



Item: PC: A-1

Tuesday, January 29, 2019

SUBJECT: Revised Employment Agreement for Dr. John Kelly

PROPOSED BOARD ACTION

Approve a revised employment agreement with President John W. Kelly.

BACKGROUND INFORMATION

On January 17, 2014, the Board unanimously selected Dr. John W. Kelly to serve as President of Florida Atlantic University and authorized the Chair to negotiate an employment agreement with Dr. Kelly. A survey of the compensation terms of the other SUS presidents was conducted and presented to the Board, and on February 18, 2014, the Board unanimously approved an employment agreement (the "Agreement") with Dr. Kelly. The Board and Dr. Kelly subsequently agreed to three amendments to the Agreement, dated February 1, 2016, October 1, 2016, and October 25, 2017. For the October 2016 amendment, the Board retained the professional compensation consulting firm of McConnell & Company to prepare a report of comparable university presidential pay ranges and a reasonable compensation opinion letter.

The Agreement expires on February 28, 2019. In anticipation of this expiration, on October 2, 2018, the Board unanimously authorized the Chair to (i) contract with McConnell & Company to obtain an update of their report and letter and (ii) negotiate a new employment agreement with Dr. Kelly to be presented to the BOT for approval. Chair Barbar completed both of these delegations and the revised employment agreement is now submitted for approval.

The proposed revised employment contains the following changes from Dr. Kelly's existing Agreement, as amended:

- The term is extended from March 1, 2019 to February 29, 2020. Current Board of Governors policy only allows for one-year extensions of presidential employment agreements.
- The annual salary is increased to five hundred five thousand dollars (\$505,000.00). This salary is fifth highest among SUS presidents.
- The percentage of salary deposited in a deferred account is increased to 25%.
- The calculation of Dr. Kelly's salary if he steps down from the presidency is clarified.
- The disposition of the Baldwin House should Dr. Kelly pass away is clarified.

In all other respects the revised agreement is identical to the Agreement, as amended. As determined by McConnell & Company, these changes yield a total compensation package that is within the range of comparator universities and deemed reasonable for purposes of Internal Revenue Service regulations.

IMPLEMENTATION PLAN/DATE

If approved, the revised agreement will become effective March 1, 2019.

FISCAL IMPLICATIONS

Florida law caps the amount of salary, bonuses, and cash-equivalent compensation that may be paid to state university presidents from public funds. The Agreement provides that the Board will request that the FAU Foundation provide all sums beyond the amount permitted to be paid from public funds. This practice is consistent with that of every other SUS university. The University General Counsel has confirmed that the Amendment is consistent with all legal requirements for State of Florida State University System employment agreements.

Supporting Documentation: 2016 University Presidents' Pay Range Report
Updated University Presidents' Pay Range Compensation Table
Reasonable Compensation Determination Letter
Proposed Revised Employment Agreement

Presented by: Trustee Anthony Barbar, Chair Phone: 561-405-0625

RENEWED PRESIDENT'S EMPLOYMENT AGREEMENT

This Renewed President's Employment Agreement (the "Agreement") is entered into by the Florida Atlantic University Board of Trustees (the "Board" or "the Board of Trustees"), a public body corporate of the State of Florida, and Dr. John W. Kelly ("Dr. Kelly").

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 selected Dr. Kelly to serve as President of the University and entered into a President's Employment Agreement with Dr. Kelly dated February 20, 2014, as amended February 1, 2016, October 1, 2016, and October 25, 2017 (collectively, the "Prior Agreement"); and

WHEREAS, by its terms the Prior Agreement expires on February 28, 2019; and

WHEREAS, the Board and Dr. Kelly desire to renew and amend the Prior Agreement and restate the terms and conditions of Dr. Kelly's employment as set forth herein;

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 appoints and employs Dr. Kelly 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 Dr. Kelly shall perform all duties required or delegated by law, by University and Board of Trustees policy and regulation, by this Agreement, or 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 Ensuring 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;
- 1.2.23 Developing and actively participating in philanthropic fundraising initiatives to support the University; and
- 1.2.24 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 Dr. Kelly 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 the Board deems 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 Dr. Kelly 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. Dr. Kelly shall seek approval from the Board 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 Dr. Kelly 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 one (1) year, commencing on March 1, 2019 and ending February 29, 2020, 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 each June 1 while Dr. Kelly is employed as President, Dr. Kelly shall provide the Chair of the Board of Trustees (“Chair”) with a list of proposed goals and objectives for the next fiscal year that begins on the following July 1, based upon the accountability processes implemented pursuant to Florida law including Section 1008.46 of the Florida Statutes, the Board of Governors’ Performance Funding Model, the University’s and the Board of Governors’ strategic plans, and the current priorities of the University. The Chair and Dr. Kelly shall discuss and agree upon Dr. Kelly’s goals and objectives for the next fiscal year. The goals and objectives shall then be presented to the Board for discussion and approval.
- 3.3 On or before each September 1 while Dr. Kelly is employed as President, Dr. Kelly shall initiate the evaluation process for the fiscal year ending on the prior June 30 by preparing a self-appraisal of his performance for submission to the Chair and evaluation by the Board, its designee, or both, in accordance with policies and procedures established by the Board

as the Board may deem appropriate. Dr. Kelly agrees to furnish any additional information requested by the Chair to aid the Board in its annual performance review of Dr. Kelly.

