

THE FLORIDA INTERNATIONAL UNIVERSITY



BOARD OF TRUSTEES

MEMBERS

ADOLFO HENRIQUES, *CHAIRPERSON*

DAVID PARKER, *VICE-CHAIRPERSON*

ROSA SUGRAÑES, *TREASURER*

BETSY ATKINS

ALBERT DOTSON, SR.

PATRICIA FROST

KIRK LANDON

MIRIAM LÓPEZ

SERGIO PINO

CLAUDIA PUIG

HERBERT WERTHEIM

BRUCE HAUPTLI, *FACULTY TRUSTEE*

ALEX PRADO, *STUDENT TRUSTEE*

FIU FOUNDATION BOARD OF DIRECTORS' LIAISON

CARLOS MIGOYA

UNIVERSITY PRESIDENT, CORPORATE SECRETARY

MODESTO A. MAIDIQUE

**THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
FULL BOARD MEETING**

WEDNESDAY, 18 MAY 2005
4:30 P.M.
VIA CONFERENCE CALL

AGENDA

- | | |
|---|---------------------------|
| I. CALL TO ORDER | CHAIRMAN HENRIQUES |
| II. CHAIRMAN'S REMARKS | CHAIRMAN HENRIQUES |
| III. ITEMS FOR BOARD CONSIDERATION | |
| ACTION ITEMS | |
| 1. RATIFICATION OF MEMORANDUM OF UNDERSTANDING BETWEEN THE FLORIDA INTERNATIONAL BOARD OF TRUSTEES AND THE UNITED FACULTY OF FLORIDA | CHAIRMAN HENRIQUES |
| 2. TAX EXEMPT FINANCING | CHAIRMAN HENRIQUES |
| IV. OTHER BUSINESS (<i>IF ANY</i>) | CHAIRMAN HENRIQUES |
| V. ADJOURNMENT | CHAIRMAN HENRIQUES |

**NEXT FULL BOARD MEETING IS SCHEDULED FOR BISCAYNE BAY CAMPUS
29 JUNE 2005
10:00 A.M.**

**THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
BOARD MEETING**

18 MAY 2005

**SUBJECT: RATIFICATION OF MEMORANDUM OF UNDERSTANDING BETWEEN THE
FLORIDA INTERNATIONAL BOARD OF TRUSTEES AND THE UNITED
FACULTY OF FLORIDA**

PROPOSED BOARD ACTION:

ADOPT THE FOLLOWING RESOLUTION:

WHEREAS, the Board of Trustees is the public employer for collective bargaining purposes,

WHEREAS, the majority of the Faculty of the Institution has not had a raise for eighteen months,

WHEREAS, because this is a unique time in the history of the institution as it tries to reach a first agreement with the UFF at the local level,

THEREFORE, BE IT RESOLVED that the Board of Trustees ratifies the Memorandum of Understanding entered into between the Florida International Board of Trustees and the United Faculty of Florida.

BACKGROUND INFORMATION:

A. LEGAL AUTHORITY

Resolution of the Florida Board of Governors, dated 7 January 2003. Resolution delegating and delineating powers of local boards of trustees, provides in pertinent part:

19. Each board of trustees shall establish the personnel program for all employees of the university, including the president, pursuant to the provisions of chapter 1012 and, in accordance with rules and guidelines of the Board of Governors, including: compensation and other conditions of employment, recruitment and selection, nonreappointment, standards for performance and conduct, evaluation, benefits and hours of work, leave policies, recognition and awards, inventions and works, travel, learning opportunities, exchange programs, academic freedom and responsibility, promotion, assignment, demotion, transfer, tenure and permanent status, ethical

obligations and conflicts of interest, restrictive covenants, disciplinary actions, complaints, appeals and grievance procedures, and separation and termination from employment. No rule of the Board of Governors shall be considered to in any way contravene the responsibility of each of the university board of trustees to act as the sole public employer with regard to all public employees of its universities for the purposes of collective bargaining in accordance with chapter 447, Florida Statutes.

B. EXPLANATION FOR PROPOSED COMMITTEE ACTION

The university administration is recommending that the Board ratify a Memorandum of Understanding with the United Faculty of Florida in these special circumstances where the majority of the Faculty has not received a raise in eighteen months.

