




September 17, 2012

MEMORANDUM

TO: District Board of Trustees
FROM: Jim Murdaugh, President 
SUBJECT: Amendment to Employment Contract for the President

Item Description

This item requests that the Board approve an amendment to the Employment Contract for the President.

Overview and Background

Pursuant to the Employment Contract for the President, the Board shall review the contract on an annual basis. At the June Board of Trustees Meeting Chair DeFoor shared that he had retained Bob Pierce of the Ausley firm to prepare a document of proposed changes to the contract, which he provided to the Board Members for review.

At the August Board of Trustees Meeting, the Board unanimously agreed to adopt the terms and conditions as set forth in the memorandum dated August 14, 2012 from Bob Pierce and ask that Mr. Pierce be directed to prepare an employment contract reflecting those changes.

Past Actions by the Board

The Board reviews the President's Contract each fiscal year.

Funding/Financial Implications

The principal areas of change for the current fiscal year are the elimination of disability insurance premiums resulting in a cost savings, no bonus, and incentive compensation (payable upon becoming vested) for each year if he remains President until normal retirement age.

Staff Resource

Jim Murdaugh

Recommended Action

Approve the amendment to the employment contract for the President, which reflects the terms and conditions unanimously agreed to at the August 2012 Board of Trustees Meeting.

**AMENDMENT TO EMPLOYMENT CONTRACT FOR THE PRESIDENT
OF
TALLAHASSEE COMMUNITY COLLEGE, FLORIDA**

This Amendment to Employment Contract for the President of Tallahassee Community College is made and entered into effective as of the ____ day of _____, 2012, by and between the District Board of Trustees of Tallahassee Community College, Florida ("Board"), and James T. Murdaugh ("Dr. Murdaugh" or "President").

WHEREAS, the parties have previously entered an Employment Contract for the President of Tallahassee Community College, Florida, dated November 15, 2010 ("Contract"); and

WHEREAS, the Board has determined that it is to Tallahassee Community College's ("College") best interest to make certain amendments and changes to the Contract, which Dr. Murdaugh is in agreement with; and

WHEREAS, the Board had previously unanimously approved the proposed amendments to the Contract at the Board meeting dated August 20, 2012.

NOW, THEREFORE, in consideration of the premises, the covenants contained herein, and for other good and valuable consideration, the Board and Dr. Murdaugh agree to amend the Contract as follows:

1. Section 1(d) is amended and restated in its entirety to read as follows:

Suspension and Dismissal for Cause. During the original term of this Agreement, and during the term of any extensions, the Board may suspend or dismiss Dr. Murdaugh for Cause pursuant to applicable Florida law, and pursuant to administrative rules adopted by the Florida Board of Education.

Any such suspensions for Cause by the Board may be with or without pay and under such terms and conditions as the Board may determine. Any termination for Cause by the Board shall terminate this Agreement and all salary and other fringe benefits payable to Dr. Murdaugh under this Agreement from and after the effective date thereof; provided, however, that any such termination shall not relieve the Board from its obligation to pay Dr. Murdaugh any minimum annual base salary or other fringe benefit which may have accrued prior to the effective date of such termination for Cause.

"Cause" shall mean the President's (i) conviction of, or guilty or no contest plea to any felony or a misdemeanor involving crimes of a financial, violent, or sexual nature, substance abuse or any illegal substances, (ii) material breach of any provision of the Contract or of any College policy or procedure related to sexual harassment, business conduct, and ethics, (iii) gross or flagrant inattention to, or lack of execution of, President's duties to the College, (iv) willful misconduct or gross negligence in the performance or exercise of President's duties, responsibilities, function, and authority, or the commission of an act of personal dishonesty in connection with the President's duties and responsibilities

as President of the College, or (v) use of illegal substances in the workplace or habitual substance abuse.

2. Section 1(f) is amended and restated in its entirety to read as follows:

(f) Termination for Convenience. The Board may terminate Dr. Murdaugh's employment as President at any time without "Cause". In the event of such a termination of employment without Cause, Dr. Murdaugh, at his option, may remain employed in a position other than President at the College through November 14, 2014. Dr. Murdaugh shall be paid at the same rate of pay and with the same benefits (excluding any benefits provided hereunder that would be lost in the event of such a termination) as is in effect on the date of the termination. The right to terminate Dr. Murdaugh's employment as President shall be contingent on execution of a Release and Waiver of Claims in a form acceptable to Dr. Murdaugh and the Board.

3. A new sentence shall be added to Section 2(a) providing as follows:

"Such increase shall be documented in writing by the Board."

