

## RESOLUTION NO. 16-2

### BOARD OF TRUSTEES OF OREGON INSTITUTE OF TECHNOLOGY

#### A RESOLUTION APPOINTING DR. JAY D. KENTON AS INTERIM PRESIDENT AND AUTHORIZING THE BOARD CHAIR TO SIGN THE EMPLOYMENT CONTRACT

**WHEREAS**, President Christopher Maples will be ending his term as president of Oregon Institute of Technology (Oregon Tech) by July 1, 2016; a national search for the new president will begin shortly; and, an interim president will need to be named to provide leadership and management during this transition period; and

**WHEREAS**, section 1.3 of the Board Policy on Delegation of Authority and Oregon Revised Statute 352.096 authorize the Board to appoint and employ a President of the University in consultation with the Governor, or the Governor's designee; and

**WHEREAS**, the target date for the new president to assume the role is January 2017; and

**WHEREAS**, the Board of Trustees approved Resolution 16-1 on March 18, 2016 authorizing the Executive Committee to work with the administration and to return to the full board with recommendations regarding interim or acting positions on campus; and

**WHEREAS**, on April 13, 2016 the Executive Committee of the Board of Trustees unanimously moved to recommend Dr. Jay D. Kenton as the interim president and recommend the Board approve a resolution outlining the actions to be taken; and

**WHEREAS**, Dr. Jay D. Kenton has many characteristics that make him an excellent candidate as Interim President, including the following:

1. Dr. Kenton has recent experience serving as an Interim President within the Oregon University System.
2. Dr. Kenton served as Vice Chancellor and CFO for the Oregon University System as well as Vice President for Finance and Administration and CFO at Portland State University and at University of Idaho.
3. Dr. Kenton previously worked at Oregon Tech and is quite familiar with its unique mission and potential for future contributions to the state and the region.
4. Dr. Kenton indicated that he does not want to be considered as a candidate for the full-time role of President.
5. Dr. Kenton has a terminal degree and has served as a Professor having published scholarly reports, taught classes, and advised PhD students.
6. Dr. Kenton has a broad perspective for appreciating performance metrics across the Oregon University System that can be useful for scaling projects and programs at Oregon Tech.

7. Oregon Tech is undergoing significant change related to its role within the State; to its many leadership vacancies; and to its need to compete in the coming years. Dr. Kenton has considerable leadership experience related to change management within academic organizations.

**WHEREAS**, the Board recognizes that this is a period of high-uncertainty for Oregon Tech stakeholders and being able to name an Interim President without an extended process will promote stability; and,

**WHEREAS**, the Executive Committee of the Board believes that compared to other candidates that were and would be available, Dr. Kenton is likely to have better familiarity with the State oversight and funding agencies and their changing processes; to better appreciate Oregon Tech's mission; and, to be uniquely qualified to protect Oregon Tech's financial position during this period of transition.

**Now, therefore**, the Board of Trustees resolves as follows:

### **Section 1**

1. In accordance with the applicable laws and regulations, the Chairman of the Board of Trustees is hereby empowered to consult with appropriate parties within Oregon's executive and legislative branches of government to confirm the appointment and employment of Dr. Kenton.
2. The Chairman of the Board of Trustees is hereby empowered to sign the employment contract, attached as Exhibit A.
3. Beginning July 1, 2016, the Interim President shall preside and shall be delegated the responsibilities, authorities, and accountabilities of the President role as defined in the various policies adopted by the Oregon Tech Board of Trustees and in the employment agreement. The term of the Interim President position shall run as set forth in the employment agreement, until a permanent President is hired and begins work, but in no case later than July 1, 2017.
4. The Interim President shall be given the following guidance and charge when appointed Interim President:

In addition to the normal roles of President the Interim President shall:

- a. Obtain advice and recommendations from President Maples as needed and as appropriate during the early stages of this Interim President role.
- b. Provide leadership and management continuity on the campuses to ensure that students are properly served during the leadership transition and that student recruiting and retention programs have the appropriate emphasis.

- c. Promote shared governance activities on campus; ensure that all stakeholder groups are properly engaged; and, that transparency is promoted during this leadership transition.
- d. Represent the university at appropriate meetings with the HECC, Oregon Legislature, and community organizations as needed to promote Oregon Tech and continue to lobby for state funding at appropriate levels.
- e. Work to ensure the campuses operate with an operating surplus and the financial position is protected to the extent possible so the new leadership team will have resources to adapt to future challenges.
- f. Leverage knowledge of operations and metrics from other institutions to help guide Oregon Tech to adopt best practices for its systems and processes.
- g. Work with the campus leadership to develop strategies and tactics for managing the many open positions on campus while being cognizant of the budget implications.
- h. Create a welcoming environment for the new President and other leaders that will be joining the university during the coming months and help provide orientation for each role.
- i. While moving the university forward be mindful that the success of the new President could be enhanced if allowed to make certain decision and alignments at the start of her/his tenure and certain initiatives might be timed accordingly.

