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Florida Gulf Coast University • Florida Gulf Coast University

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FLORIDA  
GULF COAST  
UNIVERSITY

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**2011-2014  
Collective Bargaining  
AGREEMENT**

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United Faculty of Florida – FGCU Chapter

***Florida Gulf Coast University***

***Board of Trustees***

***and the***

***United Faculty of Florida, Florida Gulf Coast University  
Chapter (UFF)***

***2011-2014***

***Collective Bargaining Agreement***



10501 FGCU BOULEVARD SOUTH  
FORT MYERS, FLORIDA 33965-6565

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## ***Preamble***

The intent of this document is to mutually establish the wages, hours and terms and conditions of employment and the rights of the parties. The parties recognize that good faith collective bargaining is a means of achieving this intent. The intent of the parties hereto in carrying out their negotiating responsibilities is to promote the quality and effectiveness of education at Florida Gulf Coast University (FGCU) and to maintain high standards of academic excellence in all phases of instruction, scholarship, and service.

While the United Faculty of Florida, FGCU Chapter (UFF), as the designated bargaining agent, retains the exclusive right to negotiate and reach an agreement, it is also recognized that the FGCU Board of Trustees (Board) retains the right, under law, to manage and direct FGCU.

Both parties further recognize the desirability of a collegial governance system for faculty in areas of academic concern. Therefore, the Board and the UFF acknowledge the unique and distinct role and responsibility of the Faculty Senate, which exists separate and apart from the UFF. While the UFF's role is acknowledged as the exclusive bargaining agent for wages, hours, and terms and conditions of employment, the parties agree that collegiality in academic governance can best be accomplished through the Faculty Senate. Therefore, the President of the University or representatives shall have the ability to bring appropriate matters of concern before the Senate. Among matters which may be of concern to the Senate and on which the President, at his discretion, may consult include but are not limited to: (a) curriculum policy and curricular structure; (b) requirements for degrees and granting of degrees; (c) policies for recruitment, admission, and retention of students; (d) the development, curtailment, discontinuance, or reorganization of academic programs; (e) grading policies; and (f) other matters of traditional concern. The UFF may also seek consultation with the President or designee under Article 2 on matters of traditional academic concern where such concerns affect wages, hours, or terms and conditions of employment, and thus fall within the province of the UFF's role as bargaining agent. Nothing in this Preamble is intended to discourage or preclude the UFF and Senate from mutually identifying and electing to confer with one another on issues of shared concern.

In such a collegial system, departments or other traditional governance structures should play an active and responsible role in academic matters, including significant involvement in the recruitment of new faculty and professional employees, the development of high quality programs, participation in the development of promotion and merit salary increase criteria, participation in the selection of instructional and library materials, and other matters of professional concern. The collegial relationship is most effective when peers work critically together to carry out their duties in the most professional manner possible.

This Preamble is a statement of intent and policy and is, therefore, not subject to the Grievance procedure.

# **Article 1**

## **Recognition**

1.1 Bargaining Unit. Pursuant to Order Granting Certification No. 03E-115 issued May 13, 2003, by the Public Employees Relations Commission, wherein the Commission issued Certification No. 1394 adopting the bargaining unit agreed to by the Florida Gulf Coast University Board of Trustees (Board) and the United Faculty of Florida, the Board has recognized the United Faculty of Florida as the exclusive representative, solely for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment as specifically set forth in this Agreement, for all employees in the bargaining unit described in the certification. Attached as Appendix "A," for information purposes only and not made a part of the Agreement, is the listing of titles included in the General Faculty bargaining unit.

### 1.2 Regulations and Policies.

A. No existing, new or amended FGCU regulation, policy, or Board resolution shall apply to employees in the bargaining unit if it is inconsistent with or conflicts with an express term or provision of the Agreement.

B. The University shall provide to the UFF an advance copy of any proposed regulation, policy, or Board resolution changing a term or condition of employment contained in this Agreement. The University shall provide the advance copy of a proposed regulation no later than the date of publication under the provisions of the Board of Governors Regulation Development Procedure. The advance copy of a policy shall be provided to the UFF at least thirty days (30) in advance of its effective date so as to permit the UFF to seek consultation with respect to it. With respect to a regulation adopted pursuant to the emergency provisions of the Board of Governors Regulation Development Procedure, an advance copy shall be provided to the UFF as far in advance of its effective date as is feasible under the circumstances.

C. If the Board or a committee of the Board has scheduled public hearings on any Board action that would conflict with an express term of this Agreement; the UFF shall not be denied the opportunity to address the matter.

D. If any proposed regulation, policy, or resolution would modify an express term of this Agreement, the University shall engage in collective bargaining with respect to the change upon the UFF's request.

### 1.3 Board of Trustees Meetings.

A. The University shall maintain a web page containing a copy of the agenda and supporting materials for each Board meeting and Board committee meeting. Minutes of Board meetings and Board committee meetings shall be posted to the web page.

The agenda, supporting materials and minutes shall be posted to the web page at the time same are made available to members of the Board.

B. The UFF shall be granted a place on the agenda at each Board meeting for the purpose of addressing any item on the Board's agenda that affects the wages, hours, or other terms and conditions of employment of employees.

1.4 Right to Hear Views. Nothing contained in this Agreement shall be construed to prevent the Board or the University from meeting with any individual or organization to hear views on any matter, provided however, that as to any such matter which is a proper subject of collective bargaining and covered by a term of this Agreement, any changes or modification shall be made only through negotiation and agreement with the UFF.

# **Article 2**

## **Consultation**

2.1 Consultation with President. The President or representative shall meet with the UFF representatives to discuss matters pertinent to the implementation or administration of this Agreement, University actions affecting terms and conditions of employment or any other mutually agreeable matters. Such meetings shall occur once (1) per semester in the academic year and once (1) during the summer term unless the parties agree to meet more or less frequently. The party requesting consultation shall submit a written list of agenda items normally no less than one (1) week in advance of the meeting. The other party shall also submit a written list of agenda items in advance of the meeting if it wishes to discuss specific issues. The parties understand and agree that such meetings may be used to resolve problems regarding the implementation and administration of the Agreement; however, such meetings shall not constitute or be used for the purpose of collective bargaining.

2.2 In addition to the consultation described in Article 2.1 above, the parties agree to have informal labor-management committee meetings to discuss matters of interest. The parties understand and agree that such meetings may be used to resolve problems regarding the implementation and administration of the Agreement; however, such meetings shall not constitute or be used for the purpose of collective bargaining. Unless mutually agreed upon, such meetings shall take place at a mutually agreed time at least once each fall and spring semester plus the opportunity for one additional meeting each fall and spring semester if either party requests it. The committee shall establish and abide by ground rules including but not limited to an agreement to refrain from any discussion of active grievances during committee meetings.

2.3 Diversity Plans. The University shall provide to the UFF, without cost, a copy of any plans to ensure diversity and updates of such plans.



# **Article 3**

## **UFF Privileges**

3.1 Use of Facilities and Services. Subject to the regulations and policies of the University and the terms of this Agreement, the UFF shall have the right to use university facilities for meetings and all other services on the same basis as they are generally available to other university-related organizations which are defined as follows:

University-Related Groups and Organizations. These groups and organizations may or may not receive budgetary support. Examples of such groups include student organizations, honor societies, fraternities, sororities, alumni associations, faculty committees, Staff Advisory Council, direct support organizations, the United Faculty of Florida, etc.

3.2 Communications.

A. UFF may post bulletins and notices relevant to its position as the collective bargaining agent on a reasonable number of existing bulletin boards but on at least one bulletin board per building where a substantial number of employees have offices. Specific locations shall be mutually selected by the university and the local UFF Chapter in the course of consultation pursuant to Article 2, Consultation. All materials placed on the designated bulletin boards shall bear the date of posting and may be removed by the university after having been posted for a period of thirty (30) days. If materials do not bear a date of posting the University may remove them at any time. In addition, such bulletin boards may not be used for election campaigns for public office or exclusive collective bargaining representation.

B. The university will place a link in an appropriate place on the university web site to the web site of the local UFF chapter.

C. Accessing existing university e-mail listservs or establishing a new listserv allowing the UFF electronic communications with employees shall be the subject of consultation pursuant to Article 2, Consultation. UFF agrees to pay a reasonable annual fee to the university if access to a university maintained e-mail listserv is provided. However, such listservs may not be used for election campaigns for public office or for exclusive collective bargaining representation. Employees who are e-mail recipients of the listserv shall have the right to have themselves removed as recipient of UFF electronic communications upon their written request. This shall be the sole responsibility of the UFF.

3.3 Leave of Absence -- Union Activity.

A. At the written request of the UFF, provided no later than April 15 of the year prior

to the beginning of the academic year when such leave is to become effective, a full-time or part-time leave of absence for the academic year shall be granted to up to 4 employees designated by the UFF for the purpose of carrying out UFF's obligations in representing employees and administering this Agreement, including lobbying and other political representation. Such leave may also be granted to up to 2 employees for the entire summer term, upon written request by the UFF provided no later than March 15 of the preceding academic year. Upon the failure of the UFF to provide the University with a list of designees by the specified deadlines, the University may refuse to honor any of the requests that were submitted late.

B. No more than one employee per fifteen (15) employees per department, need be granted such leave at any one time. Further, no more than one employee per twenty-five (25) employees per college/library need be granted such leave at any one time except that the UFF may select one college/library where there may be a leave for one (1) employee per fifteen (15) employees in the designated college/library.

C. The employee(s) shall be placed in unpaid leave status. The employee will be responsible for continuation of benefits during the unpaid leave.

D. Employees on full-time leave under this paragraph shall, upon return to paid status, be eligible to receive salary increases in accordance with the provisions of Article 17.11. Employees on less than full-time leave under this paragraph shall be eligible to receive salary increases on the same basis as other employees.

E. An employee who has been granted leave under this Article for two (2) consecutive academic years shall not again be eligible for such leave until two (2) consecutive academic years have elapsed following the end of the leave. One (1) employee, designated by the UFF, shall be exempt from the provisions of this subsection. Other exceptions may be granted at the discretion of the University upon prior written request by the UFF.

F. The university or the Board shall not be liable for the acts or omissions of said employees during the leave and the UFF shall hold the university and the FGCU Board harmless for any such acts or omissions, including the cost of defending against such claims.

G. An employee on such leave shall not be evaluated for this activity nor shall such activity be considered by the university in making personnel decisions.

### 3.4 Released Time.

A. The Board agrees to provide a total of five (5) units of released time during each academic year and one (1) unit of released time each Summer to full-time employees designated by the UFF for the purpose of carrying out the UFF's obligations in representing employees and administering this Agreement. The UFF may reserve or bank the use of up to two (2) of the released time units provided above during each academic year to be distributed for periods of negotiations during any academic

year, excluding summer. The UFF may designate employees to receive released time during the academic year, subject to the following conditions:

(1) No more than one (1) employee per fifteen (15) employees per department/unit may be granted released time at any one time, nor may any employee be granted more than a two (2) unit reduction in a single semester. Further, no more than one employee per twenty-five (25) employees per college/library need be granted such release time at any one time except that the UFF may select one college/library where there may be a release of one (1) employee per fifteen (15) employees in the designated college/library.

(2) The UFF shall provide the University with a list of designees for the academic year no later than May 1 of the preceding academic year. The designees shall serve for one (1) academic year. Substitutions for the spring semester may be made upon written notification submitted by the UFF to the University no later than October 15.

B. A “unit” of released time shall consist of a reduction in teaching load of one (1) course per Fall or Spring semester for instructional employees or, for non-teaching employees, a reduction in workload of ten (10) hours per week. Two (2) units shall consist of a reduction in teaching load of two (2) courses per Fall or Spring semester for instructional employees or, for non-teaching employees, a reduction in workload of twenty (20) hours per week.

C. Released time shall be used for conducting UFF business at the University or State level, and shall not be used for lobbying or other political representation. Leave for lobbying or other political representation may be purchased by the UFF pursuant to Section 3.3.

D. Upon the failure of the UFF to provide a list of designees by the specified deadlines, the University may refuse to honor any of the released time requests which were submitted late. Substitutions submitted after the October 15 deadline shall be allowed at the discretion of the University.

E. An employee who has been granted released time for either or both semesters during four (4) consecutive academic years shall remain eligible for released time in subsequent and future academic years. However, it is desirable that UFF manage such release time consistent with developing and maintaining a cadre of employees who are sufficiently knowledgeable in UFF affairs and are able to ensure continuity in bargaining and other UFF matters.

F. Employees on released time shall be eligible for salary increases on the same basis as other employees, but their released time activities shall not be evaluated nor taken into consideration by the university in making personnel decisions.

G. Employees on released time shall retain all rights and responsibilities as employees but shall not be considered representatives of the university or Board for any activities

undertaken on behalf of the UFF. The UFF agrees to hold the university and Board harmless for any claims arising from such activities, including the cost of defending against such claims.

H. Summer. The Board agrees to provide the equivalent of one (1) thirteen-week .25 FTE summer released time assignment. This summer release may be given to one person, or shared between two people, as designated by UFF. Payment for the summer release shall be at the same rate as the designated person(s) would receive for their share of one 3-credit-hour summer course. The UFF shall provide the University with a list of the designees no later than April 21 of the academic year preceding the summer term. All other provisions contained in Article 3.4 above, except 3.4A and 3.4B above, shall apply to summer released time.

I. Collective Bargaining Released Time. The University will provide an additional three (3) units of released time during the semester prior to expiration of this contract or in the semester prior to when the parties agree to begin bargaining on the successor (full-book) Agreement for a bargaining team representing UFF for the purposes of engaging in collective bargaining of the next contract. No individual may receive more than one (1) unit of released time per semester pursuant to this section (3.4.1). It shall be the responsibility of the UFF to make the request for such release at least three (3) months prior to the start date for such bargaining. Upon the failure of the UFF to provide a list of designees by the specified deadlines, the University may refuse to honor any of the released time requests under this subsection which are submitted late. Unless mutually agreed, these three (3) units of released time for full-book bargaining cannot be carried forward.

J. No individual may receive more than two (2) units of release time per semester under 3.4.

# **Article 4**

## ***Reserved Rights***

4.1 Policy. The Board retains and reserves to itself the rights, powers, and authority vested in it, including the right to plan, manage, and control FGCU and in all respects carry out the ordinary and customary functions of management.

4.2 Limitations. All such rights, powers, and authority are retained by the Board, subject only to those limitations imposed by this Agreement. Only violations of such limitations shall be subject to the Grievance Procedure.

4.3 Administrative Adjustments to Base Salary.

A. Nothing in Article 23 will limit the ability of the University to provide salary increases beyond those listed in that article. These administrative adjustments are available to be provided for salary counter-offers, increased duties and assignment, and other similar, special situations. For any given year, any such adjustments will be limited to 1% of the total salary rate for in-unit employees who are in an employment relationship with the University for the year. The UFF will be provided written notice of any such administrative adjustments including the name of the faculty member, the amount of the increase, and the reason for the increase no later than 30 days after the effective date, or as soon as practicable. The parties recognize and agree that 1% of total in-unit employee salary for a unit represents administrative spending authority and not a defined pool of funds held in reserve.

B. Any Administrative Adjustments provided under any court-ordered or court approved salary increase or any salary increase to settle a legitimate employment dispute shall not be subject to the terms and limitations of this section.

# **Article 5**

## ***Academic Freedom and Responsibility***

5.1 The Florida Gulf Coast University affirms the principles of academic freedom and responsibility, which are rooted in a conception of the University as a community of scholars united in the pursuit of truth and wisdom in an atmosphere of tolerance and freedom.

5.2 Academic Freedom is the freedom of an employee to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, to speak freely on all matters of university governance, and to speak, write, or act as an individual, all without institutional discipline or restraint.

5.3 On the part of an employee, Academic Responsibility implies the honest performance of academic duties and obligations, the commitment to support the responsible exercise of freedom by others, and the candor to make it clear that the individual, while he or she may be freely identified as an employee of the University, he/she is not speaking as a representative of the University in matters of public interest.

5.4 On the part of the University, Academic Responsibility implies a commitment to foster within the FGCU community a climate favorable to responsible exercise of freedom, by adherence to principles of shared governance, which require that in the development of academic policies and processes, the professional judgments of employees are of primary importance.

# **Article 6**

## ***Nondiscrimination***

### 6.1 Statement of Intent.

A. The University and the UFF fully support all laws intended to protect and safeguard the rights and opportunities of each employee to work in an environment free from any form of discrimination or harassment. The parties recognize their obligations under federal and state laws and rules and regulations prohibiting discrimination or harassment, including required implementation of affirmative action and equal opportunity programs.

B. The University and the UFF affirm their commitment to equal employment opportunities, diversity and affirmative action. The implementation of affirmative action programs will require positive actions that will affect terms and conditions of employment and to this end the parties have, in this Agreement and elsewhere, undertaken programs to ensure equitable opportunities for employees to receive salary adjustments, tenure, promotion, sabbaticals, and other benefits. This statement of intent is not subject to Article 20, Grievance Procedure and Arbitration.

### 6.2 Policy.

A. Nondiscrimination. Neither the University nor the UFF shall discriminate against any employee based upon race, color, sex, sexual orientation, religion, national origin, age, veteran status, disability, political affiliation, or marital status, nor shall the University or the UFF abridge any rights of employees related to union activity granted under Chapter 447, Florida Statutes, including but not limited to the right to assist or to refrain from assisting the UFF. Personnel decisions shall be based on job-related criteria and performance.

#### B. Sexual Harassment.

(1) Sexual harassment is a prohibited form of sex discrimination. In *Meritor Savings Bank v. Vinson*, 106 S.Ct. 2399 (1986), the United States Supreme Court defined sexual harassment in the employment context as including the following:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(2) In addition to the parties' concern with respect to sexual harassment in the employment context, the parties also recognize the potential for this form of illegal discrimination against students. Relationships between employees and students, even if consensual, may become exploitative, and especially so when a student's academic work, residential life, or athletic endeavors are supervised or evaluated by the employee. These relationships may involve a conflict of interest.

C. Investigation of Charges of Discrimination. Charges of discrimination alleging unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that constitutes sexual harassment, including those filed by employees against students, shall be promptly reviewed/investigated according to established university procedures. No employee reviewed/investigated under such procedures shall be disciplined until such review is complete and a finding of discrimination has been issued.

If after the completion of the review/investigation, any finding of discrimination is made, a record of the complete findings will be placed in the employee's evaluation file. If no finding of discrimination on any charge or complaint is made, no record of the charge or complaint will be placed in the employee's evaluation file unless the employee requests in writing that a record of the complete review/investigation be placed in the evaluation file.

6.3 Access to Documents. No employee shall be refused a request to inspect and copy documents relating to the employee's claim of discrimination, except for records which are exempt from the provisions of the Public Records Act, Chapter 119, Florida Statutes, provided, however, the University may charge for copies of documents in accordance with law, rule, regulations, university policies and procedures, and this Agreement.

6.4 Consultation. As part of the consultation process described in Article 2, Consultation the parties agree to discuss efforts made to appoint and retain women and minority employees.

6.5 Grievance Procedures. Claims of such discrimination by the University may be presented as grievances pursuant to Article 20, Grievance Procedure and Arbitration. It is the intent of the parties that matters which may be presented as grievances under the Grievance Procedure, be so presented and resolved there-under instead of using other procedures. However, the UFF agrees not to process cases arising under this Article when alternate procedures to the Grievance Procedure are initiated by the grievant, except as specifically provided for in Article 20.3.



# **Article 7**

## ***Minutes, Regulations, Policies, and Budgets***

### 7.1 University Documents.

A. The University shall provide the UFF with a copy of the following:

- (1) the agenda and minutes of the meetings of the University Board;
- (2) the agenda and minutes of the meetings of campus boards;
- (3) new University regulations published in accordance with the Board of Governors Regulation Development Procedure; and
- (4) the FGCU/UFF Agreement and all supplements to the Agreement.

If the documents referenced in 7.1 (A)(1), (2), and (4) are maintained on the web by the University they shall be deemed provided.

B. The University shall ensure that a copy of the following documents is made available in an easily accessible location in its libraries or by links on the university web site:

- (1) the minutes of the meetings of the University Board of Trustees;
- (2) the University's regulations published in accordance with the Board of Governors Regulation Development Procedure;
- (3) the University's operating budget, including the previous year's expenditure analysis; in the form that is reported to the Board of Trustees;
- (4) a copy of all official University Policies and Procedures.

C. The University shall, without charge, provide to UFF a hard copy and an electronic copy of salary data as reasonably requested, but not more than twice during the fall and spring semesters and once during the summer.

# **Article 8**

## **Appointment**

8.1 Policy. The University shall exercise its authority to determine the standards, qualifications, and criteria so as to fill appointment vacancies in the bargaining unit with the best possible candidates. In furtherance of this aim, the University shall, (a) advertise such appointment vacancies, receive applications and screen candidates, and make such appointments as it deems appropriate under such standards, qualifications, and criteria, and (b) commit to an effort to identify and seek qualified women and minority candidates for vacancies and new positions.

8.2 Advertisement of Vacancies. Bargaining unit vacancies shall be advertised in the FGCU online position vacancy announcement system and the Division of Colleges and Universities (DCU) position vacancy announcement system unless a waiver of announcement has been approved by the President or representative in the event of exceptions caused by unanticipated and compelling circumstances. Employees of lower or equivalent ranks, employees who are spouses of employees, and employees who are local residents shall not, in the hiring process, be disadvantaged for that reason, except as provided in Florida Statutes Chapter 112. Prior to making the decision to hire a candidate to fill a bargaining unit vacancy, the appropriate administrator(s) shall consider recommendations which have resulted from the review of candidates by employees in the department.

8.3 Employment Contract. All appointments shall be made on a University employment contract and signed by the President or representative and the employee. The University may enclose informational addenda, except that such addenda may not abridge the employee's rights or benefits provided in this Agreement. All academic year appointments for employees at a university shall begin on the same date. The university employment contract shall contain the following elements:

A. Date;

B. Title, class code, rank, and appointment status;

C. Employment unit (e.g., department, college, institute, area, center, etc.);

D. The length of the appointment;

E. Special conditions of employment;

F. A statement that the employee's signature on the standard employment contract shall not be deemed a waiver of the right to process a grievance with respect thereto in compliance with Article 20 Grievance Procedure and Arbitration;

G. For continuing multi-year contracts, the statement: “This continuing multi-year contract shall remain in force unless otherwise notified.”

H. For fixed contracts, the statement: “Your employment under this fixed multi-year contract will cease on the date indicated. No further notice of cessation of employment is required”;

I. A statement that the appointment is subject to the Constitution and laws of the State of Florida and the United States, the rules of the State Board of Education and the University, and this Agreement;

J. Percent of full-time effort (FTE) assigned;

K. Salary rate;

L. The statement: “The FGCU/UFF Collective Bargaining Agreement (Article 6) prohibits discrimination against any employee based upon race, color, sex, sexual orientation, religion, national origin, age, veteran status, disability, political affiliation, marital status, or employee rights related to union activity as granted under Chapter 447, Florida Statutes. Claims of such discrimination by the University may be presented as grievances pursuant to Article 20, Grievance Procedure and Arbitration”;

M. A statement informing the employee of the obligation to report outside activity and conflict of interest under the provisions of Article 19, Conflict of Interest and Outside Activity of the Agreement;

N. Principal place of employment; and

O. The number of years in rank credited for experience in previous universities.

#### 8.4 Appointments Types.

A. Continuing Multi-Year Appointments (CMYA). A continuing multi-year appointment is an appointment of contingent duration, consisting of an initial three (3) year term extendible annually on the basis of overall satisfactory annual performance as determined through the criteria, standards, and procedures stipulated in Article 10, Evaluations. FGCU shall provide the option of a CMYA to all new ranked multi-year faculty member hires, with the exception of the appointment status categories listed in Section 8.4 (B) below.

B. Fixed Multi-Year Appointments (FMYA). A fixed multi-year appointment is an appointment of fixed duration, two (2) to five (5) years in length, with the opportunity for successive appointments. FGCU may offer an FMYA without the option of a CMYA to bargaining unit members in the following categories:

(1) Instructors and lecturers;

- (2) New faculty members who have not yet completed their terminal degree requirements but are required to do so as a condition of continued employment;
- (3) Eminent Scholars and Research Associates;
- (4) Tenured faculty who elect to give up their tenured status to take advantage of whatever incentives might be offered by a fixed multi-year appointment;
- (5) Faculty who have not yet demonstrated instructional effectiveness through prior teaching experience.
- (6) Faculty on “soft money” such as contracts and grants, sponsored research funds, grants and donations trust funds, and other non-recurring sources of funds.

C. Tenure. Tenure as an appointment is recognized and continued only for those faculty who transferred from USF-Fort Myers in 1997 and who have achieved such status as of the effective date of this Agreement. Tenure guarantees annual appointment for the academic year until voluntary resignation, retirement, removal for just cause, or layoff, but does not extend to administrative appointments.

D. Visiting Appointments. A fixed appointment of specific duration to a person who has appropriate professional qualifications but is not expected to be available for more than a limited period, or to a person in a position which the university does not expect to be available for more than a limited period. There is no commitment for renewal. The appointment may not exceed a total of four (4) consecutive years.

E. Adjunct Appointments. The use of adjuncts at a university shall, upon the request of the UFF Chapter representatives, be a subject of consultation under the provisions of Article 2.1, Consultation.