4. Section 2(g) is deleted in its entirety.

5. Section 2(l) is amended and restated in its entirety to read as follows:

Leave. The Board recognizes that certain outside activities by the President advance and enhance the image and reputation of the College. In furtherance of these activities, the Board authorizes an additional twelve (12) days of leave annually, provided that the use of these days does not unreasonably interfere with the performance of other duties. It is anticipated that this professional leave will be used for those speaking and consulting opportunities when the President is compensated through honoraria or consulting fees and expenses. Any unused or accrued professional leave shall be forfeited on an annual basis. In addition, to the professional leave specified herein, during each calendar year Dr. Murdaugh may elect to receive a cash payment in lieu of taking paid annual leave (other than professional leave) for up to fifteen (15) days per calendar year. Such payment shall be treated as additional compensation subject to normal withholds, and shall be calculated at the daily rate of payment for his base salary and payable to Dr. Murdaugh in December of each calendar year upon his written request.

6. A new Section 2(n) is added as follows:

Incentive Compensation. Commencing with calendar year 2012, Dr. Murdaugh shall receive a credit in the amount of Thirty Thousand Dollars (\$30,000) for each year (or portion of a year) that he shall remain as President until he reaches his Normal Retirement Date subject to the conditions specified below. These credited amounts are referred to as His Account. Upon becoming vested as specified below in Paragraph (a) Dr. Murdaugh shall be entitled to receive a benefit equal to the amount credited to His Account as provided below.

(a) Vesting. Dr. Murdaugh shall become vested to His Account as of the first to occur of the following events: (i) separation from Service due to death or disability, (ii) involuntary termination of employment as President by the Board without Cause, or (iii) Dr. Murdaugh's attaining his Normal Retirement Date provided that he is still employed with the College in the capacity as President at that time.

(b) Normal Retirement. In the event Dr. Murdaugh continues to be employed with the College on his Normal Retirement Date, he shall be fully vested and entitled to an amount equal to the amount credited to His Account as of the date of his Normal Retirement Date. For purposes of this contract Dr. Murdaugh's Normal Retirement Date is October 2, 2017.

(c) Disability. In the event Dr. Murdaugh incurs a Separation from Service by reason of disability prior to his attainment of his Normal Retirement Date, he shall be fully vested and entitled to a benefit equal to the amounts credited to his account as of the date of such Separation of Service. For these purposes, Dr. Murdaugh shall be deemed to be disabled if he meets one of the following requirements: (i) he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) he is by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months receiving income replacement benefits of not less than three (3) months under an accident or health plan covering employees of the College.

(d) Death. In the event of the death of Dr. Murdaugh prior to the attainment of his Normal Retirement Date, his named-beneficiary (as specified in writing by Dr. Murdaugh to the Board) shall be entitled to a benefit equal to one hundred percent (100%) of the account credit to His Account as of the date of his death.

(e) Separation from Service. In the event Dr. Murdaugh voluntarily separates from service for any reason other than by reason of his disability prior to his becoming fully vested in accordance with Paragraph (a) above, he shall forfeit his right to the amount credited to His Account. In the event that Dr. Murdaugh incurs a Separation of Service due to involuntary termination of employment for Cause, prior to becoming fully vested in accordance with Paragraph (a) above, he shall forfeit his right to any amounts credited to His Account. In the event that Dr. Murdaugh incurs a separation of service due to any involuntary termination as President without Cause he shall be fully vested and entitled to a benefit equal to one hundred percent (100%) of the amount credited to the account as of the day of Separation of Service. Separation of Service shall mean Dr. Murdaugh retires, dies, or otherwise has a termination of employment with the College. A termination of employment shall mean Dr. Murdaugh's termination of employment with the employer within the meaning of Section 409A(a)(2)(A)(i) of the Code and the default rules of Treasury Regulation Section 1.4409A-1(h). For this purpose, the "Employer" is the College.

(f) Forfeiture. In the event that Dr. Murdaugh has a Separation of Service for any other reason than death, disability or involuntary termination from employment without Cause without attaining his Normal Retirement Date, he will forfeit any and all benefits in His Account.

(g) Timing and Form of Benefit Payment. The distribution of Dr. Murdaugh's benefit once vested described in this Section shall be paid in three (3) equal annual payments with the first payment commencing upon the date of Separation of Service or Normal Retirement Date and each anniversary thereafter.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

Signed, sealed and delivered
in the presence of:

**District Board of Trustees of
Tallahassee Community College, Florida**

(Witness Signature)

(Printed Name)

By: Dr. Dana Callen
Its: Chair of the District Board

(Witness Signature)

(Printed Name)

(Witness Signature)

(Printed Name)

James T. Murdaugh

(Witness Signature)

(Printed Name)