3.4 The performance of the Board 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 For all services rendered by Dr. Kelly, the Board of Trustees establishes and approves a base salary of Five Hundred Five Thousand Dollars (\$505,000) per year. This amount shall be payable according to the Board'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. Dr. Kelly shall be responsible for any income tax liability incurred as a result of this Agreement.

4.2 Dr. Kelly's salary shall be reviewed annually by the Board in conjunction with the Board's evaluation of job performance set forth in Section 3.3 of this Agreement. Dr. Kelly shall also be eligible for any legislative salary increase applicable to University employees in his employment classification.

4.3 The Board authorizes, and Dr. Kelly shall receive, all standard employment benefits applicable to the position of the President based on his annual base salary.

5.0 Tenure and Return to Faculty Appointment

- 5.1 Dr. Kelly was granted a tenured faculty appointment at the rank of Professor in the Charles E. Schmidt College of Science upon his appointment as President in accordance with the University's tenure upon appointment procedures, and shall be accorded all the rights and privileges afforded to such appointment.
- 5.2 If Dr. Kelly is eligible pursuant to this Agreement and chooses to return to professorial duties after completion of a minimum of five (5) years of service as President, he shall be eligible for a one-year administrative study leave immediately after his service ends as President and prior to returning to the faculty. During this study leave period, if taken, Dr. Kelly shall earn a 12-month base salary equal to ninety percent (90%) of his last base salary as President.
- 5.3 For the first three (3) years of service as Professor (or for years 2 and 3 if a study leave is taken), Dr. Kelly shall earn a 12-month Professor base salary equal to eighty percent (80%) of his last base salary as President. If appointed to a 9-month academic year assignment by the dean, the 9-month salary will be 9/12 of this adjusted 12-month salary.
- 5.4 If Dr. Kelly continues to serve as a full-time tenured faculty member after the expiration of this three (3) year period, his base salary shall be adjusted to the average 9-month base salary rate (exclusive of any supplement or enhancement paid for administrative positions) paid at the

time to the three (3) most highly paid full-time, non-administrative, non-clinical tenured faculty members in the Charles E. Schmidt College of Science, excluding Dr. Kelly. This base salary shall be adjusted accordingly in the event Dr. Kelly is assigned a 12-month appointment.

6.0 Other Compensation

6.1 In conjunction with the Board's annual evaluation of Dr. Kelly's performance for each fiscal year, Dr. Kelly shall be eligible for performance and retention compensation equal to a combined total of 30% of his annual base salary then in effect, to be allocated as follows:

6.1.1 Performance Compensation. Dr. Kelly shall be eligible for performance compensation of up to 20% of his annual base salary then in effect. The award of performance compensation is discretionary and shall be awarded based on the Board's assessment, in its sole and absolute discretion, of Dr. Kelly's performance during the fiscal year under review. The Board may award any amount of performance compensation from zero to the maximum identified above. In making its determination, the Board shall consider Dr. Kelly's achievement of the annual goals and objectives set pursuant to Section 3.2, the evaluation results pursuant to Section 3.3, and/or other criteria set by the Board. Any performance compensation awarded shall be paid to Dr. Kelly within 90 days of the date on which it is awarded.

6.1.2 Annual Retention Compensation. It is the intent of the Board to provide sufficient incentive to Dr. Kelly to serve as President for the full term of this Agreement. In support of this objective, for each fiscal year of service completed under this Agreement, the Board authorizes and approves an annual retention bonus for Dr. Kelly equivalent to 10% of his annual base salary in effect at the end of the fiscal year. The annual retention bonus shall be paid to Dr. Kelly within 90 days of the conclusion of the fiscal year. If Dr. Kelly leaves the presidency prior to June 30 of any University fiscal year, or if he is involuntarily terminated by the Board for cause pursuant to paragraph 12.0 of this Agreement, Dr. Kelly forfeits all right and entitlement to payment of current year or future year annual retention compensation, or any portion thereof. If Dr. Kelly is terminated without cause pursuant to paragraph 13.0, or if he dies or becomes permanently incapacitated as defined in paragraph 14.0, Dr. Kelly or his estate shall be entitled to a portion of the annual retention compensation for the current year, prorated based on service completed during the year.

6.2 It is the intent of the Board to provide sufficient incentive to Dr. Kelly to serve as President for the full term of this Agreement and for additional renewal terms if the Board decides, in its sole and absolute discretion and with the approval of the Florida Board of Governors, to offer Dr. Kelly renewal terms after the expiration of the current term. In support of this

objective, the Board authorizes and approves a contingent retention bonus for Dr. Kelly in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) payable on February 28, 2022 (the "2022 Retention Bonus"), provided that Dr. Kelly remains continuously employed as President of the University through that date. Nothing herein shall constitute an offer, guarantee, obligation, or expectation of continued employment of Dr. Kelly as President beyond the expiration of this Agreement on February 29, 2020; the Board retains the right to determine, in its sole and absolute discretion and subject to the approval of the Florida Board of Governors, whether to offer a renewal and extension of this Agreement at the conclusion of its term and any subsequent terms. The entirety of the 2022 Retention Bonus is contingent upon Dr. Kelly continuously serving as President of the University through February 28, 2022; no portion of the 2022 Retention Bonus shall vest or otherwise be due and payable at any time prior to that date. If Dr. Kelly leaves the presidency prior to February 28, 2022, for any reason, Dr. Kelly forfeits all right and entitlement to payment of the 2022 Retention Bonus, or any portion thereof.

