



Minutes of the Special Meeting of the Board of Trustees

July 16, 2018

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MINUTES OF THE SPECIAL MEETING OF THE BOARD OF TRUSTEES
SOUTHERN ILLINOIS UNIVERSITY
JULY 16, 2018

Pursuant to notice, a special meeting of the Board of Trustees of Southern Illinois University convened at 10:00 a. m., Monday, July 16, 2018, at Southern Illinois University Edwardsville, Conference Center, Edwardsville, Illinois. The meeting was called to order by Chair Amy Sholar. The following members of the Board were physically present:

Ms. Amy Sholar, Chair
Hon. J. Phil Gilbert, Vice Chair
Mr. Joel Sambursky, Secretary
Mr. Tom Britton
Mr. Brione Lockett
Dr. Shirley Portwood
Dr. Marsha Ryan – via teleconference
Ms. Molly Smith
MG (Ret) Randal E. Thomas

Present for the duration of the meeting were: Mr. Luke Crater, General Counsel; and Ms. Misty Whittington, Executive Secretary of the Board. Present for a portion of the meeting were: Dr. J. Kevin Dorsey, Interim President; Dr. Randall Pembroke, Chancellor, SIUE; and Dr. Jerry Kruse, Dean and Provost, SIUC School of Medicine. Dr. Carlo Montemagno, SIUC Chancellor, was absent.

The Executive Secretary reported and the Chair determined that a quorum was physically present.

Vice Chair Gilbert made a motion to allow Trustee Ryan to participate in the meeting via teleconference. The motion was duly seconded by Secretary Sambursky. The motion passed unanimously via voice vote.

The Chair stated that there would be a Public Questions and Comments portion available at the day's meeting.

Dr. Jonathan Bean, SIUC Faculty Senate, spoke to the Board. He reported that the SIUC Faculty Senate voted 25 to 1 in favor of removing the President. He expressed thanks to the Board for resolving a situation that brought ill-repute to the SIU system and distracted the University from its core mission of educating and mentoring students. He noted that 2018 had been a dark period for the SIU system, but he hoped it preceded an era of better relations between the campuses. He asked that the Board encourage closer ties between faculty on both SIUE and SIUC campuses which could help dispel information on all sides and forge more cooperative endeavors between the campuses. He welcomed new leadership, and he looked forward to what Interim President Dorsey had to say to constituency bodies on the SIU campuses. He spoke to the need for SIUC to have stable leadership at the system level as the SIUC campus is reorganized. Further, Dr. Bean requested better relations on the Board of Trustees. He noted the issue the Board dealt with was serious and important, and the public drama surrounding its decisions had not been good for the SIU system. He offered that the drama may have been unavoidable, but SIU needed an improved public image which is the responsibility of the faculty, staff, campus leaders, and Board.

Dr. Mike Eichholz spoke to the Board. He noted that he was an associate professor in the department of zoology at SIUC. He spoke to the difficult work that had brought the group together for the meeting. He said that those from Carbondale realized that many of the events that had occurred sprang from legitimate concerns of their Edwardsville colleagues. He expressed hope that their Edwardsville colleagues would be

interested in collaborating and hearing each other's perspectives. He reported that the Carbondale campus was developing a cultural transition from an academic bureaucracy that emphasized organizational preservation to an academic enterprise emphasizing social transformation through a more entrepreneurial approach to achieving the University's mission. He went on to say that it would be achieved first by better directing university activities, achieving the stated mission of providing access to students with both many and few resource opportunities, while conducting research and creative activities that support the innovative advances, teaching mission, and benefits the region and nation. He believed the mission was accepted and supported by the Carbondale campus community and that a strong united system that served two campuses would best allow the mission to be achieved. He reported there was a feeling of optimism on the campus regarding its cultural transition. He noted that the day's actions would allow the campus to proceed in the endeavor with fewer obstacles and distractions. He recognized the Board's hard work for the system ultimately finding a way to move forward. He offered assistance to help the campuses to begin healing.

Ms. Gretchen Fricke, University Staff Senate, SIUE, made her presentation to the Board. She noted that she was the director of student services in the School of Education, Health and Human Behavior at SIUE. She thanked President Dunn for his service to students over the course of his career. Ms. Fricke observed that President Dunn had repeatedly shown he was a strong leader and was one who valued fairness and equity. She urged the Board and President's Office to look for ways to heal the divisions and fractures that had occurred over the past few months among Board members and within the system. She reviewed that the Board had received comments

from one campus that had feelings of being undervalued. Further, she urged that Board members use caution in speaking publically and to refrain from rehashing events or making editorial pieces in the press as prospective parents and students read about the discord and all campuses lose ground in terms of enrollment. She reviewed a number of articles had been in the *Chronicle of Higher Education* and local newspapers regarding recent events. Ms. Fricke observed that there was much competition in higher education from private and out-of-state schools offering better deals than SIUC or SIUE could offer and no campus in the system could afford an enrollment drop due to continued negative publicity.

Mr. Collin VanMeter, SIUE University Staff Senate, made his presentation to the Board. Mr. VanMeter noted that he was employed in the SIUE Information Technology Department. He noted that he had spoken to the Board several times attempting to persuade the Board to look past partisanship and work together to lift the system up beyond divisiveness. He stated that the Board had lost the faith of the SIUE campus. He challenged the Board to look from a new perspective and to see SIUE as a member of the system that felt betrayed and ignored. He spoke to the need for the Board to regain the trust and faith of the campus members. He asked the Board to be visible and to meet with members of all the campus communities to show the campus that the Board members are invested in the University system.

