



Item: VII.

Wednesday, January 21, 2009

SUBJECT: Approval of Amendment to Revised Employment Agreement for President Brogan

PROPOSED BOARD ACTION

Approve a revision to the employment agreement with Frank T. Brogan for the position of University President that was previously approved by this Board on September 16, 2008.

BACKGROUND INFORMATION

On September 16, 2008, upon the recommendation of the Chair, the Board of Trustees approved a Revised Employment Agreement with President Brogan that commences on March 5, 2009 and extends his employment for a period of six (6) years, through March 4, 2015. Under this Revised Employment Agreement, President Brogan would continue as President and Chief Executive Officer of the University.

Subsequent to this approval, at the request of President Brogan, the Chair agreed to propose an amendment to the Revised Employment Agreement at Section 4.1, which addresses the President's salary. This amendment will delay the President's previously approved base salary increase until March 5, 2010. The President will, therefore, receive no salary increase during the first year of his new contract, and his current base salary amount will continue.

The only change to the Revised Employment Agreement previously approved by the Board of Trustees is Section 4.1.

IMPLEMENTATION PLAN/DATE

The terms and conditions of the Revised Employment Agreement would take effect on March 5, 2009.

FISCAL IMPLICATIONS

Effective March 5, 2009, President Brogan will continue to be paid his current annual base salary of three-hundred twenty-eight thousand one-hundred eighty-seven dollars and fourteen cents (\$328,187.14), plus standard employment benefits. As previously approved by the Board of Trustees, effective March 5, 2010, President Brogan will be paid an annual base salary of three hundred fifty-seven thousand dollars (\$357,000.00), plus standard employment benefits. Pursuant to state law, the University will pay two-hundred twenty-five thousand dollars (\$225,000) of these amounts, and will request that the Florida Atlantic University Foundation

pay the remainder. The President's supplemental compensation and benefits remain as stated in the Revised Employment Agreement previously approved by the Board of Trustees on September 16, 2008.

Supporting Documentation: Proposed Revised Employment Agreement

Presented by: Nancy Blosser, Chair, FAU Board of Trustees

PRESIDENT'S REVISED EMPLOYMENT AGREEMENT

This President's Revised Employment Agreement (the "Agreement") is entered into by the Florida Atlantic University Board of Trustees (hereinafter referred to as the "Board" or "the Board of Trustees"), a public body corporate of the State of Florida, and Frank T. Brogan ("Brogan").

WHEREAS, the Board, acting on behalf of Florida Atlantic University (the "University"), has the authority to select and employ the President of the University; and

WHEREAS, the Board previously has entered into a President's Employment Agreement (the "Prior Agreement") with Brogan, and

WHEREAS, the term of the Prior Agreement expires on March 4, 2009; and

WHEREAS, through its annual evaluations of Brogan, the Board has determined that it is in the University's best interests to secure the continued services of Brogan through a new, revised President's Employment Agreement; and

WHEREAS, Brogan agrees to continue to serve as President of the University without any break in service under the terms and conditions of the Prior Agreement; and

WHEREAS, the parties agree that all the terms and conditions of this Agreement shall take effect on March 5, 2009;

NOW, THEREFORE, in consideration of mutual promises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree to this Agreement as follows:

1.0 Appointment as President

- 1.1 The Board of Trustees appoints and employs Brogan to be President of the University and to serve as the Chief Executive Officer of the University subject to the laws of the State of Florida, the regulations and policies of the Florida Board of Governors, the regulations and policies of the University, and the regulations, policies and supervision of the Board of Trustees.
- 1.2 Brogan shall perform all duties required by law, by this Agreement, and by custom and practice to be performed by a University president. Those duties include, but are not limited to:
 - 1.2.1 Operating the University;
 - 1.2.2 Providing institutional, faculty, and educational leadership;
 - 1.2.3 Strategic planning;
 - 1.2.4 Acting as corporate secretary to the Board;
 - 1.2.5 Preparing a budget request and operating budget;
 - 1.2.6 Establishing and implementing policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel;
 - 1.2.7 Governing admissions;
 - 1.2.8 Approving, executing, and administering contracts for the acquisition of commodities, goods, equipment, services, lease of real and personal property, and planning and construction;

