

**FLORIDA SOUTHWESTERN STATE COLLEGE
EMPLOYMENT AGREEMENT
FOR THE PRESIDENT**

THIS AGREEMENT dated June 28, 2016 ("EFFECTIVE DATE"), and shall amend and replace in its entirety the agreement that was entered into on June 23, 2015 by and between the **BOARD OF TRUSTEES OF FLORIDA SOUTHWESTERN STATE COLLEGE, FLORIDA** ("BOARD"), a political subdivision of the State of Florida and public body corporate, 8099 College Parkway, Fort Myers, Florida 33919-5566, and **JEFFERY ALLBRITTEN, D.A.**, ("PRESIDENT").

WITNESSETH

WHEREAS, the BOARD and the PRESIDENT, at a regular meeting held pursuant to §1001.61, Florida Statutes on June 28, 2016, have negotiated the terms and conditions of this employment agreement and desire to reduce their agreement of such terms and conditions to writing.

NOW, THEREFORE, in consideration of the terms and conditions and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **EMPLOYMENT.** The BOARD hereby employs DR. ALLBRITTEN to serve as PRESIDENT and Chief Executive Officer of Florida SouthWestern State College (the "COLLEGE") for an initial term as described in Paragraph 3 below. The PRESIDENT hereby accepts such employment and acknowledges that during any term of this Agreement, the PRESIDENT shall also serve as Secretary of the BOARD, in accordance with Section 1001.65(5), Florida Statutes. The PRESIDENT shall devote, except as provided otherwise herein, full-time attention and energies to the duties as PRESIDENT, subject to the policies, supervision and direction of the BOARD.

2. **DUTIES.** PRESIDENT shall act as the PRESIDENT of COLLEGE and perform all duties and assume all responsibilities as president as may be prescribed by the laws of the State of Florida, the rules and regulation of the State Department of Education, and the policies and directives of the Board of Trustees of Florida SouthWestern State College. PRESIDENT shall, among other duties and not in limitation thereof, oversee, manage and coordinate all day to day activities of COLLEGE; retain qualified faculty and administrative and staff, and take appropriate action to discipline or dismiss same if necessary; promote admissions; maintain the COLLEGE physical plant; promote the expansion of the COLLEGE's direct support organization; oversee and be responsible for the development of the budget for the COLLEGE; ensure that all accreditation requirements are complied with, and accurately and timely transmit same to the appropriate accreditation agencies; ensure adherence to the controls and procedures designed to maintain the accuracy of the COLLEGE's financial statements and fiscal health and

integrity; ensure adherence to the Florida Open Government and Public Records laws, and maintain appropriate communications in accordance with Florida law and Board of Trustee policies, with the Board Chair and Board Members, and carry out the policies of the Board of Trustees; attend all meetings of the Board of Trustees, unless excused by the Chair, and provide staff to ensure the adequacy of facilities and equipment for the conduct of such meetings; maintain communications with, and request legal advice from, the General Counsel and attorney or attorneys hired by COLLEGE; faithfully, diligently, exclusively and competently devote his full time and attention and energy to the business of the COLLEGE. He may, and is encouraged to, devote a reasonable amount of time, to civic and educational activities that promote the interests of the COLLEGE, provided same does not interfere with his duties to the COLLEGE.

PRESIDENT shall not have any interest, financial or otherwise, direct or indirect, in any activity which is, or raises the appearance of, a conflict or impropriety in the discharge of his duties. Further, PRESIDENT shall not engage in any act of immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or drunkenness, nor be convicted of a crime involving moral turpitude.

3. **TERM OF EMPLOYMENT; EVALUATION and RENEWAL.** The PRESIDENT'S employment shall be for an initial term commencing June 28, 2016, and terminating June 30, 2019, subject, however, to prior termination as provided for in this Agreement. The anniversary date of this Agreement hereafter shall be deemed to be July 1 of each year. Pursuant to Florida Statutes and Section 6A-14.026, Florida Administrative Code, the BOARD shall annually evaluate the PRESIDENT'S performance of his duties and responsibilities. The BOARD'S evaluation shall be conducted no later than May 30 of each year and the written evaluation shall be submitted to the State Board of Education as provided for by law.

In the event that the BOARD desires to extend the term of this Agreement, then, immediately prior to the 2019 anniversary of the commencement date of the initial term of this Agreement, the BOARD and the PRESIDENT shall, in conjunction with the PRESIDENT'S annual evaluation, determine whether the PRESIDENT shall continue his employment beyond 2019, and, if so, under what terms and conditions.

- **Post Contract Employment** If during this contract period or at its conclusion, the BOARD wishes to change leadership of the COLLEGE or the PRESIDENT requests a change in his status the BOARD shall provide the PRESIDENT an appointment, the terms which shall be agreed upon in consultation with the BOARD. This provision shall survive the expiration or early termination of this contract.