#### F. Summer Appointments Policy.

- (1) Available supplemental summer appointments shall be offered equitably and as appropriate to qualified employees, not later than five weeks prior to the beginning of the appointment, if practicable, in accordance with written criteria. The criteria shall be made available in each department/unit.
- (2) Supplemental summer appointments shall be made in accordance with Section 1012.945, Florida Statutes (“the Twelve Hour Law”).
- (3) Compensation. Faculty teaching during any of the summer terms shall be compensated in the same amount as compensation received during the regular academic year for the same or similar course. For example, if a faculty member were assigned a three contact hour summer course that constituted .25 FTE of the faculty member’s time if taught during a semester in the regular academic year and that faculty member’s nine-month salary was \$60,000, then the summer compensation for teaching that course would be \$7,500 (1/4 of the semester salary of \$30,000 or

12.5% of \$60,000). The summer FTE for the course and the classroom time would be increased to ensure that the same number of contact hours occurred during the summer as occurred during the offering of the course in the longer regular academic semester.

G. Extra University Compensation Appointments. Extra University compensation is defined as University compensation for any duties in excess of a full appointment (1.0 FTE). Available extra University compensation appointments within the University shall be offered equitably and as appropriate to qualified employees in sufficient time to allow voluntary acceptance or rejection. Extra compensation must be paid in accordance with applicable laws, rules, university regulations, policies, and procedures. Any compensation paid in excess of the established FTE on the position shall be paid from OPS funds. Exceptions are limited to the following: (1) faculty paid from grants/contracts during the summer may at their option and upon approval of their supervisors, receive payment in OPS so long as the grant/contract so stipulates; and (2) faculty appointed in departments/units other than their own may receive summer payments from OPS funds regardless of the FTE assigned to them in their home units.

#### 8.5 Change in Appointments.

A. An employee serving on a twelve (12) month appointment may request an academic year appointment. Similarly, an employee serving on an academic year appointment may request a twelve (12) month appointment. The President or representative shall carefully consider such requests, although staffing considerations and other relevant university needs may result in the denial of such requests.

B. Upon approval by the President or representative, and assuming that the assigned responsibilities remain substantially the same, an employee's base salary shall be adjusted by 81.8 percent when changing from a twelve (12) month to an academic year appointment or by 122.2 percent when changing from an academic year to a twelve (12) month appointment. For an employee whose appointment was previously changed at an adjustment other than 81.8 percent, or at a salary adjustment other than 81.8 percent, the percent which is the reciprocal of the percent previously used shall be used to make the salary adjustment.

C. A faculty member may apply to change from a fixed to a continuing multi-year contract or from a continuing contract to a fixed multi-year contract in accord with Article 15.

8.6 Reclassification of an Employee to a Non-Unit Classification. Employees shall be provided written notice thirty (30) days in advance, where practicable, with a copy to UFF, when the university proposes to reclassify the employee to a classification which is not contained in the bargaining unit. The employee may request a review of such action consistent with the provisions of Article 27.6 and UFF may discuss such action pursuant to Article 2, Consultation.

# **Article 9**

## **Assignment of Responsibilities**

9.1 Policy. The parties agree that the University will approach faculty assignments in the spirit of equity and fairness. The professional obligation is comprised of both scheduled and non-scheduled activities. The parties also recognize that it is a part of the professional responsibility of employees to carry out their duties in an appropriate manner and place. For example, while instructional activities, office hours, and other duties and responsibilities may be required to be performed at a specific time and place, other non-scheduled activities are more appropriately performed in a manner and place determined by the employee.

9.2 Annual Assignments.

A. Communication of Assignment.

(1) Employees shall be apprised in writing, at the beginning of their employment and at the beginning of each year of employment thereafter, of the duties assigned in teaching, thesis/dissertation supervision, research and other creative activities, public service, and of any other specific duties assigned for that year. The assigned elements shall form the basis for annual evaluation, eligibility for merit, continuation, and promotion as per the college/unit criteria.

(2) Except for an assignment made at the beginning of an employee's employment, the person responsible for making an assignment shall notify the employee prior to making the final written assignment. The assignment shall be communicated to employees no later than six (6) weeks in advance of its starting date, if practicable.

B. Instructional Assignment.

(1) Specific course assignments shall be communicated to faculty members no later than six (6) weeks prior to August 7 (for the fall semester) and six (6) weeks prior to the first working day of the new year (for the spring semester), if practicable. The requirement for giving at least six (6) weeks notice of the specific course assignment does not prevent the chair/supervisor from making a change in assignment as outlined in Article 9.2.C.

(2) The period of an instructional assignment during an academic year shall not exceed an average of seventy-five (75) days per semester and the period for testing, advisement, and other scheduled assignments shall not exceed an average of ten (10) days per semester. Within each semester, activities referred to above shall be scheduled during contiguous weeks with the exception of spring break, if any.

C. Change in Assignment. Should it become necessary to make changes in an

employee's assignment, the person responsible for making the change shall notify the employee prior to making such change and shall specify such change in writing.

(1) If an assignment is changed without six (6) weeks notice, the supervisor will provide the employee with a written explanation of the rationale for the assignment change with a copy to the Dean, no later than seven (7) days after the change has been made.

(2) Upon written request, the University will provide the UFF with a copy of the rationale for the assignment change referenced in 9.2.C(1).

D. Equitable Opportunity. Each employee shall be given assignments which provide equitable opportunities, in relation to other employees in the same department/unit, to meet the required criteria for promotion, continuing multi-year appointment extensions, successive fixed multi-year appointments, and merit salary increases.

(1) For the purpose of applying this principle to promotion, assignments shall be considered over the entire period since the original appointment or since the last promotion, not solely over the period of a single annual assignment. The period under consideration at the university shall not be less than four years. The employee's annual assignment shall be included in the promotion file.

(2) For the purpose of applying this principle to successive fixed multi-year appointments, assignments shall be considered over the entire appointment period and not solely over the period of a single annual assignment. The employee's annual assignment shall be included in the evaluation file.

(3) For the purpose of applying this principle to continuing multi-year appointment extensions, assignments shall be considered over the previous three (3) years or the entire period since the original appointment, whichever is less, and not solely over the period of a single annual assignment. The employee's annual assignment shall be included in the evaluation file.

(4) If an arbitrator determines that the employee was not provided an "equitable opportunity" as described in this section, the arbitrator may award additional employment requiring the University to provide the "equitable opportunity" as described herein. The arbitrator also may retain jurisdiction for purposes of determining whether the ensuing assignment provides such "equitable opportunity".

### 9.3 Considerations in Assignment.

A. Beginning with the development of the course schedule and prior to establishing the assignment, the department chair/supervisor shall provide the faculty member with the opportunity to consult about the course schedule, the faculty member's teaching preferences, and the faculty member's plans for scholarship and service, and other performance related activities.

B. The employee shall be granted, upon written request, a conference with the person responsible for making the assignment to express concerns regarding:

- (1) the needs of the program or department/unit;
- (2) the employee's qualifications and experiences, including professional growth and development and preferences;
- (3) the opportunity to fulfill applicable criteria for promotion, continuing multi-year appointment extensions, successive fixed multi-year appointments, and merit salary increases.
- (4) the character of the assignment, including but not limited to, those characteristics described below.

- a. the number of hours of instruction,
- b. the preparation required,
- c. whether the employee has taught the course in the past,
- d. course enrollments,
- e. the time required by the course,
- f. time of day at which the course is offered,
- g. whether travel to another location is required,
- h. the number of preparations required,
- i. the employee's assignments in other semesters,
- j. the terms and conditions of a contract or grant from which the employee is compensated,
- k. the use of instructional technology (see Article 9.9),
- l. the availability and adequacy of materials and equipment, secretarial services, student assistants, and other support services needed to perform the assignments,
- m. any changes which have been made in the assignment, including those which may have resulted from previous evaluations of the employee,
- n. the distribution of day, evening, and weekend courses across the department considering the needs of students, the program, and the teaching capability within the department.

C. If the conference with the person responsible for making the assignment does not resolve the employee's concerns, the employee may discuss those concerns with an administrator at the next higher level, and upon written request will be granted an opportunity to do so.

D. The University and the UFF recognize that, while the minimum full academic assignment is described in terms of twelve (12) contact hours of instruction or equivalent research and service, the professional obligation undertaken by a faculty member will ordinarily be broader than that minimum. In like manner, the professional obligation of other professional employees is not easily quantifiable. The University has the right, in making assignments, to determine the types of duties and responsibilities which comprise the professional obligation and to determine the mix



or relative proportion of effort an employee may be required to expend on the various components of the obligation.

E. Furthermore, the University properly has the obligation constantly to monitor and review the size and number of classes and other activities, to consolidate inappropriately small offerings, and to reduce inappropriately large classes.

F. Teaching at the post-master's level requires a high level of professional preparation and scholarship. When making faculty assignments, chairs/supervisors will take into consideration post-master's level teaching, supervision of post-master's level theses/dissertations, serving on post-master's level thesis/dissertation committees, and currency of research in the field or related to the assignment.

G. No employee assignment shall be imposed arbitrarily or unreasonably.

(1) Assignments are driven primarily by the program and curricular needs of students. The

University has the right, in making assignments, to determine the types of duties and responsibilities which comprise the professional obligation and to determine the mix or relative proportion of effort an employee may be required to expend on the various components of the obligation.

(2) Assignments may be deemed arbitrary or unreasonable if one or more of the following applies:

a. The assignment was made without providing the employee an opportunity to consult about the assignment (9.3.A).

b. An assigned course is outside the employee's area of expertise as determined by the University's and/or SACS standards for faculty credentialing, and the faculty has not agreed to teach the course.

c. There is a pattern of assignment that illustrates that the employee is not provided an equitable opportunity to meet the required evaluation criteria.

(3) If an employee believes that the assignment has been imposed arbitrarily or unreasonably, and conferences with the supervisor and the next higher administrator have not resolved the issue/concern, the employee may proceed to address the matter through the dispute resolution procedures in Appendix "F" of this Agreement, which shall be the exclusive method for resolving such disputes. Other claims of alleged violations of the Agreement with respect to employee assignments are subject to the provisions of Article 20, Grievance Procedure and Arbitration.

#### 9.4 Summer Assignment.

A. The summer instructional assignment, like that for the academic year, includes the normal activities related to such an assignment as defined by the department/

unit and the nature of the course, such as course preparation, minor curriculum development, lectures, evaluation of student efforts, consultations and conferences with students, and minor committee activities not to exceed more than 12 hours of committee work for each course taught during summer session.

#### 9.5 Place of Employment.

A. Principal. Each employee shall be assigned one principal place of employment, as stated on the University employment contract. An employee shall be given at least nine (9) months notice of a change in principal place of employment. The employee shall be granted, upon written request, a conference with the person responsible for making the change to express concerns regarding such change, including concerns regarding considerations in assignment as described in Article 9.3, above. Voluntary changes and available new positions within the department shall be considered prior to involuntary changes, if practicable.

B. Secondary. Each employee, where possible, shall be given at least ninety (90) days written notice of assignment to a secondary place of employment more than fifteen (15) miles from the employee's principal place of employment. The employee shall be granted, upon written request, a conference with the person responsible for making the change to express concerns regarding such change. If the assignment to a secondary place of employment is made within a regular full-time appointment, the supervisor is encouraged to make an appropriate adjustment in the assignment in recognition of additional time spent traveling to a secondary place of employment. Necessary travel expenses incurred, including overnight lodging and meals, for all assignments not at the employee's principal place of employment shall be paid at the State rate and in accordance with the applicable provisions of State law.

#### 9.6 Teaching Schedule.

A. Teaching schedules should be established, if practicable, so that the time between the beginning of the first assignment and the end of the last for any one day does not exceed eight (8) hours, unless the employee agrees in writing.

B. Teaching schedules should be established, if practicable, so that the number of hours between the end of the last assignment on a given day and the beginning of an assignment on the next day is not less than twelve (12) hours, unless the employee agrees in writing.

9.7 Equipment. When equipment is required for classes, it is desirable that there be sufficient equipment to accommodate the students assigned thereto. The University is committed to seek funding to provide for the replacement of obsolete equipment, recognizing the necessity for maintaining an adequate inventory of technologically current equipment.

## 9.8 Workweek.

A. Scheduled hours for all employees shall not normally exceed forty (40) hours per week. Time shall be allowed within the normal working day for research, teaching, or other activities required of the employee, when a part of the assigned duties.

B. Supervisors are encouraged to make appropriate reductions or adjustments in the number of hours scheduled in recognition of evening, night, and weekend assignments, and for periods when an employee is on call. Evenings, nights, and weekends when an employee is on call shall be considered in making other assignments. See Article 17.5, regarding schedule adjustment for holiday assignment.

## 9.9 Instructional Technology.

A. "Instructional technology material" includes video and audio recordings, motion pictures, film strips, photographic and other similar visual materials, live video and audio transmissions, computer programs, computer assisted instructional course work, programmed instructional materials, three dimensional materials and exhibits, and combinations of the above materials, which are prepared or produced in whole or in part by an employee, and which are used to assist or enhance instruction.

B. The parties recognize the increasing development and use of technology, such as videotapes, interactive television, and computer software, to support teaching and learning and to enhance the fundamental relationship between employee and student. This technology may be used in the context of distance learning. Furthermore, the parties also recognize that this technology should be used to the maximum mutual benefit of the University and the employee.

C. When making assignments, the University shall review the considerations stated in (1) through (4), below, which may be raised by employee development and use of instructional technology/distance learning.

(1) Recognition that employee effort spent in the assigned development of instructional technology/distance learning materials and in providing instruction assigned in this manner is appreciably greater than that associated with a traditional course;

(2) Training and development resources available to employees who have been assigned to provide instruction through the use of instructional technology/distance learning;

(3) Provisions for clerical, technical, and library support in conjunction with the assigned use of instructional technology/distance learning; and

(4) Compensation, including recognition in an employee's assignment or provisions for extra University compensation, for appreciably greater workload associated with the assigned development and use of instructional technology/distance learning.

(5) It is recognized that these considerations may already apply to other employee instructional activities and, therefore, may be addressed by existing University policies and procedures. If the university concludes that new or revised policies are needed, they shall develop such policies and consult with UFF pursuant to Article 1.2 (B), prior to their implementation.

# **Article 10**

## **Employee Performance Evaluations**

### 10.1 Policy.

A. Annual Evaluations. The purpose of the annual evaluation is to assess and communicate the nature and extent of an employee's performance of assigned duties consistent with the criteria specified in Article 10.4 below. The performance of employees, other than those who have received notice of non-reappointment under Article 12.2, shall be evaluated at least once annually. Personnel decisions shall take such annual evaluations into account, provided that such decisions need not be based solely on written employee performance evaluations.

B. Evaluation for Successive Fixed Multi-Year Appointments. The purpose of the evaluation for successive fixed multi-year appointment is to determine if the faculty's performance over the current contract warrants offering a successive multi-year appointment. Faculty with Fixed Multi-Year Appointments who are seeking a successive appointment shall receive a review in the penultimate year of the contract.

C. Sustained Performance Evaluations. Tenured faculty members shall receive a sustained performance evaluation once every seven years following the award of tenure or their most recent promotion. The purpose of this evaluation is to document sustained performance during the previous six years of assigned duties and to encourage continued professional growth and development. This clause does not apply to continuing or fixed multi-year appointments.

### D. Procedures/Process for Evaluation.

(1) The Faculty, acting through the Faculty Senate in collaboration with UFF, will maintain and/or revise procedures to evaluate each employee (currently titled Faculty Performance Evaluation Document - FPED), including annual review, fixed multi-year successive contract review, continuing multi-year appointment probation review, promotion review, and sustained performance evaluations (post-tenure review).

(2) The proposed procedures, or revisions thereof, shall be reviewed by the President or representative to ensure that they are consistent with the mission and goals of the university and that they comply with this Agreement.

(3) If the President or representative determines that the recommended procedures do not align with the mission and goals of the university or this Agreement, the proposal shall be referred back to the Faculty Senate and UFF for revision with a written statement of reasons for non-approval.

(4) It is recommended that the Faculty Senate, UFF, and the President or

representative work collaboratively to ensure the efficient and timely development and adoption of the procedures document.

E. Deans/Directors are encouraged to consult with supervisors to promote consistent application of evaluation criteria within and across departments in a unit.

F. The specifics of employee performance evaluations as they relate to extension, probation and non-reappointment are addressed pursuant to Article 15.

## 10.2 Sources and Methods of Evaluation.

A. In preparing the annual evaluation, the person(s) responsible for evaluating the employee may consider, where appropriate, information from the following sources: immediate supervisor, peers, students, employee/self, other university officials who have responsibility for supervision of the employee, and individuals to whom the employee may be responsible in the course of a service assignment, including public school officials when an employee has a service assignment to the public schools.

B. Observation/Visitation. The employee, if assigned teaching duties, shall be notified at least two (2) weeks in advance of the date, time, and place of any direct classroom observation or visitation made in connection with the employee's annual evaluation. If the employee determines that this date is not appropriate because of the scheduled class activities, the employee may suggest a more appropriate date. Alternatively, if such classroom observation or visitation will be made, the employee shall be notified at least two (2) weeks in advance of the period (for example, a semester) over which no less than two (2) observations will be made.

## 10.3 Criteria and Standards.

### A. Annual Evaluation.

(1) The proposed written annual evaluation, including the employee's annual assignment which was furnished pursuant to Article 9.3, shall be provided to the employee within thirty (30) days after the end of the academic year, as applicable, during which such evaluation will be made. The employee shall be offered the opportunity to discuss the evaluation with the evaluator prior to its being finalized and placed in the employee's evaluation file. The evaluation shall be signed and dated by the person performing the evaluation, and by the person being evaluated who may attach a concise comment to the evaluation. A copy of the signed evaluation shall be provided to the employee. The employee may request, in writing, a meeting with an administrator at the next higher level to discuss concerns regarding the evaluation which were not resolved in previous discussions with the evaluator.

(2) Where the faculty attaches a comment to the annual evaluation, a copy of the signed evaluation along with the faculty's signed comment shall be given to the supervisor with a copy to the Dean/Director.

(3) Each university college/unit shall develop and maintain standards to evaluate each employee according to criteria specified in Article 10.4 below. The employees of each college/unit who are eligible to vote in college/unit governance, working with the administration of the college/unit, shall participate in the development of these criteria and standards. The employees shall recommend implementation by a majority vote of those employees.

a. The proposed criteria and standards, or revisions thereof, shall be reviewed by the President or representative to ensure that they are consistent with the mission and goals of the university and that they comply with this agreement.

b. If the President or representative determines that the recommended criteria and standards do not meet the conditions in Article 10.3(A)(3)(a) above, the proposal shall be referred to the college/unit for revision with a written statement of reasons for non-approval.

c. Approved criteria and standards, and revisions thereof, shall be kept on file in the college/unit office. A copy of the college/unit current criteria and standards for annual evaluation will be available to employees either in hard copy or electronic format. If the college/unit criteria and standards document is maintained on the college/unit share drive or website it shall be deemed maintained and available to faculty members in the college/unit.

(4) A faculty member whose annual performance evaluation has one area rated as "below objective" shall outline activities that he/she will undertake to achieve growth and improvement in the area of concern. The supervisor shall assist the employee in developing a plan of action that, if implemented, will enable the employee to achieve growth and improvement in the specific area of the assignment.

B. Evaluation for Successive Fixed Multi-Year Appointments. Evaluation for successive fixed multi-year appointments is addressed pursuant to Article 15.

C. Sustained Performance Evaluations for Tenured Faculty.

(1) The sustained performance evaluation program shall provide that:

a. The unit's Peer Review Committee shall perform the evaluation. Such evaluation shall ensure involvement of both peers and administrators at the department and higher levels in the evaluation and shall ensure that an employee may attach a concise response to the evaluation;

b. The University shall provide for an appeals process to accommodate instances when the employee and the supervisor cannot agree upon the elements to be included in the performance improvement plan; and

c. The proposed procedures for the sustained performance evaluation shall be available to faculty employees and to UFF for review prior to final approval.

(2) Employee annual evaluations, including the documents contained in the evaluation file shall be the sole basis for the sustained performance evaluation.

a. An employee who received satisfactory annual evaluations during the previous six years shall not be rated below satisfactory in the sustained performance evaluation nor subject to a performance improvement plan.

b. A performance improvement plan shall be developed only for those employees whose performance is identified through the sustained performance evaluation as being consistently below satisfactory in one or more areas of assigned duties. The performance improvement plan shall be developed by the employee, in concert with his/her supervisor, and include specific performance targets and a time period for achieving the targets. The performance improvement plan shall be approved by the President or representative. Specific resources identified in an approved performance improvement plan shall be provided by the university. The supervisor shall meet periodically with the employee to review progress toward meeting the performance targets. It is the responsibility of the employee to attain the performance targets specified in the performance improvement plan.

10.4 Criteria. The annual performance evaluation shall be based upon assigned duties and should reflect the unit's adopted criteria and standards for performance. Extra, voluntary activities that support the mission of the university and/or the unit shall be recognized. Where there are eminent/endowed faculty within the unit, the evaluation and renewal document shall include criteria and standards that reflect the nature of the position and the endowment that are different from or in addition to the criteria and standards for other faculty at that rank. The evaluation of all faculty shall carefully consider the nature of the assignments, in terms where applicable, of the following criteria:

A. Teaching. Teaching effectiveness, including effectiveness in presenting knowledge, information, and ideas by means or methods such as lecture, discussion, assignment and recitation, demonstration, laboratory exercise, practical experience, and direct consultation with students. The evaluation shall include consideration of effectiveness in imparting knowledge and skills, and effectiveness in stimulating students' critical thinking and/or creative abilities, the development or revision of curriculum and course structure, and adherence to accepted standards of professional behavior in meeting responsibilities to students. The evaluator may take into account class notes, syllabi, student exams and assignments, and any other materials relevant to the employee's teaching assignment. The teaching evaluation must take into account relevant materials submitted by the employee, including the results of peer evaluations of teaching and shall not be based solely on student evaluations.

B. Scholarly Contribution/Scholarship/Professional Development. Contribution to the discovery of new knowledge, development of new educational techniques, and other forms of creative activity. Evidence of research and other creative activity shall include, but not be limited to, published books; articles and papers in professional journals; musical compositions, paintings, sculpture; works of performing art; papers



presented at meetings of professional societies; and research and creative activity that has not yet resulted in publication, display, or performance. The evaluation shall include consideration of the employee's productivity, including the quality and quantity of what has been done during the year, and of the employee's research and other creative programs and contributions; and recognition by the academic or professional community of what is done.

C. Service.

(1) Public service that extends professional or discipline-related contributions to the community; the State, including public schools; and the national and international community. This public service includes contributions to scholarly and professional organizations and governmental boards, agencies, and commissions that are beneficial to such groups and individuals.

(2) Participation in the governance processes of the institution through significant service on committees, councils, and senates, beyond that associated with the expected responsibility to participate in the governance of the institution through participation in regular departmental or college meetings.

D. Other Duties. Other assigned university duties, such as advising, counseling, supervision of interns, and academic administration, or as described in a Position Description, if any, of the position held by the employee.

10.5 Proficiency in Spoken English. No employee shall be evaluated as deficient in oral English language skills unless proved deficient in accordance with the appropriate procedures and examinations established by Section 1012.93, Florida Statutes, for testing such deficiency.

10.6 Employee Assistance Programs. Neither the fact of an employee's participation in an employee assistance program nor information generated by participation in the program, shall be used as evidence of a performance deficiency within the evaluation process described in this Article, except for information relating to an employee's failure to participate in an employee assistance program consistent with the terms to which the employee and the University have agreed.

# **Article 11**

## **Evaluation File**

11.1 Policy. There shall be one (1) evaluation file containing a dated copy of all documents used in the evaluation process, other than evaluation for promotion. When evaluations and other personnel decisions are made, other than for promotion, the only documents which may be used are those contained in that file. Such documents shall be placed in the evaluation file within a reasonable time after receipt by the custodian of the file. Employees shall be notified, upon written request, of the location of the evaluation file and the identity of the custodian.

11.2 Access. An employee may examine the evaluation file, upon reasonable advance notice, during the regular business hours of the office in which the file is kept, normally within the same business day as the employee requests to see it, and under such conditions as are necessary to insure its integrity and safekeeping. Upon request, an employee may paginate with successive whole numbers the materials in the file, and may attach a concise statement in response to any item therein. Upon request, an employee is entitled to one (1) free copy of any material in the evaluation file. Additional copies may be obtained by the employee upon the payment of a reasonable fee for photocopying. A person designated by the employee may examine that employee's evaluation file with the written authorization of the employee concerned, and subject to the same limitations on access that are applicable to the employee.

11.3 Indemnification. The UFF agrees to indemnify and hold harmless the Board, the University, its officials, agents, and representatives from and against any and all liability for any improper, illegal, or unauthorized use by the UFF of information contained in such evaluation files.

11.4 Use of Evaluative Materials. In the event a grievance is filed, University and UFF grievance representatives, the arbitrator, and the grievant shall have the right to use, in the grievance proceedings, copies of materials from the grievant's evaluation file.

11.5 Anonymous Material. There shall be no anonymous material in the evaluation file except for numerical summaries of student evaluations that are part of a regular evaluation procedure of classroom instruction and/or written comments from students obtained as part of that regular evaluation procedure. If written comments, anonymous or signed, from students in a course are included in the evaluation file, all of the comments obtained in the same course must be included.

11.6 Peer Committee Evaluations. Evaluative materials, or summaries thereof, prepared by peer committees as part of a regular evaluation system, may be placed in an evaluation file when signed by a representative of the committee.

11.7 Removal of Contents. Materials shown to be contrary to fact shall be removed from the file. This section shall not authorize the removal of materials from the evaluation file when there is a dispute concerning a matter of judgment or opinion rather than fact. Materials may also be removed pursuant to the resolution of a grievance.

11.8 Limited Access Information. Information reflecting evaluation of employee performance shall be available for inspection only by the employee, the employee's representative, and university officials who use the information in carrying out their responsibilities, peer committees responsible for evaluating employee performance, and arbitrators or others engaged by the parties to resolve disputes, or by others by court order. However, such limited access status shall not apply to summary data, by course, for the common "core" items contained in student course evaluations, which have been selected as such by the University and made available by the University to the public on a regular basis.