- 1.2.9 Acting as custodian of all University property, including the authority to prioritize the use of University space, property, equipment, and resources;
- 1.2.10 Implementing approved programs for the University;
- 1.2.11 Establishing the internal academic calendar of the University;
- 1.2.12 Administering the University's program of intercollegiate athletics;
- 1.2.13 Recommending the establishment and termination of undergraduate, masters, and doctoral level degree programs within the approved role and scope of the University;
- 1.2.14 Awarding degrees;
- 1.2.15 Recommending a schedule of tuition and fees to be charged by the University;
- 1.2.16 Entering into Agreements for student exchange programs;
- 1.2.17 Approving the internal procedures of student government organizations and providing purchasing, contracting, and budgetary review processes for those organizations;
- 1.2.18 Adjusting property records and disposing of state-owned tangible property;
- 1.2.19 Maintaining all data and information pertaining to the operation of the University and reporting on the attainment

by the University of institutional and statewide performance accountability goals;

- 1.2.20 Insuring compliance with federal and state laws, regulations, and other requirements applicable to the University;
- 1.2.21 Reviewing periodically the operations of the University to determine how effectively and efficiently the University is being administered and whether it is meeting the goals of its strategic plan;
- 1.2.22 Organizing the University to achieve the goals of the University efficiently and effectively; and
- 1.2.23 Recommending the adoption of regulations and policies to successfully implement provisions of law governing the operation and administration of the University and the items listed above.

2.0 Best Efforts as President

- 2.1 Brogan agrees, subject to Section 2.3 below, to devote his full-time attention and energies to his duties as President of the University.
- 2.2 The duties of the President shall be performed for all existing and future campuses of the University, and for and at such other place or places as either the Board of Trustees or Brogan deem appropriate for the interests, needs, business, or goals of the University.

- 2.3 The expenditure of reasonable amounts of time for personal or outside business, as well as non-University related charitable and professional development activities, shall not be deemed a breach of this Agreement, provided such activities do not interfere with the services required to be rendered to the University under the provisions of this Agreement, Part III of Chapter 112 of the Florida Statutes: Code of Ethics for Public Officers and Employees, and applicable regulations or policies of the Board of Trustees or University.
- 2.4 Brogan shall not knowingly engage in any activity that may be competitive with and adverse to the best interests of the Board of Trustees or the University.
- 2.5. Brogan shall seek approval from the Board of Trustees prior to agreeing to serve on any board of directors or to engage in outside employment, business or professional activities subject to the provisions of University Regulation 5.011, or its successor regulation or policy. Any and all income or other compensation earned by Brogan in connection with approved non-University outside activities shall be paid to and retained by him, and such income or other compensation shall have no effect on the amount of salary, compensation, or benefits he is otherwise entitled to receive under this Agreement.

3.0 Term of Appointment; Evaluation; Renewal

- 3.1 This appointment shall be for a term of six (6) years, commencing on March 5th, 2009 and ending March 4th, 2015, renewable by mutual written consent of the parties. This appointment is subject to prior termination as provided for in this Agreement, and by the applicable laws of the State of Florida, the regulations and policies of the Board of Trustees, the regulations and policies of the University, and the regulations and policies of the Florida Board of Governors.
- 3.2 On or before June 1, 2009, and on or before June 1 each year thereafter, Brogan shall provide the Chair of the Board of Trustees ("Chair") with a list of proposed goals and objectives for the next fiscal year, based upon the accountability process implemented pursuant to Florida law including Section 1008.46 of the Florida Statutes and the University's strategic plan. The Chair and Brogan shall discuss the proposed goals and objectives, and agree upon the goals and objectives for the next fiscal year. The goals shall then be presented to the Board for discussion and approval.
- 3.3 On or before September 1, 2009, and on or before September 1 each year thereafter, Brogan shall initiate the evaluation process for the fiscal year ending on June 30 by preparing a self appraisal of his performance for submission to the Chair and evaluation by the Board of Trustees, its designee, or both, in accordance with policies and procedures established by the Board of Trustees as the Board may deem appropriate. Brogan

agrees to furnish any additional information requested by the Chair to aid the Board of Trustees in its annual performance review of Brogan.