Dr. Marcus Odom made his presentation to the Board. He noted that he was a professor and taught faculty fellows in the SIUC School of Accountancy. Dr. Odom reported that SIU had two great universities with both losing enrollment. He spoke to the need for the Board to understand the differences between a Carnegie rated research and

a Carnegie rated master's university. He went on to say that when examining different funding models, a good consultant would need to be hired who would understand that there are differences in faculty salaries, infrastructures, libraries, and in the cost. He noted that the Illinois Board of Higher Education had cost studies that show differences in cost that need to be taken into consideration. He noted his own research found that the costs were quite a bit different than what was originally presented to the Board at its April meeting. Dr. Odom expressed a desire for both universities to succeed. He reported that both Carbondale and Edwardsville had great missions but they were different missions with one being a high research university and the other being a master's level university. Dr. Odom stated that he looked forward to the future to hiring a great consultant to come up with a funding model that would fund the universities the way they both should be funded.

Dr. Duff Wrobbel made his presentation to the Board. He noted that he had worked for SIUE for 25 years. Dr. Wrobbel reviewed data for SIUE that it received 37 percent of the system budget with nearly identical student populations, the campuses were 8 percent apart on total credit, 6 percent on ICR, and 4 percent on graduate. He noted that 2 percent credit hour production and per capita grant production was higher at SIUE even though faculty had a 50 percent higher teaching load, twice as much campus to take care of, and half as many staff. He reviewed that SIUE provided a safer environment, its students earned higher average starting salaries, and they were charged \$2,000 less per year. Dr. Wrobbel noted that President Dunn had performed the job that the Board hired him to do by developing a new funding plan. He reviewed that SIUE faculty had raised concerns about a funding plan to the Board 16 months earlier when the

Board loaned SIUC \$35 million from SIUE. He praised President Dunn for his action on behalf of SIUE, and he challenged the Board and new President to develop a funding plan.

At 10:11 a.m., Chair Sholar moved that the Board take a ten-minute recess and reconvene in the Board Room for the executive session portion of the meeting.

At 10:26 a. m., Trustee Thomas moved that the Board go into closed session for the purpose of considering pending, probable or imminent court proceedings against or on behalf of the Board; and information regarding appointment, employment, compensation, discipline, performance or dismissal of specific employees of the public body. The relevant sections of the Open Meetings Act Statute that allow for the closed session are 5 ILCS 120/2(c) (1), (11). The motion was duly seconded by Trustee Britton. The motion carried by the following recorded vote: aye, Mr. Tom Britton, Hon. J. Phil Gilbert, Dr. Shirley Portwood, Dr. Marsha Ryan, Mr. Joel Sambursky, Ms. Amy Sholar, Maj. Gen. Randal E. Thomas; nay, none.

At 12:07 p.m., Trustee Britton made a motion to return to open session. The motion was duly seconded by Trustee Thomas. The motion carried via voice vote. Chair Sholar made a motion to take a 10-minute recess and reconvene in the Conference Center for the open portion of the meeting.

At 12:16 p.m., the Board resumed the meeting in open session.

The following item was presented: Consideration of Separation Agreement of President.

SEPARATION AGREEMENT AND RELEASE

This Agreement and Release (“Agreement”) is executed, entered into and delivered, effective as of this 16th day of July, 2018 (the “Execution Date”), by and among (i) the Board of Trustees of Southern Illinois University, a body politic and corporate of the State of Illinois, (the “Employer” or “Board”), and (ii) Dr. Randy Dunn (the “Employee”), in order to state, prescribe and describe the following terms and conditions relating to Employee’s retirement/termination of the employment relationship which exists between the Employer and the Employee prior to the Termination Date. The Employer and the Employee are collectively referred to, in this Agreement, as the “Parties,” and either the Employer or the Employee may be separately identified, in this Agreement, as a “Party.”

WHEREAS, The Board employed Employee as President of Southern Illinois University pursuant to an employment agreement dated February 17, 2014 and amended on December 9, 2016 (hereinafter “Employment Agreement”); and

WHEREAS, The Board and Employee mutually agree to termination of that Employment Agreement prior to its expiration date of June 30, 2022; and

WHEREAS, the Parties enter into this Agreement in good faith in order to effectuate such retirement and termination of the employment relationship pursuant to the Employment Agreement, to waive any and all claims by Employee and Employer, and otherwise address the Parties’ interests and responsibilities going forward.

NOW THEREFORE, in consideration of the mutual covenants, promises and consideration contained herein, the Parties agree as follows:

ARTICLE 1: TERMINATION DATE

Employee hereby irrevocably retires from his employment with Employer effective 4:30 p.m. Monday, July 30, 2018. Employee certifies that he is eligible for retirement under the applicable laws, rules, regulations, and policies of the State University Retirement System (hereinafter “SURS”). Employee shall be solely responsible for applying for retirement benefits and completing all paperwork required by SURS. Any such retirement shall be in accordance with SURS rules and regulations. Employee shall be on leave for the period July 17, 2018 through July 30, 2018. Employee will continue to be paid based upon his annual salary up through the retirement date of July 30, 2018. Employee shall not perform any duties or responsibilities on behalf of the Employer or otherwise represent himself as President of Southern Illinois University.