# **Article 12**

## ***Non-Reappointment***

12.1 No Property Right. No appointment shall create any right, interest, or expectancy in any other appointment beyond its specific terms, except as provided in Article 13.2, and Article 15.5.

12.2 Notice.

A. All employees, except those described in Sections 12.2(B)(1) and (C) below, are entitled to the following written notice that they will not be offered further appointment:

(1) For employees in their first two (2) years of continuous university service, one semester (or its equivalent, 19.5 weeks, for employees appointed for more than an academic year);

(2) For employees with two (2) or more years of continuous university service, one year; or

(3) For employees who are on “soft money” e.g., contracts and grants, sponsored research funds, and grants and donations trust funds, who had five (5) or more years of continuous university service as of June 30, 1991, one year.

(4) The provision of notice under this section does not provide rights to a summer appointment beyond those provided in Article 8.4(B).

B. Employees who are on “soft money,” e.g., contracts and grants, sponsored research funds, and grants and donations trust funds, except those described in Article 12.2(A) (3), above, are entitled to the following written notice that they will not be offered further appointment:

(1) For employees in their first five (5) years of continuous university service, no notice need be provided and the statement in (D), below, shall be included in their employment contracts; or

(2) For employees with five (5) or more years of continuous university service, ninety (90) days notice shall be provided contingent upon funds being available in the contract or grant.

C. Employees who are appointed for less than one (1) academic year, who are appointed to a visiting appointment, or employees employed in an auxiliary entity, are not entitled to notice that they will not be offered further appointment, and the statement in 12.2(D), below, shall be included in their employment contracts.

D. Employees described in 12.2(B)(1) and 12.2(C), above, shall have the following statement included in their employment contracts:

“Your employment under this contract will cease on the date indicated. No further notice of cessation of employment is required.”

E. An employee who is entitled to written notice of non-reappointment in accordance with the provisions of Article 12 and who receives written notice that the employee will not be offered further appointment shall be entitled, upon written request within twenty (20) days following receipt of such notice, to a written statement of the basis for the decision not to reappoint. Thereafter, the President or representative shall provide such statement within twenty (20) days following receipt of such request. All such notices and statements are to be sent by certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained. The parties recognize non-reappointment is not a disciplinary action. Non-reappointment shall not be used as any form of disciplinary action.

12.3 Grievability. The decision to not reappoint is not grievable except, an employee who receives written notice of non-reappointment may, according to Article 20 Grievance Procedure and Arbitration, contest the decision because of an alleged violation of a specific term of the Agreement or because of an alleged violation of the employee’s constitutional rights. Such grievances must be filed within thirty (30) days of receipt of the statement of the basis for the decision not to reappoint pursuant to Section E above or receipt of the notice of non-reappointment if no statement is requested.

12.4 Non-Reappointment Considerations. If the decision not to reappoint was based solely upon adverse financial circumstances, reallocation of resources, reorganization of degree or curriculum offerings or requirements, reorganization of academic or administrative structures, programs, or functions, and/or curtailment or abolition of one or more programs or functions, the University shall take the following actions:

A. Make a reasonable effort to locate appropriate alternative or equivalent employment within the University; and

B. Offer such employee, who is not otherwise employed in an equivalent full-time position, re-employment in the same or similar position at the University for a period of two years following the initial notice of non-reappointment, should an opportunity for such re-employment arise. For this purpose, it shall be the employee’s responsibility to keep the University advised of the employee’s current address. Any offer of reemployment pursuant to this section must be accepted within fifteen (15) days after the date of the offer, such acceptance to take effect not later than the beginning of the semester immediately following the date the offer was made. In the event such offer of re-employment is not accepted, the employee shall receive no further consideration pursuant to this Article.

12.5 Resignation. An employee who wishes to resign has the professional obligation,

when possible, to provide the University with at least one semester's notice. Upon resignation, all consideration for reappointment shall cease.

12.6 Notice Document. Notice of appointment and non-reappointment shall not be contained in the same document.

# **Article 13**

## **Layoff and Recall**

### 13.1 Layoff.

A. Layoff. When a layoff is to occur as a result of adverse financial circumstances; reallocation of resources; reorganization of degree or curriculum offerings or requirements; reorganization of academic or administrative structures, programs, or functions; or curtailment or abolition of one or more programs or functions; the University shall notify the local UFF Chapter and the UFF state office no less than thirty (30) days prior to taking such action. UFF may request a consultation with the President or representative pursuant to Article 2.1 during this period to discuss the layoff.

B. Layoff Unit. The layoff unit may be at an organizational level of the University, such as a campus, division, college/unit, school, department/unit, area, program, or other level of organization as the University deems appropriate.

13.2 Layoff Considerations. The selection of employees in the layoff unit to be laid off will be determined as follows:

A. Where employees are equally qualified under (B) below, those employees will be retained who, in the judgment of the University, will best contribute to the mission and purpose of the University. In making such judgment, the University shall carefully consider employees' length of continuous university service, and shall take into account other appropriate factors, including but not limited to performance evaluation by students, peers, and supervisors, and the employee's academic training, professional reputation, teaching effectiveness, research record or quality of the creative activity in which the employee may be engaged, and service to the profession, community, and public.

B. No employee with more than five (5) years of continuous university service shall be laid off if there are any such employees with five (5) years or less service.

C. The sole instance in which only one (1) employee will constitute a layoff unit is when the functions that the employee performs constitute an area, program, or other level of organization at the University.

D. The provisions of Article 13.2(B) above will apply unless the University determines that an Affirmative Action employment program will be adversely affected. When an Affirmative Action Program has been so affected, the University shall notify UFF in writing.

E. The University shall notify the local UFF Chapter in writing regarding the use of

adjunct and other non-unit faculty in those departments/units where employees have been laid off. The use of adjunct and other non-unit faculty in departments/units here employees have been laid off may be the subject of consultation meetings pursuant to Article 2.1.

F. No tenured or multi-year employee shall be laid off solely for the purpose of creating a vacancy to be filled by an administrator entering the bargaining unit.

13.3 Alternative/Equivalent Employment. The University shall make a reasonable effort to assist the employee in locating appropriate alternate or equivalent employment for laid-off employees within the University.

13.4 Notice. Employees should be informed of layoff as soon as practicable and, where circumstances permit, employees with three or more years of continuous University service should be provided at least one (1) year's notice; those with less service with at least six (6) month's notice. Employees who have received notice of layoff shall be afforded the recall rights granted under Articles 13.3 above and 13.5 below. Formal written notice of layoff is to be sent by certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained. The notice shall include effective date of layoff; reason for layoff; reason for shortened period of notification, if applicable; a statement of recall rights; a statement of appeal/grievance rights and applicable deadlines for filing; and a statement that the employee is eligible for consideration for retraining under the provision of Article 22.4, for a period of two years following layoff.

13.5 Re-employment/Recall.

A. For a period of two years following layoff or for employees appointed to a continuing or fixed multi-year appointment, not to exceed the length of their last employment contract, not to exceed two (2) years, an employee who has been laid off and who is not otherwise employed in an equivalent full-time position shall be offered re-employment in the same or similar position at the University should an opportunity for such re-employment arise. It shall be the employee's responsibility to keep the University advised of the employee's current address. Any offer of re-employment pursuant to this section must be accepted within fifteen (15) days after the date of the offer, such acceptance to take effect not later than the beginning of the semester immediately following the date the offer was made. In the event such offer of reemployment is not accepted, the employee shall receive no further consideration pursuant to this Article. Employees appointed to a fixed multi-year appointment, who are recalled shall be offered re-employment not to exceed the length of their last employment contract. The University shall notify the local UFF Chapter when an offer of re-employment is issued.

B. An employee who held a tenured appointment on the date of termination by reason of layoff shall resume the tenured appointment upon recall. The employee shall receive the same credit for years of service for purposes of layoff as held on the date of layoff.



C. Employee Assistance Programs. Consistent with the University's Employee Assistance Program, employees participating in an employee assistance program who receive a notice of layoff may continue to participate in that program for a period of ninety (90) days following the layoff.

13.6 Limitations. The provisions of Articles 13.2 through 13.5 of this Agreement shall not apply to those employees funded through special contracts and grants.

F. No tenured or multi-year employee shall be laid off solely for the purpose of creating a vacancy to be filled by an administrator entering the bargaining unit.

13.3 Alternative/Equivalent Employment. The University shall make a reasonable effort to assist the employee in locating appropriate alternate or equivalent employment for laid-off employees within the University.

13.4 Notice. Employees should be informed of layoff as soon as practicable and, where circumstances permit, employees with three or more years of continuous University service should be provided at least one (1) year's notice; those with less service with at least six (6) month's notice. Employees who have received notice of layoff shall be afforded the recall rights granted under Articles 13.3 above and 13.5 below. Formal written notice of layoff is to be sent by certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained. The notice shall include effective date of layoff; reason for layoff; reason for shortened period of notification, if applicable; a statement of recall rights; a statement of appeal/grievance rights and applicable deadlines for filing; and a statement that the employee is eligible for consideration for retraining under the provision of Article 22.4, for a period of two years following layoff.

13.5 Re-employment/Recall.

A. For a period of two years following layoff or for employees appointed to a continuing or fixed multi-year appointment, not to exceed the length of their last employment contract, not to exceed two (2) years, an employee who has been laid off and who is not otherwise employed in an equivalent full-time position shall be offered re-employment in the same or similar position at the University should an opportunity for such re-employment arise. It shall be the employee's responsibility to keep the University advised of the employee's current address. Any offer of re-employment pursuant to this section must be accepted within fifteen (15) days after the date of the offer, such acceptance to take effect not later than the beginning of the semester immediately following the date the offer was made. In the event such offer of reemployment is not accepted, the employee shall receive no further consideration pursuant to this Article. Employees appointed to a fixed multi-year appointment, who are recalled shall be offered re-employment not to exceed the length of their last employment contract. The University shall notify the local UFF Chapter when an offer of re-employment is issued.

B. An employee who held a tenured appointment on the date of termination by reason of layoff shall resume the tenured appointment upon recall. The employee shall receive the same credit for years of service for purposes of layoff as held on the date of layoff.

C. Employee Assistance Programs. Consistent with the University's Employee Assistance Program, employees participating in an employee assistance program who receive a notice of layoff may continue to participate in that program for a period of ninety (90) days following the layoff.

13.6 Limitations. The provisions of Articles 13.2 through 13.5 of this Agreement shall not apply to those employees funded through special contracts and grants.

# **Article 14**

## **Promotion Procedure**

### 14.1 Policy.

A. Promotion decisions are not based solely upon an employee's annual performance evaluations. Rather, the University, through its faculty, professional employees, and administrators, assesses the employee's potential for growth, scholarship, and/or other professionally appropriate contributions as well as past meritorious performance.

B. Faculty members may apply for promotion after completing four (4) full years in rank or level. Any credit for time in rank or level will be stated in the appointment letter.

C. After completing one year of employment, employees eligible for consideration for promotion shall receive an appraisal regarding their progress toward promotion. The appraisal shall be included as a separate component of every annual evaluation thereafter and is intended to provide assistance and counseling to candidates to help them to qualify themselves for promotion. The employee may request, in writing, a meeting with an administrator at the next higher level to discuss concerns regarding the promotion appraisal which were not resolved in previous discussions with the evaluator. However such appraisals regarding progress toward promotion shall not be subject to the grievance process.

### D. Procedures/Process for Evaluation.

(1) The Faculty, acting through the Faculty Senate in collaboration with UFF, will maintain and/or revise procedures to evaluate each employee (currently titled Faculty Performance Evaluation Document - FPED), including annual review, fixed multi-year successive contract review, continuing multi-year appointment probation review, promotion review, and sustained performance evaluations (post-tenure review).

(2) The proposed procedures, or revisions thereof, shall be reviewed by the President or representative to ensure that they are consistent with the mission and goals of the university and that they comply with this Agreement.

(3) If the President or representative determines that the recommended procedures do not align with the mission and goals of the university or this Agreement, the proposal shall be referred back to the Faculty Senate and UFF for revision with a written statement of reasons for non-approval.

(4) It is recommended that the Faculty Senate, UFF, and the President or representative work collaboratively to ensure the efficient and timely development and adoption of the procedures document.

## 14.2 Criteria and Standards.

A. Promotion decisions shall be a result of meritorious performance and shall be based upon criteria and standards developed in writing by the faculty in each college/unit in consultation with the supervisors and dean/director. The established criteria and standards shall be available to all faculty in the college/unit via hard copy or college/unit website. Each college/unit shall include criteria and standards for the promotion for all ranked faculty (from Assistant to Associate, and from Associate to Full), all Instructors (from Level I to Level II, and from Level II to Level III), and all Academic Advisors (from Level I to Level II, and from Level II to Level III).

B. To provide guidance to faculty members regarding the expectations of achieving promotion, the criteria and standards adopted by each college/unit shall indicate:

- (1) The performance factors that are to be used in making the promotion decision.
- (2) The breadth and depth of accomplishments in teaching, research/scholarship/creative activity/ professional development, as applicable, and professional service, and any other performance factors that would normally qualify a candidate for promotion.

C. For promotion, employees are expected to meet the promotion standards for the areas identified in the established college/unit criteria and standards document.

D. The promotion decision shall also take into account the following:

- (1) The university's mission and the mission of the college/unit to which the employee belongs.
- (2) Annual assignments and annual performance evaluations.
- (3) The contributions the employee has made based upon his/her record of performance relative to the promotion criteria and standards.

E. The employees of each college/unit shall participate in the development and/or modification of college's/unit's promotion criteria and standards and shall recommend implementation by vote of a majority of those employees.

(1) The proposed criteria and standards, or revisions thereof, shall be reviewed by the President or representative to ensure that they are consistent with the mission and goals of the university and that they comply with this Agreement. If the President or representative determines that the recommended criteria and standards are not consistent with the mission and goals of the university, or with this Agreement, the proposal shall be referred to the college/unit for revision with a written statement of the reasons for non-approval.

(2) The university reserves the right to develop written promotion criteria and

standards if employees in the colleges/units are unable or unwilling to develop written criteria and standards for promotion.

(3) Changes in criteria and standards shall not become effective until one (1) year following adoption of the changes, unless mutually agreed to in writing by the UFF President and the University President. The date of adoption for changes approved by the President or representative shall normally be the last day of the of the spring semester for that academic year or the summer immediately thereafter. Any proposal to develop or modify promotion criteria and standards shall be available for discussion and vote by members of the affected college/unit before adoption. For example, changes in the criteria and standards that took place during a given academic year (Year 1, e.g., 2006-2007) will be designated as adopted at the end of that academic year (Spring of Year 1, e.g., 2006-2007) if the criteria and standards are approved by the President or representative. The adopted criteria and standards will go into effect in the Fall of Year 3 (e.g., 2008-2009) with the result that faculty will not be evaluated under the new criteria and standards until going up for promotion in the Spring of Year 3 (e.g., Spring 2009).

(4) College/unit promotion criteria and standards documents shall list the name of the college on the cover page and shall have a footnote showing the following:

- a. The date the college/unit faculty voted to recommend the revised document;
- b. The date the document was approved by the President or representative;
- c. The date the document will first go into effect (i.e., the starting date from which faculty will be eligible to go up for promotion under the new criteria and standards).

(5) Each college/unit is encouraged to review its existing promotion criteria and standards to ensure that such criteria and standards are consistent with the mission of the University and the college/unit.

(6) Promotion for Instructors and Academic Advisors. Instructors and Academic Advisors shall have promotion opportunities only within this classification (i.e., Level I to Level II or Level II to Level III).

The promotion criteria and standards developed and approved for Instructors and Academic Advisors respectively shall apply to applications for promotion to Level II or Level III as applicable and shall conform to the University timeline for promotion applications. The conditions of 14.2.E.3 above shall apply to changes in criteria and standards for faculty in the Instructor and Academic Advisor classifications.

### 14.3 Procedures.

A. Employees for promotion shall prepare a promotion portfolio (portfolio) that shall include at minimum a copy of applicable promotion criteria and standards, an up-to-date curriculum vitae, the employee's annual assignments, rating received

on annual evaluations, materials to support the employee's performance relative to the criteria and standards established for promotion, and, if the employee chooses, the employee's promotion appraisal(s) as referenced in 14.3.B. The reviewers at any stage above the peers and external reviewers in the review may request to see the annual evaluations and promotion appraisal(s).

(1) Prior to consideration for promotion, the employee shall prepare a portfolio that accurately reflects and clearly distinguishes his or her individual accomplishments since appointment or the last promotion including, but not limited to items as described in 14.3.A above. It is the responsibility of the employee to make the case for promotion. The employee is responsible to review the portfolio and see that it is complete. If any of the reviewers need explanation of material in the portfolio they may request in writing clarification from the employee. The employee will respond in writing with a copy to the portfolio and all previous reviewers.

(2) The provisions of Articles 11.2 through 11.8 of this Agreement shall apply to the contents of the promotion portfolio.

(3) The employee shall have the right to review the portfolio at each stage of review (i.e., department, college, campus) and attach a brief response to any materials contained therein, including the evaluation section(s), prior to the next stage of review.

(4) If any material is added to the portfolio after the commencement of consideration, other than the completion of the evaluation sections (including the recording of votes by the reviewing bodies/individuals), a copy shall be sent to the employee within five (5) days (by personal delivery or by mail, return receipt requested). The employee may attach a brief response within five (5) days of his/her receipt of the added material. The portfolio shall not be forwarded until either the employee submits a response or until the second five (5) day period expires, whichever occurs first.

(5) Prior to submittal of the portfolio to the Office of the Provost, or appropriate official, for review, peers, supervisor(s) and dean/director shall each include independent evaluations that indicate their level of support for promotion based on the established promotion criteria and standards.

B. An employee who is in a classification that allows for promotion consideration may request, in writing, a written appraisal based on the criteria and standards about progress towards promotion from the peer review committee, and from the department chair/immediate supervisor. The appraisal is intended to provide assistance and counseling to candidates to help them qualify themselves for promotion. The appraisals are not binding upon the University, but they may be included by the employee in the promotion portfolio. The employee may request, in writing, a meeting with an administrator at the next higher level to discuss concerns regarding the promotion appraisal. Such appraisals regarding progress toward promotion shall not be subject to the grievance process.

C. For employees who have applied for promotion, the supervisor, peer review committee, and Dean/Director shall give a written rationale to every candidate for their level of support for the promotion application based on the established promotion criteria and standards.

14.4 Notice of Promotion: If an employee is to be recommended to the University Board of Trustees for promotion, the employee shall be notified in writing by the appropriate administrative official, within five (5) days or as soon as possible thereafter, of the decision to make that recommendation.

14.5 Notice of Denial. If any employee is denied promotion, the employee shall be notified in writing by the appropriate administrative official, within ten (10) days or as soon as possible thereafter, of that decision. Upon written request by an employee within twenty (20) days of the employee's receipt of such decision, the University shall provide the employee with a written statement of the reasons why the promotion was denied based upon the established promotion criteria and standards.

# **Article 15**

## **Multi-Year Appointments and Tenure Status: Extension, Probation, Reappointment**

### 15.1 Continuing Multi-Year Appointment (CMYA)

A. Annual Evaluation. Each faculty member on a continuing multi-year appointment will be evaluated annually pursuant to Article 10.

B. Contract Extension. If a CMYA faculty member receives an overall satisfactory annual evaluation as defined by the unit, he or she will receive a one-year contract extension, thereby maintaining a full three-year appointment cycle. This section does not apply to the continuation of administrative appointments. In cases of voluntary resignation, retirement, removal for just cause, or layoff, no contract extension will be given.

C. Probation. If a CMYA faculty member receives an “overall unsatisfactory” annual evaluation as defined by the unit, he or she will be placed on one-year probation. No contract extension will be added to his or her appointment for the duration of the probationary period.

(1) The faculty member will be required, in consultation with his or her supervisor, to draft and sign a one-year performance improvement plan to address the deficiencies responsible for the overall unsatisfactory rating and to identify specific performance targets for the following academic year. The performance improvement plan must be developed and signed prior to the start of the following semester, excluding summer.

(2) In the first succeeding annual evaluation (probation year evaluation), the faculty member’s supervisor shall review his or her progress in successfully fulfilling the performance improvement plan. If the faculty member has met the performance targets specified in the performance improvement plan, the supervisor shall recommend to the appropriate administrator that the faculty member’s probation be lifted and a two-year contract extension granted, thereby restoring the faculty member to a full three-year continuing contract cycle. No additional penalties shall attach to the faculty member’s appointment as a result of the probationary term.

D. Contract Expiration. If the faculty member receives an “overall unsatisfactory” evaluation in the probation year evaluation, the faculty member shall have one year remaining in his or her appointment before the contract expires. The faculty shall be notified of non-reappointment in accordance with Article 12.2.

### 15.2 Fixed Multi-Year Appointment (FMYA)

A. Annual Evaluation. Each faculty member on a fixed multi-year appointment will



be evaluated annually pursuant to Article 10.

B. Successive fixed multi-year appointments may be offered to fixed multi-year appointment faculty members as follows:

(1) The faculty member will be advised in the penultimate year of the appointment that to be considered for a successive fixed multi-year appointment, he or she must submit a written request and documentation for review. Documentation must include an updated curriculum vita, an executive summary referencing the vita, and summary information from annual evaluations pursuant to written procedures established by the university.

(2) Criteria and standards used to determine in which instances successive fixed appointments will be offered include: consideration of the basis for the initial fixed multi-year appointment, evaluation of performance, professional growth, extent and currency of professional qualifications, contribution to the mission of the department or program, staffing needs, funding source alternatives, and continuing program considerations. Such criteria and standards shall be in writing and available to all faculty members.

(3) These criteria and standards may be modified through a process that ensures significant involvement by unit faculty members. Approval of criteria and standards requires confirmation by a majority of the unit's faculty members.

(4) The UFF must be notified of any proposed modifications of criteria and standards and offered an opportunity to discuss such modifications in consultation with the university President or representative. Changes in the criteria and standards shall not become effective until one (1) year following adoption of the changes, unless mutually agreed to in writing by the UFF President and the university President or representative. The date of adoption shall be the date on which the changes are approved by the administrator at the highest level required under applicable university policies and procedures.

(5) Penultimate year review as referenced in 15.2 B.1 above shall include a review by the supervisor, peer review committee, and dean/director with a recommendation by the dean to the provost for a decision. The university shall notify the faculty member in writing of its decision to offer or not offer a successive appointment by the beginning of the final year of the faculty member's current appointment.

(6) If the faculty member receives written notice that he or she will not be offered a successive appointment, he or she may request a written statement of the basis for the decision. Within twenty (20) calendar days following receipt of such request, the President or representative shall provide the faculty member with written statement explicating the basis of this decision.

C. Probation. If a FMYA faculty member receives an "overall unsatisfactory" annual evaluation as defined by the unit, he or she will be placed on a one-year probation.

(1) The faculty member placed on probation will be required, in consultation with his or her supervisor, to draft and sign a one-year performance improvement plan to address the deficiencies responsible for the overall unsatisfactory rating and to identify specific performance targets for the following academic year. The performance improvement plan must be developed and signed prior to the start of the following semester, excluding summer.

(2) In the first succeeding annual evaluation (probation year evaluation), the faculty member's supervisor shall review his or her progress in successfully fulfilling the performance improvement plan. If the faculty member has met the performance targets specified in the performance improvement plan, the supervisor shall recommend to the appropriate administrator that the faculty member's probation be lifted.

(3) Notwithstanding any terms of this Agreement, the use of probation shall not extend the fixed multi-year appointment beyond the stated term of the contract or require an offer of a successive appointment. In those instances the University, at its sole discretion, may offer a successive fixed multi-year appointment. If a subsequent fixed term contract is offered, the faculty member shall be on probation for one year and required to meet the requirements of a Performance improvement Plan under Article 15.2.C(2).

D. Contract Expiration. Notwithstanding the remaining term of the faculty member's fixed multi-year appointment, if the faculty member receives an unsatisfactory evaluation at the end of the probation year, the faculty member shall have no more than one year remaining in his or her appointment before the contract is terminated. The faculty shall be notified of non-reappointment in accordance with Article 12.2.

### 15.3. Converting Faculty Contracts.

A. From Fixed Multi-Year Appointments to Continuing Multi-Year Appointments. An individual who is currently a faculty member on a fixed, multi-year employment contract may request that their contract be converted from a fixed term to a continuing multi-year appointment. This request must be made no earlier than one year prior to the expiration of the fixed contract term and only after successful review for continuation of the fixed contract. Granting such conversion requests is at the discretion of the University.

B. From Continuing Multi-Year Appointments to Fixed Multi-Year Appointments. An individual who is currently a faculty member on a continuing, multi-year employment contract may request that their contract be converted to a fixed multi-year appointment. This request can be made only after a satisfactory annual review. Granting such conversion requests is at the discretion of the University.

15.4. Grievability. A faculty member who receives written notice that he or she will not be offered a contract extension or successive appointment may, according to Article 20 (Grievance Procedure and Arbitration), contest the decision because of

an alleged violation of an express term of this Agreement. Such grievances must be filed within thirty (30) calendar days after having received statement of the basis for the decision.

#### 15.5 Tenure.

A. Annual Evaluations and Sustained Performance Evaluation. Each faculty member in a tenured position will be evaluated annually pursuant to Article 10. Each faculty member in a tenured position will also be evaluated for sustained performance pursuant to Article 10.

B. Tenure shall be in a department/unit or other appropriate administrative unit. Tenured faculty who assume administrative appointments or transfer within the University shall retain tenure status in the university.

