

Office of the Chancellor
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June 26, 2009

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President Robert Kennedy
200 Alumni Hall
University of Maine

The University of Maine

Dear Bob:

University of Maine
at Augusta

University of Maine
at Farmington

University of Maine
at Fort Kent

University of Maine
at Machias

University of Maine
at Presque Isle

University of
Southern Maine

In accordance with Board of Trustees policy, I am pleased to extend your appointment as President of the University of Maine to expire June 30, 2011. This appointment is not subject to discontinuance except under the notice for cause policy in the Handbook for Non-Represented Faculty, Professional and Administrative Staff and the terms of your employment contract. Under Board policy you serve at the pleasure of the Board and, therefore, could be reassigned to another position in the University during this period. In accordance with Board of Trustees policy this appointment may be extended annually on July 1.

All other terms of your employment will continue in accordance with your employment contract, Board policies, and policies for non-represented professional employees.

I appreciate your service during these challenging times. Our work is more important than ever to the citizens of Maine, and I am confident that the University of Maine System and the University of Maine will rise to meet the challenges.

Sincerely,

Richard L. Pattenaude
Chancellor

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CC: Personnel File

Employment Contract

This Agreement is made between the Board of Trustees of the University of Maine System (UMS) and Robert A. Kennedy, residing at Orono, Maine (President).

1.0 Appointment as President

1.1 UMS appoints and employs Robert A. Kennedy to be President of the University of Maine (University) to serve as Chief Administrative and Educational Officer of the University and to be responsible for all aspects of operations within the approved mission of the University, and under the policies and procedures set forth by the Chancellor and the Board of Trustees. The President reports directly to the Chancellor. President accepts and agrees to such employment and the conditions attached thereto.

1.2 President shall perform all duties required by law, by this Agreement, and by custom and practice to be performed by a university president including, but not limited to:

1.2.1 the implementation of plans, policies, and directives from the Board and the Chancellor;

1.2.2 the establishment of an effective communications link between the President and the Chancellor and between the President and all of the constituencies at the University level: faculty, students, staff, boosters, and alumni;

1.2.3 the academic leadership of the University through established planning processes and prioritizing of goals and objectives, promotion of academic excellence, development and motivation of faculty and staff to accomplish the campus mission, and promotion of innovative and efficient use of resources;

1.2.4 the development and administration of the University's operational and auxiliary enterprise budgets as approved by the Chancellor and Board, including establishment of priorities for expenditures and achievement of revenue projections as set forth in the approved budgets;

1.2.5 the development, maintenance and operation of the physical plant and for the development of long-range campus construction

priorities in accordance with the mission and guidelines set forth by the Board;

- 1.2.6 the administration of all programs affecting student life and promotion of the learning environment for the welfare of the student body;
- 1.2.7 the development of an effective public service program for both the internal and external communities;
- 1.2.8 the development of an effective community relations program;
- 1.2.9 the responsibilities of the President enumerated above are in Section 204 of the Policies and Procedures manual. President is expected to carry out the described responsibilities. Section 204 may be revised by the Board of Trustees in its discretion.

1.3 Both parties recognize that there must be a close working relationship not only administratively but philosophically concerning the operation of the University among the Board, the Chancellor and the President, and that the President will expend his/her best efforts to see that this is accomplished for the benefit of the students, the University and its officers, employees and constituents.

2.0 Devote Best Efforts to the Work as President

- 2.1 President agrees to faithfully, industriously, and with maximum application of experience, ability, and talent, devote full-time attention and energies to the duties as President.
- 2.2 Such duties shall be rendered at the campus of the University in Orono, Maine, and at such other place or places as Board or Chancellor shall deem appropriate for the interests, needs, business, or opportunity of the University.
- 2.3 The expenditure of de minimus amounts of time for personal or outside business, as well as charitable and professional development activities, shall not be deemed a breach of this Agreement, provided such activities do not interfere with the services required to be rendered to the Board under the provisions of this Agreement.
- 2.4 President shall not, without prior written permission from the Chancellor, enter into services of any professional nature with any person or firm other than to the UMS, and shall absolutely not engage in any activity that may result in a conflict of interest or be competitive with and adverse to the best interest of the UMS.