ARTICLE 2: CONSIDERATION

2.01 In consideration of the execution and delivery of this Agreement by the Employee, Employer agrees to make a 6 month severance payment in the amount of Two Hundred and Fifteen Thousand and 00/100 Dollars (\$215,000.00)

to Employee on or before August 31, 2018. In further consideration of the execution and delivery of this Agreement by the Employee, Employer agrees to hire Employee, effective January 1, 2019, in the capacity of a visiting professor on its Southern Illinois University Edwardsville campus (hereinafter "SIUE") in accordance with the applicable policies and procedures at an annual salary of One Hundred Thousand and 00/100 Dollars (\$100,000) per year. Employer agrees to hire and employ Employee as detailed above for a minimum period of eighteen (18) months so that Employee is employed as a visiting professor in a department in line with Employee's discipline beginning on January 1, 2019, through the completion of the Spring 2020 semester, with the agreement that said visiting professorship does not include teaching during the 2019 Summer semester and that the employee would be assigned a 2/2 course load so that he would be able to pursue research opportunities. Employee and Employer agree that said visiting professorship may continue after the Spring 2020 semester if the Parties to this agreement should desire and mutually agree to terms at that time; however, nothing herein guarantees such visiting professorship shall continue beyond the Spring 2020 semester. Any such employment shall be in accordance with all applicable laws, rules, and regulations and shall be in accordance with Southern Illinois University Edwardsville's policies and procedures for the hiring of retirees receiving benefits under SURS. Employer and Employee agree that if Employee is receiving a retirement annuity through SURS, Employee shall not accept employment which would qualify him as an "affected annuitant" under the Illinois Pension Code, SURS, or any rules, regulations, policies, or procedures thereunder. Employee further agrees that he will ensure that any compensation he receives from SURS covered employers, including but not limited to SIUE, shall not exceed 40% of his highest annual earning prior to retirement. Employee agrees that if he receives earnings from a SURS covered employer(s) in excess of 40%, he shall hold Employer harmless and indemnify Employer for any amounts Employer is required to pay due to Employee's affected annuitant status or by Employee earning in excess of the amounts described herein. If an external agency determines that Employee has violated any rules, laws, or policies of the state of Illinois or Southern Illinois University, Employee agrees that Employer's obligation to employ him in any capacity at Southern Illinois University shall immediately cease. Further, if Employee is then currently employed by Employer, Employee's employment shall cease immediately and automatically upon the issuance of the finding.

2.02 Employer shall pay Employee pursuant to its regular payment schedule for accrued but unused vacation leave and for any other reimbursements or payments that employee would be entitled to or that have accrued through the termination date of July 30, 2018, pursuant to the terms and conditions of the Employment Agreement and the policies of Southern Illinois University which are in effect on the Execution Date.

2.03 Employer shall withhold from any payment to Employee all applicable state and federal taxes, State University Retirement System withholdings, if any, and all other appropriate payroll or other withholdings for any payment delivered to Employee pursuant to this Agreement and Release under the same terms and conditions as are applicable to such other employees. Employer shall issue all

appropriate tax forms to the Employee, as and when such tax forms are due. Employee is solely responsible to pay any and all tax liabilities which he might incur as a result of receipt of any of the Payments or other remuneration described in this Agreement. Employee agrees to indemnify and hold Employer harmless as to any and all claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity which may be asserted against Employer as to any amounts claimed to be due from Employee by virtue of this Agreement or pursuant to any claims which are asserted under any federal or state tax laws, as well as any costs, expenses or damages sustained by Employer by reason of any such claims, including, without being limited to, any amounts paid by Employer as taxes, attorneys' fees, deficiencies, levies, assessments, fines, penalties, interest or otherwise. The Parties agreed that Employer and its counsel have not made any representations to Employee or his counsel relating to tax-related matters pertaining to this Agreement, and that Employee and his counsel have had an opportunity to consult with tax advisors of their own choosing regarding tax-related matters pertaining to this Agreement.

ARTICLE 3: RETURN OF PROPERTY

Employee shall vacate Employer's offices no later than the end of the day of the Execution Date and he shall return and deliver to Employer, no later than three (3) business days following the Execution Date, all of Employer's property which is then in Employee's possession, including, but not limited to: automobile; computers, ipad or other electronic devices; software systems, programs or applications, including access passwords; credit cards; keys to any of the Employer's facilities, buildings, offices, or other real or personal property; Employee identifications issued by Employer; cellular telephone and/or pager; data system access codes; personnel manuals; and any other proprietary information, documents or materials which Employee has received from Employer during the course of Employee's employment by Employer. It is fully understood and agreed to by the parties that Employee is not obligated under this Agreement to return any computers, ipad or other electronic devices; software systems, programs or applications, including access passwords; credit cards; keys to any of the Employer's facilities, buildings, offices, or other real or personal property; Employee identifications issued by Employer; cellular telephone and/or pager; data system access codes; personnel manuals; and any other proprietary information, documents or materials which Employee receives from Employer after the date of Execution of this Agreement that may be issued in conjunction with his visiting professorship with the Southern Illinois University Edwardsville campus beginning on January 1, 2019.