4. **COMPENSATION AND BENEFITS.** The BOARD agrees to pay the PRESIDENT for services rendered as follows:

- A. Base Salary during Initial Contract Year.** As compensation for the services described in this Agreement, the BOARD will pay DR. ALLBRITTEN a base salary of \$300,390.00 for the contract year beginning July 1, 2016 ending June 30, 2017. This base salary will be revisited and adjusted each June 30 based upon a satisfactory annual review by the BOARD. Salary is payable bimonthly on the regular payroll schedule of COLLEGE. Pursuant to §1012.885(4), Florida Statutes, any remuneration in excess of \$200,000 in any fiscal year shall only be paid from nonstate-appropriated funds.
- B. Retention Incentive.** In recognition of DR. ALLBRITTEN's service and contributions to the COLLEGE and the BOARD's desire to retain his services into the future, a retention incentive of 10% of his base salary will be earned by DR. ALLBRITTEN and paid, after signing of this employment agreement, in July each year following an annual review by the BOARD of TRUSTEES which exhibits a Board determination of excellence in his leadership as demonstrated by a satisfactory annual review of 3.0 or above on a 4.0 scale. Provided that no retention incentive shall be paid or payable in any year in which the annual review is less than 3.0 on a 4.0 scale.
- C. Regular Retirement Plan Contributions.** The PRESIDENT has opted to direct contributions to the local annuity program meeting requirements of Section 403(b) of the Internal Revenue Code of 1986, the "CODE" (not to exceed the annual compensation limits), rather than the Florida Retirement System. Pursuant to this contract the BOARD has determined that it is appropriate to use the Board approved contribution rate for all Local Annuity Program qualified participants in the college. Additionally, the college will contribute in an employer 403(b) contribution the difference between the Local Annuity program contribution amount and the maximum contribution amount set forth under CODE section 415(c). The PRESIDENT under this subsection shall be paid in 24 equal installments. In no event shall the amount paid to the PRESIDENT under this paragraph exceed the dollar limit on contributions and other additions to defined contribution plans as indexed under applicable law.
- D. Deferred Compensation.** For each contract year during the employment period, the BOARD shall pay as and for additional compensation up to the maximum annual limits on behalf of the PRESIDENT into an employer sponsored program meeting the requirements of Section 401 (a) of the CODE, a contribution to ensure that the amount of the payments made to the PRESIDENT under this subsection shall equal the maximum contribution allowed by the CODE under section 415 (c), such amount to be paid in July each year. For each contract year during the employment

period, the BOARD shall pay as and for additional compensation on behalf of the PRESIDENT into an employer sponsored plan meeting the requirements of Section 457 (b) of the CODE, a contribution to ensure that the amount of the payments made to the PRESIDENT shall equal the maximum contribution allowed by the code for a plan meeting the requirements of Section 457 (b) of the CODE, such amount to be paid in January each year. For each contract year during the employment period, the BOARD shall pay as and for additional compensation on behalf of the PRESIDENT into an employer sponsored plan (pending BOARD approval) meeting the requirements of Section 457(f) of the CODE, 5% of his base salary to be paid in July of each year.

- E. Health Benefits.** Each contract year during the employment period, the PRESIDENT shall be provided with the COLLEGE sponsored health, dental and vision insurance including coverage for the PRESIDENT's spouse.
- F. Insurance.** It is the intent of the BOARD that the PRESIDENT be provided appropriate life insurance at 3 times his base salary, and long and short term disability insurance coverage and long term care insurance coverage.
- G. Automobile.** During the employment period, the BOARD shall provide a vehicle allowance of \$1250.00 per month, and a fuel/maintenance allowance of \$750.00 per month for each month prior to the termination of this contract. These allowances are paid in lieu of any mileage allowance for in district travel.
- H. Vacation and Sick Leave.** The PRESIDENT shall accrue paid vacation leave and sick leave in accordance with BOARD policies and state laws. Upon termination of employment, payment will be made to the PRESIDENT for accrued vacation leave and accrued sick leave in accordance with BOARD policies and state laws. During each calendar year the PRESIDENT may elect to take paid compensation for up to 15 days of unused vacation leave or he may elect to carryover the entire balance.
- I. Professional Development Leave.** The PRESIDENT shall be granted 12 professional development leave days per year. All professional development leave days and vacation leave days are to be used at the PRESIDENT's discretion and shall be recorded and vested at the execution of this contract on the yearly anniversary thereof.
- J. Development.** During the employment period, the BOARD shall provide an allowance of \$450 payable in 24 semi-monthly installments to be used in the PRESIDENT'S sole discretion for costs related to promoting the interests of the college.