The Interim President's duties and responsibilities may be modified or expanded from time to time by the Oregon Tech Board of Trustees.

## **Section 2**

This Resolution shall take effect immediately upon approval by the Board.

Moved by \_\_\_\_\_ Trustee

Seconded by \_\_\_\_\_ Trustee

| Trustee             | Yes | No |
|---------------------|-----|----|
| Jeremy Brown        |     |    |
| Melissa Ceron       |     |    |
| Bill Goloski        |     |    |
| Jessica Gomez       |     |    |
| Lisa Graham         |     |    |
| Kathleen Hill       |     |    |
| Jill Mason          |     |    |
| Kellev Mintv Morris |     |    |
| Celia Núñez         |     |    |
| Dan Peterson        |     |    |
| Steve Sliwa         |     |    |
| Paul Stewart        |     |    |
| Fred Ziari          |     |    |

Approved and dated this 6th day of May, 2016.

\_\_\_\_\_  
 Lisa Graham  
 Board Chair

ATTEST:

\_\_\_\_\_  
 Sandra Fox  
 Board Secretary

I, \_\_\_\_\_, Secretary of the Board, do hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by the Oregon Institute of Technology Board of Trustees at the meeting held on the 6th day of May, 2016, and thereafter approved and signed by the Chair and attested by the Secretary of the Board.

\_\_\_\_\_  
 Secretary of the Board

## EXHIBIT A

### OREGON INSTITUTE OF TECHNOLOGY EMPLOYMENT AGREEMENT AND NOTICE OF APPOINTMENT

This Employment Agreement and Notice of Appointment (this "Agreement"), made and entered into by and between the Oregon Institute of Technology (hereinafter "University") and Dr. Jay D. Kenton (the "Interim President" or "Dr. Kenton"), will be effective on July 1, 2016. The term "parties" refers to the University and Interim President.

#### 1. Appointment of Interim President; Term of Agreement

In accordance with Oregon Revised Statute 352.096, the Oregon Institute of Technology Board of Trustees (hereinafter "Board") hereby appoints Dr. Kenton as interim president of the University, and Dr. Kenton hereby accepts such employment, upon the terms and conditions set forth in this Agreement. The term of employment as interim president of the University shall commence on July 1, 2016 and continue through December 31, 2016 or until a permanent president is hired and begins work, whichever occurs first. If a permanent president is not able to begin work by or on January 1, 2017 this Agreement shall automatically extend on a month-to-month basis until a permanent president begins work or until June 30, 2017, whichever occurs first. The term is, however, subject to prior termination as provided for in this Agreement.

#### 2. Duties and Responsibilities

Dr. Kenton shall have the title of Interim President of the University. Under Oregon Revised Statute Chapter 352 and Article VI, Section 2 of the University Bylaws, the Interim President has all of the duties and authority of the president of the University and is the interim president of the faculty. The Interim President's authority shall be subject to the action of and supervision of the Board. Unless otherwise specified by statute or Board action, Interim President's duties shall include, but not be limited to:

- Institutional, faculty, and educational leadership;
- Long-range planning, budget formulation, management of institution buildings, grounds and equipment controlled by University; administration of affairs of the University as best serves the institution consistent with Board rules, policies, and directives;
- Student recruitment and services; faculty recruitment;
- Appointing, supervising, promoting, and dismissing employees;
- Preparing rules, policies, regulations and procedures useful to the University's welfare;
- Fundraising, development, and public and alumni relations; and
- Addressing and documenting compliance with Board identified outcomes for each year.

In addition to the normal roles of president the Interim President shall:

- Obtain advice and recommendations from President Maples as needed and as appropriate during the early stages of this Interim President role.

