



**SPECIAL TELEPHONIC MEETING OF THE WOU BOARD OF TRUSTEES
MEETING NO. 19
JUNE 7, 2017
2:00-3:00 PM
OCHOCO ROOM, WERNER UNIVERSITY CENTER**

AGENDA

- I. CALL-TO-MEETING/ROLL CALL**
- II. CHAIR'S WELCOME**
- III. ACTION ITEM**
 - (1) Reappointment of the University President
- IV. ADJOURNMENT**

EGTC, Reappointment of the University President

At its April 26, 2017 full meeting, the Board approved the following EGTC recommendation:

“[T]he Board delegate[s] to the Board Chair or his designee the authority to negotiate a successor employment agreement with Dr. Fuller under the following conditions: (1) A term of approximately four years, depending on the start and end dates of the new term; (2) An annual salary that will not exceed the median salary of a university president of a comprehensive master’s institution as reported by the College and University Professional Association for Human Resources (CUPA-HR); (3) All other terms and conditions as reasonable and customary for an employment agreement at Western Oregon University; and (4) Submission of the final employment agreement to the full Board for approval prior to June 30, 2017. The successor employment agreement should be negotiated prior to the natural expiration of Dr. Fuller’s current employment agreement.”

After this Board action, Chair Jim Baumgartner directed Vice President & General Counsel Ryan Hagemann to draft an updated contract form. President Fuller’s current employment agreement was on a form inherited from the former State Board of Higher Education and Oregon University System. Hagemann surveyed sample agreements, including materials from the Association of Governing Boards (AGB) and the presidential employment agreements from the six other public universities in Oregon. At the same time, Baumgartner and Fuller met face-to-face to negotiate and finalize the terms of the agreement, including salary.

During negotiations, Baumgartner asked for salary comparators and data, consistent with the EGTC charge the Board approved in April. It is WOU’s practice to set unclassified salaries at 85%-100% of the College and University Professional Association for Human Resources (CUPA-HR) median for comprehensive master’s universities. For president, Baumgartner received the following data:

Oregon Tech President (appointed November 2016, started April 2017):	\$300,000
Southern Oregon University President (started August 2016):	\$240,000
Eastern Oregon University President (reappointed May 2017):	\$235,980
CUPA-HR median for president in WOU’s enrollment quartile:	\$255,000
CUPA-HR median for president in WOU’s budget quartile:	\$258,194
CUPA-HR median for president for all master’s institutions:	\$314,708
CUPA-HR median for president for the West region:	\$275,500

After consideration of salary comparator data, Baumgartner proposed a salary of \$248,000, which is less than all relevant CUPA-HR median comparators for a president

of master's comprehensive institutions. Baumgartner also proposed that the next time President Fuller be eligible for a salary adjustment be July 1, 2019. Dr. Fuller's current salary is \$225,000 annually. It was the lowest of all seven public universities in Oregon.

Although the form, language and the organization of the contract is different, the substance is quite similar to Dr. Fuller's current employment agreement. Notable provisions and changes include:

(1) A reappointment term of slightly more than four years, from July 1, 2017 through September 30, 2021, consistent with the Board's action in April and is intended to allow for annual performance evaluations to occur each July;

(2) Incorporation of the new Board Statement on the Performance Evaluation of the University President as the mechanism for the Board to evaluate the president;

(3) Housing and vehicle stipends remain constant; and

(4) New language, at Section 1.6, now that the President has received indefinite tenure, regarding how he would return to the faculty and a tenured professorship, if circumstances warrant.

RECOMMENDATION:

Consistent with the Board's April 26, 2017 action delegating to the Board Chair the authority to negotiate a successor agreement with Dr. Rex Fuller to continue to serve as President of Western Oregon University, the Board approves Fuller's reappointment as President, as well as the employment agreement and notice of appointment included in these docket materials.

**WESTERN OREGON UNIVERSITY
EMPLOYMENT AGREEMENT AND NOTICE OF APPOINTMENT**

THIS EMPLOYMENT AGREEMENT AND NOTICE OF APPOINTMENT (the “Agreement”) is entered into effective as of the 1st day of July, 2017 (“Effective Date”), by and between the Western Oregon University Board of Trustees (the “Board”) and Rex D. Fuller, Ph.D. (the “President”). The Board and the President are collectively referred to as the “Parties.” This Agreement supersedes and replaces any and all employment agreements between the Parties, including, but not limited to the employment agreement dated April 16, 2015.