EXHIBITS/SUPPORTING DOCUMENTS:

- EXHIBIT "A" – MEMORANDUM OF UNDERSTANDING BETWEEN THE FLORIDA INTERNATIONAL UNIVERSITY AND THE UNITED FACULTY OF FLORIDA

FACILITATOR/PRESENTER:

- CHAIRMAN HENRIQUES

MEMORANDUM OF UNDERSTANDING

WHEREAS, Florida International University Board of Trustees (“Board”) and the United Faculty of Florida (“UFF”) have engaged in collective bargaining negotiations for a prolonged period; and

WHEREAS, the Board and UFF acknowledge that resolution of the collective bargaining negotiations is not likely before the end of the current fiscal year; and

WHEREAS, the Board and UFF agree that it would be in the interest of Florida International University to administer certain compensation increases without delay,

THEREFORE, the Board and UFF agree to the following:

(1) General Wage Increases

Each eligible bargaining unit employee shall receive a general across the board wage increase of four percent (4%) of his or her base rate of pay effective March 4, 2005. The effective date of these raises shall not create any precedent or expectation concerning the effective date of future wage increases. To be eligible, the employee must have been employed on May 1, 2004 and must have been continuously employed through March 4, 2005 (“continuously employed” does not require employees on 9-month contracts to have been employed during the summer of 2004). In addition, the employee’s most recent annual evaluation must be satisfactory or better in a majority of his or her assigned duties in order to be eligible to receive the general wage increase.

(2) Promotion Increases

(a) In addition to the general wage increases listed in (1) above, promotion increases shall be granted in an amount equal to nine percent (9%) of the employee’s June 30, 2004 base salary rate in recognition of his or her promotion:

To Assistant Professor or Assistant University Librarian:

To Associate Professor, Associate Scholar/Scientist, Associate Engineer or Associate University Librarian;

To Professor, Scholar/Scientist, Engineer, or University Librarian.

(b) Eligibility. Employees who received promotions effective with the commencement of the 2004-05 fiscal year or Academic Year shall be eligible.

(c) Effective Date of Increase. The promotion increase shall be effective upon the first pay period of the 2004-05 fiscal year for twelve-month librarians and of the 2004-05 Academic Year for nine-month or twelve-month faculty employees .

(3) Notification to Employees and UFF.

All employees shall receive notice of their salary increases. The UFF will be provided, without charge and no later than four weeks following the date on which the raises appear in the employees' pay warrants, a machine-readable report, arranged alphabetically by name, listing the name, job title or rank, and department/academic unit of each employee in the bargaining unit; the base salary of each bargaining unit employee prior to the awarding of any salary increases pursuant to this Memorandum; the amount of any salary increase awarded each bargaining unit employee pursuant to this Memorandum, showing which portion of the increase, if any, is pursuant to (1) and which portion of the increase, if any, is pursuant to (2); and the base salary of each bargaining unit employee following the awarding of increases pursuant to this Memorandum.

(4) Contract and Grant-Funded Employees.

Employees on grants or contracts shall receive salary increases, provided that such salary increases are permitted by the terms of the contract or grant and adequate funds are available for this purpose in the grant or contract.

(5) General Provisions.

(a) This Memorandum resolves and waives any dispute, issue or claim to be asserted by either party with regard to all forms of compensation or the administration of compensation through April 7, 2005 (except for FIU Foundation Awards for Summer 2005). This does not resolve or waive claims concerning compensation for summer teaching in Summer 2003 or Summer 2004.

In addition, this Memorandum resolves and waives any dispute, issue or claim of using release time as a factor or indicia of bad faith bargaining. The Memorandum does not waive any monetary claim the UFF may have pertaining to release time.

(b) If during the period between July 1, 2004 and June 30, 2005 the parties jointly ratify a collective bargaining agreement, then this Memorandum shall become null and void effective the date of the joint ratification.

(c) This Memorandum does not preclude the possibility of additional retroactive salary increases.

(d) The salary increases provided in paragraphs (1) and (2) of this Memorandum shall be in addition to a one-time, lump-sum bonus of \$1,000 already provided employees pursuant to legislative appropriation, effective December 1, 2004.

Judith Blucker
Chief Negotiator
Florida International University
Board of Trustees

Lorna Veraldi
Chief Negotiator
United Faculty of Florida

Date

Date

**THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES
BOARD MEETING**

18 MAY 2005

SUBJECT: TAX EXEMPT FINANCING

PROPOSED BOARD ACTION:

ADOPT THE FOLLOWING RESOLUTION:

WHEREAS, on February 10, 2005, the Florida International University Board of Trustees (the "BOT") approved the settlement of the United States Government's claims against the University arising out of the performance of Federally sponsored agreements by the University's Hemispheric Center for Environmental Technology (the "Settlement");

WHEREAS, the BOT empowered the President of the University to find the best financial vehicle to finance the payment due pursuant to the Settlement; and

WHEREAS, the President of the University, acting through his designee, the University's Chief Financial Officer, after considering all reasonable options, has requested that the Florida International University Research Foundation, Incorporated (the "Research Foundation") issue on behalf of the BOT, a tax exempt note and taxable obligation, in an aggregate principal amount not to exceed \$10,000,000, to finance the payment due pursuant to the Settlement.