- 3.4 The performance of the Board of Trustees of any of its obligations under this contract shall be subject to and contingent upon the availability of funds appropriated by the legislature for the current and future periods.

4.0 Salary

- 4.1 Effective March 5th, 2009, for all services rendered by Brogan, the Board of Trustees shall continue to pay him his current base salary at the base rate of Three Hundred Twenty-Eight Thousand One-Hundred Eighty-Seven Dollars and Fourteen cents (\$328,187.14) per year.

Effective March 5th, 2010, for all services rendered by Brogan, the Board of Trustees shall pay him a base salary at the base rate of Three Hundred Fifty-Seven Thousand Dollars (\$357,000) per year.

These amounts shall be payable according to the Board of Trustee's payroll policies and procedures and the pay plan applicable to the President's position, with applicable deductions, such as applicable taxes and benefits being withdrawn. Brogan shall be responsible for any income tax liability incurred as a result of this Agreement.

- 4.2 Brogan's salary shall be reviewed annually by the Board of Trustees in conjunction with the Board of Trustees' evaluation of job performance, as set forth in Section 3.3 of this Agreement. Brogan shall be eligible for any

legislative salary increase applicable to University employees in his employment classification.

5.0 Other Compensation

- 5.1 The Board of Trustees authorizes, and shall use its best efforts, to cause the Florida Atlantic University Foundation, Inc. ("FAU Foundation") to provide Brogan with supplemental compensation equal to twelve percent (12%) of Brogan's annual base salary during each year of this Agreement. This supplemental compensation shall be applied towards the annual premium for a permanent life insurance policy of Brogan's choosing, which policy shall be owned by Brogan. The supplemental compensation for a given year shall be paid on or before December 31st of such year.
- 5.2 The Board of Trustees authorizes, and shall use its best efforts, to cause the FAU Foundation to provide Brogan with a basic long term disability policy, subject to his insurability and good health at the time of application, that augments the available group plan and annuity to provide Brogan with a benefit of 66 2/3% of his starting base salary under this Agreement after a 90-day waiting period to age 65.
- 5.3 The Board of Trustees authorizes, and shall use its best efforts to cause, the FAU Foundation to provide Brogan's spouse with an annual allowance for travel to official functions.
- 5.4 The Board of Trustees, at its sole discretion, may award an annual bonus to Brogan for achievement of the annual goals and objectives agreed to

pursuant to Section 3.2. Such annual bonus shall be paid to Brogan within 90 days of the date on which the bonus is awarded.

5.5 During the term of this Agreement and contingent upon the availability of funds, the Board shall not be responsible for, but authorizes and shall use its best efforts to cause the FAU Foundation to contribute to Brogan the portions of all payments provided for in this Agreement that exceed the limits set forth in Florida Statutes Section 1012.975.

6.0 Other Benefits

6.1 Brogan shall be eligible for all applicable State of Florida and University developed benefits and perquisite programs as authorized by the legislature or other authorized governing bodies. The Board of Trustees further agrees that Brogan shall be entitled, at all times, to the state sponsored life insurance benefits applicable to executive service personnel. The life insurance policy shall provide a death benefit equal to no less than twice his then-present annual base salary, as limited by the amount applicable to select exempt and executive service personnel in his position.

7.0 Use of University-Owned Facility

7.1 The Board of Trustees requires Brogan to reside in the University's Eleanor R. Baldwin House to enable him to efficiently carry out his duties, including its use for various official University functions.

8.0 Automobile

8.1 The Board of Trustees shall use its best efforts to cause the FAU Foundation to provide Brogan with the use of a suitable full size automobile to be provided, insured and maintained by the FAU Foundation, consistent with past practice for University presidents.