- 6.3 During the term of this Agreement and contingent upon the availability of funds, the Board shall not be responsible for, but authorizes this compensation arrangement and shall use its best efforts to cause the Florida Atlantic University Foundation, Inc. ("FAU Foundation") to contribute to Dr. Kelly the portions of all payments provided for in this

Agreement that exceed the limits set forth in Florida Statutes Section 1012.975.

7.0 Other Benefits

- 7.1 Dr. Kelly 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 further agrees that Dr. Kelly shall be entitled, at all times, to the state sponsored life insurance benefits applicable to executive service personnel.
- 7.2 The Board authorizes a retirement benefit of supplemental deferred compensation equal to twenty-five percent (25%) of Dr. Kelly's annual base salary during each year of this Agreement. This supplemental deferred compensation shall be in addition to regular state benefits and applied towards a qualified account of Dr. Kelly's choosing for the specific purpose of Dr. Kelly's retirement. The supplemental deferred compensation shall be paid in accordance with regular payroll practices.
- 7.3 The Board authorizes, and shall use its best efforts, to cause the FAU Foundation to provide funds for Dr. Kelly's spouse for travel to official functions in accordance with regular state and University travel policies. Funding for spouse travel is only authorized in conjunction with Dr. Kelly's travel outside of the University service area.
- 7.4 The Board authorizes and approves providing a complete annual executive physical examination for Dr. Kelly by a medical center or

professional of Dr. Kelly's choosing. The Board authorizes and approves full payment of or reimbursement for all costs of such exam to the extent any costs are not covered by Dr. Kelly's medical insurance plan.

8.0 Housing

8.1 The Board requires Dr. Kelly to reside in the University's Eleanor R. Baldwin House, 555 NW 20th Street, Boca Raton, FL 33431, at the University's expense to enable him to efficiently carry out his duties, including its use for various official University functions.

9.0 Automobile

9.1 The Board will authorize and provide Dr. Kelly with the use of a suitable full size automobile to be insured and maintained by the University. The automobile furnished to Dr. Kelly will be replaced at least once every three (3) years.

10.0 Professional Dues, Meeting and Entertainment

10.1 The Board will authorize and provide for reasonable expenses incurred by Dr. Kelly for University-related professional or service organizations and activities. The Board may fulfill this obligation through the use of available FAU Foundation funds.

11.0 Expense Receipts and Documentation

11.1 Dr. Kelly agrees to maintain and furnish to the Board 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 Dr. Kelly's submission of an accounting, the Board shall make prompt reimbursement to Dr. Kelly 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 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 material violation by Dr. Kelly 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 Dr. Kelly's receipt of the written notice of what the Board considers to be the violation, Dr. Kelly 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 breach of this Agreement.

12.3 In the event of termination for “just cause” by the Board, Dr. Kelly’s employment with the University and tenure status shall cease, and he shall not be entitled to any further employment, compensation or benefits from the University in any capacity 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 Dr. Kelly is given ninety (90) days prior written notice for his benefit. Upon receiving notice from the Board, Dr. Kelly may waive any portion or the entire notice period at his discretion and terminate earlier. If Dr. Kelly has served as President for at least twenty-four (24) months prior to receiving notice of termination without cause from the Board, he may choose to take a six (6) month study leave at his President’s base salary immediately after his service ends as President and prior to returning to the faculty, in lieu of receiving the ninety (90) days prior notice above.

13.2 Dr. Kelly may terminate the Agreement at any time prior to its term expiration without cause, provided that Dr. Kelly gives ninety (90) days

prior written notice to the Board of Trustees for its benefit. Upon receiving notice from Dr. Kelly, the Chair may waive any portion or the entire notice period at his/her discretion and terminate earlier.

13.3 If this Agreement is terminated without cause by either party, Dr. Kelly shall be eligible to assume the duties of full Professor with tenure.

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 Dr. Kelly's resignation from employment at the University, death, or "permanent disability" (as hereinafter defined). Such termination shall be deemed to have occurred for "just cause" and Dr. Kelly's employment with the University and tenure status shall cease, and he shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for benefits required to be continued by law. For purposes of this Agreement, "permanent disability" shall be defined as Dr. Kelly'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 Dr. Kelly'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 and shall have a reasonable period of time, not to exceed one hundred eighty (180) days, following the date of his death in which to vacate and remove all of Dr. Kelly's personal effects from the Eleanor R. Baldwin House. During this

period of time, his spouse or, if none, his estate shall make diligent efforts to vacate and find alternative housing for herself and any minor children and will permit the University to use the Eleanor R. Baldwin House as appropriate for University functions.

15.0 Non-binding Mediation

15.1 The Board and Dr. Kelly 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 Dr. Kelly 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 Board and Dr. Kelly 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 Board and Dr. Kelly agree that no mediator or arbitrator may have any material ongoing relationship with the University.

16.0 Notice

16.1 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 Board:

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

If to Dr. Kelly:

Dr. John W. Kelly
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

17.0 Entire Agreement: Modification

17.1 This Agreement constitutes the entire understanding of the parties and supersedes any and all prior or contemporaneous representations or Agreements between the parties, whether written or oral, including but not limited to the Prior Agreement. 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.

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

18.0 Severability

18.1 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.

19.0 Governing Law and Forum

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

19.2 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.

20.0 Understanding of the Agreement

20.1 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.