WHEREAS, the Board authorized its Chair (the “Chair”), James Baumgartner, to negotiate the President’s reappointment at its April 26, 2017 Board meeting; and

WHEREAS, the Board approved the President’s reappointment and this Agreement at a public meeting on June 7, 2017; and

WHEREAS, the Board desires to employ the President and the President desires to accept such employment and reappointment on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

1. *Employment and Reappointment.* The Board hereby reappoints and employs Rex D. Fuller, Ph.D., and Rex D. Fuller, Ph.D. accepts reappointment and employment as President of Western Oregon University (the “University”).

1.1 *Term of Agreement.* This Agreement commences on July 1, 2017 and ends, unless terminated as provided elsewhere in this Agreement, on September 30, 2021 (the “Term”). Notwithstanding the foregoing, the Parties may agree to extend the Term, but only in a writing authorized by the Board and executed by the Parties.

1.2 *Duties and Responsibilities.* As President, Dr. Fuller is the executive and governing officer of the University and the President of the faculty pursuant to Oregon Revised Statutes 352.096. The President shall exercise all powers and duties delegated to the President by the Board Statement on the Delegation of Authority and shall also exercise all other powers and duties delegated to the President by the Board. During the Term, the President shall perform such duties for and render such services to the University as are customary and incidental to the position of President, or such other duties or services as may be from time to time assigned to him by the Board. The President shall report and be accountable exclusively to the Board. The President shall not engage in any

conduct that would constitute a conflict of interest with his duties to the University, and agrees to use best efforts to carry out the duties and responsibilities required by this Agreement and to devote substantially all of the President's business time, attention, and energy in doing so.

1.3 *Compensation.* For all services rendered by the President hereunder, the Board shall pay the President a monthly base salary of \$20,666 based on an annualized base salary of \$248,000 at 1.0 FTE. The President's performance will be reviewed pursuant to the Board Statement on the Performance Evaluation of the University President and, based on such review, the President may be awarded an increase in base salary at the sole discretion of the Board; provided the first such increase, if any, will not occur prior to July 1, 2019.

1.4 *Benefits.* The President shall receive the same benefits as those provided to other University employees, currently including, but not limited to, medical dental, disability, life and retirement benefits, accrual of vacation and sick leave, and staff fee privileges, subject to the eligibility requirements of such plans and programs. Nothing in this Agreement, however, shall prevent the Board or University from amending or terminating any employee retirement, welfare benefit, or any other employee benefit plan or program as the University deems appropriate.

1.5 *Supplemental Benefits.* In addition to the benefits provided at Section 1.4, the Board shall provide the President with the following supplemental benefits:

(a) *Housing.* During the Term, and in lieu of Board-owned or provided housing, the President shall receive a monthly housing stipend of \$2,500.

(b) *Automobile.* During the Term, and in lieu of a Board-owned or provided vehicle, the President shall receive a monthly vehicle stipend of \$1,000. By accepting the monthly stipend, the President agrees that he is not entitled to any vehicle-related expense reimbursement when on University business or to a Board-owned or provided vehicle for the discharge of his duties as President. Subject to applicable rules, policies and procedures, this section does not apply when the President requires the use of a rental vehicle.

(c) *Travel and Related Expenses.* The President and President's spouse shall be entitled to reimbursement of reasonable and documented expenses related to the President's employment, on the same basis as other unclassified staff. Payment will be made on behalf of the President's spouse only when the

presence of the spouse is of benefit to the interests of the Board and the University. All travel will be in accordance with applicable University policies.

1.6 *Academic Rank and Tenure.* The President is a tenured Full Professor in the Division of Business & Economics in the College of Liberal Arts & Sciences. Upon the completion of the full Term of this Agreement, upon early termination of this Agreement by the Board without Cause under Section 2.1, or, under certain circumstances, termination of this Agreement by the Board with Cause under Section 2.5, the President's employment as a tenured Full Professor may continue at his option. If the President continues as a tenured faculty member, his nine-month salary as a Professor, at 1.0 FTE, shall be at the top step of the salary table in Article 16 of the University's collective bargaining agreement with the Western Oregon University Federation of Teachers (the "Union" or "WOUFT"), plus the 22% salary market adjustment authorized in the collective bargaining agreement for Business & Economics faculty members.