8.2 The Board of Trustees shall use its best efforts to cause the FAU Foundation to replace the automobile furnished to Brogan at least once every three (3) years.

9.0 Professional Dues, Meeting and Entertainment

9.1 The Board of Trustees will authorize and provide for reasonable expenses incurred by Brogan for University-related activities. The Board of Trustees may fulfill this obligation through the use of available FAU Foundation funds.

10.0 Memberships in Service Organizations

10.1 The Board of Trustees will authorize and provide Brogan with membership dues or fees for service organizations that further the interests of the University. The Board of Trustees may fulfill this obligation through the use of available FAU Foundation funds.

11.0 Expense Receipts and Documentation

11.1 Brogan agrees to maintain and furnish to the Board of Trustees an accounting of reimbursable expenses and membership dues and fees provided for in this Agreement in reasonable detail and consistent with University and State policies, standards, and procedures on no less than a monthly basis. Following Brogan's submission of an accounting, the Board of Trustees shall make prompt reimbursement to Brogan of such expenses and membership dues and fees in accordance with applicable University and State policies, standards, and procedures.

12.0 Termination of the Contract for Cause

12.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that, upon a vote of two thirds (2/3) of the Board of Trustees, the Board of Trustees may terminate this Agreement at any time for "just cause" (as hereinafter defined).

12.2 "Just cause" shall be defined as: (i) a deliberate or serious violation by Brogan of the duties set forth in this Agreement or his refusal or unwillingness to perform such duties in good faith, during his full business time, or to the best of his abilities if, within thirty (30) days following Brogan's receipt of the written notice of what the Board of Trustees considers to be the violation, Brogan fails to cure the same; (ii) materially harmful neglect of essential responsibilities; (iii) grave dishonesty that adversely affects the University; (iv) the commission of any felony or of a

misdemeanor involving moral turpitude; or (v) a material, significant, or repetitive violation or breach of this Agreement.

12.3 In the event of termination for “just cause” by the Board of Trustees, Brogan’s employment with the University as its President shall cease, and he shall not be entitled to any further compensation or benefits as President, except for benefits required to be continued by law.

13.0 Termination Without Cause

13.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that upon a vote of two thirds (2/3) of the Board of Trustees, the Board may terminate the Agreement at any time prior to its term expiration without cause, provided that Brogan is given ninety (90) days prior written notification.

13.2 If this Agreement is terminated without cause, Brogan shall be entitled to receive benefits and payments as provided in Section 15 of this Agreement.

14.0 Termination Due to President’s Resignation, Death or Disability

14.1 Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate upon Brogan’s resignation, death or “permanent disability” (as hereinafter defined). Such termination shall be deemed to have occurred for “just cause” and Section 15, entitled “Severance”, shall not apply, and Brogan shall not be entitled to receive

any benefits or payments as provided in Section 15. For purposes of this Agreement, "permanent disability" shall be defined as Brogan's inability to perform the duties set forth in Section 1.2 for a minimum of six (6) continuous months.

- 14.2 In the event of Brogan's death during the term of this Agreement, his spouse or, if none, his estate, shall receive all accrued benefits as of the date of his death to the extent permitted by law.

15.0 Severance

- 15.1 If this Agreement is terminated without cause pursuant to Section 13.0 of this Agreement, upon termination, the Board of Trustees shall immediately commence monthly payments to Brogan of an amount equal to one-twelfth (1/12) of his annual base salary in effect immediately prior to the termination, until the end of the term of this Agreement for a maximum period of twenty-four (24) months, as long as Brogan remains unemployed.
- 15.2 Brogan will be entitled to continue the health insurance plan and life insurance at Brogan's expense in accordance with applicable law. He will not be entitled to any other benefits except as otherwise provided herein or as otherwise provided or required by applicable law. In no event shall the Board of Trustees be liable for the loss of any business opportunities or any other benefits or income from any sources that may result from the Board of Trustees' termination of this Agreement without cause.

