



Item: SP:A-1

Wednesday, December 12, 2007

SUBJECT: Harbor Branch Memorandum of Understanding

PROPOSED BOARD ACTION

Adopt a resolution approving the final Memorandum of Understanding ("MOU") with Harbor Branch Oceanographic Institution, Inc. ("HBOI") and authorizing the President to take such further actions and to execute such documents as are necessary and appropriate to achieve the purposes of the MOU.

BACKGROUND INFORMATION

The final MOU with HBOI outlines the framework for transferring certain HBOI assets, including approximately 138 acres of real property, HBOI personal property, HBOI operational/research contracts, and intellectual property associated with current HBOI operations. The transferred assets will become a part of FAU and remain intact as an FAU research institute, reporting primarily to the Provost's office and other organizational divisions throughout FAU. The MOU also covers the transition of the HBOI employees to FAU, the restructuring of HBOI into an FAU direct-support organization, and those assets and liabilities retained by HBOI.

Approximately 138 acres are transferring to FAU. The property transferring to FAU will be restricted to educational and research use and HBOI shall have the right to approve any further transfers by FAU for six years after the closing. The adjacent real property retained by HBOI is subject to similar use restrictions and FAU shall have perpetual approval rights over any future transfers by HBOI (other than to the state or county for conservation, passive or recreational use). We understand that 123 acres of the remaining property are scheduled to be acquired by St. Lucie County for a county park/preserve and that funding for such an acquisition has now been approved by the State. Appropriate easement agreements for access and utilities will be mutually provided.

The Harbor Branch employees shall be offered employment with FAU at their current salary. Those employees fully funded with state dollars in FAU's current operating budget may not be terminated by FAU without cause earlier than June 30, 2008. Harbor Branch shall retain all employee liabilities prior to the closing date and shall compensate the Harbor Branch employees for all vested paid time off. With limited exceptions, the Harbor Branch employees will come into FAU as new FAU employees.

In conjunction with the closing, the HBOI Board is reorganizing itself to become a direct-support organization of FAU—to operate exclusively to receive, hold, invest and administer property to and for the benefit of FAU and the FAUHBOI Institute. The HBOI Foundation will have two appointees from FAU. The current HBOI endowment and debt liabilities will remain with the reorganized HBOI Foundation.

IMPLEMENTATION PLAN/DATE

The final closing date for the transaction is scheduled for December 31, 2007. Preparations for the transition have been ongoing.

FISCAL IMPLICATIONS

Governor Crist has previously approved the appropriation to FAU of \$8.16 million in recurring funding for the operation of Harbor Branch by FAU and a one-time appropriation to FAU of \$44.6 million in funds for site work, renovations, environmental, health and safety, IRM, and new construction expendable as of July 1, 2007. The Personnel Services Agreement previously approved by this Board—under which FAU retained the services of HBOI with the appropriated funds to preserve, maintain and enhance the value of the Harbor Branch assets during the interim period—will terminate on the December 31, 2007 closing date. HBOI and FAU shall work cooperatively to secure additional appropriated funds in future years to accomplish recurring funding of at least \$13.750 million as originally contemplated in the original Letter of Intent dated April 25, 2007

Supporting Documentation: Memorandum of Understanding
Proposed Resolution
(Both included in Strategic Planning Committee Back-up Material)

Presented by: David L. Kian

Phone: 561-297-3007