1.7 *Board Service, Public Speaking, and Other Outside Activities.* As permitted by Oregon Revised Statutes 352.232, the President may engage in outside activities, including, but not limited to, serving on for-profit and non-profit boards of directors, delivering speeches, writing, and consulting services to the extent these outside activities comport with the mission of the University, do not interfere with the performance of the President's obligations contained herein, and are consistent with the applicable laws and University policies regarding conflicts of interest. Compensation and reimbursement of expenses received by the President related to such outside activities is considered official compensation or the reimbursement of expenses for purpose of ORS 244.040. If acceptance of any such compensation or reimbursement of expenses creates a potential conflict of interest, the President shall promptly report the potential conflict in writing to the Chair. The President also shall promptly disclose to the Chair each new recurring source of outside earned income and other compensation and will provide to the Chair an annual report that discloses the source and amounts of all outside income. Subject to the foregoing terms and conditions, the President shall be entitled to retain all income or other compensation earned by the President in connection with his outside activities, and such income or other compensation will have no effect on the amount of base salary, benefits, or other compensation to which the President may be entitled under this Agreement.

2. *Termination.* The President's employment shall terminate upon the occurrence of any of the following events:

2.1 *Termination by the Board Without Cause.* The Board may terminate this Agreement at any time without Cause (“Cause” defined in Section 2.5) upon no less than thirty (30) calendar days’ prior written notice to the President; provided, however, that in the event such notice is given, the President shall be under no obligation to render additional services to the University and shall be allowed to seek other employment, subject to the terms, conditions, and covenants of this Agreement. If the Board terminates this Agreement without Cause:

(a) The President will be entitled to receive his monthly base salary for the lesser of 12 months from the effective date of the termination, or the remaining Term, paid in equal, monthly installments (pro-rated for any partial month) in accordance with the University’s payroll practices then in effect.

(b) Any amounts otherwise payable to the President under Section 2.1(a) of this Agreement will be reduced by all compensation the President entitled to receive for work completed from other employment during the period which payments under that Section are to be paid.

(c) Under no circumstance will be the Board be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that may occur if the Board terminates this Agreement as specified in this Section. The Parties have bargained for and agreed to the foregoing provisions, giving consideration to the fact that action by the Board under this section may cause loss to the President which is extremely difficult to determine with certainty. The Parties further agree that payments made based on the foregoing by the Board and acceptance thereof by the President will constitute adequate and reasonable compensation to the President for any loss and injury suffered and are not intended to be a penalty.

(d) The President shall be entitled to all other benefits earned or accrued in accordance with the terms of any applicable benefit plans and programs of the University through the date of termination.

(e) The President shall retain his indefinite tenure as Full Professor and may elect to assume that faculty position as described in Section 1.6 above.

2.2 *Voluntary Termination by the President.* The President may voluntarily terminate this Agreement at any time prior to the expiration of its Term by giving not less than thirty (30) calendar days’ advance written notice of such resignation or voluntary termination to the Chair. Upon the effective date of the

President's voluntary termination of this Agreement, President will not be entitled to any further compensation or benefits under this Agreement. The President may retain any rights provided in the University's various benefit plans or programs to the extent those plans provide rights after termination of employment, presuming, under this Section, the President relinquishes his indefinite tenure, as well as voluntarily terminates his position as President.

2.3 *Disability of the President.* The Board may terminate this Agreement if the President is unable to perform the essential functions of his job with or without reasonable accommodation during the Term because of physical or mental injury or illness ("Disability"), subject to any limitations imposed by federal, state, or local laws. If the President is disabled, as defined by the federal Americans with Disabilities Act and applicable state and local laws, the University will provide a reasonable accommodation to the President so long as such reasonable accommodation would not impose an undue hardship to the University and the Board and would enable the President to satisfactorily perform the essential functions of the position. The President agrees, in the event of a dispute under this Section 2.3 relating to the President's Disability, to submit to a physical examination by a licensed physician jointly selected by the Chair and the President. If the Board terminates this Agreement because of the President's Disability, the President shall be entitled to the following:

(a) All amounts earned or accrued under this Agreement that have not been paid as of the date of termination; and

(b) All other benefits earned or accrued in accordance with the terms of any applicable benefits plans and programs of the University through the date of termination.

2.4 *Death of the President.* If the President dies while employed as President of the University, this Agreement shall terminate immediately on the date of the President's death. The President's executor, legal representative, administrator, or designated beneficiary, as applicable, may retain any rights provided in the University's various benefit plans and programs to the extent those plans programs provide rights after death and termination of employment.