THEREFORE, BE IT RESOLVED THAT

(I) The BOT hereby approves the issuance of a five-year, fully amortized bank-qualified tax-exempt note (the "Tax-Exempt Note") and a taxable obligation (collectively, the "Obligations"), in a principal amount not to exceed \$10,000,000 in the aggregate, by the Research Foundation on behalf of the BOT to finance (a) payment of amounts due under the Settlement; and (b) certain costs relating to the Obligations, all pursuant to a note purchase agreement to be entered into by the Research Foundation and a financial institution to be selected by the Research Foundation (the "Lender"); and

(II) BE IT FURTHER RESOLVED that the BOT approve the existence and amended purposes of the Research Foundation attached hereto as Exhibit "B" and incorporated by reference herein; and

(III) BE IT FURTHER RESOLVED that the BOT hereby designates the Tax-Exempt Note as a qualified tax-exempt obligation, as defined under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended; and

(IV) BE IT FURTHER RESOLVED that the President and/or his designees are hereby authorized and directed to do all acts and things necessary to carry out these BOT Resolutions; and

BE IT FURTHER RESOLVED that these Resolutions shall become effective on this 18 day of May, 2005.

BACKGROUND INFORMATION:

After much investigation on the best way to finance the HCET settlement payment, the President's recommendation is to issue a tax-exempt note. The resolution included in your materials has the Board authorizing the issuance by the Florida International University Research Foundation (the "Research Foundation") of a bank qualified tax-exempt note (the "Note") and a taxable note not to exceed \$10,000,000 in the aggregate (collectively, the "Obligations"). Two notes are needed because an entity cannot issue more than \$10,000,000.00 in tax exempt notes that are bank qualified in any given year, and the University has already issued some tax-exempt debt this year for equipment leases.

This resolution is necessary because federal tax law provides that only units of local government (or entities that have similar powers, such as the BOT) can issue debt on a tax-exempt basis. Such units of local government may also approve the issuance of tax-exempt debt by another entity on its behalf. In this case, the Note will be tax-exempt because the Research Foundation will be treated as issuing the Note on behalf of the BOT.

Bond counsel has been retained for this transaction and they have advised us that the Note will be tax-exempt. They will issue a written opinion to that effect prior to the closing of the transaction.

The Resolution also has the Board designating the Note as a bank qualified tax-exempt obligation under §265(b) of the Internal Revenue Code of 1986, as amended. Designating the Note as a bank qualified tax-exempt obligation allows the lender to charge a lower interest rate on the Note because the lender is then able to deduct 80% of its cost of carrying the Note.

The only collateral required by the Bank is a promise by the BOT to the Research Foundation to budget and apply, on an annual basis, legally available funds to repay the Obligations.

EXHIBITS/SUPPORTING DOCUMENTS:

- EXHIBIT “B” - AMENDED AND RESTATED ARTICLES OF INCORPORATION OF FLORIDA INTERNATIONAL UNIVERSITY RESEARCH FOUNDATION, INCORPORATED

FACILITATOR/PRESENTER:

- CHAIRMAN HENRIQUES

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
FLORIDA INTERNATIONAL UNIVERSITY
RESEARCH FOUNDATION, INCORPORATED**

ARTICLE I

Name

The name of this corporation is the Florida International University Research Foundation, Incorporated.

ARTICLE II

Enabling Law

This corporation is organized pursuant to the Florida Not for Profit Corporation Act.

ARTICLE III

Purposes

Section 1. This corporation is organized and shall be operated exclusively for scientific and educational purposes and not for pecuniary profit. The corporation shall be operated exclusively for the benefit of Florida International University. The purposes of this corporation include, without limitation, the promotion and encouragement of, and assistance to, the research and training activities of faculty, staff, and students of Florida International University through income from contracts, grants, and other sources, including, but not limited to, income derived from or related to the development and commercialization of University work products, and the resolution of any issues arising of the University's research activities. The corporation shall provide means by which discoveries, inventions, processes, and work products of faculty, staff, and students of the University may be patented, developed, applied, and utilized in order that the results of such research shall be made available to the public and that funds be made available from such discoveries, inventions, processes, and work products for further research at Florida International University.

