Florida Gulf Coast University Board of Trustees  
September 14, 2004

SUBJECT: President’s Employment Agreement

PROPOSED BOARD ACTION

Approve the employment agreement for President William C. Merwin

BACKGROUND INFORMATION

At the June 2004 meeting, Mr. David Lucas, Chair, Administration and Finance Committee, was asked by Mr. Scott Lutgert, Chair, with the concurrence of the Board of Trustees, to negotiate a new employment agreement with Dr. William C. Merwin for three additional years, with the contract term to begin on July 1, 2004. That employment agreement has been completed and is presented to the Board of Trustees for its consideration and approval.

Supporting Documentation Included: Employment agreement

Legal Review by: Mr. Guy E. Whitesman, Esq., Henderson, Franklin, P.A.

Prepared by: Dr. Joseph D. Shepard, Vice President – Administrative Services  
Mr. Curtis Bullock, Assistant to the President

Submitted by: Mr. David Lucas, Chair, Administration and Finance Committee
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is entered into this 1st day of July 2004, by and between the Board of Trustees (the “Board”) of Florida Gulf Coast University (the “University”) and Dr. William C. Merwin (“Dr. Merwin”).

BACKGROUND

WHEREAS, the University is a fully accredited, state assisted degree-granting institution of higher education located in Fort Myers, Florida;

WHEREAS, the University desires to extend the Dr. Merwin's employment with the University and provide the President with an incentive to continue with the University for at least another three years;

WHEREAS, Dr. Merwin desires to work for the University under the specific terms and conditions of employment for at least another three years as stated in the Agreement;

WHEREAS, Dr. Merwin is currently residing in a residence owned by the Florida Gulf Coast University Foundation (the “Foundation”) and located in the appreciating Wildcat Run subdivision in Estero;

WHEREAS, the existing employment term of the President is available for renewal on July 1, 2004;

WHEREAS, Dr. Merwin and the University have freely negotiated their respective terms and conditions of employment and have reached agreement on such matters; and

NOW, THEREFORE, in consideration of promises, covenants and agreements of the parties contained herein, the parties, intending to be legally bound, agree as follows:

TERMS

1. Position and Duties

   a. Position. During the Employment Term (as defined below in 1. c), the University will employ Dr. Merwin as the President and Chief Executive Officer of the University. Dr. Merwin will hold the faculty rank of Professor of History. He does not hold tenure either in his administrative role as President or as a faculty member.

   b. Duties. During the Employment Term, Dr. Merwin will diligently devote his full professional time, ability, and attention to the day-to-day operations of the University, including without limitation, all
administrative, executive and academic functions. Dr. Merwin’s powers and duties are as stated in the Board of Trustees Policies and Procedures, University rules and in the laws of the State of Florida as they presently exist or may hereafter be amended, and will include such other duties as may be assigned to him by the Board. He is the chief executive officer of the University and responsible for all aspects of the University’s activities and performances in conformance with the provisions of the University’s governing documents, Policies and Procedures, University rules and State of Florida laws, as they presently exist or may hereafter be amended from time to time. The Board recognizes the benefits to the University of Dr. Merwin participating in civic, charitable, corporate, educational, and cultural activities that are consistent with his position and of benefit to the University. Service on corporate boards or consulting activities should receive prior approval of the board chair.

c. **Term of Employment.** Dr. Merwin’s term of employment by the Board under this agreement will begin on 1 July 2004 and will end on 30 June 2007. The parties may agree to renew this agreement for an additional term. This agreement amends and takes precedence over Dr. Merwin’s employment agreement that began on 1 July 2002 and is scheduled to end on 30 June 2005.

d. **Periodic Reviews.** There will be two levels of review of the President’s performance: a formal written review and a less formal review. The Board, through the appointment of an outside consultant, will commission a review of the President’s performance of his duties and responsibilities every three years from the date of this Agreement. A review, based on goals prepared by the President and approved by the Board, will occur in each year in which there is no commissioned review. Each year, prior to the Board’s June meeting, the President will submit to the Board an assessment of the state of the University, his personal objectives, and specific goals and priorities for the University and himself for the ensuing twelve months. The Board may discuss and amend these goals and priorities at its discretion. At the end of each year, Dr. Merwin will report to the Board on the extent to which the goals and priorities adopted by the Board have been accomplished and supply appropriate commentary. The Board will evaluate Dr. Merwin on the basis of their assessment of his success in accomplishing these goals and priorities.