ARTICLE 4: RELEASE OF CLAIMS

4.01 For purposes of this Agreement, the term "Claim(s)" will include, but is not limited to, the following:

- a. any and all actions, causes of action, proceedings, demands, suits, grievances, debts, complaints, claims, liabilities, obligations,

promises, agreements, controversies, losses, damages and expenses (including attorneys' fees and other costs actually incurred), of any nature whatsoever;

b. any action or claim under federal, state or local law, regulation or executive order, including, but not limited to, actions or claims under Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1866, as amended; the Equal Pay Act, as amended; the Fair Labor Standards Act, as amended; the Age Discrimination in Employment Act, as amended (including the Older Workers Benefit Protection Act); the Americans With Disabilities Act, as amended; the Worker Adjustment Retraining and Notification Act, as amended; the Employee Retirement Income Security Act of 1974, as amended; the Family and Medical Leave Act, as amended; the National Labor Relations Act, as amended; the Occupational Safety and Health Act of 1970, as amended; and the Illinois Human Rights Act;

c. any action or claim for compensation, benefits, backpay, frontpay, defamation, reinstatement, wrongful discharge or demotion, any constitutional claim, failure to hire, promote or transfer, promissory estoppel, breach of contract or of an implied covenant of good faith and fair dealing, emotional distress, compensatory damages, punitive damages, attorneys' fees, and/or loss of seniority; and any action or claim based on or related to a service letter;

d. any action or claim pursuant to any formal or informal Board policy, practice or procedure;

e. any dispute between the Employee, the Employer, or any member of the Employer's Board, or any of the Employer's employees arising prior to the date of this Agreement.

4.02 In consideration of the promises and payments referred to in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, Employee hereby releases, remises, waives, absolves, and forever discharges the Employer and its current and former employees, Board members, agents, attorneys, representatives, insurers, successors, and assigns of and from any and all claims, demands, causes of action, losses, and liabilities of any kind or nature, whether known or unknown, whatsoever, including, but not limited to, any claims for damages, equitable relief, attorneys' fees, interest, and costs, and any other relief of any kind or nature, whether direct or indirect, contingent or accrued, liquidated or unliquidated, known or unknown, suspected or unsuspected, foreseen or unforeseen, at law or in equity, accruing at any time prior to the date this Agreement is fully executed.

Employee further acknowledges that the consideration provided to him pursuant to this Agreement represents full and complete satisfaction of any and

all monetary and non-monetary Claims he has or might have against the Employer.

Employee has certain federal rights which must be explicitly waived. Specifically, Employee is protected by the Age Discrimination in Employment Act ("ADEA") from discrimination in employment because of age. Employee understands that by executing this Agreement, Employee is waiving such rights and releasing any past or current Claims with respect to any claimed violation of such rights.. Employee further acknowledges that he may revoke his acceptance of this Agreement for a period of seven (7) days after execution, and that this Agreement shall not become effective or enforceable until after the seven (7) day period has expired. Notwithstanding anything else in this Agreement, ADEA age claims that may arise after execution of this Agreement are excluded from this release.

In consideration of the promises referred to in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, Employer hereby releases, remises, waives, absolves, and forever discharges the Employee and his agents, attorneys, representatives, insurers, successors, and assigns of and from any and all claims, demands, causes of action, losses, and liabilities of any kind or nature, whether known or unknown, whatsoever, including, but not limited to, any claims for damages, equitable relief, attorneys' fees, interest, and costs, and any other relief of any kind or nature, whether direct or indirect, contingent or accrued, liquidated or unliquidated, known or unknown, suspected or unsuspected, foreseen or unforeseen, at law or in equity, accruing at any time prior to the date this Agreement is fully executed.

Employer further acknowledges that the consideration provided pursuant to this Agreement represents full and complete satisfaction of any and all monetary and non-monetary Claims it has or might have against the Employee.

4.03 Employee, in addition, by the execution and delivery of this Agreement, represents and warrants to Employer, and Employee expressly covenants with Employer, that Employee will not institute any litigation against Employer and its current and former employees, Board members, agents, attorneys, representatives, insurers, successors, and assigns in any state or federal court or other forum, on the basis of any of the Claims which are described and enumerated in this Agreement.

Employer, also, by the execution and delivery of this Agreement, represents and warrants to Employee, and Employer expressly covenants with Employee, that Employer will not institute any litigation against Employee, his agents, attorneys, representatives, insurers, successors, and assigns in any state or federal court or other forum, on the basis of any of the Claims which are described and enumerated in this Agreement.

4.04 If Employee subsequently acts so as to violate, or be in breach of, any of the preceding terms or provisions of this Article 4, then, Employee

stipulates and agrees that Employer may recover, from Employee, all of the attorneys' fees, litigation costs and related expenses which Employer incurs as a result of Employee's actions.

If Employer subsequently acts so as to violate, or be in breach of, any of the preceding terms or provisions of this Article 4, then, Employer stipulates and agrees that Employee may recover, from Employer, all of the attorneys' fees, litigation costs and related expenses which Employee incurs as a result of Employer's actions or inaction.

4.05 To the extent that any state or federal law, which is in existence on the Execution Date of this Agreement, precludes the waiver or release by Employee of a particular Claim, including the right to file a charge of discrimination with an administrative agency, Employee, by the execution and delivery of this Agreement, is nevertheless waiving and releasing any and all rights which Employee may otherwise be entitled to exercise to recover any monetary damages from Employer in connection with any such charge of discrimination.