21.0 Public Disclosure of the Agreement

21.1 Both Parties agree and acknowledge that this Agreement is subject to the Florida public records laws and may, therefore, be subject to disclosure by and in the manner provided by law.

22.0 Waiver

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

23.0 Assignment

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

24.0 Execution and Counterparts

24.1 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.

25.0 No Trust Fund

25.1 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 Dr. Kelly 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.

26.0 Miscellaneous

26.1 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, Dr. John W. Kelly and Mr. Anthony K.G. Barbar, 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

By: Anthony K.G. Barbar
Chairperson

Date

Dr. John W. Kelly

Date

January 25, 2019

Mr. David L. Kian
 Vice President, Legal Affairs and General Counsel
 Florida Atlantic University
 777 Glades Road
 Admin Bldg. Room 370
 Boca Raton, Florida 33431

Re: Updated Compensation Ranges

Dear David:

As you requested, I am writing to provide the Board of Trustees with updated competitive compensation ranges for Dr. John W. Kelly, President of Florida Atlantic University (“FAU”.) For purpose of clarity, the terms used herein, and the market pay rates referenced are derived from my report of September 23rd 2016.

I have updated the ranges for both National Research Peers (using 2016-17 academic year data) and the projected Florida Peers (see Exhibit A). This data, adjusted as described in the report, is shown in the table below. I have also included an analysis of public universities that have medical schools using the same data as the Nation Peers.

Form of Compensation	Competitive Pay Perspective	Weight	p25	Median	p75	p90*	Curr FAU % Mkt
Base Salary	National Research Peers	25%	331,000	385,000	451,000	482,000	
	Public with Med School	25%	432,000	517,000	622,000	784,000	
	Florida Peers (Projected)	50%	506,000	506,000	606,000	896,000	6%
	Weighted Average		445,000	480,000	570,000	765,000	475,000 1%
Guaranteed Compensation	National Research Peers	25%	425,000	485,000	594,000	682,000	
	Public with Med School	25%	485,000	604,000	781,000	867,000	
	Florida Peers (Projected)	50%	648,000	721,000	881,000	1,385,000	15%
	Weighted Average		550,000	635,000	785,000	1,080,000	611,750 4%
Total Opportunity	National Research Peers	25%	411,000	483,000	625,000	703,000	
	Public with Med School	25%	489,000	623,000	816,000	934,000	
	Florida Peers (Projected)	50%	847,000	911,000	981,000	1,385,000	15%
	Weighted Average		650,000	730,000	850,000	1,100,000	770,386 6%

* for Florida Peers, 90th percentile column is highest

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January 25, 2019

If you require any further information or would like me to discuss this data with the Committee Chair, please let me know.

* * * * *

Very Truly Yours,



Paul J. McConnell

Major Florida Public Universities

Exhibit A

Source: Analysis of Contracts

<u>Institution</u>	<u>President</u>	<u>Contract Term</u>	<u>Source</u>	<u>Base Salary</u> (a)	<u>Deferred Comp</u> (b)	<u>Retirement Ctrb</u> (c)	<u>Retention Acrued</u> (d)	<u>Guaranteed Compensation</u> (e)=(a)+...+(d)	<u>Bonus/ Opportunity</u> (f)	<u>Total Opportunity</u> (g)=(e)+(f)
University of Florida	Kent W. Fuchs	5 yrs	2016-17	866,425	162,400	66,045		1,094,870	0	1,094,870
	Hired in 2014	Jan 2015	Project	895,670	160,000	150,000	179,134	1,384,804	0	1,384,804
University of South Florida	Judy L. Genshaft	1 yr	2016-17	493,500	0	24,329		517,829	175,000	692,829
	Hired in 2000	Jul 2016	Project	505,837	101,167	41,175	0	648,180	263,175	911,355
University of Central Florida	John C. Hitt	1 yr	2016-17	505,730	0	31,465		537,195	655,475	1,192,670
	Hired in 1992	Jul 2016	Project	505,730	83,146	18,000	0	606,876	240,000	846,876
	Dale Whitaker	Jul 2018	Project	506,000	83,200	18,000	0	607,200	240,000	847,200
Florida State University	John Thrasher	5 yrs	2016-17	501,967	108,245	85,848		696,060	100,000	796,060
	Hired in 2014	Nov 2014	Project	606,141	90,921	18,000	166,228	881,290	100,000	981,290
Florida International University	Mark B. Rosenberg	5 yrs	2016-17	502,579	0	85,839		588,418	100,000	688,418
	Hired in 1986	Aug 2014	Project	502,578	80,000	18,000	120,516	721,094	100,000	821,094
Distribution of Projected	75th Percentile			606,000				881,000		981,000
	50th Percentile			506,000				721,000		911,000
	25th Percentile			506,000				648,000		847,000
Florida Atlantic University	John W. Kelly	5 yrs	2016-17	469,828	62,640	23,084		555,552	120,000	675,552
	Hired in 2014	Mar 2014	Project	475,000	71,250	18,000	47,500	611,750	158,636	770,386

The data labeled '2016-17' is the actual compensation reported on form 990 for that year without trend or adjustment.

The data labeled 'Project' reflects the value of the individual's contracted when projected using their current salary.