C. Tenure status guarantees annual reappointment for the academic year until voluntary resignation, retirement, removal for just cause in accordance with the provisions of Article 16, Disciplinary Action and Job Abandonment, or layoff in accordance with the provisions of Article 13, Layoff and Recall. This does not extend to the continuation of administrative appointments.

# **Article 16**

## ***Disciplinary Action and Job Abandonment***

### 16.1 Just Cause.

A. The purpose of this article is to provide a prompt and equitable procedure for disciplinary action taken with just cause. Just cause shall be defined as:

(1) incompetence, or

(2) misconduct.

B. An employee's activities which fall outside the scope of employment shall constitute misconduct only if such activities adversely affect the legitimate interests of the University.

16.2 Progressive Discipline. Both parties endorse the principle of progressive discipline as applied to professionals.

### 16.3 Notice of Intent.

A. When the President or representative has reason to believe that a suspension or termination should be imposed, the President or representative shall provide the employee with a written notice of the proposed action and the reasons therefor. Such notice shall be sent certified mail, return receipt requested, or delivered in person with written documentation of receipt obtained. The employee shall be given ten (10) days in which to respond in writing to the President or representative before the proposed action is taken. The President or representative then may issue a notice of disciplinary action under Article 16.4 below. If the President or representative does not issue a notice of disciplinary action, the notice of proposed disciplinary action shall not be retained in the employee's evaluation file.

B. The employee has a right to union representation during investigatory questioning that may reasonably be expected to result in disciplinary action.

16.4 Notice of Discipline. All notices of disciplinary action shall include a statement of the reasons therefor and a statement advising the employee that the action is subject to Article 20, Grievance Procedure and Arbitration. All such notices shall be sent certified mail, return receipt requested, or delivered in person to the employee with written documentation of receipt obtained.

16.5 Termination. A tenured appointment or any appointment of definite duration may be terminated during its term for just cause. An employee shall be given written notice of termination at least six (6) months in advance of the effective date of such termination, except that in cases where the President or representative determines

that an employee's actions adversely affect the functioning of the University or jeopardize the safety or welfare of the employee, colleagues, or students, the President or representative may give less than six (6) months notice.

16.6 Disciplinary Action Other than Termination. The University retains its right to impose disciplinary action other than termination for just cause including, but not limited to, suspension with or without pay. Counseling, including recommendations for participation in an Employee Assistance Program, shall not be considered disciplinary action.

#### 16.7 Job Abandonment

A. If an employee is absent without authorized leave under the provisions of Article 17.1.D for twelve (12) or more consecutive days, the employee shall be considered to have abandoned the position and voluntarily resigned from the University.

B. Notwithstanding Article 16.7(A), above, if the employee's absence is for reasons beyond the control of the employee and the employee notifies the University as soon as practicable, the employee will not be considered to have abandoned the position.

16.8 Employee Assistance Program. Neither the fact of an employee's participation in an employee assistance program, nor information generated by participation in the program, shall be used as a reason for discipline under this Article, except for information relating to an employee's failure to participate in an employee assistance program consistent with the terms to which the employee and the University have agreed.

# Article 17

## Leaves

17.1 Requests for A Leave or Extension of Leave of One (1) Semester or More.

A. For a leave of one (1) semester or more, an employee shall make a written request not less than 120 days prior to the beginning of the proposed leave, if practicable.

B. For an extension of a leave of one (1) semester or more, an employee shall make a written request not less than sixty (60) days before the end of the leave, if practicable.

C. The University shall approve or deny such request in writing not later than thirty (30) days after receipt of the request.

D. An absence without approved leave or extension of leave shall subject the employee to the provisions of Article 16.7.

E. An employee's request for use of leave for an event covered by the provisions of the Family and Medical Leave Act (FMLA) of 1993 (Public Law 103-3) shall be submitted and responded to in accordance with the provisions of Article 17.6 below.

17.2 Return from Leave. An employee who returns from an approved leave of absence with or without pay shall be returned to the same classification, unless the University and the employee agree in writing to other terms and conditions. The return from FMLA leave shall be in accordance with Article 17.6 below.

17.3 Accrual During Leave with Pay. An employee shall accrue normal leave while on compensated leave in full-pay status, or while participating in the sabbatical or professional development programs. If an employee is on compensated leave in less than full-pay status for other than sabbaticals or professional development programs, the employee shall accrue leave in proportion to the pay status.

17.4 Employment Status During Periods of Leave. Semesters during which an employee is on compensated or uncompensated leave will not serve to extend the duration of the employee's employment contract, except by mutual agreement of the employee and the university.

17.5 Holidays.

A. The following holidays will be observed during the term of this Agreement:

Independence Day

Labor Day

Veterans' Day, November 11

Thanksgiving  
Friday after Thanksgiving  
Christmas Day  
Winter Break (4 business days between Christmas Day and New Years Day)  
New Years Day  
MLK Birthday  
Memorial Day

If any of these holidays falls on a Saturday, the preceding Friday will be observed as the holiday. Likewise, if any of these holidays falls on a Sunday, the following Monday will be observed as the holiday.

B. An employee shall be entitled to observe all official holidays designated as holidays by the University. No classes shall be scheduled on designated holidays. Classes not held because of a holiday shall not be rescheduled.

C. Supervisors are encouraged not to require an employee to perform duties on holidays; however, an employee required to perform duties on holidays shall have the employee's schedule adjusted to provide equivalent time off.

D. If an employee who has performed duties on a holiday terminates employment prior to being given time off, the employee shall be paid, upon termination, for the holiday hours worked within the previous twelve (12) month period.

#### 17.6 Family and Medical Leave Act (FMLA) Entitlements.

A. The Family and Medical Leave Act of 1993 ("FMLA") is the common name for the Federal law providing eligible employees an entitlement of up to four hundred and eighty (480) hours of leave without pay for qualified family or medical reasons during a twelve (12) month period. This Act entitles the employee to take leave without pay; where University policies permit, employees may use accrued leave with pay during any qualifying family or medical leave. The failure to list, define, or specify any particular provision or portion of the FMLA in this Agreement shall in no way constitute a waiver of any of the rights or benefits conferred to the employer or the employee through the FMLA.

#### B. Implementation of FMLA Leave Entitlements.

(1) An employee, whether salaried or paid from Other Personal Services (OPS), is entitled to four hundred and eighty (480) hours of FMLA leave within a twelve (12) month period for any qualifying family or medical leave.

(2) A salaried employee is entitled to a parental leave for up to six (6) months in accordance with the provisions of Article 17.7 below, for a birth or adoption of the employee's child. If an eligible employee elects to take Parental Leave, up to four hundred and eighty (480) hours of such leave may be counted against that employee's FMLA entitlement.

### C. Accounting for the Use of FMLA Leave in a Twelve-Month Period.

(1) The designated twelve (12) month period in which to count the use of up to four hundred and eighty (480) hours of FMLA leave shall be determined by the University in accordance with FMLA.

(2) An eligible employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of a twelve (12) month period beginning on the date of the birth or placement of the child.

### D. Use and Approval of FMLA Leave.

(1) The University shall approve FMLA leave for an eligible employee as long as the reasons for absence qualify under the FMLA and the employee has not exhausted the employee's four hundred and eighty (480) hours within the appropriate 12-month period for such leave. The employee may request FMLA leave as accrued leave, leave without pay, or a combination of both.

(2) The University may require that the employee use accrued leave with pay prior to requesting leave without pay for four hundred and eighty (480) hours (12 workweeks) of FMLA leave. Requiring the use of paid leave shall be applied consistently and may not be used merely to exhaust the employee's leave balance in order to prohibit the use of paid leave while on leave without pay as provided for in Article 17.11(E) below.

(3) After the President or representative has acquired knowledge that the leave is being taken for an FMLA required reason, the President or representative shall within two business days, absent extenuating circumstances, notify the employee of the period of FMLA leave to be granted, including the date of return to employment. If the notice is oral, it shall be confirmed in writing no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday).

### E. Medical Certification.

(1) The University may require an employee to provide medical certification from a health care provider for FMLA leave without pay when taken for the serious health condition of the employee or the employee's family member.

(2) Medical certification may be required to affirm the employee's ability to return to work and perform one or more of the essential functions of the job within the meaning of the Americans with Disabilities Act (ADA), after being absent on FMLA leave.

F. Return to Position. Upon return from FMLA leave, the employee shall be returned to the same or equivalent position in the same classification and work location, including the same shift or equivalent schedule, unless the University and the employee agree in writing to other conditions and terms under which such leave is



to be granted.

G. Continuation of Benefits. The use of FMLA leave by eligible employees shall neither enhance nor decrease any rights or benefits normally accrued to salaried employees during a leave with pay or any rights or benefits normally accrued during a leave without pay.

H. If any provision of Article 17.6 (FMLA) is inconsistent with or in contravention of the Family Medical Leave Act of 1993, Public Law 103-3, or the Family and Medical Leave Act Regulations, 29 CFR Part 825, or any subsequently enacted legislation, then such provision shall be superseded by the laws or regulations referenced above, except to the extent that the collective bargaining agreement or any employee benefit program or plan provides greater family or medical leave rights to an eligible employee.

### 17.7 Parental Leave

A. Upon written request, an employee shall be granted a parental leave not to exceed six (6) months when the employee becomes a biological parent or a child is placed in the employee's home pending adoption; foster care is not covered under this provision but is provided for through the FMLA provisions in accordance with Article 17.6 above. Parental leave is unpaid leave unless other paid leave benefits are accessed. The faculty must apply for the parental leave by submitting a completed Request for Parental Leave form to her/his department chair/supervisor at least one semester prior to the date that the leave is expected to begin, as practicable.

(1) The President or representative shall acknowledge to the employee in writing the period of leave to be granted, that such leave counts against the employee's unused FMLA entitlements in accordance with Article 17.6 above, and specifies the expected date of return to employment. Parental leave runs concurrently with Family Medical Leave when applicable.

(2) Unless agreed to otherwise, the period of parental leave shall begin no more than two (2) weeks before the expected date of the child's arrival. A faculty member must use the parental leave within twelve (12) months after the birth or adoption placement.

(3) At the end of the approved parental leave and at the employee's request, the President or representative shall grant part-time leave without pay for a period not to exceed one (1) year, unless the President or representative determines that granting such leave would be inconsistent with the best interests of the university.

(4) Any illness caused or contributed to by pregnancy shall be treated as a temporary disability and the employee shall be allowed to use accrued sick leave credits when such temporary disability is certified by a health care provider.

B. If an employee plans to use a combination of accrued leave and leave without pay, such request shall include the specific periods for each type of leave requested.

Use of accrued leave during an approved period of leave without pay shall be in accordance with Article 17.11 below.

C. Upon agreement between the employee and the University, intermittent FMLA leave or a reduced work schedule may be approved for the birth of the employee's child or placement of a child with the employee for adoption in accordance with Article 17.6 above.

D. The parties agree to form a joint subcommittee of not more than eight (8) persons to study the viability of providing paid parental leave for faculty who become parents through birth or adoption of a child younger than six (6) years old unless special accommodations are required. The joint subcommittee will make a recommendation to the parties by February 1, 2012 prior to the beginning of negotiations for the 2012-2013 re-opener agreement. Consideration of this recommendation will not be counted as a re-opener (of Article 17.7) under the limits of Article 29. At a minimum the proposal will address the following:

1. What are the factors that would make it viable for the University to provide paid parental leave?
2. If it is determined that paid parental leave is viable for the University, who and how many employees per household might be eligible for paid parental leave at any given time? Provide rationale.
3. What might be the likely duration of leave at any given time?
4. How many times could a faculty be eligible for paid parental leave during employment at the University?
5. What are the likely effects of paid parental leave on CMYA and FMYA in the probationary or in the penultimate year for faculty who take parental leave?
6. Provide a cost analysis and funding, including the use of sick and/or annual leave time, and/or a leave pool.
7. Provide a review of the operational impact of parental leave on instructional assignment.
8. Should there be a required period of service to the University after paid parental leave and what might be the consequences if a faculty member voluntarily member fails to return to the University after the leave period?

#### 17.8 Leaves Due to Illness/Injury.

Illness/Injury is defined as any physical or mental impairment of health, including such an impairment proximately resulting from pregnancy, which does not allow an employee to fully and properly perform the duties of the employee's position. When an employee's illness/injury may be covered by the Americans with Disabilities Act, the provisions of Public Law 101-336 shall apply.

#### A. Sick Leave.

- (1) Accrual of Sick Leave.

- a. A full-time employee shall accrue four (4) hours of sick leave for each biweekly pay period, or the number of hours that are directly proportionate to the number of days worked during less than a full-pay period, without limitation as to the total number of hours that may be accrued.
- b. A part-time employee shall accrue sick leave at a rate directly proportionate to the percent of time employed.
- c. An employee appointed under Other Personal Services (OPS) shall not accrue sick leave.

(2) Uses of Sick Leave.

a. Sick leave shall be accrued before being taken, provided that an employee who participates in a sick leave pool shall not be prohibited from using sick leave otherwise available to the employee through the sick leave pool.

b. Sick leave shall be authorized for the following:

i. The employee's personal illness or exposure to a contagious disease, which would endanger others.

ii. The employee's personal appointments with a health care provider.

iii. The illness or injury of a member of the employee's immediate family, at the discretion of the supervisor. Approval of requests for use of reasonable amounts of sick leave for caring for a member of the employee's immediate family shall not be unreasonably withheld. "Immediate family" means the spouse and the grandparents, parents, brothers, sisters, children, and grandchildren of both the employee and the spouse, and dependents living in the household.

iv. The death of a member of the employee's immediate family, at the discretion of the supervisor. Approval of requests for use of reasonable amounts of sick leave for the death of a member of the employee's immediate family shall not be unreasonably withheld.

c. A continuous period of sick leave commences with the first day of absence and includes all subsequent days until the employee returns to work. For this purpose, Saturdays, Sundays, and official holidays observed by the University shall not be counted unless the employee is scheduled to perform services on such days. During any seven (7) day period, the maximum number of days of sick leave charged against any employee shall be five (5).

d. An employee who requires the use of sick leave should notify the supervisor as soon as practicable.

e. An employee who becomes eligible for the use of sick leave while on approved

annual leave shall, upon notifying the supervisor, substitute the use of accrued sick leave to cover such circumstances.

(3) Certification. If an employee's request for absence or absence exceeds four (4) consecutive days, or if a pattern of absence is documented, the University may require an employee to furnish certification issued by an attending health care provider of the medical reasons necessitating the absence and/or the employee's ability to return to work. If the medical certification furnished by the employee is not acceptable, the employee may be required to submit to a medical examination by a health care provider who is not a University staff member which shall be paid for by the University. If the medical certification indicates that the employee is unable to perform assigned duties, the President or representative may place the employee on compulsory leave under the conditions set forth in Article 17.8(C) below.

(4) Transfer of Credits.

a. When an employee is reemployed by the University within 100 days, the full balance of accrued sick leave shall accompany the employee unless the employee has received a lump sum payment for accrued sick leave. If an employee has received such a lump sum payment, the employee may elect in writing, upon re-employment, to restore the employee's accrued sick leave. Such restoration will be effective upon repayment of the full lump sum leave payment.

b. When an employee moves to a position in state government, the transfer of unused sick leave from the University shall be governed by the rules of the plan to which the employee is transferring.

c. The transfer of unused sick leave from a local government to a university position is not permitted unless a reciprocal agreement in writing between the University and the previous employing entity is in effect.

(5) Payment for Unused Sick Leave.

a. An employee with less than ten (10) years of continuous University service, as defined herein, who separates from the University shall not be paid for any unused sick leave. For employees appointed on or before 1/7/03 University service includes continuous employment by the University or the State of Florida.

b. An employee who has completed ten (10) or more years of University service, as defined in Article 17.8(A)(5)(a) above, has not been found guilty or has not admitted to being guilty of committing, aiding, or abetting any embezzlement, theft, or bribery in connection with University employment, or has not been found guilty by a court of competent jurisdiction of having violated any State law against or prohibiting strikes by public employees, and separates from the University because of retirement for other than disability reasons, termination, or death, shall be compensated at the employee's current regular hourly rate of pay for one-fourth of all unused accrued sick leave ; provided that the payment shall not exceed 480 hours.

c. Payment for unused sick leave shall be provided to eligible employees according to the terms of the approved Special Pay Plan authorized under Section 403(b) of the Internal Revenue Code.

d. Where applicable, upon layoff an employee with ten (10) or more years of University service, as defined in Article 17.8(A)(5)(a) above, shall be paid for unused sick leave as described in Article 17.8(A)(5)(b) and (c), above, unless the employee requests in writing that unused sick leave be retained pending re-employment. For an employee who is re-employed by the university within twelve (12) calendar months following layoff, all unused sick leave shall be restored to the employee, provided the employee requests such action in writing and repays the full amount of any lump sum leave payments received at the time of layoff. An employee who is not re-employed within twelve (12) calendar months following layoff shall be paid for sick leave in accordance with Article 17.8(A)(5)(b) above.

e. All payments for unused sick leave authorized by Article 17.8(A)(5)(b) and (c) above, shall be made in lump sum payment into an approved Special Pay Plan authorized under Section 403(b) of the Internal Revenue Code where applicable, and shall not be used in determining the average final compensation of an employee in any state administered retirement system. An employee shall not be carried on the payroll beyond the last official day of employment, except that an employee who is unable to perform duties because of a disability may be continued on the payroll until all accrued sick leave is exhausted.

f. If an employee has received a lump sum payment of accrued sick leave, the employee may elect in writing, upon re-employment within 100 days, to restore the employee's accrued sick leave. Restoration will be effective upon the repayment of the full lump sum leave payment.

g. In the event of the death of an employee, payment of sick leave accrued at the time of death shall be made to the employee's beneficiary, estate, or as provided by law.

#### B. Job-Related Illness/injury.

(1) An employee who sustains a job-related illness/injury that is compensable under the Workers' Compensation Law shall be carried in full-pay status for a period of medically certified illness/injury not to exceed seven (7) days immediately following the illness/injury, or for a maximum of forty (40) work hours if taken intermittently without being required to use accrued sick or annual leave.

(2) If, as a result of the job-related illness/injury, the employee is unable to resume work at the end of the period provided in Article 17.8(B)(1), above:

a. The employee may elect to use accrued leave in an amount necessary to receive salary payment that will increase the Workers' Compensation payments to the total salary being received prior to the occurrence of the illness/injury. In no case shall the employee's salary and Workers' Compensation benefits exceed the amount of the

employee's regular salary payments; or

b. The employee shall be placed on leave without pay and shall receive normal Workers' Compensation benefits if the employee has exhausted all accrued leave in accordance with Article 17.8 (B)(2)(a), above, or the employee elects not to use accrued leave.

(3) This period of leave with or without pay shall be in accordance with Chapter 440 (Worker's Compensation), Florida Statutes.

(4) If, at the end of the leave period, the employee is unable to return to work and perform assigned duties, the President or representative should advise the employee, as appropriate, of the Florida Retirement System's disability provisions and application process, and may, based upon a current medical certification by a health care provider prescribed in accordance with Chapter 440 (Worker's Compensation), Florida Statutes, and taking the University's needs into account:

- a. offer the employee part-time employment;
- b. place the employee in leave without pay status or extend such status;
- c. request the employee's resignation; or
- d. release the employee from employment, notwithstanding any other provisions of this Agreement.

### C. Compulsory Leave.

(1) Placing Employee on Compulsory Leave.

a. If an employee is unable to perform assigned duties due to illness/injury the President or representative may require the employee to submit to a medical examination, the results of which shall be released to the University, by a health care provider chosen and paid by the University, or by a health care provider chosen and paid by the employee, who is acceptable to the President or representative. Such health care provider shall submit the appropriate medical certification(s) to the University. The employee shall cooperate by providing such medical records as requested by the examining physician.

b. If the University agrees to accept the employee's choice of a health care provider the University may not then require another university-paid examination.

c. If the medical examination confirms that the employee is unable to perform assigned duties, the President or representative shall place the employee on compulsory leave.

(2) Conditions of Compulsory Leave.

a. Written notification to the employee placing the employee on compulsory leave shall include the duration of the compulsory leave period and the conditions under which the employee may return to work. These conditions may include

the requirement of the successful completion of, or participation in, a program of rehabilitation or treatment, and follow-up medical certification(s) by the health care provider, as appropriate.

b. The compulsory leave period may be leave with pay or leave without pay. If the compulsory leave combines the use of accrued leave with leave without pay, the use of such leave shall be in accordance with Article 17.11 below.

c. If the employee fulfills the terms and conditions of the compulsory leave and receives a current medical certification from a health care provider approved by the University that the employee is able to perform assigned duties, the President or representative shall return the employee to the employee's previous duties, if possible, or to equivalent duties.

(3) Duration. Compulsory leave, with or without pay, shall be for a period not to exceed the duration of the illness/injury or one year, whichever is less.

(4) Failure to Complete Conditions of Compulsory Leave or Inability to Return to Work. If the employee fails to fulfill the terms and conditions of a compulsory leave and/or is unable to return to work and perform assigned duties at the end of a leave period, the President or representative should advise the employee, as appropriate, of the Florida Retirement System's disability provisions and application process, and may, based upon the University's needs:

- a. offer the employee part-time employment;
- b. place the employee in leave without pay status in accordance with Article 17.11 below or extend such status;
- c. request the employee's resignation; or
- d. release the employee from employment, notwithstanding any other provisions of this Agreement.

## 17.9 Annual Leave

### A. Accrual of Annual Leave.

(1) Full-time employees appointed for more than nine (9) months, except employees on academic year appointments, shall accrue annual leave at the rate of 6.77 hours biweekly (or a number of hours that is directly proportionate to the number of days worked during less than a full-pay period for full-time employees), and the hours accrued shall be credited at the conclusion of each pay period or, upon termination, at the effective date of termination. Employees may accrue annual leave in excess of the year end maximum during a calendar year. Employees with accrued annual leave in excess of the year end maximum (forty-four days or 352 hours) as of December 31, shall have any excess converted to sick leave on an hour-for-hour basis on January 1 of each year.

(2) Part-time employees appointed for more than nine (9) months, and employees

with greater than academic year appointments shall accrue annual leave at a rate directly proportionate to the percent of time employed.

(3) Employees appointed for 9 months or less shall not accrue annual leave.

#### B. Use and Transfer of Annual Leave.

(1) Annual leave shall be accrued before being taken, except in those instances where the President or representative may authorize the advancing of annual leave. When leave has been advanced and employment is terminated prior to the employee accruing sufficient annual leave to credit against the leave that was advanced, the University shall deduct from the employee's warrant the cost of any annual leave advanced under this provision. All requests for annual leave shall be submitted by the employee to the supervisor as far in advance as possible and appropriate. Approval of the dates on which an employee wishes to take annual leave shall be at the discretion of the supervisor and shall be subject to the consideration of departmental/unit and organizational scheduling.

(2) Upon re-employment within the University within 100 days, except for reemployment after layoff (see 17.9(C)(3), below), the employee may choose to reinstate their annual leave balance by repaying the full lump-sum annual leave payment received.

(3) An employee may transfer into an annual leave accruing position up to forty-four (44) days of unused leave accrued in the University classification and pay plan in which previously employed, provided the employee has not received payment for such leave and no more than thirty-one (31) days have elapsed between jobs.

(4) When an annual leave accruing employee moves to a position in state government, the transfer of leave from FGCU shall be governed by the rules of the plan to which the employee is transferring. Should all unused leave not be transferable, up to forty-four days (352 hours) of the remaining balance shall be paid in lump sum, effective the last day of University employment.

(5) The transfer of unused annual leave from a local government to an annual leave accruing position is not permitted unless a reciprocal agreement in writing between the University or its representative and the previous employing entity is in effect.

#### C. Payment for Unused Annual Leave.

(1) Payment for unused annual leave shall be provided to eligible employees according to the terms of the approved Special Pay Plan authorized under Section 403(b) of the Internal Revenue Code.

(2) Upon termination from an annual leave accruing contract, or transfer from an annual leave accruing contract to an academic year contract, and unless the employee requests the option in Article 17.9(C)(2) below, the university shall pay for



the employee into an approved Special Pay Plan authorized under Section 403(b) of the Internal Revenue Code the employee for up to forty-four (44) days (352 hours) of unused annual leave at the calendar year rate the employee was accruing as of the employee's last day of work, provided that a determination has been made by the President or representative that the employee was unable to reduce the unused annual leave balance prior to termination or reassignment to an academic year contract. All unused annual leave in excess of forty-four days (352 hours) shall be forfeited by the employee.

(3) Upon transfer from an annual leave accruing contract to an academic year contract within the University, the employee may elect to retain all unused annual leave until such time, not to exceed two (2) years, as the employee transfers back to an annual leave accruing contract or terminates employment with the University. Upon such termination or at the end of two (2) years, whichever comes first, the unused leave balance shall be paid in lump sum into an approved Special Pay Plan for up to forty-four days (352 hours) at the annual rate the employee was accruing as of the employee's last day of work on an annual leave accruing contract.

(4) Upon layoff, an employee shall be paid for up to forty-four days (352 hours) of unused annual leave in lump sum to a Special Pay Plan, unless the employee requests in writing that annual leave credits be retained pending reemployment. For employees who are re-employed by the University within twelve (12) calendar months following layoff, all unused annual leave shall be restored to the employee, provided the employee requests such action in writing and repays the full amount of any lump sum leave payment received at the time of layoff. Employees who are not re-employed within twelve (12) calendar months following layoff and who elected to retain their annual leave pending re-employment shall be paid for up to forty-four days (352 hours) of unused annual leave at the calendar rate the employee was accruing as of the employee's last day of work.

(5) If an employee has received a lump sum payment for accrued annual leave, the employee may elect in writing, upon re-employment within 100 days, to restore the employee's accrued annual leave. Restoration will be effective upon the repayment of the full lump sum leave payment.