- Provide leadership and management continuity on the campuses to ensure that students are properly served during the leadership transition and that student recruiting and retention programs have the appropriate emphasis.
- Promote shared governance activities on campus; ensure that all stakeholder groups are properly engaged; and, that transparency is promoted during this leadership transition.
- Represent the University at appropriate meetings with the HECC, Oregon Legislature, and community organizations as needed to promote the University and continue to lobby for state funding at appropriate levels.
- Work to ensure the campuses operate with an operating surplus and the financial position is protected to the extent possible so the new leadership team will have resources to adapt to future challenges.
- Leverage knowledge of operations and metrics from other institutions to help guide the University to adopt best practices for its systems and processes.
- Work with the campus leadership to develop strategies and tactics for managing the many open positions on campus while being cognizant of the budget implications.
- Create a welcoming environment for the new President and other leaders that will be joining the University during the coming months and help provide orientation for each role.
- While moving the University forward be mindful that the success of the new President could be enhanced if allowed to make certain decision and alignments at the start of her/his tenure and certain initiatives might be timed accordingly.

The Interim President's duties and responsibilities may be modified or expanded from time to time by the Board.

### **3. Devote Best Efforts to Work as Interim President**

3.1. Interim President agrees to faithfully, industriously, and with maximum application of experience, ability and talent, devote his full attention and energies to the duties as interim president of the University.

3.2. The Board recognizes that certain outside activities by Interim President are beneficial to the University. These activities include service on boards of for-profit or non-profit corporations, speaking engagements, and service on boards and committees of national and local nonprofit or professional organizations. The expenditure of reasonable amounts of time for personal or outside business, as well as charitable and professional development activities, will not be deemed a breach of this Agreement so long as (1) such activities do not interfere with the services this Agreement requires the Interim President to render, (2) such activities are within the limits of applicable law, rule, and University policy, (3) Interim President obtains the Board's written approval for service on boards of for-profit or non-profit corporations, and (4) such activities are otherwise consistent with this Agreement.

3.3. The Board will not consider any income in connection with any of Interim President's outside activities in setting the amount of compensation under this Agreement.

3.4. Other than activities or services permitted by rules or policies, and under Section 3.2 of this Agreement, Interim President will not render services of any professional nature to or for any person, firm,

or entity for remuneration other than to the Board. The making of passive or personal investments and the conduct of private business affairs is not prohibited by this section.

3.5. The Interim President will absolutely not engage in any activity that would cause a conflict of interest with the duties described in Section 2.0 of this Agreement.

#### **4. Salary and Benefits**

4.1. For the period from July 1, 2016 through December 31, 2016, Interim President will be paid \$25,000 per month for 100 hours of service to University (which is a total of \$150,000 for 600 hours of total service over the stated six-month period), to be paid in equal monthly amounts in accordance with University's normal payroll practices, less applicable deductions and withholding. The Interim President will voluntarily donate approximately 73 hours of time per month without pay. Interim President shall file a timesheet each month indicating paid hours worked for PERS record keeping purposes.

4.2. If this Agreement is extended beyond December 31, 2016, Interim President will continue to be paid \$25,000 per month in accordance with University's normal payroll practices, less applicable deductions and withholding.

4.3. The Interim President will not receive benefits.

4.4. The Interim President will not receive a vehicle stipend.

4.5. The Interim President will not receive a monthly housing stipend nor the use of the University-owned residence.

4.6. It is understood that the Interim President will work from his home in Corvallis, Oregon for much of this time, but will be present on both the Wilsonville and Klamath Falls campus, and other meeting sites, when required.

4.7. It is understood that the Interim President will be afforded reasonable time off for personal endeavors, sickness, rest and relaxation subject to the successful accomplishment of the duties outlined above, in the Board's discretion.

#### **5. Travel Expenses**

University will reimburse Interim President and Interim President's spouse for reasonable travel expenses, hotel bills and other necessary and proper expenses, consistent with state and University rules and policies governing travel reimbursements, when Interim President is travelling on University business, except that payment will be made on behalf of the spouse only when the presence of the spouse is of benefit to the interests of the University. Per Section 4.6 above, all travel reimbursements will be based on Corvallis, Oregon as the official work station.

## 6. Expense Receipts and Documentation

Interim President agrees to maintain and furnish an accounting of expenses provided for in this Agreement in accord with University rules and policies and in reasonable detail.

## 7. Termination

7.1. The University reserves the right to terminate this Agreement in its discretion for just cause.

7.1.1. Just cause means conduct by Interim President including, but not limited to the following:

- A deliberate or serious violation of the material duties set forth in this Agreement or Interim President's failure to perform such material duties in good faith;
- A violation by Interim President of any of the other material terms or conditions of this Agreement which causes substantial harm to the Board or University and is not remedied after thirty (30) calendar days' written notice thereof to Interim President;
- A plea of guilty or *nolo contendere* by Interim President to a felony or any crime of moral turpitude;
- A prolonged or serious violation of any law, rule, regulation, Constitutional provision, Board bylaw or directive, or local, state, or federal law which causes substantial harm to the Board or University and is not remedied after thirty (30) calendar days' written notice thereof to Interim President, if curable; or
- Prolonged absence from duty for a period of thirty (30) calendar days or longer without Board or University consent and which absence is not due to illness or disability.