Presidential Pay Ranges

9/23/2016

Presented to:



Background & Study Objectives

- We have been retained by the Board of Trustees of Florida Atlantic University (FAU) to provide recommendations on a competitive range of compensation for the position of President. FAU is part of the Florida State University System and is classified as a Doctoral University – Higher Research Activity (R2)
- Dr. John W. Kelly, the current incumbent, was hired in 2014. According to his employment contract, he receives the following elements of compensation (contract reference):
 - Base salary - \$400,000 per year (4.1).
 - Bonus Opportunity – 20% of salary (6.2.1)
 - Retention Payment – 10% of salary (6.2.2)
 - Qualified Retirement (403(b) contribution) – maximum of \$18,000 (7.1)
 - Deferred Compensation – 15% of salary (7.2)
 - Other employee benefits (7.1); housing (8.1); automobile (9.1); tenure and return to faculty appointment (5.0). These elements are common to most Presidential contracts and are thus not analyzed in this report.

Market Competitive Compensation

- **Presidents of universities in the United States are paid through a variety of means:**
 - **Base Salary:** Like all employees, presidents receive a base salary, typically payable monthly or bimonthly.
 - **Retirement Contributions & Deferred Compensation:** Through various federal tax qualified plans (e.g., 457(f) or 403(b)) money is put away for their retirement. These funds are typically fully vested. In addition, some institutions utilize non-tax qualified plans which require an element of forfeiture to avoid current taxation of the money received.
 - **Retention Payments:** These consist of simple retention bonuses (e.g., stay three years, receive \$x) or other similar arrangements such as sabbaticals.
 - **Incentive Payments:** These consist of various incentive arrangements formally linking compensation to future performance or subjective after the fact payments made based on previous performance (i.e., bonuses).
 - **Benefits:** University presidents also participate in the school's various broad based benefit plans (health, life insurance, retirement, etc.) and almost universally receive housing and an automobile – either directly or as an allowance. For the purpose of this study, we have ignored any competitive difference in these benefits.

Forms of Compensation

- In our analysis, we have examined the competitive ranges for Base Salaries, Guaranteed Compensation and Total Opportunity.
 - We define Guaranteed Compensation as base salary plus qualified retirement plan contributions (e.g., 403(b)), deferred compensation and retention payments. Although some of these elements do require continued employment to be received, they are typically paid in all situations except voluntary termination or termination for cause.
 - Total Opportunity is defined as Guaranteed Compensation plus the total incentive opportunity that can be earned for the year. For plans that measure performance over multiple years, opportunities are annualized.

Competitive Pay Perspectives

- In order to provide the Board of Trustees with a broad perspective on suitable compensation for the FAU President position, we developed two relevant perspectives for determining competitive compensation.
 - National Research Peers: Exhibit A presents a detailed list of the compensation provided to the presidents of the institutions that are classified as Doctoral Universities – Higher Research Activity – (i.e., the same as FAU.) This data, from a Chronicle of Higher Education database, is derived from information provided by the universities in their Form 990 tax filings for the fiscal year 2014-15. Although this data is accurate, it is not complete. Guaranteed pay elements such as retention bonuses are generally not reported until actually paid. Similarly, incentive payments only reflect amounts actually paid not multi-year opportunities that are still being earned or the unearned portion of total incentive opportunities.

- **Florida Peers (Projected):** Exhibit B provides a detailed look at the compensation provided to five major public universities in the state of Florida plus FAU. This data was assembled by reviewing the specific provisions of their President's individual contracts, with updated information as to current salaries obtained from the latest Board of Governors salary survey. Because this information was derived from contract specifics, it is our opinion that these figures are the most accurate indicator of total current compensation levels/opportunities. For comparison, we have also included in this exhibit, the 990 data for each institution (i.e., as shown in Exhibit A).
 - Deferred compensation and retention payments are reported on an accrual basis over the course of the agreement. Thus for example, a retention payment of \$300,000 payable at the end of a four year contract is shown as \$75,000 per year.
 - Incentive clauses are shown at the full opportunity available, annualized for multi-year performance periods. In our experience, most university incentives are paid near the maximum.
- We compared the median compensation for the Florida schools from the 990 data and our more inclusive projections. We found that base salaries were underreported by 4% (reflecting new increases and partial years for new Presidents); by 18% for Guaranteed Compensation (reflecting previous factors and the absence of retention accruals); and by 23% for Total Opportunities (reflecting previous factors and unearned incentives.) In the interest of conservatism, we only adjusted the distribution of the 990 data by half of the observed the underreporting.

Market Competitive Range

- The table below blends the two competitive pay perspectives into a single market range for each form of compensation.
 - All data has been trended to the current compensation year (i.e., 2016-17) assuming a 2% annual increase in each element of pay.
- The table also shows Dr. Kelly's current compensation relative to the ranges. His pay is at or below the low end of the market for each form of compensation.

Form of Compensation	Competitive Pay Perspective	Weight	Low	Market	High	FAU	% Mkt
Base Salary	National Research Peers	50%	345,000	395,000	443,000	400,000	12%
	Florida Peers (Projected)	50%	504,000	516,000	520,000		
	Weighted Average		425,000	455,000	480,000		
Guaranteed Compensation	National Research Peers	50%	412,000	466,000	536,000	518,000	8%
	Florida Peers (Projected)	50%	622,000	657,000	745,000		
	Weighted Average		515,000	560,000	640,000		
Total Opportunity	National Research Peers	50%	434,000	484,000	569,000	598,000	11%
	Florida Peers (Projected)	50%	847,000	864,000	903,000		
	Weighted Average		640,000	675,000	735,000		

Alternatives

- The table below is intended to guide the Board in reaching a decision regarding compensation for Dr. Kelly. It illustrates the combined effect of increasing various compensation elements and shows the resulting forms of compensation relative to the market compensation. The far right column shows the amount of increase in both dollars and as a percentage.

