Florida Gulf Coast University Board of Trustees
January 31, 2007

SUBJECT: Retirement Agreement for Dr. William C. Merwin

PROPOSED BOARD ACTION

Approve retirement agreement for Dr. William C. Merwin as proposed with any modification as discussed by the Board.

BACKGROUND INFORMATION

The FGCU Board of Trustees met for an emergency meeting on January 17, 2007 and unanimously accepted the early retirement resignation of President William C. Merwin. After a short discussion it was agreed that a retirement agreement would be reviewed for acceptance after having the chance to review the independent audit by Stroemer Tuscan & Company, PA. Attached is the retirement and settlement agreement for Board discussion.

Supporting Documentation Included: Retirement Agreement

Prepared by: Vice President for Administrative Services and Finance Joe Shepard

Legal Review by: Outside Counsel John Potanovic of Henderson Franklin Attorneys at Law (January 30, 2007)

Submitted by: Vice President for Administrative Services and Finance Joe Shepard
RETIREMENT AGREEMENT

This Agreement is made by and between Dr. William C. Merwin ("Dr. Merwin") and the Board of Trustees of Florida Gulf Coast University ("FGCU").

WITNESSETH

WHEREAS, Dr. Merwin by signing below, has retired and resigned from his position as President, and as an employee and/or faculty member of FGCU, effective January 17, 2007; and

WHEREAS, FGCU has accepted the notice of retirement and resignation tendered by Dr. Merwin; and

WHEREAS, in consideration of the retirement, the severance payment to Dr. Merwin, together with any other consideration to be provided to Dr. Merwin as more fully described below;

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Dr. Merwin and FGCU for themselves, their successors and assigns hereby agree as follows:

1. Dr. Merwin's retirement and resignation from employment with FGCU is effective as of January 17, 2007.

2. FGCU will pay Dr. Merwin a severance payment, less applicable payroll deductions and withholdings, including Social Security and FICA. The severance payment shall be (__________________________). Dr. Merwin understands and agrees that FGCU's obligation to make the severance payment described herein shall only accrue upon expiration of the unexercised revocation period described in paragraph 14(e).
3. The severance payment and any other consideration described herein, shall be provided by FGCU after Dr. Merwin delivers this executed original Retirement Agreement to FGCU.

4. In connection with this Retirement Agreement, the parties further agree to the following:
   a. Dr. Merwin will cooperate to the fullest extent possible in the transition of duties to the interim President, and/or the successor President of FGCU;
   b. in furtherance of efforts toward a smooth transition, Dr. Merwin will be permitted to maintain the home computer, fax machine, and T1 line currently provided by FGCU. At such time as FGCU determines, the T1 line will be transferred into Dr. Merwin's name for billing purposes, or alternatively, the T1 line service will be cancelled by FGCU. In addition, at such time as FGCU determines, it will give Dr. Merwin the opportunity to purchase the computer and/or fax machine at a mutually agreed upon cost, or alternatively, Dr. Merwin will return the computer and fax machine to FGCU.

5. Dr. Merwin acknowledges that during his tenure with FGCU he has been involved in and privy to information related to education development, personnel and investigative matters. Some of these issues may have been resolved during Dr. Merwin's tenure and others may remain unresolved and/or pending and have resulted in action against FGCU. As a result of knowledge that Dr. Merwin has acquired during his
tenure as to these matters, it may be necessary from time to time for Dr. Merwin to participate in fact finding meetings, interviews, depositions, document review and production. Dr. Merwin agrees to so participate on an impartial basis to assist in the furtherance of any necessary fact finding.

6. The parties agree that FGCU will cancel or discontinue any memberships which it has heretofore funded on behalf of Dr. Merwin, including without limitation, country club, dining, or any other social memberships.

7. The parties agree that upon full execution of this Agreement, the Employment Agreement entered into July 1, 2006, shall be of no further force or effect.