2.5 President shall at all times keep the Chancellor fully informed of all activities at the University, especially those activities or issues which cause apprehension regarding: the functioning of personnel; budgetary problems; legal issues; safety and security of the university community; matters that may become subjects of public concern, and over- or under-enrollment of students; and shall provide to the Chancellor whatever special reports, requests for information or other items of information are requested.

3.0 Term of Appointment; Evaluation; Renewal.

3.1 This appointment shall be for a term of two years, commencing July 1, 2007, and terminating June 30, 2009, subject, however to prior termination as provided for in this agreement.

3.2 The Chancellor, in consultation with the Board and in his discretion, may offer to extend this Agreement annually on the first anniversary date of appointment and thereafter, subject to the Notice for Cause policy. When the anniversary of appointment is not July 1, the initial appointment or reappointment may be modified so that subsequent appointment periods begin on July 1.

3.3 Employment shall be in accordance with the terms and conditions outlined in the Handbook for Non-Represented Faculty, Professional and Administrative Staff (Handbook), including provisions and benefits applicable to presidents. If any of the terms of this agreement conflict with the terms of the Handbook, the terms of this agreement shall apply.

3.4 The UMS reserves the right to change responsibilities of the position or to reassign the President to another position at any time.

3.5 President shall annually meet with the Chancellor to evaluate and discuss President's performance. To aid in such annual job performance reviews, President agrees to furnish such oral and written reports as may be required.

3.6 The evaluation process and time-frame for Presidents is outlined in Section 204.1 of the Policies and Procedures Manual. President is expected to participate in the formal review process. Section 204.1 may be revised by the Board of Trustees in its discretion.

4.0 Salary

4.1 For all services rendered under this Agreement, UMS shall pay President an annual salary of Two Hundred and Two Thousand, Three Hundred and Twelve

Dollars and fifty cents (\$202,312.50), payable in equal monthly installments on the last working day of each month. Salary shall be subject to all deductions for state and federal taxes and employee benefits.

- 4.2 President's salary shall be reviewed annually and may be increased at the discretion of the Chancellor, with approval of the Board. Such annual salary review will be in conjunction with a review by the Chancellor of the performance of President.
- 4.3 President shall be responsible for any income tax liability incurred as a result of this Agreement.

5.0 Insurance and Retirement Benefits

- 5.1 President is eligible to participate in the UMS's group health insurance program and will be enrolled in the UMS's group life insurance program. In addition he/she will be eligible to receive life insurance equal to twice the base salary with the UMS paying the total premium. UMS employees thirty years of age and older are required to participate in the UMS's retirement plan, to which the employee and the UMS contribute 4% and 10% of regular monthly salary, respectively. Benefits provided to Presidents are outlined in Section 404.4 of the Policy Manual, which may be revised by the Board in its discretion.
- 5.2 President shall be entitled to participate in an eligible deferred compensation plan, as defined in Section 457(b) of the Internal Revenue Code, as amended, sponsored and maintained by UMS. For a period of five calendar years, beginning in January 2007, UMS shall contribute \$20,000 per year to the plan.
- 5.3 Should President be reassigned to another position during the term of this agreement, all benefits, including insurance and retirement, shall be in accordance with policies for full-time regular employees in accordance with the applicable Handbook or collective bargaining agreement.
- 5.4 President shall be an employee of UMS for the purposes of being covered by UMS's Workers' Compensation policy.
- 5.5 Upon retirement President shall be eligible for health insurance coverage as a retiree in accordance with eligibility and other terms then in effect in University policy for non-represented employees.
- 5.6 There is hereby established for the benefit of the President a deferred compensation arrangement within the meaning of Section 457(f) of the Internal Revenue Code of 1986, as amended, maintained by UMS in its capacity as an

agency or instrumentality of the State of Maine. The terms and conditions of the arrangement are the following.