	Base Salary (a)	Deferred Comp (b)	Retirement Ctrb (c)	Retention Acruel (d)	Guaranteed Compensation (e)=(a)+...+(d)	Bonus/ Opportunity (f)	Total Opportunity (g)=(e)+(f)	Increase \$ / %
Current Compensation	400,000	60,000	18,000	40,000	518,000	80,000	598,000	
Variance from Market	-12%				-8%		-11%	
Increase Salary to between Low & Market; no other changes	435,000	65,250	18,000	43,500	561,750	87,000	648,750	50,750
Variance from Market	-4%				0%		-4%	8%
Increase Salary to Market; no other changes	455,000	68,250	18,000	45,500	586,750	91,000	677,750	79,750
Variance from Market	0%				5%		0%	13%
Increase Salary between Market & High; no other changes	475,000	71,250	18,000	47,500	611,750	95,000	706,750	108,750
Variance from Market	4%				9%		5%	18%
Increase Salary & Bonus Oppty (25%)	425,000	63,750	18,000	42,500	549,250	106,250	655,500	57,500
Variance from Market	-7%				-2%		-3%	10%
Increase Salary & Bonus Oppty (30%)	425,000	63,750	18,000	42,500	549,250	127,500	676,750	78,750
Variance from Market	-7%				-2%		0%	13%
Increase Salary; Retention (15%); Bonus Oppty (25%)	425,000	63,750	18,000	63,750	570,500	106,250	676,750	78,750
Variance from Market	-7%				2%		0%	13%

Opinion

- Section 4958 of the Internal Revenue Code, which applies to organizations like Florida Atlantic University that are exempt under section 501(c)(3), provides for intermediate sanctions in the form of excise taxes (i.e., penalties) on any person who receives an excess benefit from a covered organization and on each manager or director who approves the excess benefit transaction. The single most likely way that such an excess benefit would occur is when an individual receives a salary in excess of “Reasonable Compensation.”
- Reasonable compensation is defined by regulation 1.162-7(b)(3) as the amount that would ordinarily be paid for like services by like organizations in like circumstances. Although there are many factors involved in determining reasonable compensation, the test for a given executive can simply be described as: “is compensation paid to the FAU President similar to that provided to other executives with similar responsibilities in similarly situated organizations?”
- Based on the data described herein, it is my professional opinion that the total compensation currently provided by Florida Atlantic University to its President is reasonable compensation within the meaning of IRC §162. It is also my opinion that the alternatives presented are reasonable as well.