(6) In the event of the death of an employee, payment for all unused accrued annual leave at the time of death, up to 352 hours, shall be made to the employee's beneficiary, estate, or as provided by law.

#### 17.10 Administrative Leaves.

##### A. Jury Duty and Court Appearances.

(1) An employee who is summoned as a member of a jury panel or subpoenaed as a witness in a matter not involving the employee's personal interests, shall be granted leave with pay and any jury or witness fees shall be retained by the employee; leave granted hereunder shall not affect an employee's annual or sick leave balance.

(2) An appearance as an expert witness for which an employee receives professional compensation falls under Article 19 and the university's regulations and policies relative to outside employment/conflict of interest. Such an appearance may necessitate the employee requesting annual leave or, if a non-annual leave accruing employee, may necessitate the employee seeking an adjustment of the work schedule.

(3) If an employee is required, as a direct result of the employee's employment, to appear as an official witness to testify in the course of any action as defined in Section 92.142(2), Florida Statutes, such duty shall be considered a part of the employee's job assignment, and the employee shall be paid per diem and travel expenses and shall turn over to the University any fees received.

(4) An employee involved in personal litigation during work hours must request annual leave or, if a non-annual leave accruing employee, must seek an adjustment to the work schedule.

#### B. Military Leave.

(1) Short-term Military Training. An employee who is a member of the United States Armed Forces Reserve, including the National Guard, upon presentation of a copy of the employee's official orders or appropriate military certification, shall be granted leave with pay during periods in which the employee is engaged in annual field training or other active or inactive duty for training exercises. Such leave with pay shall not exceed seventeen (17) work days in any one (1) federal fiscal year (October 1 - September 30).

(2) National Guard State Service. An employee who is a member of the Florida National Guard shall be granted leave with pay on all days when ordered to active service by the State. Such leave with pay shall not exceed thirty (30) days at any one time.

(3) Other Military Leave.

a. An employee, except an employee who is employed in a temporary position or employed on a temporary basis, who is drafted, who volunteers for active military service, or who is ordered to active duty (not active duty training) shall be granted leave in accordance with Chapter 43 of Title 38, United States Code. Active military service includes active duty with any branch of the United States Army, Air Force, Navy, Marine Corps, Coast Guard, National Guard of the State of Florida, or other service as provided in Sections 115.08 and 115.09, Florida Statutes.

b. Such leave of absence shall be verified by official orders or appropriate military certification. The first thirty (30) days of such leave shall be with full-pay and shall not affect an employee's annual or sick leave balance. The remainder of military leave shall be without pay unless the employee elects to use accumulated annual leave or appropriate leave as provided in (4) below, or the employer exercises its option under Section 115.14, Florida Statutes, to supplement the employee's military pay. Leave

payment for the first thirty (30) days shall be made only upon receipt of evidence from appropriate military authority that thirty (30) days of military service have been completed.

c. Applicable provisions of Federal and State law shall govern the granting of military leave and the employee's re-employment rights.

d. Use of accrued leave is authorized during a military leave without pay in accordance with Article 17.11 below.

C. Leave Pending Investigation. When the President or representative has reason to believe that the employee's presence on the job will adversely affect the operation of the University, the President or representative may immediately place the employee on leave pending investigation of the event(s) leading to that belief. The leave pending investigation shall commence immediately upon the President or representative providing the employee with a written notice of the reasons therefore. The leave shall be with pay, with no reduction of accrued leave.

D. Other Leaves Provided Not Affecting Accrued Leave Balances. An employee may be granted other leaves not affecting accrued leave balances which are provided as follows:

(1) Florida Disaster Volunteer Leave is provided by Section 110.120, Florida Statutes, for an employee who is a certified disaster service volunteer of the American Red Cross. Leave of absence with pay for not more than fifteen (15) working days in the fiscal year may be provided upon request of the American Red Cross and the employee's supervisor's approval. Leave granted under this act shall be only for services related to a disaster occurring within the boundaries of the State of Florida.

(2) Civil disorder or disaster leave is provided for an employee who is a member of a volunteer fire department, police auxiliary or reserve, civil defense unit, or other law enforcement type organization to perform duties in time of civil disturbances, riots, and natural disasters, including an employee who is a member of the Civil Air Patrol or Coast Guard Auxiliary, and called upon to assist in emergency search and rescue missions. Such paid leave not affecting leave balances may be granted upon approval by the President or designee and shall not exceed two days on any one occasion.

(3) Athletic competition leave is provided by Section 110.118, Florida Statutes, for an employee who is a group leader, coach, official, or athlete who is a member of the official delegation of the United States team for athletic competition. Such paid leave not affecting leave balances shall be granted for the purpose of preparing for and engaging in the competition for the period of the official training camp and competition, not to exceed 30 days in a calendar year.

(4) Leave for re-examination or treatment with respect to service-connected disability is provided by Section 110.119, Florida Statutes, for an employee who has such rating by the United States Department of Veterans Affairs and has been scheduled to be

reexamined or treated for the disability. Upon presentation of written confirmation of having been so scheduled, such leave not affecting the employee's leave balances shall be approved and shall not exceed six (6) calendar days in any calendar year.

E. Official Emergency Closings. The President or President's representative may close the University, or portions of the University, in the event of an emergency or natural disaster. Such closings will be only for the period it takes to restore normal working conditions. Leave resulting from such an emergency closing shall not reduce employees' leave balances.

#### 17.11 Leave Without Pay.

A. Granting. Upon request of an employee, the President or representative shall grant a leave without pay for a period not to exceed one year unless the President or representative determines that granting such leave would be inconsistent with the best interests of the University. Such leave may be extended upon mutual agreement.

B. Salary Adjustment. The salary of an employee returning from uncompensated leave shall be adjusted to reflect all non-discretionary increases distributed during the period of leave. While on such leave, an employee shall be eligible to participate in any special salary incentive programs.

C. Retirement Credit. Retirement credit for such periods of leave without pay shall be governed by the provisions of applicable Florida Statutes and implementing rules.

D. Accrual of Leave/Holiday Pay. While on leave without pay, the employee shall retain accumulated sick leave and annual leave, but shall not accrue sick leave or annual leave nor be entitled to holiday pay.

E. Use of Accrued Leave During an Approved Period of Leave Without Pay.

(1) Use of accrued leave with pay is authorized during a leave of absence without pay for parental, foster care, medical, or military reasons. Such use of leave with pay is provided under the following conditions:

a. Notwithstanding the provisions of Article 17.8(A)(2) above regarding the use of sick leave, an employee may use any type of accrued leave in an amount necessary to cover the employee's contribution to the State insurance program and other expenses incurred by the employee during an approved period of leave without pay for parental, foster care, medical, or military reasons.

b. Normally the use of accrued leave during a period of leave without pay for medical reasons shall be approved for up to six (6) months, but may be approved for up to one year for the serious health condition of the employee or a member of the employee's immediate family.

c. The employer contribution to the State insurance program will continue for the

corresponding payroll periods.

(2) An employee's request for the use of accrued leave during a period of leave without pay shall be made at the time of the employee's request for the leave without pay. Such request shall include the amount of accrued leave the employee wishes to use during the approved period of leave without pay. If circumstances arise during the approved leave which cause the employee to reconsider the combination of leave with and without pay, the employee may request in writing approval of revisions to the original approval.

17.12 Leave Donation Policy. Employees shall be eligible to participate in any University developed leave donation policy on the same basis as out-of-unit faculty and staff. Consistent with Article 31.3, the UFF shall have the opportunity to consult about any newly developed leave donation policy, or any change to any existing leave donation policy.

# Article 18

## *Inventions and Works*

18.1 University Authority and Responsibilities. Section 1004.23, Florida Statutes, authorizes the University to establish regulations, policies, and procedures regarding patents, copyrights, and trademarks. Such regulations, policies, and procedures shall be consistent with the terms of this Article.

18.2 Definitions. The following definitions shall apply in this Article:

A. A “work” includes any copyrightable material under the U.S. Copyright Act, 17 U.S.C. section 101 et. seq., such as printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, choreographic works, pictorial or graphic works, and sculptural works. Instructional technology material, as defined in Article 9.9(A), is included in this definition.

B. An “invention” includes any discovery within the meaning of the U.S. Patent Law, 35 U.S.C. section 1 et. seq., and other laws such as any invention, machine, process, composition of matter, article of manufacture, know-how, design, model, technological development, plant, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark used in connection with these items. Instructional technology material, as defined in Article 9.9(A), is included in this definition.

C. “Creator” is defined as an employee who creates a work or invention. “Creator” includes the definition of “inventor” under the U.S. Patent Law, 35 U.S.C. Section 1 et. seq., and the definition of “author” used the U.S. Copyright Act, 17 U.S.C. Section 101 et. seq.

D. “Instructional technology material” is defined in Article 9.9(A).

E. “University support” includes the use of university funds, personnel, facilities, equipment, materials, or technological information customarily provided to the Faculty member by the university, and includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the University. Examples include: base salaries of employees producing a work or invention; customary time assigned to research and/or teaching; customary use of instructional delivery mechanisms such as the university network and WebBoards; customary use of facilities, offices, equipment, software, and/or supplies provided by the university for academic purposes and available for use by employees generally; use of university library resources; and limited secretarial and/or administrative resources available to employees generally.

F. “Appreciable university support” refers to funds, personnel, facilities, equipment,

materials, and/or technological aid provided by the university, as well as to support provided by outside sponsors under agreements that have been arranged, administered, or controlled by the university and that specify the disposition of intellectual property, where the form and/or amount of such support measurably exceeds what is customarily provided to an FGCU faculty member.

G. “Net Income” is “gross revenue” less all “development expenses” for a work or invention and its improvements.

(1) “Gross revenue” shall mean:

(a) proceeds from the sale, lease, transfer, or other conveyance of an invention or work by the University, and

(b) license issue fees, option fees, running royalties, and equity interests paid to the University by a licensee of an invention or work, except that such equity interests, or portion thereof, shall not be considered “gross revenue” unless and until the equity interests, or portion thereof, are sold by the University.

(2) “Development expenses” shall mean all moneys paid by the University for goods and services to create the work or invention, or to protect, develop, and/or enhance the marketability or any other aspect of a work or invention, including, but not limited to, patent filing fees, protection of patent, marketing expenses, patent maintenance, consulting fees, prosecution expenses, expenses incurred in dealing with equity interests, travel, attorneys’ fees, and research costs. Not included as development expenses are salaries and general operating expenses of University administrative personnel.

### 18.3 Works.

A. Independent Efforts. A work made in the course of independent efforts is the property of the employee, who has the right to determine the disposition of such work and the revenue derived from such work.

(1) As used in this Section, the term “independent efforts” means that:

a. the ideas came from the employee; and

b. the work was not made with the use of appreciable University support; and

c. the University is not held responsible for any opinions expressed in the work.

(2) Ownership of the following types of works shall be retained by the faculty member

a. Those works for which the intended purpose is to disseminate the results of academic research, scholarly study, or artistic expression such as books, articles, or electronic or artistic media.

b. Works developed without the use of appreciable university support and used solely for the purpose of assisting or enhancing the employee's instructional assignment. Examples include: non-commercialized instructional works, course plans, lecture notes, course handouts and other course supplements, study guides, and instructional technology materials.

c. Consistent with normal academic environments, nothing in Article 18.3B is intended to interfere with the normal voluntary sharing of noncommercial instructional materials among faculty colleagues at Florida Gulf Coast University. For purposes of program and administrative record keeping, the university can maintain syllabus information.

#### C. University-Supported Efforts.

(1) If the work was not made in the course of independent efforts, the work is the property of the University and the employee shall share in the net income therefrom.

(2) Ownership of the following types of works shall be retained by the University, and the employee shall share in the net income: Works produced with the use of appreciable university support; works expressly commissioned or contracted by the University, where the University provided direct and detailed specifications for the content, nature, direction, and form of expression and exercising authority over final acceptance; and works conceived or developed through a university-administered- and externally-sponsored agreement.

#### D. Disclosure.

(1) Upon creating a university-supported or externally sponsored work, and prior to any publication, the employee shall disclose directly to the President or President's designee any work made in the course of university-supported efforts, together with an outline of the project and the conditions under which it was done. Consistent with the provisions of Article 18.3(A)(2a) above, employees need not disclose regarding books, articles, and similar works, the intended purpose of which is to disseminate the results of academic research or scholarly work, nor works developed without appreciable University support, and used solely for the purpose of assisting or enhancing the employee's instructional assignment.

(2) The President or President's designee shall assess the relative equities of the employee and the University in the work.

(3) Within sixty (60) days after such disclosure, the President or President's designee will inform the employee whether the University seeks an interest in the work, and a written agreement shall thereafter be negotiated to reflect the interests of both parties, including provisions relating to the equities of the employee and the allocation of net income resulting from such work. Creation, use, and revision of such works shall also be the subject of the written agreement between the employee and the University as well as provisions relating to the use or revision of such works by



persons other than the creator. The employee shall assist the University in obtaining releases from persons appearing in, or giving financial or creative support to, the development or use of these works in which the University has an interest. All such agreements shall comport with and satisfy any preexisting commitments to outside sponsoring contractors.

(4). The employee and the University shall not commit any act which would tend to defeat the University's or employee's interest in the work and shall take any necessary steps to protect such interests.

#### 18.4 Inventions.

A. Independent Efforts. All inventions made outside the field or discipline in which the employee is employed by the University and for which no appreciable university support has been used are the property of the employee, who has the right to determine the disposition of such work and revenue derived from such work. The employee and the President or President's designee may agree that the patent for such invention be pursued by the University and the net income shared.

B. University-Supported Efforts. An invention which is made in the field or discipline in which the employee is employed by the University, or by using appreciable university support, is the property of the University and the employee shall share in the net income therefrom.

#### C. Disclosure/University Review.

(1) An employee shall fully and completely disclose directly to the President or President's designee all inventions which the employee develops or discovers while an employee together with an outline of the project and the conditions under which it was done. With respect to inventions made during the course of approved outside employment, the employee may delay such disclosure, when necessary to protect the outside employer's interests, until the decision has been made by the outside employer whether to seek a patent.

(2) If the University wishes to assert its interest in the invention, the President or President's designee shall inform the employee within 60 days of the employee's disclosure to the Division.

(3) The President or President's designee shall inform the employee of the University's decision regarding the University's interest in the invention within a reasonable time, not to exceed 60 days from the date of the disclosure to the President or President's designee.

(4) The division between the University and the employee of net income generated by the licensing or assignment of an invention or work shall be negotiated and reflected in a written contract between the University and the employee. All such agreements shall comport with and satisfy any preexisting commitments to outside

sponsoring contractors. In the instance where the University and the employee(s) are not able to reach agreement on a written contract, the following division of net income shall apply:

- Up to \$20,000, the creator(s) shall receive 100%.
- From \$20,001 - \$100,000, the creator(s) shall receive 65%, and the University shall receive 35%.
- From \$100,001 - \$250,000, the creator(s) shall receive 50% and the University shall receive 50%.
- From \$250,001 - \$500,000, the creator(s) shall receive 35%, and the University shall receive 65%.
- Over \$500,000, the creator(s) shall receive 30%, and the University shall receive 70%.

(a) In the event that there are multiple creators of an invention or work, the creators' share shall be divided equally among all creators. If the creators agree among themselves to a different split, the University must be notified in writing at least thirty (30) days prior to the first income distribution.

(b) At the discretion of the creator(s) a portion of the creator's share of the net income may be placed in a fund within the Division of Sponsored Research and expended in accordance with Section 1004.24, Florida Statute.

(c) Distribution of net income shall be made at least annually on or before December 1 of each year.

(5) The employee shall not commit any act which would tend to defeat the University's interest in the matter, and the University shall take any necessary steps to protect such interest.

#### D. Release of Rights.

(1) In the event a sponsored research contractor has been offered the option to apply for the patent to an invention or other rights in an invention, the University will use its good offices in an effort to obtain the contractor's decision regarding the exercise of such rights within 120 days.

(2) At any stage of making the patent applications, or in the commercial application of an invention, if it has not otherwise assigned to a third party the right to pursue its interests, President or President's designee may elect to withdraw from further involvement in the protection or commercial application of the invention. At the request of the employee in such case, the University shall transfer the invention rights to the employee, in which case the invention shall be the employee's property and none of the costs incurred by the University or on its behalf shall be assessed against the employee.

(3) All assignments or releases of inventions, including patent rights, by the President

or President's designee to the employee shall contain the provision that such invention, if patented by the employee, shall be available royalty-free for governmental purposes of the State of Florida, unless otherwise agreed in writing by the University.

E. University Policy.

(1) The University shall have an intellectual property policy that shall be available to faculty via the University website.

(2) Such policy may be the subject of consultation meetings pursuant to Article 2.

F. Execution of Documents. The University and the employee shall sign an agreement individually recognizing the terms of this Article, which may be contained in the employment document.

18.5 Outside Activity.

A. Although an employee may, in accordance with Article 19, Conflict of Interest/ Outside Activity, engage in outside activity, including employment, pursuant to a consulting agreement, requirements that an employee waive the employee's or University's rights to any work or inventions which arise during the course of such outside activity must be approved by the President or representative.

B. An employee who proposes to engage in such outside activity shall furnish a copy of this Article and the university's patents policy to the outside employer prior to or at the time a consulting or other agreement is signed, or if there is no written agreement, before the employment begins.

# **Article 19**

## **Conflict Of Interest/Outside Activity**

### 19.1 Policy.

A. An employee is bound to observe, in all official acts, the highest standards of ethics consistent with the code of ethics of the State of Florida (Chapter 112, Part III, Florida Statutes), the advisory opinions rendered with respect thereto, and all regulations and policies applicable to university employees.

B. Nothing in this Article is intended to discourage an employee from engaging in outside activity in order to increase the employee's professional reputation, service to the community, or income, subject to the conditions stated herein.

### 19.2 Definitions.

A. "Outside Activity" shall mean any compensated private practice, private consulting, additional teaching or research, or other activity which is not part of the employee's assigned duties and for which the University has provided no compensation.

B. "Conflict of Interest" shall mean

(1) any conflict between the private interests of the employee and the public duty or interests of the University or the University Board of Trustees, including conflicts of interest specified under Florida Statutes; or

(2) any activity whether paid or unpaid which interferes with the full performance of the employee's professional or institutional responsibilities or obligations.

### 19.3 Conflicts of Interest Prohibited.

A. Conflicts of interest, including those arising from University or outside activities, are prohibited. Employees are responsible for resolving such conflicts of interest, working in conjunction with their supervisors and other University officials.

B. It is a conflict of interest for any faculty member to be employed full-time in a single organizational unit where the faculty member evaluates or is evaluated by, supervises, or is supervised by, either directly or indirectly through the chain of command, a related person. "Related persons" are those related to each other in one of the following ways: spouse, long-term co-habitant, parent, child, brother, sister; spouse of a child, brother, or sister; or parents, child, brother, or sister of spouse. If related persons are employed by the University, they must work a majority of their assignment in separate departments/units."

### 19.4 Report of Outside Activity.

A. An employee who proposes to engage in any compensated outside activity shall report to the employee's supervisor, in writing, the details of such proposed activity prior to engaging therein.

B. An employee who proposes to engage in any non-compensated outside activity which the employee should reasonably conclude may create a conflict of interest, shall report to the employee's supervisor, in writing, the details of such proposed activity prior to engaging therein. If there is any question or likelihood of question of whether an activity may result in a conflict of interest, the employee should report the activity.

C. The report, as described in Article 19.4(A and B) shall include where applicable, the name of the employer or other recipient of services; the funding source; the location where such activity shall be performed; the nature and extent of the activity; and any intended use of university facilities, equipment, or services.

D. A new report, as described in 19.4 C, shall be submitted for outside activity previously reported at:

(1) the beginning of each academic year for outside activity of a continuing nature; and

(2) such time as there is a significant change in an activity (nature, extent, funding, etc.)

E. The reporting provisions of this section shall not apply to compensated or uncompensated activities performed wholly during a period in which the employee has no appointment with the University.

F. Any outside activity which falls under the provisions of this Article and in which the employee is currently engaged but has not previously reported, shall be reported within sixty (60) days of the execution of this Agreement and shall conform to the provisions of this Article.

#### 19.5 Grievance Procedure.

A. In the event the proposed outside activity is determined to constitute a conflict of interest, and the employee disagrees with that determination, the employee may file a grievance under the grievance procedure contained in Article 20, Grievance Procedure and Arbitration.

B. The employee may engage in such outside activity pending a resolution of the matter pursuant to Article 19.5(A) above.

C. If the resolution of the matter is that there is a conflict of interest, the employee shall cease such activity immediately and may be required to turn over to the

University all or part of compensation earned therefrom.

19.6 Use of University Resources. An employee engaging in any outside activity shall not use the facilities, equipment, or services of the University in connection with such outside activity without prior approval of the President or representative. Approval for the use of university facilities, equipment, or services shall be requested on a university form designated for that purpose and may be conditioned upon reimbursement for the use thereof.

19.7 No University Affiliation. An employee engaging in outside activity shall take reasonable precautions to ensure that the outside employer or other recipient of services understands that the employee is engaging in such outside activity as a private citizen and not as an employee, agent, or spokesperson of the University.

# **Article 20**

## ***Informal Resolution, Grievance and Arbitration Procedures***

### 20.1 Purpose.

A. The parties encourage the informal resolution of faculty concerns. The parties recognize that there are other University offices that assist faculty with issues/concerns that fall outside of the Collective Bargaining Agreement. The UFF and the University agree to collaborate to ensure that faculty are referred to the appropriate venues to explore and address unit members' concerns.

B. The purpose of the informal resolution and grievance procedures is to promote opportunities for prompt and efficient discussion and resolution of work-related issues covered by the Collective Bargaining Agreement. The parties agree that it is desirable to encourage open communication in order to resolve concerns and issues at the lowest possible level within the organization through informal resolution. The grievance and arbitration procedures shall be the sole and exclusive method for resolving grievances.

### 20.2 Informal Resolution Procedure.

A. The informal resolution (IR) procedure is the first method used to resolve concerns and issues and is not intended to be "evidence gathering" for a grievance. No grievance shall be filed until the UFF or faculty member has timely requested an informal resolution. The faculty member shall have the right to representation by the UFF during attempts at informal resolution. If the faculty member is not represented by UFF at this point, the University shall provide prompt notification to UFF with a copy of the request for IR.

B. Faculty are encouraged to request informal resolution as early as practicable. All requests for informal resolution shall be in writing or by e-mail and submitted to the Office of Academic Affairs. However, faculty who wish to preserve their rights to file a grievance must file a request for IR within thirty (30) days of the act or omission giving rise to the dispute, or the date on which the faculty member knew or reasonably should have known of such an act or omission if that date is later. If filed after the thirty (30) days, the request will be subject only to IR.

C. If the request for informal resolution has been timely filed, as referred to in Article 20.2.B above, and a grievance is filed at a later date in accordance with the timeline for filing a grievance, then the resulting grievance shall be considered to be timely filed as long as the other deadlines specified below are observed. However, if the request for informal resolution has not been timely requested as outlined in Article

20.2.B, the later filed grievance shall be considered time-barred.

D. The request for informal resolution shall contain a brief, general description of the facts relating to the dispute, identify the relevant provisions of the Agreement that are at issue, and include dates, times, and locations of the action(s) giving rise to the dispute.

E. Upon receipt of a request for informal resolution, the Office of Academic Affairs' designee and the faculty member shall have thirty (30) days to attempt to informally resolve the dispute. Extensions may be granted upon mutual written agreement and such extensions shall not affect the faculty member's right to later file a grievance in a timely manner as long as the other deadlines specified below are observed.

(1) Any resolution of the dispute brought about by the informal resolution process shall be in writing with copies provided to the faculty member requesting the informal resolution to a dispute, the UFF and the Office of Academic Affairs.

(2) The faculty member who requested an informal resolution may file a grievance earlier than the required thirty (30) days for attempting informal resolution (Article 20.2.E above) if at least twenty-one (21) days have lapsed since the date of the requested for informal resolution was received by the Office of Academic Affairs and good faith attempts have been made by the grievant to achieve an informal resolution.

(3) The faculty member who requested an informal resolution may file a grievance earlier than the required 30 days for attempting informal resolution (Article 20.2.E above) if the parties mutually agree that informal resolution of the dispute is not possible.

(4) If the parties are unable to reach informal resolution of the dispute within the time provided, or if the faculty member has filed a grievance, the Office of Academic Affairs shall notify the UFF that informal resolution of the dispute is not possible and all such attempts at informal resolution shall end.

F. During the informal resolution period efforts to resolve the dispute informally shall be made. Informal resolution methods may include discussions with the involved parties, for example, supervisor, Deans/Directors as applicable. The parties can also avail themselves of the Conflict Management System (<http://www.fgcu.edu/cms/>) or other informal methods for resolution.

### 20.3 Definitions Related to Grievances.

A. "Grievance" shall mean a dispute filed on the appropriate grievance form (Appendix C) concerning the interpretation or application of a specific term or provision of the Collective Bargaining Agreement, subject to those exclusions appearing in other articles of the agreement. The parties agree that counseling does not constitute disciplinary action. Further, since the parties do not intend that this grievance procedure be a device for appellate review, the University's response to a



recommendation of a hearing officer or other individual or group having appropriate jurisdiction in any other procedure shall not be an act or omission giving rise to a grievance under this procedure.

B. "Grievant" shall mean a member of the bargaining unit or group of members of the bargaining unit who has/have filed a grievance in a dispute over application of a provision of the Collective Bargaining Agreement. The UFF may file a grievance in a dispute over application of a provision of this Agreement which confers rights upon the UFF. Where several employees have essentially the same grievance, the parties may agree in writing to consolidate the grievances. Where the parties agree to consolidation, one grievance form may be attached bearing the signatures of the grievants. A separate mutual agreement must be obtained to maintain the grievances as consolidated at each step of the grievance and arbitration process.