Section 2. All the assets and earnings of the corporation shall be used exclusively for the exempt purposes set forth above, including the payment of expenses incidental thereto. No part of the net earnings shall inure to the benefit of any individual, and no substantial part of its activities shall be for the carrying out of a program of propaganda or otherwise attempting to influence legislation. The corporation shall not participate or intervene in (including publishing or distributing of statements) any political campaign on behalf of any candidate for public office. The corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c) (3) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws) or by any organization contributions which are deductible under Section 170(c) (2) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws). The corporation shall have no capital stock, pay no dividends, distribute no part of the income to its members, directors, or officers, and the private property of the subscribers, members, directors, and officers shall not be liable for the debts of the corporation.

ARTICLE IV **Powers**

This corporation shall have all the powers and authority as are now or may hereafter be granted to corporations not for profit under the laws of the State of Florida.

ARTICLE V
Membership

Section 1. The membership of this corporation shall consist of persons who are interested in the scientific and educational purposes of the corporation and who meet such additional qualifications as may be prescribed in the bylaws of this corporation. Qualified persons shall become members of the corporation upon approval or acceptance in any manner authorized by the Board of Directors.

Section 2. The voting and other rights and privileges of members and the provisions for termination of membership shall be as set forth in the bylaws of this corporation.

ARTICLE VI
Board of Directors

Section 1. The Board of Directors of the corporation shall consist of not fewer than three nor more than twelve persons who shall be chosen as provided in the bylaws.

Section 2. The Board of Directors may, pursuant to a resolution adopted by a majority of the full Board, designate three or more of its members to constitute an Executive Committee, which, to the extent provided in such resolution, may exercise the powers of the Board.

ARTICLE VII
Officers

Section 1. The officers of this corporation shall be a President, Secretary, Treasurer, and such other officers as may be provided for in the bylaws.

Section 2. The qualifications of officers, the time and manner of electing or appointing them, the duties of and the term of office, and the manner of removing offices shall be set forth in the bylaws.

ARTICLE VIII
Address and Registered Agent

The address of this corporation and the registered office of this corporation is Office of the General Counsel, Florida International University, University Park Campus, 11200 S.W. 8th Street, Miami, FL 33199, and the corporation's initial registered agent at such address is Cristina Mendoza.

ARTICLE IX
Bylaws

Bylaws will be adopted at the first meeting of the Board of Directors. Such bylaws may be amended or repealed, in whole or in part, by the directors in the manner provided therein. Any amendments to the bylaws shall be binding on all members of the corporation.

ARTICLE X
Amendment of Articles

Amendments to these Articles of Incorporation may be proposed by a resolution adopted by the Board of Directors, and such proposed amendments shall be submitted by the President of the University to the Florida International University Board of Trustees for approval. Proposed amendments approved by the Florida International University Board of Trustees may then be adopted by a vote of two-thirds (2/3) of the directors of this corporation.

ARTICLE XI
Term of Existence

This corporation shall have perpetual existence unless it shall be dissolved pursuant to the laws of the State of Florida.

ARTICLE XII
Dissolution

Upon dissolution or winding up of this corporation, all of its assets remaining after the payment of all costs and expenses of such dissolution shall be disbursed to the Florida International University Foundation, Incorporated, provided that it is exempt under Section 501 (c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws), or in the event that such organization is not in existence or the Florida International University Foundation, Incorporated is not exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws), the remaining assets of the corporation shall be distributed to such scientific, educational and charitable organizations ruled exempt by the Internal Revenue Service under Section 501(c)(3) and Section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws), as may be selected by the last Board of Directors, and none of the assets will be distributed to any members, directors, or officers of this corporation.

IN WITNESS WHEREOF, the undersigned have made and subscribed to these Amended and Restated Articles of Incorporation this _____ day of _____, 2005.

Chairperson of Board of Directors (SEAL)

Secretary (SEAL)

STATE OF FLORIDA)
) SS:
 COUNTY OF MIAMI-DADE)

Before me, a Notary Public duly authorized in the State and County aforesaid to make acknowledgments, personally appeared _____ and _____, to me well known to be the persons described in and who executed the foregoing Amended and Restated Articles of Incorporation, and who acknowledged before me that they executed and subscribed to these Amended and Restated Articles of Incorporation for the purposes therein expressed.

_____ Personally known
 _____ Produced identification

 Notary Public, State of Florida at Large
 My Commission expires: _____
 (NOTARIAL SEAL)

Having been named as registered agent to accept service of process for the Florida International University Research Foundation, Incorporated, at the place designated in the foregoing Amended and Restated Articles of Incorporation, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

 Cristina Mendoza
 Registered Agent

Dated: _____