8. Dr. Merwin, on behalf of himself and his successors, assigns, agents, and representatives, in exchange for the consideration described herein, fully releases and discharges FGCU as well as its trustees, officers, agents, employees, representatives, assigns, successors, and related entities, including the Florida Gulf Coast University Foundation and the Florida Gulf Coast University Financing Corporation, with respect to and from any and all claims, wages, demands, rights, liens, agreements, contracts, actions, suits, obligations, debts, damages and judgments of whatever kind or nature in law, equity or otherwise, whether now known or unknown, arising out of or in any way connected with his previous employment relationship with FGCU, his retirement and resignation from employment with FGCU, or any other transactions, occurrences, acts or omissions, or any loss, damage or injury whatsoever, whether known or unknown, suspected or unsuspected, resulting from any act or omission by FGCU or its related entities, from the beginning of the world to the date of this Agreement.
9. Without limiting the generality of the foregoing, this Agreement also specifically pertains to any claim whether State, Federal, Statutory, Administrative or Common Law for reinstatement, personal injuries, breach of contract (express or implied), breach of any covenant of good faith and fair dealing (express or implied), or for claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) et seq. (prohibiting discrimination on account of race, sex, color, national origin, religion, etc.); the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. (prohibiting discrimination on account of age); the Americans with Disabilities Act of 1990, 42 U.S.C. §121.01 et seq. (prohibiting discrimination on account of disabilities); the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et seq.; the Family and Medical Leave Act of 1993; the Florida Human Rights Act of 1992 (§760.01-760.11 and 509.092 Florida Statutes) (prohibiting discrimination on account of race, color, religion, sex, national origin, age, handicap, marital status, etc.); as well as any amendments to any of the foregoing; any common law or statutory wrongful discharge or retaliatory discharge theory, or any claim for severance pay or benefits, other than the severance pay and/or benefits specifically being provided to Dr. Merwin herein.

10. Each of the parties shall be responsible for his/its own legal fees and costs incurred, and all other expenses incidental to the carrying out of the terms hereof, and such fees, costs, and expenses shall be paid by the party which incurred them.

11. This Agreement shall inure to the benefit of and be legally binding upon the parties hereto, and their heirs, successors, personal representatives and assigns, even if it should be judicially declared at any time for any reason that this Agreement or any part hereof is inapplicable to or is invalid as to any or all of the parties. The validity
or unenforceability of any provision of this Agreement, shall not effect the validity or unenforceability of any remaining provisions.

12. In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretation that written documents be construed against the party preparing the same shall not be applicable.

13. Dr. Merwin agrees that he will not apply for re-employment with FGCU or any entity, affiliate or subsidiary related to FGCU, and agrees that such application would be a breach of this Agreement and that FGCU may disregard any such application. Any refusal by FGCU to hire or rehire Dr. Merwin may not be the basis of any lawsuit or administrative proceeding; nor may it be used as evidence of or constitute a violation of any federal, state or local statute, regulation or ordinance, or breach of any obligation imposed under common law.

14. In executing this Agreement, Dr. Merwin FURTHER REPRESENTS AND AGREES THAT:

   a. This Agreement was signed KNOWINGLY, VOLUNTARILY, FREELY, AND OF HIS OWN VOLTION;

   b. In considering and signing this Agreement, he consulted with his attorney;

   c. He is not waiving rights or claims that may arise after the date this Agreement is executed, for incidents occurring after the date this Agreement is executed;
d. The monetary consideration, as well as any other consideration, is provided in exchange for this Agreement, and is in addition to that which he is already otherwise entitled to from FGCU; and

e. He has been advised by FGCU that he may have up to 21 days to consider this Agreement, and shall have seven (7) days from the date he executes the Agreement, if he in fact executes the Agreement, to revoke it. Any such revocation must be received by FGCU, in hand, and in writing, within the seven-day revocation period.
IN WITNESS WHEREOF, the parties have executed this Agreement and Release as of the day and year indicated below.

DR. WILLIAM C. MERWIN
Date: ________________________

WITNESSES:

_______________________________  ________________________________

FLORIDA GULF COAST UNIVERSITY  WITNESSES:
BOARD OF TRUSTEES

By: ___________________________  ________________________________
    SCOTT LUTGERT
    Chairman, Board of Trustees
Date: ________________________