20.4 Reprisal. No reprisal of any kind will be made by the University, or UFF against any grievant, any witness, any UFF representative, or any other participant in the grievance procedure by reason of such participation.

20.5 Filing a Grievance. The filing of a grievance constitutes a waiver of any applicable rights to review of University action pursuant to the Administrative Procedure Act, Chapter 120, Florida Statutes, or to the review of such actions under university regulations, policies, and procedures which may otherwise be available to address such matters.

20.6 Grievance Procedure.

A. Step 1: Notification and Filing Process.

(1) If informal resolution has not satisfactorily resolved the issue(s) the faculty member may file a grievance at Step 1 or Step 2, as appropriate, after a minimum of twenty-one (21) days of informal resolution effort (Article 20.2.E.(2)), but no later than seven (7) days after the end of the informal resolution period or the end of any extensions, whichever is later.

(2) A grievance shall be filed with the Office of Academic Affairs which will designate a University representative at Step 1 within seven (7) days following the grievance filing. If the alleged violation occurred outside the college/unit level (University Level) the grievance shall be filed at Step 2 instead of Step 1.

(3) Whether filed at Step 1 or Step 2 the grievance may be amended without University consent only one time throughout the review process, prior to either the Step 1 or the Step 2 meeting. Only those acts or omissions and sections of the Collective Bargaining Agreement identified at the initial filing or as amended prior to the Step 2 meeting may be considered at subsequent steps.

(4) An employee may seek redress of alleged salary discrimination by filing a grievance under the provisions of this article. The established date for the act or omission giving

rise to such a grievance shall be the date of the employee's paycheck or direct deposit for the first full-pay period for the annual salary increases referenced in Article 23.

B. **Grievance Form Requirements.** Each grievance (Appendix C) and notice of arbitration (Appendix D) must be submitted in writing on the appropriate form and shall be signed by the grievant. Request for Step 2 Review shall be filed in writing by the grievant or the representative. If there is difficulty in meeting any time limit, the representative may sign such documents for the grievant; however, the grievant's signature shall be provided prior to the Step 2 meeting. All grievance forms and the request for Step 2 Review shall be dated when the grievance is received by the University. The grievance forms and the request for Step 2 Review may be filed by facsimile, United States mail, or any other recognized means of delivery, excluding electronic mail.

C. **Time Limit Extensions.** All time limits related to grievances may be extended by mutual agreement of the parties. Upon failure of the University to provide a decision within the time limits provided in this Article, the grievant or the UFF, where appropriate, may appeal to the next step. Upon the failure of the grievant or the UFF, where appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be deemed to have been resolved by the decision at the prior step.

D. **Step 1 Grievance Review.**

1. **Meeting(s).** Within fourteen (14) days following receipt of the written filing of a grievance, the designated university representative and the grievant and/or the grievant's representative shall schedule a Step 1 meeting. At the Step 1 meeting, the grievant shall have the right to present any evidence in support of the grievance, and the grievant and/or the grievant's representative (if selected pursuant to 20.8 Representation) and the designated university representative shall discuss the grievance. By mutual agreement the parties may schedule additional meetings to continue discussing the grievance. Where practicable and prior to the Step 1 meeting(s), the grievant shall have the right, upon written request, to a copy of any identifiable documents relevant to the grievance that are not maintained on the University's website or share drive.

2. **Decision.** The designated University representative shall issue a written decision stating the reasons therefore, to grievant's Step 1 representative within thirty (30) days following the Step 1 meeting. Extensions may be granted upon mutual agreement of the parties. A copy of the decision shall be sent to the grievant, to the grievant's representative, to UFF if grievant elected self-representation or representation by legal counsel, and to the Office of Academic Affairs. The designated University Representative at Step 1 shall prepare a list of all documents referred to in the Step 1 decision and any additional documents presented by either party, and attach the list to the written decision.

E. **Step 2.**

## 1. Proceeding to Step 2 Following Step 1 Decision.

a. If the grievance is not satisfactorily resolved during Step 1 and the Step 1 decision was rendered in the college/unit, the grievant or representative may request a Step 2 review in writing by completing Appendix C and filing it with the Office of Academic Affairs.

b. However, if the Step 1 grievance was heard by a representative of the Office of Academic Affairs and the grievance was not satisfactorily resolved, the grievant or grievant's representative shall not request a Step 2 review and the grievance may proceed directly to Step 3 Arbitration.

c. If the grievant or grievant's representative files a Step 2 grievance and also files a Step 3 grievance, the grievance process will be terminated and the grievance shall be deemed to have been resolved by the decision at Step 1.

d. Filing Deadlines. The grievant or the grievant's representative must file the request for a Step 2 review within seven (7) days from the expiration of the Step 1 review, or within seven (7) days from the receipt of the Step 1 decision unless there is an extension in writing. If the seven (7) day period expires without the grievant filing a request for Step 2 review, the grievance shall be considered time-barred for a Step 2 grievance and the grievance shall be deemed to have been resolved by the decision at Step 1. The expiration of the seven (7) day period shall be evidenced by a receipt executed by the office receiving the request for Step 2 review, or by the date of mailing as determined by the postmark.

## 2. By-Passing Step 1 and Proceeding Directly to Step 2 Review.

a. A grievance may by-pass Step 1 and be filed directly at Step 2 if it alleges that one or more violations of the Collective Bargaining Agreement have occurred outside of the college/unit of the grievant (University Level).

b. A grievance filed directly at Step 2 shall be filed in writing (Appendix C) with the Office of Academic Affairs within seven (7) days following the conclusion of the informal resolution process in accordance with Article 20.2.E.(2).

3. Meeting(s). Within fourteen (14) days following receipt of the written filing of a Step 2 grievance, the designated university representative and the grievant and/or the grievant's representative shall schedule a Step 2 meeting. At the Step 2 meeting, the grievant shall have the right to present any evidence in support of the Step 2 grievance, and the grievant and/or the grievant's representative and the designated university representative shall discuss the grievance. By mutual agreement the parties may schedule additional meetings to continue discussing the grievance. Where practicable and prior to the Step 2 meeting(s), the grievant shall have the right, upon written request, to a copy of any identifiable documents relevant to the Step 2 grievance and not previously provided or not available on the University's website or share drive.

4. Decision. The designated university representative shall issue a written decision, stating the reasons therefore, to grievant's Step 2 representative within thirty (30) days following the Step 2 meeting. Extensions may be granted upon mutual agreement of the parties. A copy of the decision shall be sent to the grievant, to the grievant's representative, to UFF if grievant elected self-representation or representation by legal counsel, and to the Office of Academic Affairs. The designated University Representative at Step 2 shall prepare a list of all documents referred to in the Step 2 decision and any additional documents presented by either party, and attach the list to the written Step 2 decision.

F. Step 3 Arbitration.

(1) Filing.

a. If the grievance has not been satisfactorily resolved at Step 2, UFF FGCU-Chapter may, upon the request of the grievant, proceed to Step 3 Request for Arbitration (Appendix D) within the time limitations outlined in this Agreement.

b. In the case of a grievance where the Step 1 hearing and decision were conducted outside of the college/unit by a representative of the Office of Academic Affairs, the UFF FGCU-Chapter may, upon the request of the grievant, proceed directly to Step 3 Request for Arbitration, after the Step 1 decision, or after the expiration of the time limitation for a Step 1 decision, by filing Appendix D within the time limitations outlined in this Agreement (Article 20.5.F.1(c)).

c. All Step 3 Request for Arbitration must be filed with the Office of Academic Affairs within thirty (30) days of the receipt of the Step 2 decision (or the Step 1 decision if provided by an Office of Academic Affairs representative) by the grievant and the UFF FGCU-Chapter. The expiration of the thirty-day period shall be evidenced by a receipt executed by the Office of Academic Affairs receiving the grievance, or by the date of mailing as determined by the postmark.

d. All Step 3 Request for Arbitration shall be signed by the grievant and sent by the UFF FGCU-Chapter to the Office of Academic Affairs and the UFF State President or State Director of Arbitration (Appendix D). As the certified bargaining agent UFF State Office shall decide whether to proceed to arbitration.

e. The grievance may be withdrawn at any time by the grievant, or by the State UFF President or State UFF Director of Arbitration at any point prior to issuance of the arbitrator's decision. The parties shall stipulate to the issue(s) prior to the arbitration. In the event a stipulation is not reached, the parties shall proceed to a hearing on arbitrability as described in Article 20.5(F)(4) below.

(2) Selection of Arbitrator. Within fourteen (14) days after receipt of a notice of intent to arbitrate from the UFF State Office, either party may, with written notification to the other, contact the Federal Mediation and Conciliation Service and request a list of five (5) certified Arbitrators. Selection of the Arbitrator to hear the dispute shall

be by mutual agreement or by alternately striking names from the list until one name remains. The right of the first choice to strike from the list shall be determined by the flip of a coin.

(3) Authority of the Arbitrator.

a. The arbitrator shall neither add to, subtract from, modify, or alter the terms or provisions of the Collective Bargaining Agreement. The arbitrator's decision shall be confined solely to the application and/or interpretation of the Collective Bargaining Agreement and the precise issue(s) submitted for arbitration. The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted.

b. Where an administrator has made a judgment involving the exercise of discretion, such as decisions regarding tenure or promotion, the arbitrator shall not substitute the arbitrator's judgment for that of the administrator. Nor shall the arbitrator review such decision except for the purpose of determining whether the decision has violated the Collective Bargaining Agreement. If the arbitrator determines that the Collective Bargaining Agreement has been violated, the arbitrator shall direct the University to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the University, but the arbitrator may not award other monetary damages or penalties. If notice that further employment will not be offered is not given on time, the arbitrator may direct the University to renew the appointment only upon a finding that no other remedy is adequate, and that the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek other employment, or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted.

(4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive issue(s) and, whenever possible, determined by means of a hearing conducted by conference call. The arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability. If the issue is judged to be arbitrable, an arbitrator shall then be selected to hear the substantive issue(s).

(5) Conduct of Hearing. The arbitrator shall hold the hearing in Fort Myers, Florida, unless otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the arbitrator's acceptance of selection, unless the parties mutually agree to extend the time period in writing. The arbitrator shall issue the arbitration decision within forty-five (45) days of the close of the hearing or the submission of briefs, whichever is later, unless additional time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact, reasoning, and conclusions on the issues submitted. Except as expressly specified in this procedure, the provisions of the Florida Arbitration Code, Chapter 682, Florida Statutes, shall not apply. Except as modified by the provisions of the Collective Bargaining Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

(6) Effect of Decision. The decision or award of the arbitrator shall be final and binding upon the University, the UFF, and the grievant, provided that either party may appeal to an appropriate court of law a decision that was rendered by the arbitrator acting outside of or beyond the arbitrator's jurisdiction, pursuant to Section 682.13, Florida Statutes.

(7) Venue. For purposes of venue in any judicial review of an arbitrator's decision issued under this agreement, the parties agree that such an appeal shall be filed in the courts in Lee County, Florida, unless both parties specifically agree otherwise in a particular instance.

(8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration. The party desiring such transcript shall be responsible for scheduling a court reporter to record the proceedings and shall be solely responsible for the appearance fees of the court reporter and the cost of any transcripts of the proceedings which that party may order. The requesting party shall, at its expense, photocopy the copy of the transcript received from the reporter and deliver the photocopy to the other party within five days after receiving the copy of the transcript from the reporter.

(9) Retroactivity. An arbitrator's award may or may not be retroactive as the equities of each case may demand, but in no case shall an award be retroactive to a date earlier than thirty (30) days prior to the date the grievance was initially filed.

20.7 Resort to Other Procedures. It is the intent of the parties to first provide a reasonable opportunity for resolution of a dispute through the grievance procedure and arbitration process. If prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in progress, the grievant requests, in writing, resolution of the matter in any other forum, whether administrative or judicial, the University shall have no obligation to entertain or proceed further with the grievance under this grievance procedure. As an exception to this provision, a grievant may file a federal EEOC charge while the grievance is in progress when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. section 2000e et seq.

20.8 Burden of Proof. In all grievances except disciplinary grievances, the burden of proof shall be on the employee. In disciplinary grievances, the burden of proof shall be on the University.

20.9 Representation. The UFF shall have the exclusive right to represent any employee in a grievance filed hereunder, unless an employee elects self-representation or to be represented by legal counsel. If an employee elects not to be represented by the UFF, the employee shall file a grievance in accordance with Article 20.5. If UFF is not

the selected representative, then the University shall provide, as practicable, prompt notification to the UFF that includes a copy of the grievance form (Appendix C). No resolution of any individually processed grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall have the right to have an observer present at all meetings called for the purpose of discussing such grievance and shall be sent copies of all decisions at the same time as they are sent to other parties.

20.10 Identification of Grievance Representatives. UFF shall annually provide to the University a list of all persons authorized to act as UFF grievance representatives and shall update the list as needed.

20.11 Duties of Grievance Representatives and Grievant.

A. The UFF grievance representative shall have the responsibility to meet all classes, office hours, and other duties and responsibilities incidental to the assigned workload. Some of these activities are scheduled to be performed at particular times. Such representative shall have the right during times outside of those hours scheduled for these activities to investigate, consult, and prepare grievance presentations and attend grievance hearings and meetings. Should any hearings or meetings necessitate rescheduling of assigned duties, the representative may, with the approval of the appropriate administrator, arrange for the rescheduling of such duties or their coverage by colleagues. Such approval shall not be unreasonably withheld.

B. Prior to participation in any grievance proceedings, conferences, or meetings, the grievant shall make arrangements acceptable to the appropriate supervisor for the performance of the grievant's duties. Approval of such arrangements shall not be unreasonably withheld. Time spent in such activities outside regular working hours shall not be counted as time worked.

C. When an employee participates during working hours in an arbitration proceeding or in a grievance meeting between the grievant or representative and the University, that employee's compensation shall neither be reduced nor increased for time spent in those activities.

20.12 Filings and Notification. All documents related to a grievance that are required or permitted to be issued or filed may be transmitted by facsimile, United States mail, or any other recognized delivery service, excluding electronic mail. Grievance decisions shall be transmitted to the grievant's representative(s) by personal delivery with written documentation of receipt or by certified mail, return receipt requested. In the event that any action falls due on a Saturday, Sunday, holiday (as defined in this Agreement, Article 17.5), or administrative closure of the University, the action will be considered timely if it is accomplished by 5:00 P.M. on the following business day.

20.13 Precedent. No complaint informally resolved, or grievance resolved at either Step 1 or Step 2, shall constitute a precedent for any purpose unless agreed to in

writing by the President of the University or designee and the UFF acting through its President or representative.

#### 20.14 Processing.

A. The filing or pendency of any grievance or arbitration proceedings under this procedure shall not operate to impede, preclude, or delay the University from taking the action complained of. Reasonable efforts, including the shortening of time limits when practicable, shall be made to conclude the processing of a grievance prior to the expiration of the grievant's employment, whether by termination or non-reappointment. An employee with a pending grievance will not continue to be compensated beyond the last date of employment.

B. The University may refuse consideration of a grievance not filed or processed in accordance with this article.

20.15 Records. All written materials pertinent to a grievance shall be filed separately from the evaluation file of the grievant or witnesses, except decisions resulting from arbitration or settlement.

20.16 Inactive Grievances. A grievance which has been filed at Step 3 and on which no action has been taken by the grievant or UFF State Office for sixty (60) days shall be deemed withdrawn and resolved in accordance with the decision issued at the prior Step.



# **Article 21**

## **Other Employee Rights**

21.1 Professional Meetings. Employees should be encouraged to and may, with the approval of the supervisor, attend professional meetings, conferences, and activities. Subject to the availability of funds, the employee's expenses in connection with such meetings, conferences, or activities shall be reimbursed in accordance with the applicable provisions of State law and university regulations.

21.2 The UFF agrees with the Provost's continuing effort to obtain "soft funding" for faculty development activities university-wide. Recognizing the non-recurring availability of such funds, the parties agree that the University may allocate the funds through the Faculty Senate, during 2011-2014. This clause (Article 21.2) may be discussed annually and shall not count as a reopener under Article 29.

21.3 Office Space. Each employee shall be provided with office space which may be on a shared basis. The parties recognize the desirability of providing each employee with enclosed office space with a door lock, office equipment commensurate with assigned responsibilities, and ready access to a telephone. Each employee shall, consistent with building security, have reasonable access to the employee's office space and laboratories, studios, music rooms, and the like used in connection with assigned responsibilities; this provision may require that campus security provide access on an individual basis. Before an employee's office location is changed, or before there is a substantial alteration to an employee's office to a degree that impedes the employee's work effectiveness, the affected employee shall be notified, if practicable, at least one (1) month prior to such change.

21.4 Safe Conditions. Whenever an employee reports a condition which the employee feels represents a violation of safety or health rules and regulations or which is an unreasonable hazard to persons or property, such conditions shall be promptly investigated. The appropriate administrator shall reply to the concern, in writing, if the employee's concern is communicated in writing.

21.5 Limitation on Personal Liability.

A. In the event an employee is sued for an act, event, or omission which may fall within the scope of Section 768.28, Florida Statutes, the employee should notify the General Counsel's office as soon as possible after receipt of the summons commencing the action in order that the University may fulfill its obligation. Failure to notify the employer promptly may affect the rights of the parties.

B. For information purposes, the following pertinent language of Section 768.28(9)(a), Florida Statutes, is reproduced herein.

No officer, employee, or agent of the State or any of its subdivisions shall be held

personally liable in tort or named as a party defendant in any action for any injury or damages suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

21.6 Travel Advances. The University will, to the extent permitted by State law and rule, provide travel advances, upon request, of up to eighty (80) percent of budgeted expenses for authorized travel of longer than five (5) consecutive days.

21.7 Working Papers Rights. Consistent with law and the provisions of this agreement, and the legitimate interests of the University, employees shall have the right to control of their personal correspondence, notes, raw data, and other working papers.

21.8 Protection for Whistleblowers. Employees are notified that Section 112.3187, Florida Statutes, provides protection to whistleblowers and delineates their rights and responsibilities.

# **Article 22**

## **Professional Development Program and Sabbaticals**

### 22.1 Professional Development Leave.

A. Policy. Professional development leave shall be made available to employees who meet the requirements set forth below. Such leaves are granted to increase an employee's value to the University through enhanced opportunities for professional renewal, educational travel, study, formal education, research, writing, or other experience of professional value, not as a reward for service.

B. Types of Professional Development Leave. Each year, the University or its representatives will make available at least one (1) professional development leave at full-pay for one (1) semester or its equivalent (for example, leave at half-pay for two (2) semesters), for each twenty (20) eligible employees, subject to the conditions set forth below.

C. Eligibility for Professional Development Leave. Full-time employees serving in multi-year appointments with three (3) or more years of service shall be eligible for professional development leaves, except those employees who are tenured or in multi-year appointments as assistant professor, associate professor, or professor. An employee who is compensated through a contract or grant may receive a professional development leave only if the contract or grant allows for such leaves and the employee meets all other eligibility requirements. Eligible employees shall be notified annually regarding eligibility requirements and application deadlines.

### D. Application and Selection.

(1) Application for professional development leave shall contain an appropriate outline of the project or work to be accomplished during the leave.

(2) The University or its representative shall select applicants when the university believes that completion of the project or work would improve the productivity of the department or function of which the employee is a part. Criteria for selection of professional development leave applicants shall be specified by the University and made available to eligible employees.

(3) No more than one (1) employee in each department/unit need be granted leave at the same time.

### E. Terms of Professional Development Leave.

(1) The employee must return to university employment for at least one (1) academic

year following the conclusion of such leave. Agreements to the contrary must be reduced to writing prior to participation. Return to the University of salary received during the program may be required in those instances where neither of the above is satisfied.

(2) An employee who fails to spend the time as stated in the application shall reimburse the University for the salary received during such leave.

(3) Employees shall not normally be eligible for a second professional development leave until three (3) years of continuous service are completed following the previous leave.

(4) The employee must provide a brief written report of the employee's accomplishments during the professional development leave to the President or representative upon return to the University.

(5) Contributions normally made by the University to retirement and Social Security programs shall be continued on a basis proportional to the salary received. University contributions normally made to employee insurance programs and any other employee benefit programs shall be continued during the professional development leave.

(6) Eligible employees shall continue to accrue annual and sick leave on a full-time basis during the professional development leave.

(7) While on leave, an employee shall be permitted to receive funds for travel and living expenses, and other professional development leave-related expenses, from sources other than the University such as fellowships, grants-in-aid, and contracts and grants, to assist in accomplishing the purposes of the professional development leave. Receipt of funds for such purposes shall not result in reduction of the employee's university salary. Grants for such financial assistance from other sources may, but need not, be administered through the university. If financial assistance is received in the form of salary, the university salary shall normally be reduced by the amount necessary to bring the total income of the professional development leave period to a level comparable to the employee's current year salary rate. Employment unrelated to the purpose of the professional development leave is governed by the provisions of Article 20, Conflict of Interest and Outside Activity.

## 22.2 Other Study Leave.

A. Job-Required. An employee required to take academic course work as part of assigned duties shall not be required to charge time spent attending classes during the work day to accrued leave.

B. Job-Related. An employee may, at the discretion of the supervisor, be permitted to attend up to six (6) credits of course work per semester during work, provided that:

(1) The course work is directly related to the employee's professional responsibilities;

(2) The supervisor determines that the absence will not interfere with the proper operation of the work unit;

(3) The supervisor believes that completion of the course work would improve the productivity of the department or function of which the employee is a part; and

(4) The employee's work schedule can be adjusted to accommodate such job-related study without reduction in the total number of work hours required per pay period.

C. Employees may, in accordance with this Article, use accrued annual leave for job related study.

### 22.3 Sabbaticals.

A. Policy. Sabbaticals for professional development are to be made available to employees who meet the requirements set forth below. Such sabbaticals are granted to increase an employee's value to the University through enhanced opportunities for professional renewal, planned travel, study, formal education, research, writing, or other experience of professional value, not as a reward for service.

#### B. Types of Sabbaticals.

(1) The University will make available to each employee whose application has been reviewed by the University a sabbatical for two (2) semesters (i.e., one (1) academic year) at half-pay, subject to the conditions set forth below. The University may, with the approval of the UFF, provide sabbaticals that are equivalent to the two (2) semester half-pay sabbaticals.

(2) Each year, the University will make available at least one (1) sabbatical at full-pay for one (1) semester for each forty (40) eligible employees, subject to the conditions set forth below. The University may, with the approval of the UFF, provide sabbaticals that are equivalent to the one (1) semester, full-pay sabbaticals.

C. Eligibility for Sabbaticals. Faculty shall be eligible for the sabbaticals described in 22.3B(1) and (2) above as follows: Full-time tenured or multi-year contract employees at rank of assistant, associate, or full professor with at least six (6) years of full-time service at the University shall be eligible to apply for sabbaticals. An employee who is compensated through a contract or grant may receive a sabbatical only if the contract or grant allows a sabbatical and the employee meets all other eligibility requirements. Employees shall not normally be eligible to apply for a second sabbatical until six (6) years of continuous service are completed following the first sabbatical.

#### D. Application and Selection.

(1) Applications for sabbaticals shall be submitted in accordance with university Sabbatical Guidelines established in consultation with a representative of the President (Article 2).

(2) Each application shall include a statement describing the program and activities to be followed while on sabbatical, the expected increase in value of the employee to the University and the employee's academic discipline, specific results anticipated from the leave, any anticipated supplementary income, and a statement that the applicant agrees to comply with the conditions of the sabbatical program as described in Article 22.3(D)(3) below.

(3) Sabbaticals at half-pay shall be granted unless the University has determined that the conditions set forth in this Section have not been met that departmental/unit staffing considerations preclude such sabbatical from being granted. In this latter instance, the employee shall be provided the sabbatical the following year, or at a later time as agreed to by the employee and the University. The period of postponement shall be credited for eligibility for a subsequent sabbatical.

(4) Sabbatical Review Committee.

(a) If there are more applicants for one (1) semester sabbaticals at full-pay than available sabbaticals, a committee shall rank the applicants based on their respective applications. The Sabbatical Review Committee shall be elected from among the employees with more than six (6) years of experience at FGCU in a ranked faculty position (assistant professor, associate professor, professor). This shall be a standing committee with the sole purpose of reviewing and providing recommendations for sabbaticals consistent with this article.

(b) The committee membership shall be comprised of one (1) elected faculty per college with six (6) or more years as a ranked faculty member at FGCU. Each committee member shall serve a two (2) academic-year term except where a member is elected to complete the term for a previously elected committee member. The committee membership shall be staggered such that approximately half of the committee shall be elected each year.

(c) A member of the committee who wishes to apply for a sabbatical, whether two semesters at half pay or one semester at full-pay, shall resign from the committee prior to submission of an application.

(d) It shall be the responsibility of each college to submit the name of its committee member to Academic Affairs by September 30th each year. Additionally a committee member shall be eligible for appointment up to a maximum of two successive terms (4 years). Academic Affairs shall assign an ex-officio member to assist the Committee.

(e) For continuity, it is recommended that the committee chairperson be selected by the committee from among one of the committee members in at least their second year of appointment.

(f) The committee, in ranking the applicants, shall consider the benefits of the proposed program to the employee, the University and the profession; an equitable

distribution of sabbaticals among colleges, divisions, schools, departments, and disciplines within the University; the length of time since the employee was relieved of teaching duties for the purpose of research and other scholarly activities; and length of service since previous sabbatical or initial appointment. The committee shall submit ranked lists of recommended employees to the President or representative. The President or representative shall make appointments from the lists and consult with the committee prior to an appointment that does not follow the committee's rankings.