ARTICLE 5: CONFIDENTIALITY

5.01 Except to the extent required by law, Employee will not divulge or disclose to any person, university, corporation, firm, association, partnership, limited liability company, agency or any other entity any information concerning or related to this Agreement, or any of the business of Employer, including financial data, contractual relationships, organizational ownership or structure, management, marketing or other strategic plans, operating policies or procedures, or any other proprietary or confidential information (collectively, the "Confidential Information") of Employer. The preceding provisions of this Article 5.01 notwithstanding, however, Employee may divulge the existence of this Agreement, and he may disclose the contents of this Agreement on a strictly limited basis to his spouse and attorneys and/or accountants who are specifically engaged or retained by him to advise him concerning this Agreement if such persons acknowledge, in the form of a written communication, delivered to the Employee, that (i) the existence of this Agreement is confidential and (ii) none of the terms or provisions of this Agreement may be further disclosed to another person or entity unless that disclosure is required by law. Except to the extent required by law, Employer will not divulge or disclose to any person, university, corporation, firm, association, partnership, limited liability company, agency or any other entity any Confidential Information supplied to it by Employee. The preceding provisions of this Article 5.01 notwithstanding, however, Employer may divulge the existence of this Agreement, and it may disclose the contents of this Agreement on a strictly limited basis to its employees or agents or auditors as necessary for business operations and/or to carry out the terms of this Agreement or as otherwise required by law. Further, the preceding provisions of this Article 5.01 notwithstanding, Employer may divulge the existence of this Agreement, and may disclose the contents of this Agreement on a strictly limited basis to external attorneys and/or accountants who are specifically engaged or retained concerning this Agreement if such persons acknowledge, in the form of a written

communication, delivered to the Employer, that: (i) the existence of this Agreement is confidential and (ii) none of the terms or provisions of this Agreement may be further disclosed to another person or entity unless that disclosure is required by law.

5.02 The Parties acknowledge that a Party would sustain immediate and irreparable injuries if the other Party violated any of the provisions or covenants which are contained in this Article 5. The Parties, consequently, stipulate that the non-breaching Party, if it so elects, may seek injunctive relief to enforce this Agreement, or to avert a threatened or impending violation or breach of this Agreement by the other Party.

5.03 The Parties acknowledge, in addition, that the equitable remedies which are specifically enumerated in Section 5.02 are not exclusive. Rather, such remedies are in addition to any other remedy which is available to the non-breaching Party under the law of the state of Illinois, or which is permitted under this Agreement, in the event of a violation or breach of this Agreement by the other Party.

5.04 If a Party is required to divulge or disclose any of the Confidential Information, subsequent to the Execution Date, by virtue of the issuance of a subpoena or other judicial order, such Party, prior to disclosing that Confidential Information, will timely notify the other Party so as to afford the other Party a reasonable opportunity to object to the requested disclosure.

ARTICLE 6: ADDITIONAL COVENANTS AND STIPULATIONS

6.01 Employee further acknowledges, stipulates and agrees that:

(i) Employee is entering into this Agreement knowingly and voluntarily;

(ii) Employee has been advised by the Employer to consult with an independent attorney, selected by the Employee, before signing this Agreement and has consulted with such an attorney;

(iii) Employee has been allowed a reasonable opportunity and period of time to consider the implications and ramifications of this Agreement before signing this Agreement;

(iv) Employee is aware that the Employee is allowed a twenty-one (21) day period to review and consider this Agreement before the Employee signs and delivers this Agreement to the Employer;

(v) except as a consequence of this Agreement or otherwise set out herein, the Employee is not otherwise entitled to receive any payment or remuneration or other employee benefits;

(vi) this Agreement constitutes the entire contract and settlement arrangement between the Employee and the Employer concerning the termination of Employee's employment relationship with Employer; and

(vii) this Agreement has been individually negotiated between Employee and Employer, and is not part of a group exit incentive or other group employment termination program being administered by Employer.

6.02 Employee will cooperate fully with Employer in the defense of any claims brought against Employer and the prosecution of any claims by Employer which arise out of or are related to Employee's employment by Employer. Such cooperation shall include, but not be limited to, consultations, as well as presence for preparation and testimony at a deposition, trial or otherwise.

6.03 Nothing in this paragraph is intended to limit the Parties' obligation to cooperate fully with any governmental or law enforcement agency, or to provide full, complete, and truthful testimony in any proceedings.

6.04 The Parties agree that this Agreement is not and will not be construed as an admission of liability or wrongdoing on the part of either Party.

6.05 Subject to applicable law, Employee covenants and agrees that he will not in any way publicly disparage, call into disrepute, defame, slander, or otherwise criticize Employer its current and former employees, Board members, agents, attorneys, representatives, insurers, successors, and assigns of and from any and all claims, demands, causes of action, losses, and liabilities of any kind. Employer covenants and agrees that Employer's Board members, agents, attorneys, representatives, insurers, successors, and assigns will not in any way publicly disparage, call into disrepute, defame, slander, or otherwise criticize Employee.

ARTICLE 7: GENERAL PROVISIONS

7.01 Amendments. No amendment of this Agreement will be valid or enforceable unless the amendment is reduced to writing and is then respectively executed and delivered by Employer and Employee.

7.02 Construction. This Agreement will be enforced, construed, interpreted and governed, in all respects, by and under the law of the state of Illinois, without any regard to or consideration of state or federal choice of law provisions. Any action filed by Employee related to disputes arising under this Agreement is subject to the Illinois Court of Claims Act. All such actions shall be brought before a proper state or federal court of competent jurisdiction in the state of Illinois.

7.03 Attorneys' Fees, Costs and Expenses. The Parties agree to bear their own costs and attorneys' fees regarding this matter except as detailed in this Section 7.03 below. The prevailing party in any action to enforce the substantive provisions of this Agreement, or for breach of this Agreement, shall

be entitled to recover reasonable attorneys' fees and costs incurred in connection with the prosecution or defense of that action, including any appeal of the action, in addition to all other relief awarded by the court. The prevailing party within the meaning of this section shall include, without limitation, a party who successfully brings or defends an action against or by the other party for sums allegedly due or performance of covenants allegedly breached, or that party who obtains and/or defends substantially the relief sought in the action.