Exhibits

Doctoral Universities – Higher Research Activity

Exhibit A

Source: Chronicle of Higher Education - 990 Filings of Compensation for 2014-15

Institution	St	President	Title	Base Salary (a)	Deferred Comp (b)	Retirement Ctrb (c)	Guaranteed Compensation (d)=(a)+(b)+(c)	Bonus/ Opportunity (e)	Total Opportunity (f)=(d)+(e)
Auburn University	AL	Jay Gogue	President	520,776	250,000	32,661	803,437		803,437
Ohio University	OH	Roderick J. McDavis	President	465,000	78,313	106,000	649,313	85,000	734,313
New Jersey Institute of Technology	NJ	Joel S. Bloom	President	540,000		11,280	551,280	92,000	643,280
Cleveland State University	OH	Ronald M. Berkman	President	430,000		38,500	468,500	167,500	636,000
University of Alabama at Huntsville	AL	Robert A. Altenkirch	President	495,000			495,000	105,000	600,000
Portland State University	OR	Marinus Wilhelmus Wiewel	President	401,700		175,054	576,754		576,754
University of Maryland-Baltimore County	MD	Freeman A. Hrabowski III	President	484,491		84,894	569,385		569,385
College of William & Mary	VA	W. Taylor Reveley III	President	450,000	85,000	27,040	562,040		562,040
University of New Hampshire	NH	Mark W. Huddleston	President	385,000	30,000	29,114	444,114	107,800	551,914
Western Michigan University	MI	John M. Dunn	President	398,536	100,000	43,839	542,375		542,375
University of Nevada at Reno	NV	Marc A. Johnson	President	369,711	119,997	48,987	538,695		538,695
Miami University (Ohio)	OH	David C. Hodge	President	419,439		30,292	449,731	86,404	536,135
University of Akron	OH	Scott Scarborough	President	450,000		80,000	530,000		530,000
Central Michigan University	MI	George E. Ross	President	400,640		77,354	477,994	31,680	509,674
Bowling Green State University, Main Campus	OH	Mary Ellen Mazey	President	394,200	60,260	49,183	503,643		503,643
University of Texas at El Paso	TX	Diana S. Natalicio	President	391,755	35,000	33,727	460,482	39,604	500,086
Northern Illinois University	IL	Douglas D. Baker	President	450,000	22,500	21,094	493,594		493,594
Kent State University at Kent (Ohio)	OH	Beverly J. Warren	President	450,000		42,750	492,750		492,750
University of South Alabama	AL	Tony G. Waldrop	President	459,000		28,907	487,907		487,907
Mississippi State University	MS	Mark E. Keenum	President	446,100		40,950	487,050		487,050
University of Louisiana at Lafayette	LA	Joseph Savoie	President	350,000		133,496	483,496		483,496
University of Vermont	VT	E. Thomas Sullivan	President	429,093		44,806	473,899		473,899
Rutgers University at Newark	NJ	Nancy Cantor	Chancellor	384,115	30,000	34,450	448,565	19,250	467,815
San Diego State University	CA	Elliot L. Hirshman	President	412,000		50,988	462,988		462,988
University of Texas at San Antonio	TX	Ricardo Romo	President	406,291		34,524	440,815	22,127	462,942
University of Missouri at St. Louis	MO	Thomas F. George	Chancellor	318,250	52,000	52,000	422,250	24,989	447,239
University of Toledo	OH	Nagi Ganapathy Naganathan	Interim President	392,700		53,900	446,600		446,600
Florida A&M University	FL	Elmira Mangum	President	425,000		20,227	445,227		445,227
Oklahoma State University at Stillwater	OK	V. Burns Hargis	President	425,004		18,200	443,204		443,204
University of Massachusetts at Lowell	MA	Martin T. Meehan	Chancellor	331,888	23,232		355,120	73,919	429,039
Colorado School of Mines	CO	Myles W. Scoggins	President	400,000		26,390	426,390		426,390
New Mexico State University at Las Cruces	NM	Garrey E. Carruthers	President	385,000		36,609	421,609		421,609
University of Southern Mississippi	MS	Rodney D. Bennett	President	375,000		40,950	415,950		415,950
University of Wyoming	WY	Richard C. McGinity	President	375,468		39,056	414,524		414,524
University of Massachusetts at Boston	MA	J. Keith Motley	Chancellor	317,327		30,728	348,055	63,661	411,716
University of Memphis	TN	M. David Rudd	President	376,943		30,987	407,930		407,930
University of Missouri at Kansas City	MO	Leo E. Morton	Chancellor	296,514	52,000	52,000	400,514		400,514
Old Dominion University	VA	John R. Broderick	President	368,493		20,747	389,240	3,685	392,925
Utah State University	UT	Stan L. Albrecht	President	343,162		48,729	391,891		391,891
University of Northern Colorado	CO	Kay Norton	President	300,116	54,500	33,374	387,990		387,990
East Carolina University	NC	Steven C. Ballard	Chancellor	322,560	32,256	33,124	387,940		387,940
North Dakota State University	ND	Dean L. Bresciani	President	344,241	9,566	31,645	385,452		385,452
University of Idaho	ID	Charles Alan Staben	President	350,000		32,560	382,560		382,560
Missouri University of Science & Technology	MO	Cheryl Bunnett Schrader	Chancellor	302,083	51,000		353,083	27,700	380,783

Doctoral Universities – Higher Research Activity

Exhibit A

Source: Chronicle of Higher Education - 990 Filings of Compensation for 2014-15

Institution	St	President	Title	Base Salary (a)	Deferred Comp (b)	Retirement Ctbr (c)	Guaranteed Compensation (d)=(a)+(b)+(c)	Bonus/ Opportunity (e)	Total Opportunity (f)=(d)+(e)
University of Rhode Island	RI	David M. Dooley	President	330,000	20,000	29,700	379,700		379,700
South Dakota State University	SD	David L. Chicoine	President	354,567		24,998	379,565		379,565
University of South Dakota	SD	James W. Abbott	President	354,567		24,998	379,565		379,565
University of North Carolina at Charlotte	NC	Phillip L. Dubois	Chancellor	324,450	32,445	22,192	379,087		379,087
Wichita State University	KS	John W. Bardo	President	350,175		22,525	372,700		372,700
Indiana University-Purdue University at Indianapolis	IN	Charles R. Bantz	Chancellor	336,795		33,680	370,475		370,475
University of North Carolina at Greensboro	NC	Linda P. Brady	Chancellor	318,780	31,878	17,784	368,442		368,442
Illinois State University	IL	Larry Dietz	President	350,004		17,921	367,925		367,925
University of Alaska at Fairbanks	AK	Brian D. Rogers	Chancellor	313,899	13,050	39,781	366,730		366,730
North Carolina A&T State University	NC	Harold L. Martin	Chancellor	314,316		47,807	362,123		362,123
University of Montana at Missoula	MT	Royce C. Engstrom	President	301,415	42,000	17,952	361,367		361,367
University of North Dakota	ND	Robert O. Kelley	President	360,773			360,773		360,773
Texas A&M University at Commerce	TX	Dan R. Jones	President	313,360	20,000	26,636	359,996		359,996
Montana State University at Bozeman	MT	Waded Cruzado-Salas	President	301,415	35,000	17,952	354,367		354,367
University of New Orleans	LA	Peter J. Fos	President	325,000		17,077	342,077		342,077
Michigan Technological University	MI	Glenn D. Mroz	President	319,461		19,743	339,204		339,204
Jackson State University	MS	Carolyn Meyers	President	270,500		32,726	303,226		303,226
University of Maine	ME	Susan J. Hunter	President	250,000		25,000	275,000		275,000
			75th Percentile	418,000			482,000		498,000
			50th Percentile	372,000			419,000		424,000
			25th Percentile	325,000			371,000		380,000
Florida Atlantic University	FL	John W. Kelly	President percentile	400,000 67	56,500	15,321	471,821 71		471,821 65

