

**BOARD OF REGENTS**  
EASTERN MICHIGAN UNIVERSITY

SECTION: C
DATE: 12/8/2022

**RECOMMENDATION**

**AGREEMENT TO APPROVE EMPLOYMENT CONTRACT AMENDMENT**

**ACTION REQUESTED**

It is recommended that the Board of Regents of Eastern Michigan University authorize and execute the attached Third Amendment to President James M. Smith's Employment Contract.

**STAFF SUMMARY**

The attached Third Amendment to President's Employment Contract (the "Amendment") extends the President's term at the University for a period of two additional years, making the contract valid through June 30, 2026. The President's annual salary shall be \$468,650.00, commencing July 1, 2022, representing a 3% raise. The 3% increase is identical to that available to all eligible EMU employees in the Administrative Professional group in 2022. The Amendment further authorizes bonus payments for the 2020, 2021, and 2022 fiscal years and establishes a retention bonus payable only as deferred compensation. All other aspects of President Smith's Employment Contract with the University remain the same.

**FISCAL IMPLICATIONS**

The President's salary shall be \$468,650.00, retroactive to July 1, 2022.

**ADMINISTRATIVE RECOMMENDATION**

The proposed Board action has been reviewed and is recommended for Board approval.

\_\_\_\_\_ 12/8/2022 \_\_\_\_\_

**Date**

### **THIRD AMENDMENT TO PRESIDENT'S EMPLOYMENT CONTRACT**

This Third Amendment to the President's Employment Contract shall be effective \_\_\_\_\_, 2022, between the Eastern Michigan University Board of Regents ("the Board") and Dr. James Michael Smith ("President"), (collectively the "Parties").

WHEREAS, the Board and the President are parties to the President's Employment Contract dated February 12, 2016, (the "Agreement"), as well as a First Amendment to the Agreement dated October 25, 2019, and a Second Amendment to the Agreement dated May 4, 2020; and

WHEREAS, the Parties now desire to amend the Agreement;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the Parties agree as follows:

#### **1. Amendment to Section 3.0 – Term of Appointment: Evaluation.**

The parties hereby amend Section 3.0 to read as follows:

This appointment shall be for a period of ten years, commencing on July 01, 2016, and terminating June 30, 2026, subject, however, to prior termination as provided for in this Agreement.

#### **2. Amendment to Section 4.1**

The parties hereby amend Section 4.1 to read as follows:

For all services rendered under this Agreement, the University shall pay President an annual base salary of four-hundred sixty-eight thousand six-hundred fifty dollars and no cents (\$468,650.00), payable per the University's standard payroll procedures. All such compensation shall be subject to the customary withholding tax, social security tax, and other employment taxes as may be required by the State of Michigan and the United States of America. The President's salary at this rate shall be retroactive to July 1, 2022.

#### **3. Amendment to Section 4.3**

The parties hereby amend Section 4.3 to read as follows:

The President is eligible for an annual bonus of up to ten percent of his base salary based upon his achievement of goals set for him by the Board.

The Parties further affirm that, as of the effective date of this Amendment, the President earned (1) a bonus for the 2019-2020 fiscal year equal to ten percent of his unadjusted base salary during that year, (2) a bonus for the 2020-2021 fiscal year equal to ten percent of his unadjusted base salary during that year and (3) a bonus for the 2021-2022 fiscal year equal to ten percent of his unadjusted base salary during that year. The President is entitled to claim these bonuses, but may choose to have some or all of them placed into a deferred compensation package in lieu of claiming them as standalone payment(s). The President may further choose to have future bonuses earned pursuant to this section placed into a deferred compensation package or delivered to him as standalone payments.

#### **4. Addition of Section 4.4**

The parties agree to add the following as Section 4.4 of the Agreement:

The President shall earn accrual of an annual retention bonus if he remains in his job as of June 30 of each year remaining in this contract, beginning on June 30, 2023. These retention bonuses shall accrue annually but shall be payable *only* as deferred compensation. If the President leaves his position voluntarily at any time before June 30, 2026, or if he is terminated from his position for cause at any time before June 30, 2026, he will forfeit entitlement to all accrued retention payments.

The schedule for these retention payment accruals is as follows:

\$25,000 shall accrue on June 30, 2023

\$30,000 shall accrue on June 30, 2024

\$35,000 shall accrue on June 30, 2025

\$40,000 shall accrue on June 30, 2026.

#### **5. Amendment to Section 14.2 – Termination Without Cause**

The parties agree to amend Section 14.2.1 to read as follows:

Regardless of any other provision of this agreement, this Agreement shall terminate automatically, without further liability to the University except as provided in Section 14.2.3 below, and except for applicable medical, insurance, and vested benefits provided in this Agreement, if the President dies while in office.

The Parties further agree to amend Section 14.2.3 to read as follows:

If the President (1) dies while in office; or (2) becomes incapable of carrying out the duties of the presidential office due to permanent disability and is terminated by the University without cause, the University shall be liable to the President or the President's personal representative as the case may be, for the amount of the President's base salary at the time of termination, not to exceed one full year of base salary and prorated if termination occurs during the final contract year, together with any other benefits which would be due and payable to the President, or personal representative, as the case may be, by reason of death or disability during employment by the University.

The Parties further agree to amend Section 14.2.4 to read as follows:

This Agreement may be terminated without cause by the University at any time, by delivering to the President written notice of the University's intent to terminate this Agreement without cause, which notice shall specify the employment termination date. Should the University choose to exercise this option, the University shall be liable to the President for the amount of the President's base salary at the time of termination, not to exceed one full year of base salary and prorated if termination occurs during the final contract year, together with any other benefits which would be due and payable to the President at the time of termination.

#### **6. Confirmation and Integration**

Except as expressly amended by this Amendment, the parties hereby confirm and ratify the Agreement in its entirety. The Agreement, as amended hereby, constitutes the entire agreement between the parties and their predecessors pertaining to the subject matter of the Agreement, as so amended, and supersedes all prior and contemporaneous agreements and understandings of the parties and their predecessors in connection therewith.

**7. Counterparts**

This Amendment may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same original document.

**8. Headings**

The section headings herein are for convenience only and do not define, limit, or construe the contents of such sections.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be signed by their duly authorized representatives, all done the day and year first above written.

EASTERN MICHIGAN UNIVERSITY  
BOARD OF REGENTS

PRESIDENT

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_