- 5.6.1 The President shall be entitled to receive a one-time, lump sum payment of \$174,057 upon completion by him of five continuous years of service as President following the effective date of this Agreement, provided, in the sole discretion and determination of the Chancellor of the University of Maine System (or his designee) (hereinafter the "Chancellor"), the President has satisfactorily met each and every annual or other performance goal theretofore set by the Chancellor.
- 5.6.2 If the President ceases to perform his duties as President due to termination without cause, as set forth in Section 18.2 below (including if such termination is due to his death, or due to his disability or his total incapacity, as defined in Section 18.2.1.1)
- (a) after two years of continuous service as President following the effective date of this Agreement and after having satisfactorily met each and every annual or other performance goal theretofore set by the Chancellor, but prior to the end of his third year of such service, he shall be entitled to receive a one-time, lump sum payment of \$64,575;
 - (b) after three years of continuous service as President following the effective date of this Agreement and after having satisfactorily met each and every annual or other performance goal theretofore set by the Chancellor, but prior to the end of his fourth year of such service, he shall be entitled to receive a one-time, lump sum payment of \$99,304; and
 - (c) after four years of continuous service as President following the effective date of this Agreement and after having satisfactorily met each and every annual or other performance goal theretofore set by the Chancellor, but prior to the end of his fifth year of such service, he shall be entitled to receive a one-time, lump sum payment of \$135,769.
- 5.6.3 If the President ceases to perform his duties as President due to termination for just cause, as defined in Section 18.1 below, or if the President ceases to perform his duties as President due to termination of this Agreement by the President as set forth in Section 18.3 below, the President shall forfeit absolutely any and

all right to any future payment of deferred compensation under this arrangement.

- 5.6.4 For purposes of this deferred compensation arrangement, the effective date of this Agreement shall be January 1, 2007.
- 5.6.5 The President agrees to deliver to UMS in writing the name(s), address(es), and social security number(s) of the beneficiary(ies) designated by the President to receive deferred compensation payable under this arrangement in the event of his death. If UMS does not receive such a designation of beneficiary(ies) from the President, deferred compensation payable under this arrangement in the event of his death shall be paid to his estate.
- 5.6.6 No part or provision of this deferred compensation arrangement and no action taken pursuant to it shall create or be construed to create a trust of any kind, or a fiduciary relationship between or among UMS, University of Maine Foundation, the President, his designated beneficiary(ies) or any other person. All amounts payable under this arrangement shall be paid from general funds or assets of UMS, or on behalf of UMS from general funds or assets of University of Maine Foundation, and the President shall have no right to such money or property greater than the right of any unsecured general creditor of UMS or University of Maine Foundation. The President shall have no right to assign, transfer, pledge or encumber in any way his interests or rights under this arrangement.
- 5.6.7 Notwithstanding Sections 5.6.1 and 5.6.2 above, the President further acknowledges and agrees that (a) University of Maine Foundation may, in its sole and absolute discretion at any time, determine that market or other economic or financial circumstances or conditions are such that it will not fund a payment of deferred compensation under this arrangement, in which case UMS will have the right in its absolute discretion, but not the obligation, to do so, and (b) neither University of Maine Foundation nor UMS is obligated to fund this arrangement. If neither University of Maine Foundation nor UMS provides funding for a payment of deferred compensation to which the President would otherwise have been entitled under this arrangement, the President acknowledges and agrees that he waives absolutely any and all right to such payment without obligation or continuing obligation of either UMS or University of Maine Foundation.

6.0 Disability Leave

President shall accrue one and two-thirds (1 2/3) days of disability leave per month, which may be accumulated up to a maximum of 150 days. Further information about disability leave may be found in the Handbook.

7.0 Housing

7.1 As a condition of employment, President agrees to live in, and UMS agrees to provide and pay utilities for the President's house located on the campus of the University.

7.2 The residence and UMS owned contents located in the residence shall be insured or self-insured at the cost of the UMS on a replacement cost basis. UMS shall provide general liability insurance or self-insurance on the residence with a limit of not less than \$5 million. Insurances to cover personal contents and personal liability exposures shall be the responsibility of the President. UMS strongly recommends that the President obtain personal liability insurance with a limit of at least \$1 million, and UMS will reimburse the President for the purchase of personal liability insurance through a "tenant's," "homeowner's," or other similar policy, up to \$500.00 annually upon verification of purchase.