7.1.2. If the University informs the Interim President in writing that it is terminating this Agreement for just cause, the University shall have no obligation to provide the Interim President with any salary or benefits beyond the effective date of termination.

7.2. Either party reserves the right to terminate this Agreement without cause upon thirty (30) calendar days' prior written notice to the other party.

7.3. Dr. Kenton is an active PERS retiree and as such is limited to work no more than 1,039 hours of paid compensation in any calendar year from any public entity in Oregon. During the term of this Agreement, Dr. Kenton will not take any other PERS-eligible employment, and will cease any such employment immediately if it conflicts with PERS rules or anything in this Agreement. Provided that Dr. Kenton has complied with the terms of this Section 8.3, if anything in this Agreement conflicts with the PERS rules, Dr. Kenton may terminate the Agreement immediately upon written notice to the University.

7.4. Upon the effective date of the termination, Interim President will not be entitled to any further compensation under this Agreement.

7.5. Under no circumstance will the University or Interim President be liable for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may occur if this Agreement is terminated as specified in Section 7.2. The parties have bargained for and agreed to the foregoing provision, giving consideration to the fact that action by either party under Section 7.2 may cause loss to the other party which is extremely difficult to determine with certainty.

## **8. Non-Appropriation**

If sufficient funds are not provided in future legislatively approved budgets to permit the University, in the exercise of its reasonable administrative discretion to continue this Agreement, the University may terminate this Agreement without further liability by giving Interim President not less than ninety (90) calendar days' written notice. Termination due to non-appropriation will not result in either party being entitled to liquidated damages.

## **9. Severability**

If any provision of the Agreement is determined to be void, invalid, unenforceable or illegal for any reason, it will be ineffective only to the extent of such prohibition and the validity and enforceability of all remaining provisions will not be affected thereby.

## **10. Modification**

This Agreement may not be modified or extended except by written instrument signed by Interim President and a designee of the Board expressly authorized to amend this Agreement on behalf of the Board.

## **11. 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.

## **12. Prior Agreements**

This Agreement cancels and supersedes any and all prior agreements entered into between the parties.

## **13. Indemnification**

To the extent permitted by Article XI, Section 7 of the Oregon Constitution, and the provisions of the Oregon Tort Claims Act, the Board will indemnify Interim President and hold him harmless against legal fees, expenses, judgments and other financial amounts incurred while serving in his capacity as interim president of the University. Interim President will continue to be indemnified subsequent to the termination of his employment as interim president with respect to acts or omissions occurring while he served as interim president.

**14. Waiver**

No delay or failure to enforce any provisions of this Agreement by either party will be construed as a waiver or relinquishment to any extent of such party's rights to assert or rely upon such terms or rights in any future occasion

**15. Governing Law; Forum**

This Agreement will be governed, construed, and enforced in accordance with the laws of the state of Oregon, excluding its choice of law rules. Any lawsuit, claim, or dispute arising from or in connection with this Agreement will be brought and conducted solely and exclusively within the Circuit Court of Klamath 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.

**16. 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.

**17. Nonassignability**

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

**18. Applicable Laws and Regulations**

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

**19. Notices.**

All notices, requests, claims, demands, and other communications which are required or may be given under this Agreement must be in writing and will be deemed to have been duly given and received at the earliest of: (i) the date actually received; (ii) one business day after being sent by a nationally recognized overnight courier for next business day delivery, with receipt acknowledged; (iii) when delivered by fax or e-mail during regular business hours or on the next business day if so delivered after regular business hours, provided in either case that a confirming copy is concurrently sent by overnight delivery; or (iv) three business days after being mailed, postage prepaid, by certified mail, return receipt requested. Notices to University must be addressed to University's Board Chair at its main campus address in Klamath Falls. Notices to Interim President are to be sent to the last address Interim President has provided from time to

time to University. Either party may change its address for notices by giving notice of the change to the other party.

**IT IS SO AGREED:**

DATED effective as of the date set forth above.

Interim President:

\_\_\_\_\_  
Dr. Jay D. Kenton  
Date: \_\_\_\_\_

Oregon Institute of Technology:

By: \_\_\_\_\_  
Dr. Lisa J. Graham, Oregon Tech Board Chair  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sandra Fox, Oregon Tech Board Secretary  
Date: \_\_\_\_\_