

Fort Schuyler Maritime Alumni Association, Inc.

P. O. Box 509
Oakdale, NY 11769

May 11, 2005

Mr. Patrick J. Wiater
University Controller
The State University of New York
State University Plaza
Albany, New York 12246

Dear Mr. Wiater:

Further to my letter of April 22, 2005, I write to offer a point-by-point analysis of SUNY's latest proffered contract based on review by our outside legal counsel as mentioned in that letter. First, I would like to make the following comments to you that would lend some perspective to the technical contractual issues that we are attempting to resolve.

Please be assured of our sincere desire to resolve this matter as expeditiously as possible while not violating the core principles of incorporation that guide, and are even mandated, for both of our organizations. For the greater good, some flexibility is always required on the part of both parties who wish to pursue good faith negotiations.

A review of Admiral Ryan's April 09, 2005, Presidential Update under the Alumni Development Section lists, as its No. 1 Strategic Goal, "Alignment Needed with Alumni Association." We couldn't agree more. Once back and working in collaboration with the other major Maritime College stakeholders, our 103-year-old Alumni Association will enhance the very positive accomplishments now taking place on campus.

Please note the proposed contract, as augmented by the Guidelines and Exhibit A, in areas, is contradictory and problematic for our organization and its articles of incorporation. It would not be prudent to ignore our legal counsel's opinions in this regard and we would like to work with you on those issues raised by legal counsel and propose that you consider the issues as enumerated below to be "on the table" for the sake of "clarity" and "successful resolution."

Lastly, the corporate purposes of the Alumni Association are primarily to serve graduates, cadets, and faculty, with a secondary objective to support the College in recruiting and employment, as well as participation, in athletic, social and other college events, including support for college fundraising that does not conflict with traditional Alumni Association programs. We are anxious to continue our efforts in behalf our beloved College with the same enthusiasm and assistance we have demonstrated for more than 100 years.

Following is a point-by-point analysis of the latest proposed contract based on the evaluation and advice of our outside counsel. Please note that several of the changes to the contract that our attorneys have suggested relate to statements in the contract or annexed SUNY Guidelines for Campus-Related Alumni Associations ("Guidelines") that do not accurately reflect the Alumni Association's legally prescribed purposes as set forth in our Certificate of Incorporation.

The point-by-point analysis follows:

1. Second “WHEREAS” clause - The statement of the Fort Schuyler Maritime Alumni Association (“FSMAA”) purposes set forth in this clause is not consistent with FSMAA’s legally prescribed purposes as set forth in its governing documents. Accordingly, our attorneys have suggested that this clause be revised to read as follows:

“WHEREAS, the Association has been established for the purposes set forth in its Certificate of Incorporation and By-Laws, attached hereto and incorporated herein as Exhibit B, including but not limited to, serving as a liaison between Campus and its Alumni; and”

2. Paragraph 2 - FSMAA’s charitable purposes are to ensure the continuance of a maritime school at Fort Schuyler and to promote nautical education. To achieve those goals, we conduct activities that, among other things, benefit the Maritime College and its alumni. Because FSMAA’s activities are not conducted exclusively to benefit the Maritime College, we request that the phrase “exclusively for the benefit of the Campus” in the first sentence of paragraph 2 be revised to read “in part for the benefit of the Campus.”

3. Paragraph 3 - This provision would require FSMAA to agree to annually give a certain amount to support alumni relations programs for the Campus and for Campus scholarship programs. It also would obligate FSMAA to provide the College with an annual statement of goals and objectives for the coming year and to work with the College in developing FSMAA’s annual budget. Since this entire provision is discretionary, our attorneys have recommended, and we request, that it be omitted from the contract.

4. Paragraph 14 - This provision, which permits either SUNY or FSMAA to terminate the contract on 45 days prior written notice, does not comply with the Guidelines’ provision on termination. The Guidelines’ provision states that the contract may be terminated by SUNY (see Guidelines Section VI - Linkage to Campus). The termination provision in paragraph 14, then, appears to be a waiver from the Guidelines although it is not noted in paragraph 1 of the contract, which lists the waivers of the Guidelines. Accordingly, we request that the termination provision in paragraph 14 be noted as one of the waivers in paragraph 1.

Paragraph 14 also states that upon termination of the contract, FSMAA “agrees to continue to administer the funds, including any subsequent accumulated income and net capital gains of such funds, whose beneficial interest has been designated by donors as Maritime College, its students, programs or purposes, in support of and in full compliance with such designations and in full compliance with all New York State laws and regulations applicable to fiduciaries.” FSMAA, as you know, is a Delaware non-stock corporation and also must administer its assets consistently with Delaware laws applicable to fiduciaries. However, FSMAA also administers charitable assets in New York and, accordingly, is subject to the provisions for the administration of charitable assets set forth in Article 8 of the New York Estates, Powers and Trusts Law. Accordingly, our attorneys have recommended that the words “all applicable laws and regulations” be substituted for the words “all New York State laws and regulations applicable to fiduciaries” in that sentence. Our attorneys also recommend an additional revision to that sentence, adding the words “received during the term of this agreement” after the words “administer the funds.”