7.04 Enforcement. The invalidity or unenforceability of any particular provision of this Agreement will not invalidate the remaining provisions of this Agreement and, in that event, this Agreement will be construed in all respects as if such invalid or unenforceable provision were omitted and deleted.

7.05 Equal Participation. Employer and Employee have each been afforded an equal opportunity to negotiate the terms and conditions of this Agreement, without regard to which Party has been the actual drafter of this Agreement.

7.06 Notices. Any notices which are required under or which are otherwise prescribed by this Agreement must be in writing and must either be (i) hand-delivered to the Party entitled to the notice; (ii) shipped by courier services; or (iii) mailed, with first-class postage prepaid, to the Party entitled to the notice by registered or certified mail, return receipt requested, at the following addresses, or such other alternative addresses as the Parties may respectively specify, in writing, subsequent to the Execution Date of this Agreement:

Employer: Attention: General Counsel
Southern Illinois University
1400 Douglas Drive, Mail Code 6801
Carbondale, IL 62901

Employee: Dr. Randy Dunn

With a Copy to: Shane M. Moskop
Freeark, Harvey, & Mendillo, P.C.
115 W. Washington Street,
Belleville, IL 62220

A notice will be deemed to be received in subparagraph (i), on the date of the actual receipt of the notice by the Party entitled to the notice, and in subparagraphs (ii) and (iii), on the date of the mailing of the notice.

7.07 Successors. The covenants, terms and conditions which are contained in this Agreement bind and inure to the benefit of Employer and Employee, and all of their respective successors in interests and/or assigns, and, in addition, as applied to Employer, all of Employer's subsidiaries, affiliates, officers, directors, employees, agents and independent contractors.

7.08 Waiver. The waiver by a Party of a violation or breach by the other Party of any provision of this Agreement will not operate or be construed as a waiver by that Party of any subsequent violation or breach of this Agreement by the other Party.

7.09 Headings. The Article titles and other headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

In witness whereof, the Employer and the Employee have respectively executed and then delivered this Agreement in pursuance of the uses and purposes which are described and contained in this Agreement.

Employer:

Employee:

Board of Trustees of
Southern Illinois University

By: _____
Amy Sholar
Chair

Dr. Randy Dunn

Vice Chair Gilbert expressed his support of the separation agreement negotiated between the Board's General Counsel and President Dunn's attorney. He acknowledged that paying \$215,000 was not preferable to some, but due to his more than 30 years in litigation he felt the agreement was in the best interest of the SIU system and its future. He explained that President Dunn entered into a presidential employment contract with the Board of Trustees on February 17, 2014, for an initial term of four years ending February 16, 2018. Section 3.2 of the agreement was a renewal provision and in

December of 2016, President Dunn's contract was renewed through June 30, 2022. He went on to say that the renewal agreement also amended the termination without cause provision to provide the equivalent of three years' annual base salary for almost \$1.3 million for terminating him without cause. All other aspects of the original agreement would remain in effect. In addition, President Dunn was granted a tenured appointment at SIUC at the rank of professor in a college appropriate to his discipline pursuant to SIUC policy. Section 4.1 of the initial agreement provided that the Board may terminate the agreement at any time for just cause and listed several factors that would be considered just cause. Vice Chair Gilbert noted that it was not totally clear from his reading of the agreement that if the Board terminated the agreement for a just cause that President Dunn might still be able to exercise his right to a tenured appointment. He further noted that the agreement had an alternative dispute resolution provision that if the parties could not resolve a dispute on their own, the dispute would be submitted to a mediator. He went on to say that if the provision were invoked by President Dunn the process could take many months to get a resolution. Vice Chair Gilbert noted that if the Board were to prevail, President Dunn could then file legal action against the Board and the University in the Illinois Court of Claims which could take years to resolve. He spoke of potential costs of litigation including the discovery process on University staff being subjected to depositions and documents which likely would be two or three times the number of documents already released, and staff needed to concentrate on enrollment and growing the system. He noted continued publicity would affect not only enrollment but the ability to attract quality professors and staff to the SIU system. He noted that in his profession he had overseen litigation that had attorney's fees in the hundreds of thousands of dollars.

He expressed that he was not happy to enter into a separation agreement paying President Dunn \$215,000 which amounted to a half year's salary; however, the separation agreement would supersede his employment agreement and Dr. Dunn's terms, and would create new terms that would not involve the potential of prolonged and costly litigation. He noted that the separation agreement would allow the system to move forward, and he supported it.

Secretary Sambursky reviewed that at the Board's May 30 meeting the Board voted without opposition against legislation that would dissolve the SIU system which sent an important message that the Board believed the SIU system was significant to its campuses and communities it serves. He noted there was much work to be done to move forward and to strengthen the SIU system. He expressed that moving the system forward was the responsibility of the Board, and it should come together to identify a shared vision for each campus and the system as a whole; work should be done through an open dialogue based on objective and accurate information. Mr. Sambursky noted that he thought the separation agreement was not perfect but it provided the SIU system the opportunity to move forward and allowed the University to avoid costly litigation and prolonged negative press. Mr. Sambursky expressed his appreciation for Dr. Kevin Dorsey being willing to step in to assist the University, and he noted that everyone needed to help ensure Dr. Dorsey had a productive tenure as interim President.

Trustee Britton made a motion to approve the separation agreement and to give the Chair the authority to sign the separation agreement. The motion was duly seconded by Trustee Thomas. The motion carried by the following recorded vote: aye,

Mr. Tom Britton, Hon. J. Phil Gilbert, Dr. Shirley Portwood, Dr. Marsha Ryan, Mr. Joel Sambursky, Ms. Amy Sholar, Maj. Gen. Randal E. Thomas; nay, none.