2. **Compensation**

a. **Base Salary.** As compensation for the services described in this Agreement, the University will pay Dr. Merwin a base salary of $265,000 for the time period 1 July 2004 through 30 June 2005. This base salary will be increased by 5% each 30 June based upon a satisfactory annual review by the Board (see 1d). As per Florida Statute (F.S. 1012.975 (2))
public funds shall only remunerate the compensation for services up to $225,000. All additional amounts required shall come from non-public funding sources such as any University Direct Support Organization or other non-public sources as defined by F.S. 1012.975 (1) (b).

b. **Base Salary Payment and Increases.** Dr. Merwin’s base salary will be paid in accordance with the customary payroll practices of the University. The University will deduct from each such installment all amounts required to be deducted and withheld in accordance with applicable federal and state income tax laws, FICA and other withholding tax requirements.

c. **Deferred Compensation.** During the period of 1 July 2004 through 30 June 2007 Dr. Merwin will accrue deferred compensation of fifteen (15) percent of his base salary in the Florida Gulf Coast University President’s 29CFR 2510.3-2(b) severance pay plan.

Participation and benefits associated with such funds are controlled by the plan agreement. The Foundation and/or other entities will contribute this deferred compensation.

d. **Performance Awards.** The Board may at its sole discretion award Dr. Merwin performance payments for service rendered under the Agreement. In order to meet the Board’s goals of a) retaining Dr. Merwin, and b) setting compensation tied to performance the following performance incentives shall be awarded each 30 June upon a satisfactory annual review by the Board (see 1d).

After completing the first year of his contract (30 June 2005) and achieving a satisfactory evaluation by the Board, if Dr. Merwin chooses to retire as president, he can receive either a 7% discount on the fair market value of the house located at 20226 Country Club Lane, Estero, Florida 33928 or a $30,000 payment.

After completing the second year of his contract (30 June 2006) and achieving a satisfactory evaluation by the Board, if Dr. Merwin chooses to retire as president, he can receive either an additional 8% (totaling 15%) discount on the fair market value of the house located at 20226 Country Club Lane, Estero, Florida 33928 or a $60,000 payment.

After completing the third year of his contract (30 June 2007) and achieving a satisfactory evaluation by the Board, if Dr. Merwin chooses to retire as president, he can receive either an additional 9% (total 24%) discount on the fair market value of the house located at 20226 Country Club Lane, Estero, Florida 33928 or a $90,000 payment.

In no case shall the discount on the house located at 20226 Country Club Lane, Estero, Florida 33928 reduce the selling price below $585,000.
e. **Automobile Provision and Expenses.** During the Employment Term, the University or the Foundation will provide a full-sized automobile for his business related and other use. The Foundation will directly pay or reimburse Dr. Merwin for the costs of licensing, permits, gasoline, maintenance, repairs and insurance on this automobile.

f. **Insurance, Vacation and Sick Leave.** Dr. Merwin will receive leave and benefits at least equal to those provided to FGCU Administrative and Professional Executive Service employees.

g. **Benefits.** During the Employment Term (and thereafter as required by law or permitted by the terms of the applicable plans), the University shall provide medical insurance benefits, retirement benefits, and life insurance benefits, disability benefits, and liability insurance under plans available generally to the officers of the University as such plans may be amended. If at any time during the Employment Term Dr. Merwin becomes disabled, or is unable for any reason to substantially perform his duties as described in this Agreement, other than death, and he has not breached any of the provisions of this Agreement, then Dr. Merwin will first use any sick or annual leave accruals and exhaust any applicable Group Disability Income Insurance (see 2f) prior to seeking payment under this section. Any additional payments made under this section beyond this point will be at the discretion of the Board and will be paid by the Foundation.

h. **Expenses.** During the Employment Term, the Foundation will provide Dr. Merwin a discretionary fund of $30,000 annually for reasonable and customary expenses incurred by him in furtherance of his duties hereunder. This amount may be increased as his duties dictate. It is understood that reasonable expenses for traveling, meals, hotel accommodations, and business related meetings and entertainment would be charged directly to the Foundation. Such charges will be in compliance with the policies and procedures adopted by the University for this purpose. Dr. Merwin will also be provided, by the Foundation, a discretionary allowance of $4,000 for spousal travel.

i. **President’s House.** The University deems it to be in its best interest that the President occupies the President’s Home, which is designated by the Board. The current President’s Home is designated to be 20226 Country Club Lane, Estero, Florida 33928 and is located within five miles of the FGCU campus. As a condition of employment, Dr. Merwin is required to occupy the President’s Home and is encouraged to use the President’s Home in the performance of his duties hereunder including but not limited to receptions and meetings benefiting the University. The Foundation, will provide maintenance and repairs, utilities, house keeping, grounds keeping and landscaping for the President’s Home and pay any
homeowners’ assessments and taxes. The Foundation will furnish all public areas in the President’s Home.

j. **Moving Expenses.** Dr. Merwin will be entitled to reasonable moving expenses should his services to the University, as President be discontinued for any reason. These expenses will be reimbursed by the Foundation.

