirements of Section 409A of the Internal Revenue Code and the regulations issued thereunder ("Section 409A"), and this Agreement shall be interpreted and administered in accordance with the intent that Dr. Whittaker not be subject to tax under Section 409A. If any provision of the Agreement would otherwise conflict with or frustrate this intent, that provision will be interpreted and deemed amended so as to avoid the conflict. Any reference in this Agreement to "termination of employment", "separates from service" or similar phrase shall mean an event that constitutes a "separation from service" within the meaning of Section 409A. All reimbursements and in-kind benefits shall be provided in accordance with Treasury Regulation Section 1.409A-3(i)(iv).

Section 21.0 Miscellaneous. 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" as used herein, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, committee, or officer of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

IN WITNESS WHEREOF, the President and the authorized representative of the Board of Trustees have executed this Agreement to be effective as of July 1, 2018.

University of Central Florida Board of
Trustees

By: _____
Marcos R. Marchena
Chairman

(Date)

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By: _____
John R. Sprouls
Chair, Board of Trustees Compensation and Labor
Committee

(Date)

By: _____
A. Dale Whittaker

(Date)