2.5 *Termination by the Board for Cause.* The Board may terminate this Agreement at any time for Cause upon written notice to the President, in which event all payments under this Agreement shall cease, except for: (i) as a lump sum, base salary to the extent already earned and unpaid up to the date of his termination and (ii) all benefits accrued or earned before his termination in accordance with

the terms of any applicable benefit plans and programs of the University. "Cause" for purposes of this Agreement exists if: (i) the President is convicted of or enters a guilty plea or a plea of no contest to any felony or any crime involving fraud, theft, misuse or misappropriation of money or other property, or moral turpitude; (ii) in the reasonable judgment of the Board, the President has breached in any material respect the terms of this Agreement; (iii) in the reasonable judgment of the Board, the President has neglected or willfully failed or refused to perform in good faith material assigned duties; (iv) in the reasonable judgment of the Board, the President has engaged in gross and willful misconduct with respect to the affairs of the University, or conduct that does, or has the potential to, materially harm the reputation or prospects of the University; or (v) the President has been absent from duty for more than thirty (30) days for reasons other than illness or disability without Board or University consent. In the event of potential termination under (ii) or (iii) above, the Chair shall first provide the President with notice and a reasonable opportunity to cure the defect if in the reasonable judgment of the Board cure is practicable. Termination of this Agreement for Cause, absent written consent and acknowledgement from the Board, will eliminate the President's indefinite tenure described in Section 1.6.

2.6 *Natural Expiration.* If the President is not reappointed by the Board or this Agreement is not terminated under Section 2.0 of this Agreement, this Agreement will naturally expire at the end of the Term.

2.7 *Reassignment.* Nothing in this Agreement abridges or diminishes the Board or University's authority to reassign the President consistent with the University's human resources policies and procedures.

3.0 *Indemnification.* The Board and University shall, to the extent legally permissible, defend, hold harmless, and indemnify the President against all liabilities and expenses (including legal fees) reasonably incurred in connection with the defense of any action, suit or other proceedings (whether civil, criminal, administrative, or investigative) to which he has been made a party by reason of being or have been President, provided he acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Board or the University. The President is not entitled to indemnification for acts that are adjudicated in such action, suit or proceeding to be the result of malfeasance in office or willful or wanton neglect of duty.

4.0 *Severability.* If any provisions of this Agreement is determined to be void, invalid, unenforceable or illegal for any reason, it will be ineffective only to the extent of such

prohibitions and the validity and enforceability of all remaining provisions will not be affected thereby.

5.0 *Modification.* This Agreement may not be modified or extended excepted by a written instrument authorized by the Board and executed by the Parties.

6.0 *Entire Agreement.* This Agreement contains the entire understanding of the Parties, and there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

7.0 *Waiver.* No delay or omission by either Party to this Agreement in exercising any right, remedy or power under this Agreement or existing at law or in equity shall be construed as a waiver thereof, and any such right, remedy or power may be exercised by such Party from time to time and as often as may be deemed expedient or necessary by such Party in its sole discretion.

8.0 *Governing Law; Forum.* Any lawsuit or claims arising from this Agreement will be brought and conducted solely and exclusively within the Circuit Court of Polk County for the State of Oregon; provided, however, if a lawsuit or claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

9.0 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which will constitute but one of the same instrument. Signatures delivered by facsimile and email will be deemed to be an original signature for all purposes, including for the purposes of any applicable Rules of Evidence.

10.0 *Nonassignability.* Neither this Agreement nor any right, obligation, or interest hereunder shall be assignable or delegable by any Party without prior written consent of the other Party.

11.0 *Applicable Laws and Regulations.* All provisions of this Agreement are subject to the laws of the State of Oregon and, unless otherwise stated, the directives, resolutions, statements or policies of the Board.

12.0 *Headings.* All section headings used in this Agreement are for convenience only

13.0 *Section 409A of the Internal Revenue Code.* Notwithstanding anything herein or in the Agreement to the contrary, no payments will be made or benefits provided under this Agreement are in violation of section 409A(2)(b)(i) of the Internal Revenue Code of 1986 (the "Code"). The Board will adopt such amendments to this Agreement as are necessary or

appropriate to exempt the payments or benefits from section 409A of the Code or to modify such payments or benefits in a manner that maintains the value of this Agreement to the President to the maximum extent possible while remaining in compliance with section 409A of the Code.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Agreement as of the date first above written.

Rex D. Fuller, Ph.D.
President

James Baumgartner
Chair, WOU Board of Trustees

Ryan J. Hagemann
Secretary, WOU Board of Trustees