(5) No more than one (1) employee in a department/unit need be awarded a sabbatical at the same time.

#### E. Terms of Sabbatical Program.

(1) While on sabbatical, the employee's salary shall be one half-pay for two (2) semesters (one (1) academic year), or full-pay for one semester.

(2) The employee must return to the University for at least one (1) academic year following participation in the program. Agreements to the contrary must be reduced to writing prior to participation. Return to the University of salary received during the program may be required in those instances where neither of the above is satisfied.

(3) The employee must, within thirty (30) days upon returning from the sabbatical, provide a concise written report of the employee's accomplishments during the sabbatical to the President or representative. This report shall include information regarding the activities undertaken during the sabbatical, the results accomplished during the sabbatical as they affect the employee and the University, and research or other scholarly work produced or expected to be produced as a result of the sabbatical.

(4) Contributions normally made by the University to retirement and Social Security programs shall be continued on a basis proportional to the salary received. University contributions normally made to employee insurance programs and any other employee benefit programs shall be continued during the sabbatical.

(5) Eligible employees shall continue to accrue annual and sick leave on a full-time basis during the sabbatical.

(6) While on leave, an employee shall be permitted to receive funds for travel and living expenses, and other sabbatical-related expenses, from sources other than the University such as fellowships, grants-in-aid, and contracts and grants, to assist in accomplishing the purposes of the sabbatical. Receipt of funds for such purposes shall not result in reduction of the employee's university salary. Faculty on one-half pay may receive salary from University grants or contracts at a level that would make total compensation no greater than the faculty member's full-time salary rate for the sabbatical period. In order for the faculty member to use grant or contract funds through the University to supplement salary while on sabbatical leave

the following conditions must be met: (1) the nature of the grant/contract activity must be congruent with the proposed sabbatical activities and participation in the grant/contract activities must contribute to the accomplishment of the sabbatical objectives; (2) the granting/contracting agency must allow for such an arrangement; (3) gross salary drawn from the grant/contract during the sabbatical period cannot exceed one-half of the faculty member's gross FGCU salary for those on half-pay sabbaticals; (4) the faculty member must be named in the grant/contract and appear as a budgeted salary line item; and (5) the faculty member must submit a signed statement from the faculty member's chair/director or campus chief executive officer verifying that the above conditions have been satisfied, either as part of the sabbatical application or prior to taking the sabbatical as appropriate. If financial assistance is received in the form of salary, the University salary shall normally be reduced by the amount necessary to bring the total income of the sabbatical period to a level comparable to the employee's current year salary rate. Employment unrelated to the purpose of the sabbatical leave is governed by the provisions of Article 20, Conflict of Interest and Outside Activity.

22.4 Retraining. The University may, at its discretion, provide opportunities for retraining of employees when it is in the University's best interests. Such opportunities may be provided to employees who are laid off, to those who are reassigned, or in other appropriate circumstances. These retraining opportunities may include enrollment in tuition-free courses under the provisions of Article 24.7, and Sabbaticals or Professional Development Leaves under this Article.



# **Article 23**

## **Salaries**

23.1 Policy. The parties to this Agreement recognize the importance of providing appropriate compensation as an essential component in the delivery of quality higher education, scholarship, and service to the institution, community, and profession. To that end, the parties are committed to working toward the strategic goals of Florida Gulf Coast University especially high quality education, quality improvement, and hiring and retaining talented and dedicated faculty through competitive compensation and support. This is a policy statement and is not subject to Article 20, Grievance Procedure.

### 23.2 Promotions.

A. Promotion shall be granted to employees pursuant to the promotion process in Article 14.

B. All employees receiving promotion to Instructor Level II or Academic Advisor Level II will receive a nine percent (9%) increase to their previous year's base salary.

C. All employees receiving promotion to Instructor Level III or Academic Advisor Level III will receive a nine percent (9%) increase to their previous year's base salary.

D. All employees receiving promotion to Associate Professor or Associate Librarian will receive a nine percent (9%) increase to their previous year's base salary.

E. All employees receiving promotion to Professor or Librarian will receive a twelve percent (12%) increase to their previous year's base salary.

F. For 2011-2012 promotion increases will be effective as of August 7, 2011.

### 23.3 Eligibility.

A. For 2011-2012 an in-unit employee who was employed by the University on or before July 1, 2011 and anticipated to continue employment during the full 2011-2012 academic year, shall be eligible for any legislatively mandated adjustment to base salary and/or other identified compensation to employees as applicable (Article 23.4) and any University provided base salary increase and/or any non-recurring compensation to employees as applicable for 2011-2012 (Article 23.4) if their most recent annual performance evaluation is at least "overall satisfactory".

B. Contract and Grant funded employees who are eligible per Article 23.3A above shall receive compensation adjustments equivalent to similar employees on Education and General (E&G) funding, provided that such salary increases are permitted by the terms of the contract or grant or the rules of the funding agency.

#### 23.4 Faculty Compensation.

A. Salary Increase for Promotions for 2011-2012. The University shall provide a pool of such an amount as is needed to fund promotion increases to faculty who have been promoted. For 2011-2012 the amount will be sufficient to provide base salary increases for in-unit faculty who were approved for promotion by the Board of Trustees at the June 2011 meeting. From the established pool, the respective faculty members shall, on August 7, 2011, receive adjustments to their 2010-2011 base salary consistent with the rank or level to which they were promoted and the percentage adjustment to base salary outlined in Article 23.2.A to E above.

B. There shall be no base-salary increase and no one-time lump sum bonus payment for 2011-2012.

23.5 Administrative Stipends. A temporary salary increase which is provided to an in-unit faculty for performing a specific, titled administrative function shall be permitted under this agreement as an Administrative Stipend and shall not result in the change of the faculty in-unit status. The University shall provide the employee a written notification of the stipend which states the rank and discipline of the employee, the amount of the stipend, and the reason for the stipend.

23.6. Merit Increases. Each college/unit shall develop procedures and criteria for the distribution of merit increases, should they become available. These procedures are subject to approval by the President or designee.

#### 23.7 Notification.

All employees who are to be promoted as of August 7, 2011 shall receive notice of their 2011-2012 promotion related increase (Appendix E) at least two (2) weeks prior to the effective date of implementation, if practicable.

23.8 Ongoing Compression and Inversion (C&I) Study. Consistent with Article 23.8 of the 2009-2010 Supplement and 2010-2011 Extension to the 2007-2010 Collective Bargaining Agreement the parties acknowledge that they have commissioned an external consulting firm to conduct a C&I Study to inform bargaining. A copy of the final report from the consulting firm will be provided to the parties.

# **Article 24**

## **Benefits**

24.1 Policy. It is the policy of the University to provide all faculty with information concerning eligible employee benefit programs and to implement such programs consistent with applicable Federal and State law. Eligibility for University offered benefit programs and/or the timeframes for enrollment in such benefits may be governed by the respective benefit provider. The Department of Human Resources will communicate benefit offerings and assist faculty in the enrollment process and, when notified, in making qualified status changes. This is a policy statement and is not subject to Article 20, Grievance Procedure.

24.2 Benefits Improvements. The University and UFF support legislation to provide adequate and affordable health insurance and other State-sponsored benefits to all employees.

24.3 Part-Time Employees. Part-time employees, except those in positions funded from Other Personal Services funds, are entitled to employer-funded benefits under the provisions of State law and the rules of the Department of Management Services and the Division of Retirement. Part-time employees should contact the Department of Human Resources at the University to determine the nature and extent of the benefits for which they are eligible.

24.4 Retirement Credit Under the Florida Retirement System (FRS). Retirement credit for employees who are authorized to take uncompensated or partially compensated leaves of absence shall be granted in accordance with State law and the rules of the Division of Retirement as they may exist at the time leave is granted. Employees who are to take such a leave of absence should contact the Department of Human Resources at the University for complete information prior to taking the leave.

24.5 Benefits for Retired Employees.

A. Employees retired from the University shall be eligible, upon request, and on the same basis as other employees, subject to university regulations and policies, to receive the following benefits from the University:

- (1) Retired employee identification card;
- (2) Use of the University library (i.e., public rooms, lending and research service);
- (3) Listing in the University directory;
- (4) Placement on designated University mailing lists;
- (5) A University parking decal;
- (6) Use of University recreational facilities (retired employees may be charged fees different from those charged to other employees for the use of such facilities);
- (7) The right to enroll in courses without payment of fees, on a space available basis,

in accordance with the provisions of Section 1009.26(4), Florida Statutes; and  
(8) A mailbox in the department/unit from which the employee retired, subject to space availability.  
(9) University e-mail address.

B. In accordance with university policy, and on a space available basis, the University is encouraged to grant a retired employee's request for office or laboratory space.

C. With the exception of retirees who participated in the SUS Optional Retirement Program and for whom provisions have been made, as stipulated in Article 24.6(A) below of this Agreement, retired employees of any State-administered retirement system are entitled to health insurance subsidy payments in accordance with Section 112.363, Florida Statutes.

#### 24.6 Optional Retirement Program.

A. The State University System Optional Retirement Program is provided for employees who are employed for no less than one academic year in accordance with Florida Statutes and applicable rules of the Division of Retirement.

B. The parties agree to inform eligible employees regarding the existence of the Optional Retirement Program.

C. If the UFF is concerned with the performance of any aspect of the Optional Retirement Program, the UFF has a right to consult with the University regarding such concern. As a result of such consultation, the parties may agree to an approach to address the concern if it lies outside the University's statutory authority.

#### 24.7 Phased Retirement Program.

##### A. Eligibility.

(1) Employees who have accrued at least six (6) years of creditable service in the Florida or Teachers Retirement System (FRS, TRS) or Optional Retirement Program (ORP), except those employees referenced in Article 24.7(A)(2), are eligible to participate in the Phased Retirement Program. Such eligibility shall expire on the employee's 63rd birthday. Employees who decide to participate must provide written notice to the University of such decision prior to the expiration of their eligibility, or thereafter forfeit such eligibility. Employees who choose to participate must retire with an effective date not later than 180 days, nor less than ninety (90) days, after they submit such written notice, except that when the end of this 180 day period falls within a semester, the period may be extended to no later than the beginning of the subsequent term (semester or summer, as appropriate).

(2) Employees not eligible to participate in the Phased Retirement Program include those who have received notice of non-reappointment, layoff, or termination and those who participate in the State's Deferred Retirement Option Program (DROP).

## B. Program Provisions.

(1) All participants must retire and thereby relinquish all rights to tenure as described in Article 15, Multi-Year Appointments and Tenure Status Extension, Probation, Non-Reappointment, except as stated otherwise in this Article. Participants' retirement benefits shall be determined as provided under Florida Statutes and the rules of the Division of Retirement.

(2) Payment for Unused Leave. Participants shall, upon retirement, receive payment for any unused annual leave and sick leave to which they are entitled.

### (3) Re-employment.

a. Prior to re-employment, participants in the Phased Retirement Program must remain off the University payroll for six (6) calendar months following the effective date of retirement in order to validate their retirement, as required by the Florida Division of Retirement. Participants must comply with the re-employment limitations that apply to the seventh (7th) through twelfth (12th) month of retirement, pursuant to the provisions of either the Florida Retirement System (which includes ORP) or the Teachers Retirement System, as appropriate.

b. Participants shall be offered re-employment, in writing, by the University under an Other Personal Services (OPS) contract for one-half of the academic year, however, the University and employee may agree to less than one-half of the academic year. The written reemployment offer shall contain the text of Article 24.7(B)(3)d below.

c. Compensation during the period of re-employment shall be at a salary proportional to the participant's salary prior to retirement, including an amount comparable to the pre-retirement employer contribution for health and life insurance and an allowance for any taxes associated with this amount. The assignment shall be scheduled within one (1) semester unless the participant and the University agree otherwise, beginning with the academic year next following the date of retirement and subject to the condition outlined in Article 24.7(B)(3)a above.

d. Participants shall notify the university in writing regarding acceptance or rejection of an offer of re-employment not later than thirty (30) days after the employee's receipt of the written reemployment offer. Failure to notify the University regarding re-employment may result in the employee's forfeiting re-employment for that academic year.

### (4) Leave for Illness/Injury.

a. Each participant shall be credited with five (5) days of leave with pay at the beginning of each full-time semester appointment. For less than full-time appointments, the leave shall be credited on a pro-rata basis with the assigned FTE. This leave is to be used in increments of not less than four (4) hours ( $\frac{1}{2}$  day) when the participant is

unable to perform assigned duties as a result of illness or injury of the participant or a member of the participant's immediate family. For the purposes of this Section, immediate family shall include the participant's spouse, mother, father, brother, sister, natural, adopted, or step child, or other relative living in the participant's household.

b. Such leave may be accumulated; however, upon termination of the post- retirement reemployment period, the participant shall not be reimbursed for unused leave.

(5) Personal Non-Medical Leave.

a. Each participant who was on a twelve (12) month appointment upon entering the Phased Retirement Program and whose assignment during the period of re-employment is the same as that during the twelve (12) month appointment shall be credited with five (5) days of leave with pay at the beginning of each full-time semester appointment. This leave is to be used in increments of not less than four (4) hours ( $\frac{1}{2}$  day) for personal reasons unrelated to illness or injury. Except in the case of emergency, the employee shall provide at least two (2) days notice of the intended leave. Approval of the dates on which the employee wishes to take such leave shall be at the discretion of the supervisor and shall be subject to the consideration of departmental and organizational scheduling.

b. Such leave shall not be accumulated, nor shall the participant be reimbursed for unused leave upon termination of the post-retirement period.

(6) Re-employment Period.

a. The period of re-employment obligation shall extend over five (5) consecutive academic years, beginning with the academic year next following the date of retirement. No further notice of cessation of employment is required.

b. The period of re-employment obligation shall not be shortened by the University, except under the provisions of Article 16 of the Agreement. During the period of re-employment, participants are to be treated, based on status at point of retirement, as tenured employees or non-tenure earning employees with five (5) or more years of continuous service, as appropriate, for purposes of Article 13.2(B) of the Agreement.

(7) Declining Re-employment. A participant may decline an offer of reemployment during any academic year. Such a decision shall not extend the period of re-employment beyond the period described in Article 24.7(B)(6)a above. At the conclusion of the re-employment period, the university may, at its option, continue to re-employ participants in this program on a year-to-year basis.

(8) Salary Increases. Participants shall receive all increases guaranteed to employees in established positions, in an amount proportional to their part-time appointment, and shall be eligible for non-guaranteed salary increases on the same basis as other employees.

(9) Preservation of Rights. Participants shall retain all rights, privileges, and benefits of employment, as provided in laws, rules, the FGCU/UFF Agreement, and university policies, subject to the conditions contained in this Article.

(10) Payroll Deductions. The UFF payroll deductions, as specified in Article 25, if applicable, shall be continued for a program participant during each reemployment period.

(11) Contracts and Grants. Nothing shall prevent the employer or the participant, consistent with law and rule, from supplementing the participant's employment with contracts or grants.

(12) The employee's decision to participate in the Phased Retirement Program and to resign the employee's established position is irrevocable after the required approval document has been executed by all parties.

C. PRP Information Document. Written information describing the current provisions of the Phased Retirement Program in this Agreement is available through the FGCU Human Resources website.

24.8 Free University Courses for Employees. The University shall provide the following Employee Tuition and Fee Voucher Program, FGCU Policy # 3.12, as approved by the Board on October 6, 2004. Full-time employees, including employees on sabbaticals or on professional development leave, may enroll for up to six (6) credit hours of instruction per term (Fall, Spring, or Summer) at the University without payment of tuition and fees on a space available basis. The program allows employees to allocate up to six (6) credit hours of their unused tuition and fee voucher per term to their spouse and/or eligible dependents.

24.9 Employee Assistance Programs. Employees shall have access to any Employee Assistance Program (EAP) of the University. Such program may include assessment, referral, follow-up consultation, short-term counseling, and other services for employees with personal, family, job stress, or substance abuse problems. Any policies created or revised by the university in the development or operation of its EAP shall be discussed in consultation with the local UFF Chapter.

24.10 Pre-tax Benefits Program. In accordance with IRS regulation and federal and state laws the University shall continue to offer the State of Florida's pre-tax benefits program for salaried employees which includes but are not limited to: (1) pay for their applicable State insurance premiums on a pre-tax basis and, (2) utilize flexible spending accounts for medical and dependent care expenses.

24.11 The University and UFF agree to continue to discuss the possibility of providing benefits for domestic partners.

# **Article 25**

## **Payroll Deduction**

Pursuant to the provisions of Section 447.303, Florida Statutes, the University and the UFF hereby agree to the following procedure for the deduction and remittance of the UFF membership dues and other UFF deductions.

### 25.1 Deductions.

A. During the term of this Agreement, the University agrees to deduct the UFF membership dues in an amount established by the UFF and certified in writing by the UFF State President to the University, and to make other UFF deductions in an amount authorized by an employee, from the pay of those employees in the bargaining unit who individually and voluntarily make such request on a written authorization form as contained in Appendix "B" to this Agreement.

B. Deductions will be made biweekly beginning with the first full-pay period commencing at least seven (7) days following receipt of authorization by the University. The UFF shall give written notice to the University of any changes in its dues at least forty-five (45) days prior to the effective date of any such changes.

C. In addition to dues deductions, UFF may offer other related deductions such as voluntary economic services programs. It is understood that all such programs and deductions will meet requirements of State and University rules and regulations.

25.2 Remittance. The dues and other authorized deductions shall be remitted to UFF on a biweekly basis within thirty (30) days following the pay date. The University, at its option, shall remit all funds using either electronic funds transfer (EFT) or by University vendor check. At the time of each remittance a list of the employees from whose salaries such deductions were made and the amounts deducted shall be provided to the UFF State Office and UFF FGCU-Chapter.

25.3 Termination of Deduction. The University's responsibility for deducting dues and other authorized deductions from an employee's salary shall terminate automatically upon either:

A. Thirty (30) days written notice from the employee to the University, and to the UFF revoking that employee's prior deduction authorization, or

B. the transfer of the authorizing employee out of the bargaining unit.

25.4 Reinstatement of Deduction. For employees who have previously filed authorization for dues deduction and are in leave without pay status, or who participate in the Phased Retirement Program, the University shall reinstate dues deductions upon return to salaried employment in the bargaining unit position.



25.5 Indemnification. The UFF assumes responsibility for:

A. All claims against the University, including the cost of defending such actions, arising from their compliance with this Article, and for

B. All monies deducted under this Article and remitted to the UFF. The UFF shall promptly refund to the University excess monies received under this Article.

25.6 Exceptions. The University will not deduct any UFF fines, penalties, or special assessments from the pay of any employee, nor is the University obligated to provide more than one payroll deduction field for the purpose of making the deductions described in this Article.

25.7 Termination of Agreement. The University's responsibilities under this Article shall terminate automatically upon:

A. Decertification of the UFF or the suspension or revocation of its certification by the Florida Public Employees Relations Commission, or

B. Revocation of the UFF's deduction privilege by the Florida Public Employees Relations Commission.

# **Article 26**

## ***Maintenance of Benefits***

26.1 No employee may be required to waive the benefits provided by the terms of this Agreement. No employee shall, as a result of the establishment of a level of rights or benefits in this Agreement, suffer a loss or diminution of any such rights or benefits for which otherwise eligible.

26.2 The reorganization of higher education in the State of Florida resulted in the legislative abolition of the Board of Regents and the creation of the Florida Gulf Coast University Board of Trustees as the public employer. Tenure status, rank, earned benefits, years of service, history of assignments and record of evaluations which an employee had at the University prior to the creation of the Florida Gulf Coast University Board of Trustees, shall be recognized, credited or used, as applicable, unless a specific term or provision of this Agreement states otherwise.

# **Article 27**

## **Miscellaneous Provisions**

27.1 No Strike or Lockout. The University agrees that there will be no lockout during the term of this Agreement. The UFF agrees that there will be no strike by it or by any employees during the term of this Agreement.

27.2 Effect of Passage of Law. Any provision of this Agreement which is contrary to law, but becomes legal during the term of this Agreement, shall be reinstated consistent with such legislation.

27.3 Legislative Action. The University and UFF agree that neither will attempt to influence or support changes in existing statutes or legislation which would change the terms of this Agreement.

27.4 Venue. For purposes of venue in any judicial review of an arbitrator's decision, the parties elect to submit themselves to the jurisdiction of the courts in Lee County, Florida. In an action commenced in Lee County, neither the University nor the UFF will move for a change of venue based upon the defendant's residence in fact if other than Lee County.

27.5 Copies of the Agreement.

(1) The University shall maintain a copy of the ratified agreement and all supplements to the ratified agreement on the University website, including a listing of the location of the document, and shall provide the website address to new employees hired in an in-unit classification upon hiring.

(2) The University shall provide one thousand (1,000) printed copies of the agreement for distribution. The University shall order and pay for the printing and the UFF FGCU-Chapter shall pay fifty percent (50%) of the cost upon receipt of an invoice from the University.

(3) If the employee does not receive the website address from the University as part of the hiring process, the employee may obtain same from UFF. UFF may distribute an electronic notice of the website address of the Agreement to current employees in the unit when the Agreement is ratified.

27.6 Class Titles.

A. Whenever the University creates a new faculty classification, it shall designate such classification as being either within or outside the bargaining unit and shall notify the UFF. Further, if the University revises the specifications of an existing class so that its bargaining unit designation is changed, it shall notify the UFF of such new designation twenty (20) days prior to the effective date of said change.

Within ten (10) days following such notification, the UFF may request a meeting with the University for the purpose of discussing the designation. If, following such discussion, the UFF disagrees with the designation, it may request the Florida Public Employees Relations Commission to resolve the dispute through unit clarification proceedings.

B. An employee may request a review of the appropriateness of the employee's classification by the appropriate University office. In case of disagreement with the results of the review, the matter shall be discussed in accordance with Article 2, Consultation, but shall not be subject to Article 20, Grievance Procedure and Arbitration.

27.7 Salary Rate Calculations and Payment. The biweekly salary rate of employees serving on twelve (12) month (calendar year) appointments shall be calculated by dividing the calendar year salary rate by 26.1 pay periods.

27.8 Titles, Headings and Index. The titles of articles, headings which precede text, the table of contents, and index are inserted solely for convenience of reference and shall not be deemed to limit or affect the meaning, construction, or effect of any provision of this Agreement and are not subject to the grievance procedure.

# **Article 28**

## **Severability**

28.1 In the event that any provision of this Agreement (a) is found to be invalid or unenforceable by final decision of a tribunal of competent jurisdiction, or (b) is rendered invalid by reason of subsequently enacted legislation, or (c) shall have the effect of a loss to the University of funds, property, or services made available through federal law, or (d) pursuant to Florida Statutes can take effect only upon the amendment of a law, rule, or regulation and the governmental body having such amendatory powers fails to take appropriate legislative action, then that provision shall be of no force or effect, but the remainder of the Agreement shall continue in full force and effect.

28.2 If a provision of this Agreement fails for reason (a), (b), or (c) above, the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such provision.

# **Article 29**

## ***Amendment and Duration***

29.1 Effective Date. Provided it is ratified by both the UFF and the Board, the Agreement shall become effective on June 1, 2011 and remain in effect through May 31, 2014. During reopener negotiations, the parties may negotiate over the possible extension of this Agreement.

29.2 Right to Reopen for 2012-2013. Reopener negotiations for the Agreement term of June 1, 2012 through May 31, 2013 shall begin no later than October 3, 2011 and shall include Articles 23 and 24. In addition, either party may reopen no more than one (1) article each upon written notification to the other party by September 26, 2011 except that Article 3, and Article 4 shall not be reopened unless both parties mutually agree to reopen one or both of these two (2) articles.

29.3 Right to Reopen for 2013-2014. Reopener negotiations for the agreement term June 1, 2013 through May 31, 2014 shall begin no later than January 15, 2013 and shall include Articles 23 and 24. In addition, either party may reopen no more than two (2) additional articles each upon written notification to the other party by February 1, 2013 except that Article 3, and Article 4 shall not be reopened unless both parties mutually agree to reopen one or both of these two (2) articles.

A. Renegotiations for a successor agreement (“full-book”) for the term June 1, 2014 through May 31, 2017 shall begin no later than October 15, 2013.

B. The parties may mutually agree to include other subjects in their renegotiations.

29.4 Amendments. In the event the UFF and the Board negotiate a mutually acceptable amendment to this Agreement, such amendment shall be put in writing and become part of this Agreement upon ratification by both parties.

# **Article 30**

## **Definitions**

As used in this Agreement, the term:

-- “academic year” means a period consisting of a fall and spring semester of approximately 39 contiguous weeks.

-- “bargaining unit” means those employees, collectively, represented for collective bargaining purposes by the UFF pursuant to the certification of the Florida Public Employees Relations Commission dated May 13, 2003, wherein the Commission adopted the bargaining unit agreed to by the University and UFF.

-- “base salary” means the annual salary based upon the appointment, nine to twelve month, and does not include paid additives, such as stipends and overload.

-- “Board,” or “Board of Trustees” means the body established by sections 1001.71-1001.74, Florida Statutes, responsible for governing Florida Gulf Coast University.

-- “break in service” means those absences following which the employee is treated as a new employee for purposes of computing seniority and years of service.

-- “Collective Bargaining Agreement” or “Agreement” means the ratified contract between the Florida Gulf Coast University Board of Trustees and the United Faculty of Florida, including any ratified supplements thereto, governing the terms and conditions of employment for the bargaining unit members.

-- “college/unit” means a college or a comparable administrative unit generally equivalent in size and character to a college.

-- “continuous service” means employment uninterrupted by a break in service. For academic year employees, one year of continuous service is equivalent to the academic year employment period consisting of a fall and spring semester of approximately 39 contiguous weeks.