The following item was presented: Consideration of Appointment of Interim President.

INTERIM PRESIDENTIAL EMPLOYMENT AGREEMENT

This Interim Presidential Employment Agreement is made and entered into this 16th day of July, 2018, by and between the Board of Trustees of Southern Illinois University (hereinafter the "Board") and J. Kevin Dorsey (hereinafter the "Interim President"). The Board and Interim President may hereinafter be referred to individually as a "party" or collectively as the "parties."

Article I

THE BOARD'S AGREEMENT WITH THE INTERIM PRESIDENT

1.1 **Employment.** The Board appoints and employs J. Kevin Dorsey to be Interim President of Southern Illinois University (hereinafter the "University"). The Interim President shall serve as the chief executive officer of the University, the primary representative of the University for external bodies, including offices, agencies, and branches of federal and state government; coordinate, facilitate, and manage the private philanthropic community and fundraising efforts of the University; and serve as the primary contact to and University officer for and on behalf of the Board. The Interim President agrees to perform these duties under the policies, bylaws, statutes, and charter of the Board (collectively "Board Legislation") and supervision and direction of the Board, including its Executive Committee. The Interim President accepts and agrees to such employment.

1.2 **Duties.** The Board agrees that as Interim President of the University, the Interim President shall, subject to the Interim President's agreements with the Board under Article II herein, perform the following duties:

- a. Serve as chief executive officer for the University, including but not limited to, providing general leadership and coordination for the University, its policies, programs, and operation.
- b. Make recommendations concerning the mission, scope, and organization of the University and concerning plans and policies for the development and enhancement of the University operations and activities.
- c. Develop for Board review and approval a budget for the University and provide allocation and oversight to the campuses regarding said budget.
- d. Appoint, supervise, and evaluate the Chancellors of SIUC and SIUE and Dean and Provost of the School of Medicine (hereinafter the "Dean and Provost") and collaborate with them in planning and administering campus programs and activities.

- e. Serve, under the general direction of the Board, as the principal spokesperson and representative for the University with the offices, agencies, and branches of federal and state government and other external bodies or constituencies.
- f. Develop and maintain good public relations between the University and the region in which it is located, the public it serves, and the state of Illinois.
- g. Make recommendations to the Board of Trustees concerning the initiation, continuation, or modification of University programs and activities and assure compliance with Board programs and Board Legislation, including revisions thereto.
- h. Develop and make recommendations concerning the operating and capital budget requests, appropriation requests, and internal budgets of the University.
- i. Serve as a fund raiser for the University in coordination with the Chancellors, Dean and Provost, and the institutional development officers, as well as the University's foundations and alumni organizations, and oversee the development of institutional fund raising initiatives assuring appropriate coordination of efforts between the respective campuses.
- j. Appoint and supervise such officers and employees as may be designated by the Board.
- k. Perform such other duties as may be assigned or delegated by the Board.

1.3 Consideration. As consideration for the Interim President's employment, the Interim President shall receive the following:

- a. Compensation in the form of an annual base salary in the amount of Four Hundred Thirty Thousand Dollars (\$430,000.00), payable in equal installments in accordance with the appropriate University payroll schedule. Salary shall include deductions for local, state, and federal taxes and employee benefits;
- b. Health insurance benefits, sick leave, paid vacation, and other benefits accorded to administrative and professional employees of the University that are authorized by law or policy.
- c. The University shall reimburse the Interim President for reasonable entertainment, travel, and other expenses incurred by the Interim President in the performance of his duties as Interim President in accordance with University policy, as now or hereafter amended. These expenses shall be subject to audit by the University. Further, the Interim President may attend educational conferences, conventions, seminars, and other professional growth activities, and other meetings to advance the interests of the University in accordance with University policy as now or hereafter amended, and the reasonable expenses connected therewith shall be reimbursed, including membership in appropriate professional and service organizations. The Interim President understands that the University shall reimburse travel and associated expenses of the Interim President's spouse in accordance with University policy as now or

hereafter amended but only when the presence of the spouse is necessary to further the interests of the University, in the sole discretion of the Board, and when pre-approved by the Board Chair.

Article II

THE INTERIM PRESIDENT'S AGREEMENTS WITH THE BOARD

2.1 Acceptance of Interim Presidency. For and in consideration of the promises of the Board as stated in this Agreement, J. Kevin Dorsey agrees to serve as Interim President of the University. The Interim President agrees to remain responsible to the Board for the execution of Board Legislation, as applicable, as it exists or as amended from time to time. The Interim President agrees to discharge the authority and responsibilities delegated by the Board and to consult with the Board and such constituencies as are appropriate. The Interim President agrees to regularly report to the Board and the pertinent Board committees, as appropriate, all major policy, legislation, budget, operational, and other material matters as determined by the Board Chair and Interim President.

2.2 Accountability. The Interim President agrees that in performing the duties enumerated in this Agreement he shall be accountable to the Board. The Interim President agrees to conduct regular meetings with the Board and Board Chair in order to provide advice and counsel, coordinate and implement the Board Legislation, and articulate University challenges or concerns.

2.3 Full-time position. The Interim President further agrees to faithfully and with maximum application of experience, ability and talent, devote full-time attention and energies to the duties of the Interim President.