- 15.3 The parties have bargained for and agreed to this severance pay provision, giving consideration that termination of this Agreement without cause, prior to its natural expiration, may cause loss to Brogan in an amount difficult to be determined. The parties further agree that the payment of such severance by the Board of Trustees, and acceptance by Brogan, shall constitute adequate and reasonable compensation to Brogan, in the form of liquidated damages, relieving the Board of Trustees of any liability for any alleged damages or injury suffered.
- 15.4 If Brogan elects to obtain new full-time employment during the ninety day (90) notice period provided for in Section 13.1, then this Agreement shall immediately terminate and the Board of Trustees' financial obligations under this Agreement, including the severance payments and benefits provided for in this section, shall cease.

16.0 Non-binding Mediation

- 16.1 The Board of Trustees and Brogan agree that if any dispute arises concerning this Agreement, they will first attempt in good faith to resolve the dispute to their mutual satisfaction. If they are unable to do so, the Board and Brogan agree that they will submit the dispute to non-binding mediation in Boca Raton, Florida, in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect. The University and Brogan will use their best efforts, to the extent permitted under Florida law, to keep any disputes and

any efforts to resolve disputes confidential, informing only their respective legal counsel and other persons determined in good faith to have a need to know. To the extent permitted under Florida law, they will use their best efforts to ensure that such persons do not further disclose any such information. The University and Brogan agree that no mediator or arbitrator may have any material ongoing relationship with the University.

17.0 Notice

17.1 Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to the University:

Chairperson
Florida Atlantic University Board of Trustees
777 Glades Road
Boca Raton, Florida 33431

If to Brogan:

Frank T. Brogan
Florida Atlantic University
777 Glades Road
Boca Raton, Florida 33431

With a copy to:

General Counsel
Florida Atlantic University Board of Trustees
777 Glades Road
Boca Raton, Florida 33431

18.0 Entire Agreement: Modification

18.1 This Agreement constitutes the entire understanding of the parties and supersedes any and all prior or contemporaneous representations or Agreements, whether written or oral, between the parties. There are no other promises, understandings, obligations, inducements, or

considerations between the parties or owed by either party to the other that are not set forth in this Agreement.

18.2 This Agreement cannot be changed or modified unless accomplished in writing and signed by the parties.

19.0 Severability

19.1 The terms of this Agreement are severable, meaning that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable to the extent possible.

20.0 Governing Law and Forum

20.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida.

20.2 Notwithstanding any other terms and conditions of this Agreement, either party may bring an action for the sole and limited purpose of enforcing the terms and conditions of this Agreement in any court of competent jurisdiction. Venue shall be in Palm Beach County, Florida.

21.0 Understanding of the Agreement

21.1 Both parties represent that they have thoroughly read this Agreement, that they understand it to be a binding contract, that they understand each provision, term, and condition of this Agreement as well as its legal effect,

and that they have signed the Agreement voluntarily and of their own free will with the intention to comply with its terms. Both parties have participated in the preparation of this Agreement. Therefore, the Agreement shall not be construed against or in favor of either party based upon which party was responsible for the drafting of the Agreement.

22.0 Public Disclosure of the Agreement

22.1 Both Parties agree and acknowledge that this Agreement may be subject to the Florida public records law, Chapter 119, or other provisions, and may, therefore, be subject to disclosure by and in the manner provided by law.

23.0 Waiver

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

24.0 Assignment

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

25.0 Execution and Counterparts

25.1 This Agreement may be executed in counterparts and by the parties on separate counterparts each of which, when so executed, shall constitute but one and the same instrument.

26.0 No Trust Fund

26.1 Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that Brogan acquires a right to receive payments from the University, such rights shall be no greater than the right of any unsecured, general creditor of the University.

27.0 Miscellaneous

27.1 The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees" and "University," where applicable or appropriate, shall include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

THEREFORE, Frank T. Brogan and Nancy Blosser, Chair and authorized representative of the Florida Atlantic University Board of Trustees, have executed this Agreement on the dates appearing below.

Florida Atlantic University Board of Trustees

Nancy Blosser,
Chairperson

Date

Frank T. Brogan

Date