5. **REIMBURSABLE EXPENSES.** Subject to the PRESIDENT providing receipts or other documentation in accordance with the BOARD'S established policies and the College's procedures and rules, the College shall reimburse the PRESIDENT for the following:

The College shall pay, in the manner provided for in BOARD'S established policies and the College's procedures and rules, reasonable membership dues in professional associations and reasonable subscriptions to professional journals and any other reasonable expense that serves the best interest of the College incurred by the PRESIDENT in the course of his employment by the BOARD that is within the annual budget established by the BOARD for the Office of the President.

6. **CONSULTING ACTIVITIES AND SERVICE ON BOARDS.**

A. The PRESIDENT shall not render services of any professional nature to or for any person or firm for remuneration other than to the BOARD, and shall absolutely not engage in any activity that may be competitive with or adverse to the best interests of the BOARD.

B. The PRESIDENT is authorized to serve on national and state educational boards and councils, serve on the boards of nationally recognized educational associations and foundations and engage in customary professional development without taking annual paid vacation leave. The PRESIDENT is authorized to serve on local, charitable and community boards, including but not limited to, organizations such as Rotary and Chamber of Commerce

7. **TERMINATION.** This Agreement may be terminated as follows:

A. **Death or Disability.** In the event of the death or permanent disability of the PRESIDENT, this Agreement shall terminate and the PRESIDENT or his estate, as the case may be, shall be due compensation and benefits hereunder only to the date of death or determination of disability by the BOARD. For the purposes of this agreement, "permanent disability" shall be defined as the PRESIDENT'S inability to perform his duties set forth in Section 1 for a minimum of six (6) continuous months.

B. **Other Termination.** The BOARD shall have the right to suspend or dismiss the President at any time, with or without cause.

(i) If the PRESIDENT receives both a negative evaluation by a super majority of the BOARD and a vote not to be retained by a super majority of the BOARD, the PRESIDENT shall be dismissed as herein provided, this Agreement shall be terminated as herein provided. A super majority shall be defined as six (6) of the nine (9) BOARD members, or five (5) of the eight (8), or four (4) of the seven (7) of the then current BOARD. In the event of a vote by a supermajority of the

BOARD to terminate the PRESIDENT'S contract under this paragraph 7(B)(i), the PRESIDENT shall be provided with written notice of the decision to terminate this employment contract and the termination of employment shall become effective ninety (90) days after the giving of such written notice. At the end of the ninety (90) day period the PRESIDENT shall be entitled to a severance payment equal to twenty weeks of compensation of base salary as provided for in §215.425(4)(a)(1), Florida Statutes.

(ii) In any case, if the BOARD terminates the President's employment with cause, the BOARD shall determine the amount, if any, of termination compensation to be provided consistent with Florida law including, without limitation, §215.425, Florida Statutes. Provided, however, that if the President is terminated for "misconduct" as defined in Section 443.036(30), Florida Statutes, as that section may be amended from time to time, the BOARD shall not pay the President any severance pay.

Reasons for termination with cause shall include the following:

1. A deliberate and certain violation of the duties set forth in this Agreement, or his refusal or unwillingness to perform such duties in good faith and to the best of his abilities.
2. Any conduct constituting moral turpitude that would bring public disrespect, contempt, or ridicule upon the college, as determined solely by the BOARD.
3. A serious and deliberate violation of a State or Federal law, rule, in the judgment of the BOARD adversely reflects upon and or adversely affects the college.
4. Prolonged chronic and/or excessive absences from duty without the BOARD'S consent.
5. Misconduct as defined in Section 443.036(29), Florida Statutes.

8. **GENERAL PROVISIONS.**

A. This Agreement shall be construed and regulated under and by the laws of the State of Florida, the State Board of Education rules, Board policies, and the definitions set forth in the General Provisions of 2012 Salary Schedule.

B. This Agreement contains the entire agreement between the parties with respect to the PRESIDENT'S employment and is merged into and expressed in this Agreement.

C. No change, amendment, supplement or modification of this Agreement shall be valid unless the same shall be in writing and signed by the parties hereto.

D. The section headings in this Agreement are solely for convenience of reference and shall not affect the interpretation or construction of the terms and provisions thereof.

E. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

F. The delivery by electronic or facsimile of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

G. Each party has participated fully in the negotiation and preparation of this Agreement with full benefit of counsel. Accordingly, this Agreement shall not be more strictly construed against either of the parties.

H. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

I. This Agreement is governed by the laws of the state of Florida, without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the undersigned parties hereby execute this Agreement on the date first above written.

**BOARD OF TRUSTEES OF
FLORIDA SOUTHWESTERN
STATE COLLEGE**

PRESIDENT

By: Brian Chapman, Chair

Jeffery S. Allbritten, D.A.

Dated: _____

Dated: _____