k. **Professorial Appointment.** Dr. Merwin will be eligible to join the teaching faculty upon conclusion of his presidency, and will be eligible for sabbatical leave of one calendar year. Prior to beginning any sabbatical leave, he will have committed to fill the position of “University Professor of History” or other mutually agreeable position. Upon conclusion of the sabbatical, Dr. Merwin’s teaching, research, and service responsibilities will be as directed by the Dean of the College to which he is assigned. He will be responsible for teaching three courses during each twelve-month period (1 July through 30 June). His initial salary whether on sabbatical leave or as Professor during his first year will be 90% of his final annual base president salary, not to include any deferred compensation or performance award payments. During his second year of assignment his salary will be 90% of his initial year salary as Professor. Thereafter, he will be eligible for any salary increments provided regular, full-time faculty members. Usual faculty and administrative processes will determine such salary increments.

During his service as a full-time faculty member, the University shall establish a fund of $5,000 per year that Dr. Merwin may draw upon to support his legitimate professional scholarly activities, including professional travel, journal and book purchases, computer software, and the like.

Upon assuming his full-time faculty position, Dr. Merwin will be provided with a private furnished office that includes a microcomputer, printer, fax, scanner, Internet access, and secretarial support.

3. **Renewal, Termination or Resignation**

a. **Renewal.** This Agreement may be amended, renewed or extended in writing on terms mutually satisfactory to the Board and the President.

b. **Termination.** The parties agree that the University may terminate this Agreement and the President’s employment as President at any time either “with cause” or “without cause.” Should the Board dismiss Dr. Merwin “without cause,” the Board will determine the amount of termination compensation, but in no case will the amount be less than the equivalent of Dr. Merwin’s annual total compensation plus performance awards in effect at the time of termination. If the University terminates the President’s employment “with cause,” the Board shall determine the amount of
termination compensation if any. The Foundation will pay termination compensation paid under this section. Reasons for termination of Dr. Merwin “with cause” shall include the following:

1. A deliberate and certain violation of the duties set forth in this Agreement, or his refusal or unwillingness to perform such duties in good faith and to the best of his abilities.

2. Any conduct constituting moral turpitude that would bring public disrespect, contempt, or ridicule upon the University.

3. A serious and deliberate violation of a State or Federal law, rule, regulation, or Constitutional provision or of a University rule or policy, which violation may, in the judgment of the Board, adversely reflect upon and/or adversely affect the University.

4. Prolonged chronic and/or excessive absences from duty without the Board’s consent.

Should a termination occur, it will be the Board’s option, regardless of the reason for the termination and the amount of compensation due, to immediately relieve Dr. Merwin of his duties.

c. **Resignation**  Should Dr. Merwin resign from the Presidency; he shall receive compensation to which he is entitled under Section 2 of this Agreement until such time as the effective date of this resignation. Any performance awards in effect shall be pro-rated until such time as the effective date of the resignation.

4. **Miscellaneous**

a. **No Waiver.** Neither any reasonable delay nor failure on the part of any party to exercise any rights under this Agreement, nor a partial or single exercise by any party to exercise any rights under this Agreement, shall constitute a waiver of such rights or of any others rights under this Agreement.

b. **Entire Agreement.** This Agreement represents the entire Agreement of the parties and supersedes any and all other oral or written agreements or understandings between them. No change, amendment, alteration, waiver or modification of any provision hereto may be made except in a writing signed by the parties hereto.

c. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
d. **Taxes.** Dr. Merwin shall be responsible for his federal, state, local or other taxes resulting from any compensation or benefits provided to him by the University. The University may withhold all federal, state, local or other taxes as may be required pursuant to law or governmental regulation or ruling from any compensation or benefits provided under this Agreement.

e. **Severability.** If any provision of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, such illegal, invalid, or unenforceable provision will not affect any other provision of this Agreement. In such a case, this Agreement will be construed as if such an illegal, invalid or unenforceable provision had never been contained herein.

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

g. **Bond.** The University may, at its option and expense, obtain a faithful performance and fidelity bond on the President.

h. **Key Person Insurance.** The University may, at its option and expense, secure and maintain “key person” insurance on the life of the President in such amount, as the University deems necessary or appropriate. The President shall cooperate fully with the University in connection with securing and maintaining the insurance.

i. **Arbitration of Disputes.** The parties agree that final and binding arbitration in accordance with the policies and procedures of the American Arbitration Association will be the sole and exclusive forum for resolving any disputes or claims between the President and the University concerning the terms of this agreement. Any hearings related to this agreement will be held in Lee County, Florida.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed as of this _____ day of _____, 2004.
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FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES

By: ______________________________
    Mr. Scott Lutgert
    Chairman, Board of Trustees

WILLIAM C. MERWIN

By: ______________________________
    William C. Merwin
    President

Approved as to form and execution

By: ______________________________
    Mr. Guy E. Whitesman, Esq.