2.4 Outside Employment. The Interim President further agrees not to render services of any professional nature for any person or entity for remuneration (other than the Board) without the Board's prior consent. This provision does not prohibit the making of personal investments or the conducts of private business affairs so long as these activities do not conflict with the Interim President's responsibilities or duties to the University or reflect negatively upon him or the University.

Article III

TERM OF APPOINTMENT

3.1 Term. This Agreement shall be for a term of one (1) year, commencing July 16, 2018, and terminating July 15, 2019, or until a new President of the University is hired, whichever is shorter, subject, however, to extension or to prior termination as provided for in this Agreement. The Board and Interim President may mutually agree to extend the term. Any such extension must be in writing, signed by both parties. At the conclusion of the Interim President's term, the Interim President shall be entitled to return to his prior position with the University, at his prior rate of pay adjusted by any across the board salary increases provided to similarly located and classified employees. The Interim President shall maintain his tenure and shall hold a 0% appointment as a

Professor in the Department of Medical Education and Department of Internal Medicine.

Article IV
TERMINATION

4.1 Termination by the Board. The Board may, in its sole discretion, terminate this Agreement in accordance with Board Legislation. If such a termination occurs, Interim President shall return to his prior position, at his prior rate of pay adjusted by any across the board salary increases provided to similarly located and classified employees.

4.2 Termination by Interim President. This Agreement may be terminated without cause by Interim President giving the Board thirty days (30) advance written notice of the termination of employment.

4.3 Disability. Regardless of any other provisions of this Agreement, this Agreement shall terminate automatically if Interim President dies or becomes totally disabled, or totally incapacitated to such a degree, either physically or mentally, that the Interim President is incapable of carrying out the duties as Interim President, as defined by the Board.

- a. If the Board deems Interim President disabled, totally incapacitated, or incapable of carrying out the duties as Interim President, the Board reserves the right to require Interim President to submit to a medical examination, either physical or mental.
- b. If Interim President becomes incapable of carrying out the duties of office, due to permanent disability or incapacity and is terminated, the Board shall pay to Interim President or Interim President's personal representative, as the case may be, for any accrued but unpaid compensation together with a proportionate part of any other benefits which would be due and payable to Interim President, or personal representative, as the case may be, by reason of death or incapacity during employment by Board. The payment liability of the Board shall terminate as of the date of death or determination of permanent disability or incapacity.
- c. If the Interim President becomes disabled or incapacitated, the Board shall cooperate with the Interim President or his personal representative to enable him to secure any appropriate disability, Social Security, or related benefits including executing any documents necessary to apply for any such benefits.

4.4 Exclusion of Consequential or Other Damages. The parties have bargained for and agreed to the foregoing provisions. In no case shall the University be liable to the Interim President for any damages, or loss of any collateral business opportunities or any other benefits, or income from any other source. The provisions for return to his prior position as a tenured faculty member in the Department of Medical Education and Department of Internal Medicine upon termination as provided in this Agreement are the sole and exclusive legal and equitable remedies for termination and shall constitute adequate and reasonable

compensation for any damages or injury suffered because of such termination by either party.

Article V
OTHER MUTUAL AGREEMENTS

5.1 Entire Agreement. This Agreement constitutes the entire understanding of the parties hereto and supersedes any and all prior or contemporaneous representations or agreements, whether written or oral, between the parties, and cannot be changed or modified unless in writing, approved by the Board and signed by the parties hereto.

5.2 Non-Disparagement. The parties agree not to make comments that injure or damage the reputation or character of any other party, or otherwise disparage any other party, during or after the term of this Agreement, or make comment about the circumstances giving rise to the Agreement or the termination, non-renewal, or expiration of this Agreement except as otherwise required by law. Unless otherwise required by law, any statement by the Interim President must be agreed to in writing by the Board.

5.3 Jurisdiction. This Agreement shall be interpreted and construed in accordance with the laws of the state of Illinois, without regard to its conflict of law provisions.

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

5.5 Assignment. This Agreement is not assignable but shall be binding upon heirs, administrators, representatives, and successors of both parties.

5.7 Captions. The captions are for reference purposes only and have no force and effect in determining the rights or obligations of any of the parties to this Agreement.

5.8 Severability. The terms of this Agreement are severable such 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 of the Agreement shall continue to be valid and enforceable.

5.9 Notices. Any notices required hereunder shall be hand delivered or sent by certified mail, return receipt requested to the following addresses:

For the Board of Trustees:
Secretary of the Board
Southern Illinois University
1400 Douglas Drive, MC 6801
Carbondale, IL 62901

For the Interim President:
J. Kevin Dorsey

IN WITNESS WHEREOF, J. Kevin Dorsey and the Board have executed this Agreement this the 16th day of July, 2018.

BOARD OF TRUSTEES OF
SOUTHERN ILLINOIS UNIVERSITY:

INTERIM PRESIDENT:

BY _____
Amy Sholar, Chair

BY _____
J. Kevin Dorsey

Trustee Thomas made a motion to approve the appointment of interim president and to give the Chair the authority to sign the interim president agreement. The motion was duly seconded by Trustee Britton. The motion carried by the following recorded vote: aye, Mr. Tom Britton, Hon. J. Phil Gilbert, Dr. Shirley Portwood, Dr. Marsha Ryan, Mr. Joel Sambursky, Ms. Amy Sholar, Maj. Gen. Randal E. Thomas; nay, none.

Vice Chair Gilbert moved that the meeting be adjourned. The motion was duly seconded by Secretary Sambursky. The motion to adjourn passed unanimously by voice vote.

The meeting adjourned at 12:26 p.m.

Joel Sambursky, Secretary