7.3 In the event that President leaves the position by death or total disability or incapacity, the spouse and dependent household members shall be allowed to remain in residence at the president's house for a period of at least sixty (60) days. Should a period longer than sixty days be needed and requested by the spouse, the UMS will attempt to accommodate the spouse's needs, subject to the needs of the University.

8.0 Automobile

8.1 The UMS shall provide a car at UMS expense for President's use, subject to approval of the UMS Director of Facilities for reasonableness. The vehicle is intended primarily for official travel; personal use should be limited to commuting and de minimis personal use, which may be subject to taxation in accordance with IRS regulations.

8.2 Said vehicle shall be insured or self-insured at the cost of the UMS with liability limits of not less than \$5,000,000 per individual and \$5,000,000 per accident, and President shall be included as an insured on this insurance. Liability and other insurances to cover use or rental of other vehicles for personal use shall be the responsibility of the President.

9.0 Professional Dues and Meetings

The University will provide for reasonable expenses incurred by President to attend educational conferences, conventions, courses, seminars and other similar professional growth activities, including membership in professional organizations.

10.0 Travel for the University

The University will provide for President and President's spouse's reasonable travel expenses, hotel bills, and other necessary and proper expenses when President is traveling on University business, except that payments will be made on behalf of the spouse only when the spouse is officially representing the University.

11.0 Entertainment Allowance

University may provide for reasonable expenses incurred by President for University-related entertaining.

12.0 Memberships in Service Organizations

During the term of this contract, University may provide President with membership in service organizations that would further the interests of the University. In addition, with approval of the Chancellor, the University may provide membership in other organizations if deemed to be in the best interests of the University. In accordance with this provision President may be provided with the golf and social membership costs only for the Penobscot Valley Country Club.

13.0 Expense Receipts and Documentation

President agrees to maintain and furnish accounting of expenses provided for in this Agreement in reasonable detail, and in accordance with the applicable UMS Administrative Practice Letter.

14.0 Tenure

Should President leave the position as President for any reason other than removal for just cause or total disability, he may assume a tenure-track position as Professor of Biological Sciences at the University of Maine. Salary for the faculty position would be established as appropriate for a senior professor in the discipline. Application for tenure in the faculty position would occur in accordance with University policy, standards and procedures in effect at the time.

15.0 Annual and Personal Leave

- 15.1 President shall accrue one and two-thirds (1 2/3) days of annual leave per month.
- 15.2 Additional provisions regarding annual leave may be found in the Handbook.
- 15.3 President shall not take vacation, personal, or professional leave if such leave interferes with properly discharging the duties under the terms of this Agreement.

16.0 Dependent Tuition Waiver

During employment in this position, President is eligible for a dependent tuition benefit. This benefit will be for each dependent child as defined in University policy who is enrolled as a full-time undergraduate student at an accredited institution of higher education. The benefit for any dependent will not exceed four years of undergraduate enrollment and is not assignable. The benefit will be the cost of tuition, not to exceed the cost of in-state tuition at the University of Maine for undergraduate enrollment. This benefit covers only out-of-pocket costs and is reduced by the amount of any scholarships received by the dependent student. The University of Maine System will make payments directly to the institution, upon submission of a student bill. Bills should be submitted to the Chief Human Resources and Organization Development Officer. The amount paid will be added to President's taxable income for purposes of withholding and reporting for tax purposes.

17.0 Sabbatical Leave

President shall be eligible to apply for sabbatical leave in accordance with Board of Trustee policy as follows: A sabbatical leave, after three years service, which accrues at the rate of one month per year, not to exceed six months accumulated leave eligibility. Such a sabbatical is not a right, but rather a privilege to be considered on an individual basis and shall be requested in writing and shall include an appropriate plan for the leave. Upon return from an approved sabbatical, a substantive report regarding the leave shall be submitted to the Chancellor. This leave cannot be utilized to extend a renewable term appointment.