-- “days” means calendar days.

-- “department/unit” means a department or a comparable administrative unit generally equivalent in size and character to a department.

-- “Director of Arbitration” means UFF State Office administrator holding such designation (Reference Appendix D)

-- “employee” means a member of the bargaining unit.

- “equitable” means fair and reasonable under the circumstances.
- “expectations” means the same as “objectives”. For the purpose of annual evaluation the terms are equivalent.
- “faculty” means a member of the bargaining unit.
- “months” means calendar months.
- “number” The singular includes the plural.
- “principal place of employment” means the campus location or other university site specified on the employee’s standard employment contract.
- “promotion portfolio” means the materials collected by a faculty member to document how he or she meets the unit criteria and standards for promotion.
- “semester” means one of the two approximately 19.5 week periods which together constitute the academic year.
- “supervisor” means an individual identified by the President or representative as having immediate administrative authority over bargaining unit employees.
- “SUS” or “State University System” means the system of institutions and agencies within the jurisdiction of the Board of Governors.
- “State UFF President” means United Faculty of Florida administrator at the state office holding such designation. (Reference Appendix D).
- “UFF” means United Faculty of Florida, FGCU Chapter.
- “UFF State Office” means the Florida state office of United Faculty of Florida.
- “University” means the Florida Gulf Coast University Board of Trustees acting through the President and its staff.
- “year” means a period of twelve (12) consecutive months.



# **Article 31**

## ***Totality of Agreement***

31.1 Limitation. The parties acknowledge that during the negotiations which resulted in the Agreement, the University and the UFF had the unlimited right and opportunity to present demands and proposals with respect to any and all matters lawfully subject to collective bargaining, and that all of the understandings and agreements arrived at thereby are set forth in this Agreement, and that it shall constitute the entire and sole Agreement between the parties for its duration.

31.2 No Obligation to Bargain. During the term of this Agreement, the University and the UFF agree that the other shall not be obligated to bargain collectively with respect to any subject or matter, whether or not referred to or covered by this Agreement. This provision will cease to be applicable on May 31, 2014 or sooner should a replacement provision be negotiated and agreed. This clause (Article 31.2) may be reopened annually and shall not count as a reopener under Article 29.

31.3 Consultation and Impact Bargaining. If the University concludes that new or revised regulations or policies are needed, they shall develop such regulations or policies as applicable and shall provide the UFF, upon their written request, with the ability to consult about the regulations or policies prior to their adoption. If the University develops new regulations or policies, or revises regulations or policies that have an adverse effect on in-unit faculty, the University shall engage in bargaining on the impact of such new or revised regulations or policies.

31.4 Modifications. Nothing herein shall, however, preclude the parties from mutually agreeing to alter, amend, supplement, delete, enlarge, or modify any of the provisions of this Agreement in writing.

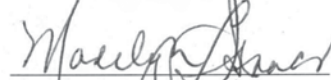
IN WITNESS THEREOF, the parties have set their signatures this 11th day of July, 2011.

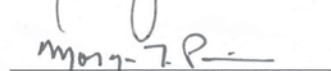
FOR FLORIDA GULF COAST  
UNIVERSITY BOARD OF TRUSTEES

  
\_\_\_\_\_  
Wilson G. Bradshaw, President

  
\_\_\_\_\_  
Hudson P. Rogers, Chief Negotiator

FOR THE UNITED FACULTY  
OF FLORIDA – FLORIDA GULF  
COAST UNIVERSITY CHAPTER

  
\_\_\_\_\_  
Maddelyn L. Isaacs, President

  
\_\_\_\_\_  
Morgan T. Paine, Chief Negotiator

For Administration Bargaining Team:

Jennifer Baker  
Tony Barringer  
Steve Belcher  
Lois Christensen  
Madeline Holzem  
Kathleen Miller  
David Vazquez  
Jim Wohlpart

For UFF-FGCU Chapter Bargaining Team

Lucero Carvajal  
Elizabeth Elliot  
Debra Giambo  
Jeffrey Kleeger  
David Steckler

# Appendix A

## Position Classifications in the Bargaining Unit

INCLUDED: All employees in the following position classifications holding regular, visiting, provisional, research, affiliate, or joint appointment:

9001 Professor  
9002 Associate Professor  
9003 Assistant Professor  
9014 Instructor I  
9024 Instructor II  
9034 Instructor III  
9005 Lecturer  
9009 Eminent Scholar  
9053 University Librarian  
9054 Associate University Librarian  
9055 Assistant University Librarian  
9115 Coordinator  
9120 Associate In  
9121 Assistant In  
9126 Program Director  
9166 Research Associate  
9173 Academic Advisor I  
9174 Academic Advisor II  
9175 Academic Advisor III  
B1xx Academic Advisor (xx denotes rank) Administrative Assignment  
G1xx Program Director (xx denotes rank) Administrative Assignment  
N1xx Coordinator (xx denotes rank) Administrative Assignment

and employees in the above classifications with the following administrative titles: Academic Advisor (B1xx), Program Director (G1xx), and Coordinator (N1xx).

EXCLUDED: All other employees of the Florida Gulf Coast University, including but not limited to all employees serving as trustees of Florida Gulf Coast University and all employees who are on administrative contracts or are managerial or confidential employees.

Certification No. 1394 is issued to United Faculty of Florida.

# Appendix B

## FLORIDA GULF COAST UNIVERSITY UFF MEMBERSHIP AND DUES DEDUCTION AUTHORIZATION

Social Security Number:		Institution: Florida Gulf Coast University	
Department:		Campus:	
NAME		Circle One: Dr. Mr. Mrs. Ms.	
First:	Middle:	Last:	
Street Address:			
City:		State:	Zip:
Home Phone:		Work Phone:	
Email:		Cell Phone:	

Please see page 2 for codes	Subject Code	Position Code	Gender	Yr. Of Birth	*This Optional Information is provided to the UFF State Office	*Ethnic Code	*Registered Voter	*Party Affil. Code

UFF dues are one percent (1%) of regular salary for bargaining unit members of the United Faculty of Florida. UFF dues payments are not tax deductible as charitable contributions for Federal income tax purposes. However, they may be tax deductible under other provisions of the Internal Revenue Code

Please enroll me as a member of the United Faculty of Florida (UFF).

\_\_\_\_\_  
Employee Signature Date

Dues Payroll Deduction: I authorize Florida Gulf Coast University to deduct from my pay, starting with the first full biweekly pay period commencing not earlier than 7 days from the date this authorization is received by the University, membership dues of the UFF in such amount as may be established from time to time in accordance with the constitution and bylaws of the UFF and certified in writing to the University by the UFF, and I direct that the sum so deducted be paid over to the UFF.

The above deduction authorization shall continue until either (1) revoked by me at any time upon 30 days written notice to the University Human Resources Department, and to UFF-FGCU Chapter, or (2) my transfer or promotion out of this bargaining unit. Unless this Dues Deduction Authorization is revoked in the manner heretofore stated, this authorization shall remain in full force and effect in accordance with the provisions of Section 447.507 Florida Statute.

\_\_\_\_\_  
Employee Signature Date FGCU UIN  
Effective date if later than above: \_\_\_\_\_

UFF-Political Action Committee (PAC) Payroll Deduction Authorization: (OPTIONAL) I authorize Florida Gulf Coast University to deduct from my pay, starting with the first full biweekly pay period commencing not earlier than 7 days from the date this authorization is received by the University, contributions to the UFF Political Action Committee in the amount of \$1.00 per pay period, and I direct that the sum so deducted be paid over to the UFF.

Contributions to UFF-PAC are not deductible as charitable contributions for Federal income tax purposes. However, they may be tax deductible under other provisions of the Internal Revenue Code.

The above deduction authorization shall continue until either (1) revoked by me at any time upon 30 days written notice to the University Human Resources Department and to the UFF-FGCU Chapter, or (2) my transfer or promotion out of this bargaining unit.

\_\_\_\_\_  
Employee Signature Date FGCU UIN  
Return the completed form to your UFF-FGCU Chapter.

## Appendix B

The following coding is requested by the State UFF Office. Please put the appropriate code number in the corresponding box on the FGCU UFF Membership and Dues Deduction Authorization form.

### Subject

02 Agriculture  
03 Architecture  
05 Art  
06 Biological Science  
07 Business  
08 Communications  
09 Computer Science  
10 Chemistry  
11 Education  
12 Engineering  
13 English  
15 Foreign Language/Lit.  
18 Health/Phys. Educ.  
19 Health Professions  
22 Interdisciplinary Studies  
23 Criminal Justice  
24 Library  
25 Mathematics  
27 Music  
28 Philosophy  
29 Physical Science  
30 Psychology  
31 Public Administration  
33 Religion and Theology  
35 Social Sciences/History  
36 Sociology  
38 Speech and Drama  
90 No Subject Taught  
99 Other

### Registered Voter\*

Y Yes  
N No  
U Unknown

### Position

05 Counselor/Psychologist  
07 Health Care Professional  
08 Librarian  
12 Retired  
14 Director  
16 Graduate Assistant  
20 Adjunct Faculty  
21 Admin Office Personnel  
22 Assistant Professor  
23 Associate Professor  
24 Instructor  
25 Lecturer  
26 Professor  
99 Other

### Ethnic\*

1 American Indian/Alaska Native  
2 Asian/Pacific Islander  
3 Black  
4 Chicano/Hispano  
5 Caucasian (not of Spanish origin)  
9 Unknown

### Party Affiliation\*

R Republican  
D Democrat  
I Independent  
O Other

\*This information is optional and failure to provide it will in no way affect your membership status, rights or benefits. This information will be kept confidential.

# Appendix C

## Florida Gulf Coast University/ United Faculty of Florida Grievance

### SECTION I: Demographic Information

I. Date (Received by University) \_\_\_\_\_

Grievant	Step 1 Grievance Representative
Name _____	Name _____
College _____	Mailing Address _____
Dept. _____	_____
Office Phone _____	Office Phone _____

If grievant is represented by the UFF or legal counsel, all university communications should go to the grievant's representative.

If UFF is not the selected representative, then the University shall provide prompt notification to the UFF that includes a copy of this grievance form.

Other address to which university mailings pertaining to grievance shall be sent:

=====  
Check as **applicable to the grievance**

\_\_\_ **I am filing a Step 1 Grievance** (all grievances except those at the University Level)

\_\_\_ **I am filing a Step 2 Grievance** (grievance alleging violations outside the college/unit )

### SECTION II: Grievance

Article(s) and Sections(s) of Agreement allegedly violated (this filing may be amended ONLY one (1) time without University consent either prior to the Step 1 meeting or prior to a Step 2 meeting if applicable):

\_\_\_\_\_  
\_\_\_\_\_

Statement of grievance (must include date of acts or omissions complained of):

Remedy Sought: (See next page for additional requirements)

=====

**SECTION III: Informal Resolution**

Informal methods used to resolve this matter (please specify): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

=====

**SECTION IV: Authorization/Representation** (Must be completed prior to submission to the University):

Authorization

I will be represented in this grievance by: (The representative must sign on appropriate line):

UFF \_\_\_\_\_

Legal Counsel \_\_\_\_\_

Myself \_\_\_\_\_

**I understand and agree that by filing this grievance, I waive whatever rights I may have under the Administrative Procedure Act, Chapter 120, Florida Statutes, with regard to the matters I have raised herein and if prior to seeking resolution of this dispute by filing this grievance hereunder, or while the grievance is in progress, I request, in writing, resolution of the matter in any other forum, whether administrative or judicial, the University shall have no obligation to entertain or proceed further with the grievance under this grievance procedure. As an exception to this provision, I may file a federal EEOC charge while the grievance is in process when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. section 2000e et seq.**





I will be represented in this grievance by: (The representative must sign on appropriate line):

UFF \_\_\_\_\_

Legal Counsel \_\_\_\_\_

Myself \_\_\_\_\_

**I understand and agree that by filing this grievance, I waive whatever rights I may have under the Administrative Procedure Act, Chapter 120, Florida Statutes, with regard to the matters I have raised herein and if prior to seeking resolution of this dispute by filing this grievance hereunder, or while the grievance is in progress, I request, in writing, resolution of the matter in any other forum, whether administrative or judicial, the University shall have no obligation to entertain or proceed further with the grievance under this grievance procedure. As an exception to this provision, I may file a federal EEOC charge while the grievance is in process when such filing becomes necessary to meet federal filing deadlines pursuant to 42 U.S.C. section 2000e et seq.**

This request for a Step 2 grievance review was filed with the Office of Academic Affairs \_\_\_\_\_ by (check one):

\_\_\_\_\_ mail (certified or registered, restricted delivery, return receipt requested);

\_\_\_\_\_ personal delivery;

\_\_\_\_\_ other (please specify) \_\_\_\_\_.

\_\_\_\_\_  
Signature of Grievant

\_\_\_\_\_  
Date

**(Grievant must sign prior to the Step 2 meeting or the grievance will not proceed.)**

The Step 2 decision shall be transmitted to Grievant’s Step 2 Representative by personal delivery with written documentation of receipt or by certified mail, return receipt requested. A copy of this decision shall be sent to Grievant, and the local UFF Chapter if grievant elected self-representation or representation by legal counsel.



## Notice of Intent to Arbitration

### Part II

The United Faculty of Florida, State Office, hereby gives notice of its intent to proceed to arbitration in connection with the above referenced FGCU Grievance No:

\_\_\_\_\_  
 (Assigned by UFF State Office)

The following statement of issue(s) before the Arbitrator is proposed:

This Notice of Intent to Arbitrate is filed with the FGCU Office of Academic Affairs and a copy provided to UFF FGCU-Chapter as follows:

FGCU Office of Academic Affairs		UFF FGCU-Chapter	
<b>Check One</b> and enter date		<b>Check One</b> and enter date	
	U.S. mail (certified or registered, return receipt requested); or		U.S. mail (certified or registered, return receipt requested); or
	personal delivery (note recipient); or		personal delivery (note recipient); or
	other (please specify) _____		other (please specify) _____

\_\_\_\_\_  
 Signature of State UFF President or Director of Arbitration

\_\_\_\_\_  
 Date

This notice should be sent to:

The Provost, Office of Academic Affairs, Florida Gulf Coast University, 10501 FGCU Boulevard, Fort Myers, FL 33965-656

Received by FGCU Office of Academic Affairs: \_\_\_\_\_

(Name/Signature)

\_\_\_\_\_  
 Date

# Appendix E

## Florida Gulf Coast University NOTICE OF PROMOTION INCREASE 2011 – 2012 Promotion Salary Increase Notification

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

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

College/Department: \_\_\_\_\_

This notification of your change in salary due to promotion is being provided consistent with University practice. The promotion and the base salary increase shall be effective August 7, 2011.

### **Based upon your promotion increase your starting salary for 2011-2012 is as follows:**

A. Current (2010-2011) Base Salary: \$ \_\_\_\_\_

B. Promotion from \_\_\_\_\_ to \_\_\_\_\_: \$ \_\_\_\_\_  
(Instructor I/Academic Advisor I to Instructor/Academic Advisor II – 9%;  
(Instructor II/Academic Advisor II to Instructor/Academic Advisor III – 9%;  
Assistant to Associate – 9%; Associate to Full – 12%)

C. August 7, 2011 Base Salary due to promotion: A + B \$ =====

D. Stipend (if any); \$ \_\_\_\_\_

New Total Salary (New Base Salary + Stipend if any) = C + D \$ =====

---

This notification for your starting 2011-2012 compensation reflects of your 2010-2011 base salary plus the promotion increase as applicable and was prepared by Human Resources on the advice of Academic Affairs. Accompanying this notice is two copies of your employment agreement. Please sign one copy of the agreement and return to Human Resources. The other copy is for your records. You may contact Academic Affairs to request a meeting to discuss this increase.

# Appendix F

## Exclusive Assignment Dispute Resolution Procedure

### F.1 Exclusive Method

A. The University and the UFF agree to the following procedure as the exclusive method of resolving disputes under Article 9.3.F, of the Agreement which allege that an employee's assignment has been imposed arbitrarily or unreasonably.

B. An employee who alleges that the assignment has been imposed arbitrarily or unreasonably may file a grievance under Article 20 of the FGCU/UFF Collective Bargaining Agreement (CBA) only to enforce the Exclusive Assignment Dispute Resolution (EADR) procedure delineated below. Article 20 of the CBA can be used only to enforce the EADR procedure and not to seek a determination as to whether an assignment has been arbitrarily or unreasonably imposed.

### F.2 Time Limits

A. In order to be considered, the dispute must be filed using the "Exclusive Assignment Dispute Resolution Form" (Appendix F.6) within thirty (30) days after the receipt of the assignment by the employee. If the employee's assignment begins prior to final resolution of the dispute, the employee shall perform the assignment until the matter is finally resolved under these procedures.

B. All time limits contained herein may be extended by mutual agreement of the university and the employee or his/her representative. Upon failure of the employee or his/her representative to comply with the time limits herein, the dispute shall be deemed to have been finally determined at the prior step.

C. All references to "days" herein refers to "calendar days." The "end of the day" shall refer to the end of the business day, i.e., 5:00 p.m. In the event that any action falls due on a Saturday, Sunday, holiday (as defined in this Agreement, Article 17.5), or administrative closure of the University, the action will be considered timely if it is accomplished by 5:00 p.m. on the following business day.

### F.3 Assignment Dispute Resolution Procedures

A. An employee who believes that the assignment has been imposed arbitrarily or unreasonably shall, within thirty (30) days after receipt of the assignment, file Part 1A of the EADR Form (Appendix F.6) with the individual responsible for making the assignment. The filing of the EADR Form shall be accompanied by a brief statement of the employee's arguments, and any relevant documentation supporting the employee's position. This documentation shall be placed in a file entitled "Employee's Assignment Dispute Resolution File," which shall be kept separate from the employee's personnel evaluation file. Additional documentation shall not

be considered in the EADR process except by agreement of the Office of Academic Affairs unless it is documentation that the employee requested from the university prior to the conference held pursuant to (b) below, but did not receive before such conference.

B. Within four (4) days of receipt of the EADR Form, the individual responsible for making the assignment shall meet with the employee and discuss the dispute. Within twenty-four (24) hours after this conference, the supervisor shall complete Part 1B of the EADR Form and deliver it to the employee.

C. If the employee continues to be aggrieved following the initial conference, the employee shall file the EADR Form, with Part 1A and Part 1B completed, with the Dean or other appropriate administrator no later than four (4) days after the initial conference.

D. The representative shall schedule a meeting with the Dean or other appropriate administrator to be held no later than four (4) days after filing the EADR Form with the Dean or other appropriate administrator. At this meeting, the employee, the UFF representative, and the Dean or appropriate administrator shall discuss the dispute and attempt to resolve it. Within twenty-four (24) hours after the conclusion of this meeting, the Dean or appropriate administrator shall complete Part 2 of the EADR Form and deliver it to the employee or his/her representative.

E. If consultation with the Dean or appropriate administrator does not resolve the matter, the employee or his/her representative may file, within four (4) days of that meeting, Part 3 of the EADR Form (with supporting documentation) with the Office of Academic Affairs representative, indicating an intention to submit the dispute to a Neutral Umpire.

F. Within seven (7) days of receipt of the completed EADR Form and other documentation, the Office of Academic Affairs representative may place a written explanation, brief statement of the University's position, a list of expected witnesses, and other relevant documentation in the Employee's Assignment Dispute Resolution File. As soon as practicable thereafter, a copy of all documents placed in the Employee's Assignment Dispute Resolution File shall be presented to the UFF representative, who shall place a list of the employee's expected witnesses into the file.

G. At the time that the completed EADR Form is submitted to the Office of Academic Affairs representative, the employee or his/her representative shall schedule a meeting with the Office of Academic Affairs representative for the purpose of selecting a Neutral Umpire from the Neutral Umpire Panel. This meeting shall be scheduled for no later than seven (7) days after filing of the completed EADR Form. Selection of the Neutral Umpire shall be by mutual agreement or by alternatively striking names from the Neutral Umpire Panel list until one name remains. The right of first choice to strike from the list shall be determined by the toss of a coin. The right to strike first shall alternate in any

subsequent Neutral Umpire selection.

H. The Office of Academic Affairs representative shall contact the selected Umpire no later than three (3) days following the selection. Should the Umpire selected be unable to serve, the Academic Affairs representative shall contact the employee or his/her representative as soon as practicable and schedule another selection meeting.

I. Upon the agreement of the Neutral Umpire to participate, the Office of Academic Affairs representative shall provide the Umpire with the Employee's Assignment Dispute Resolution File.

J. The Assignment Dispute Resolution Meeting shall be scheduled as soon as practicable after the Neutral Umpire has received the Employee's Assignment Dispute Resolution File. The Office of Academic Affairs representative shall notify the employee or his/her representative of the time and place of the Assignment Dispute Resolution Meeting no later than forty-eight (48) hours prior to it being convened.

K. No person concerned with or involved in the assignment dispute shall attempt to lobby or otherwise influence the decision of the Umpire.

L. The Assignment Dispute Resolution Meeting shall be conducted as follows:

(1) The employee, or an employee or his/her representative, and a Academic Affairs representative shall be the sole representatives of the parties. Each representative may present documentary evidence from the Employee's Assignment Dispute Resolution File, interrogate witnesses, offer arguments, cross-examine witnesses, and have present at the meeting one individual to assist in the presentation of the representative's case.

(2) The Neutral Umpire will conduct and have total authority at the Assignment Dispute Resolution Meeting. The Neutral Umpire may conduct the Assignment Dispute Resolution Meeting in whatever fashion, consistent with this Agreement that will aid in arriving at a just decision.

(3) The Umpire shall submit to all parties on Part 4 of the EADR Form within forty-eight (48) hours after the close of the Assignment Dispute Resolution Meeting a written, binding decision as to whether the assignment was imposed arbitrarily or unreasonably. The decision shall include the reasons for the Umpire's determination.

(4) If the Umpire decides that the employee's assignment was imposed arbitrarily or unreasonably, the Umpire may also suggest an appropriate remedy. This suggestion is not binding on the university but shall be used by the Office of Academic Affairs representative in fashioning an appropriate remedy.

#### F.4 Neutral Umpire Panel

A. The Office of Academic Affairs representative and the employee or his/her representative shall meet within two (2) weeks of the ratification of this Agreement for the purpose of selecting an odd-numbered Neutral Umpire Panel. The Panel shall consist of no less than five (5) and no more than nine (9) individuals, not employed by the University, FGCU Board of Trustees or the Florida Board of Governors, who meet the following qualifications:

- (1) familiarity with academic assignments;
- (2) an ability to serve as Neutral Umpire on short notice;
- (3) a willingness to serve on the Panel for one academic year; and
- (4) acceptability to both the University and the UFF.

B. The Office of Academic Affairs representative and the employee or his/her representative are encouraged to select educators from other institutions in the area, fully retired faculty and administrators, and professional mediators and arbitrators, to be on the Neutral Umpire Panel.

C. Panel membership may be reviewed, at the initiation of the University or the employee or his/her representative, through written notice provided before the end of the preceding fiscal year.

F.5 Expenses. All fees and costs of the Neutral Umpire shall be borne equally by the University and the employee or UFF.



## F.6 Exclusive Assignment Dispute Resolution Form

### PART 1A: Statement of Dispute

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Department

\_\_\_\_\_  
Employee's Address

\_\_\_\_\_  
Person Making Assignment

\_\_\_\_\_  
Date Assignment Made

\_\_\_\_\_  
Beginning Date of Assignment

**I believe the assignment was arbitrarily or unreasonably imposed because:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
UFF Representative's Signature

\_\_\_\_\_  
Date Filed

\_\_\_\_\_  
Date of Meeting

### PART 1B: Supervisor's Response

The assignment was not arbitrarily or unreasonably imposed:

The disputed assignment has been resolved:

\_\_\_\_\_  
Person making the assignment

\_\_\_\_\_  
Date of Decision

**This form must be accompanied by all documentation which the employee wants to have reviewed, except for documentation the employee has requested but not received (See Appendix F, Section F.3.)**

**I understand and agree that by filing this grievance, I waive whatever rights I may have under the Administrative Procedure Act, Chapter 120, Florida Statutes, with regard to the matter I have raised herein and under all other University procedures which may be available to address these matters.**

**PART 2: Decision of Dean or Appropriate Administrator**

\_\_\_\_\_  
Date Filed with Dean/Administrator

\_\_\_\_\_  
Date of Conference

The assignment was not arbitrarily or unreasonably imposed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The disputed assignment has been resolved in the following manner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Dean or appropriate administrator

\_\_\_\_\_  
Date of Decision

**PART 3: UFF Notice of Intent to Refer Assignment Dispute to Neutral  
Umpire**

The decision of the Dean or other appropriate administrator is not satisfactory and the UFF hereby gives notice of its intent to refer the dispute to a Neutral Umpire.

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Date of Receipt by Academic Affairs  
Representative

\_\_\_\_\_  
UFF Representative

\_\_\_\_\_  
Receipt Acknowledged by Academic  
Affairs Representative

**PART 4: Neutral Umpire's Decision**

The disputed assignment was \_\_\_\_\_/was not \_\_\_\_\_ arbitrarily or unreasonably imposed.

Reasons for the determination that the assignment was arbitrarily or unreasonably imposed are: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Suggested Remedy (Optional): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Neutral Umpire's Name

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Neutral Umpire's Signature

\_\_\_\_\_  
Date Decision Issued

# Index

This index is not an official part of the 2011-2014 Collective Bargaining Agreement between Florida Gulf Coast University Board of Trustees and the United Faculty of Florida. It is been provided by the parties solely for convenience of reference, navigating and searching the document and shall not be deemed to limit or affect the meaning, construction, or effect of any provision of this Agreement. The parties to this agreement bear no responsibility for any omission from this index (see Article 27.8).

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