5. Paragraph 19 - Paragraph 18 of the contract lists the documents that are part of the contract. Paragraph 19 then sets forth the priority of interpretation of those documents in the event of any

controversy of terms. Paragraph 19 provides that the Guidelines take priority over the contract itself. This creates unnecessary ambiguity, and in fact our attorneys have written: “It is not clear to us what effect, if any, that provision would have if a controversy arose regarding one of the waivers of the Guidelines set forth in the contract (e.g., a court still might conclude that the Guidelines prevail if there is a difference in the effect of the two conflicting provisions).” It has been suggested that language be added in Paragraph 19 to clarify that the priority granted to the Guidelines does not extend to any provisions of the Guidelines for which waivers have been granted in the contract. One way to do this would be to revise number 2 of the list of documents set forth in the paragraph to read as follows:

“2. Guidelines for Alumni Associations (except for any provisions of the Guidelines for which waivers have been granted in the Agreement)”

6. SUNY Guidelines, Section III (Mission) - The fifth bullet point under Section III of the Guidelines states that FSMAA “[a]ssists in and supports the activities of the campus in fundraising as directed by the campus for student recruitment, governmental affairs, and other areas which will advance the goals and objectives of the campus.” As our attorneys have noted, the use of the words “as directed by the campus” suggests that the Maritime College will have the final say (even to the extent of preempting the FSMAA Board of Directors) regarding FSMAA’s conduct of those activities. Our attorneys have recommended that the words “as directed by the campus” be revised to state “in coordination with the campus.” This revision will require an additional waiver of the Guidelines.

7. SUNY Guidelines, Section IV (Responsibilities) - The first bullet point under Section IV lists among FSMAA’s duties “[d]eveloping programs that support the goals and objectives of the campus, especially in campus fundraising, as directed by the campus.” Here again, the use of the words “as directed by the campus” suggests that the Maritime College will have final say (even to the extent of preempting the FSMAA Board of Directors) over FSMAA’s development of programs to support the College. Accordingly, our attorneys have also recommended here that the words “in coordination with the campus” be substituted for “as directed by the campus.” This revision also will require an additional waiver of the Guidelines.

8. SUNY Guidelines, Section VII (Accountability & Reporting) - This requires FSMAA to complete an audit within 90 days of the close of FSMAA’s fiscal year. We wish to discuss audit provisions further before we can agree to the terms for any audit.

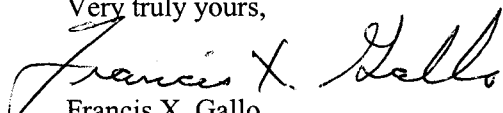
This section of the Guidelines also sets forth dissolution requirements. In that regard, it provides that FSMAA’s Certificate of Incorporation and other organizing documents “must provide that the net assets of the organization shall be distributed to the campus or other campus-approved entity organized for similar purposes in the event that it is dissolved.” It also provides that dissolutions and dispositions “are subject to all applicable laws, regulations, and restrictions and unless otherwise stated, the net assets revert to the campus or campus approved organization.” This provision is not consistent with FSMAA’s Certificate of Incorporation (“Certificate”), which provides that on dissolution FSMAA’s assets are to be distributed consistently with FSMAA’s purposes as set forth in its Certificate. Those purposes are “to support the perpetual use of the land and buildings at Fort Schuyler for use as a maritime school, devoted exclusively to purposes of nautical education.” The Certificate also states that FSMAA “shall not carry on any activities contrary to said perpetual use, nor shall its assets be distributed, upon dissolution or otherwise, for any purpose contrary to said perpetual exclusive use.” In addition, the Certificate specifically provides that FSMAA’s assets shall not be distributed on dissolution to New York State or its political subdivisions. Accordingly, our attorneys have suggested that we obtain a waiver of this provision of the Guidelines. The waiver should state that FSMAA’s assets on dissolution will be

distributed in accordance with the dissolution provisions set forth in its Certificate of Incorporation, subject to applicable statutory provisions.

Finally, as I mentioned in my April 22 letter, there remains the misunderstanding about the nature of the Alumni Database, as reflected in Paragraphs 7 through 10. As noted, this matter was addressed fully in the contract prepared by us and sent to Mr. Trunzo last summer, but appears not to have been incorporated into the document we received from you in March. The term "Alumni Database" must be defined clearly, since the database that was painstakingly maintained by the Alumni Association for many years has somehow come into SUNY's possession. For SUNY to "license" this database back to the Association makes no sense.

I remain hopeful that, given the modifications detailed above and some further discussion on the issues of auditing and the Alumni Database, we can reach accord in the near future. In that regard, and as a gesture of good faith, it is my intention to introduce a resolution at the next Board meeting that would begin the process of amending our By-Laws to include the President of SUNY Maritime College as an *ex officio* voting Board member. Please let me have your comments after you and your team have reviewed the foregoing.

Very truly yours,


Francis X. Gallo
President