18.0 Termination and Liquidated Damages

- 18.1 Termination by UMS for Just Cause. The parties agree that the UMS may terminate this Agreement at any time for "just cause," which, in addition to any of its other normally understood meanings in employment contracts, shall include the following:

- 18.1.1 A deliberate or serious violation of the duties set forth in this

Agreement, insubordination or refusal or unwillingness to perform such duties in good faith and to the best of President's abilities;

18.1.2 A violation by President of any of the other terms and conditions of this Agreement not remedied after thirty (30) days' written notice thereof to President;

18.1.3 Any conduct of President that constitutes moral turpitude, or that would tend to bring public disrespect, contempt, or ridicule upon the UMS;

18.1.4 A deliberate or serious violation of any law, rule, regulation, Constitutional provision or bylaw of the Board, or local, state or federal law, which violation may, in the sole judgment of the Board, reflect adversely upon the University;

18.1.5 Prolonged absence from duty without the Chancellor's consent.

18.2 Termination by UMS Without Cause. The parties agree that the UMS may terminate this Agreement prior to its normal expiration, without cause, which, in addition to any of its other normally understood meanings in employment contracts, shall include the following situations:

18.2.1 Regardless of any other provision of this Agreement, this Agreement shall terminate automatically if President dies or becomes totally disabled, or totally incapacitated or incapable of carrying out the duties as President, as defined by the University.

18.2.1.1 If the Chancellor deems President disabled, totally incapacitated, or incapable of carrying out the duties as President, the Chancellor reserves the right to require President to submit to a medical examination, either physical or mental. Such examination shall be performed by a physician licensed to practice medicine, selected and paid for by UMS.

18.2.1.2 If President becomes incapable of carrying out the duties of office, due to permanent disability or incapacity and is terminated, UMS shall be liable to President or 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 President, or personal representative, as the case may be, by

reason of death or incapacity during employment by UMS. President may be eligible for benefits under UMS's long-term disability insurance as determined by the insurance carrier.

18.2.2 This Agreement may be terminated at any time by the UMS by delivering to President written notice of the UMS's intent to terminate this Agreement without cause, which notice shall be effective thirty (30) days after the date the notice is delivered. In such event, President shall be entitled to payment of salary or reassignment at the same salary until the end of the specified term of the appointment. The decision whether to provide payment or to reassign shall be at the discretion of UMS. Upon notification, UMS may, in its discretion, relieve President of all responsibilities and provide payment in lieu of notice.

18.3 Termination by President. This Agreement may be terminated without cause by President giving the UMS ninety (90) days advance written notice of the termination of employment.

18.3.1 If President exercises the right under this provision to terminate this Agreement and provides less than ninety (90) days' notice, the UMS shall be entitled to 25% of President's base annual salary. This requirement may be waived by the Chancellor.

18.3.2 The parties have bargained for and agreed to the foregoing liquidated damages provision, 18.2.2 and 18.3, giving consideration to the fact that termination of this Agreement by the President without cause prior to its natural expiration may cause loss to UMS, which damages are extremely difficult to determine with certainty, and that the payment of such liquidated damages by the UMS and acceptance thereof by President shall constitute adequate and reasonable compensation to President for the damages and injury suffered.

18.4 All correspondence, papers, documents, reports, files, films, work products and all copies thereof received or prepared by the President in the course of performing, or as an incident to the President's duties and responsibilities hereunder shall immediately upon such receipt and preparation become the exclusive property of the UMS for any and all purposes. All items described above shall be provided to and left with the UMS upon termination of this appointment except as otherwise agreed by the UMS. President may not without the permission of the Board make copies of such items nor have the use thereof without the permission of the Board.

18.5 In no case shall the UMS be liable for the loss of any collateral business

opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of the UMS's termination of this Agreement.

19.0 Entire Agreement; Modification

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 signed by the parties hereto.

20.0 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 shall continue to be valid and enforceable.

21.0 Governing Law; Forum

This Agreement shall be interpreted and construed in accordance with the laws of the State of Maine which shall be the forum for any lawsuit arising from or incident to this Agreement.

22.0 Waiver

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

23.0 Non-Assignable


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

24.0 Time is of the Essence of this Agreement

Time is of the essence of this Agreement.

IN WITNESS WHEREOF, Robert A. Kennedy and the authorized representative(s) of the UMS have executed this Agreement on this 25th day of August, 2007.

UNIVERSITY OF MAINE SYSTEM

By: 
Richard L. Pattenaude
Chancellor

PRESIDENT:

By: 
Robert A. Kennedy