Major Florida Public Universities

Exhibit B

Source: Analysis of Contracts

<u>Institution</u>	<u>President</u>	<u>Contract Term</u>	<u>Source</u>	<u>Base Salary</u> (a)	<u>Deferred Comp</u> (b)	<u>Retirement Ctrb</u> (c)	<u>Retention Acruel</u> (d)	<u>Guaranteed Compensation</u> (e)=(a)+...+(d)	<u>Bonus/ Opportunity</u> (f)	<u>Total Opportunity</u> (g)=(e)+(f)
University of Florida	Kent W. Fuchs Hired in 2014	5 yrs	2014-15	430,000	0	0		430,000	75,000	505,000
		Jan 2015	Project	860,000	160,000	150,000	172,000	1,342,000	0	1,342,000
University of South Florida	Judy L. Genshaft Hired in 2000	1 yr	2014-15	470,000	56,400	19,994		546,394	166,250	712,644
		Jul 2016	Project	493,500	98,700	18,000	0	610,200	275,000	885,200
University of Central Florida	John C. Hitt Hired in 1992	1 yr	2014-15	501,798	247,032	29,808		778,638	0	778,638
		Jul 2016	Project	505,730	83,146	18,000	0	606,876	240,000	846,876
Florida State University	John Trasher Hired in 2014	5 yrs	2014-15	261,954	0	55,399		317,353	0	317,353
		Nov 2014	Project	430,000	64,500	18,000	131,000	643,500	100,000	743,500
Florida International University	Mark B. Rosenberg Hired in 1986	5 yrs	2014-15	502,579	0	135,966		638,545	48,000	686,545
		Aug 2014	Project	510,117	80,000	18,000	122,023	730,140	100,000	830,140
Distribution of Projected	75th Percentile			510,000				730,000		885,000
	50th Percentile			506,000				644,000		847,000
	25th Percentile			494,000				610,000		830,000
Florida Atlantic University	John W. Kelly Hired in 2014	5 yrs	2014-15	400,000	56,500	15,321		471,821	0	471,821
		Mar 2014	Project	400,000	60,000	18,000	40,000	518,000	80,000	598,000

The data labeled '2014-15' is the actual compensation reported on form 990 for that year.

The data labeled 'Project' reflects the value of the individual's contracted when projected using their current salary.

January 27, 2019

Mr. David L. Kian
 Vice President, Legal Affairs and General Counsel
 Florida Atlantic University
 777 Glades Road
 Admin Bldg. Room 370
 Boca Raton, Florida 33431

Re: Reasonable Compensation

Dear David:

As you requested, I am writing to provide my opinion on the reasonableness of the compensation that the Board of Trustees has proposed to pay to Dr. John W. Kelly, President of Florida Atlantic University (“FAU”). For purpose of clarity, the terms used herein and the market pay rates referenced are derived from my letter report of January 25th.

The Board met recently and increased Dr. Kelly’s base salary from \$475,000 to \$505,000 and his deferred compensation from 15% of salary to 25%. There are no proposed changes to the incentive elements of the other guaranteed portions of his contract (retirement, annual retention.) As shown in the table below, this positions his salary at 5% over the market median and about equal to his SUS peers. With the increase in salary and deferred compensation, his guaranteed pay is 699,750 – 10% over the weighted median and 3% below the SUS peers.

Form of Compensation	Competitive Pay Perspect	Weight	p25	Median	p75	p90*	Prop FAU	% Mkt
Base Salary	National Research Peers	25%	331,000	385,000	451,000	482,000		
	Public with Med School	25%	432,000	517,000	622,000	784,000		
	Florida Peers (Projected)	50%	506,000	506,000	606,000	896,000		0%
	Weighted Average		445,000	480,000	570,000	765,000	505,000	5%
Guaranteed Compensation	National Research Peers	25%	425,000	485,000	594,000	682,000		
	Public with Med School	25%	485,000	604,000	781,000	867,000		
	Florida Peers (Projected)	50%	648,000	721,000	881,000	1,385,000		3%
	Weighted Average		550,000	635,000	785,000	1,080,000	699,750	10%
Total Opportunity	National Research Peers	25%	411,000	483,000	625,000	703,000		
	Public with Med School	25%	489,000	623,000	816,000	934,000		
	Florida Peers (Projected)	50%	847,000	911,000	981,000	1,385,000		5%
	Weighted Average		650,000	730,000	850,000	1,100,000	864,386	18%

* for Florida Peers, 90th percentile column is highest

Dr. Kelly is eligible to receive a cash bonus of up to 20% of his salary. In addition, as described in my letter of October 1, 2016, the contingent retention payment of \$350,000¹, should be considered a further incentive payment. While this is not a typical incentive arrangement, stripped to its essence it is such an arrangement. Since this payment accrues over a period of five and a half years, we add \$63,636 to his incentive opportunities for a total compensation of \$864,386 – 14% over the weighted median (about the 75th percentile) and 5% below the SUS peers.

Based on the facts and circumstances described herein (and referenced from my earlier report), it is my professional opinion that the compensation package that the Board of Trustees has proposed for Dr. Kelly is reasonable compensation within the meaning of §1.162-7(b)(3) of IRS regulations.

Please call if you require any further clarification.

* * * * *

Very truly yours,



Paul J. McConnell

¹ A payment of \$350,000 that will only be made if he is still employed as President at the end of February 2022. Dr. Kelly's current contract expires at the end of February in 2019. To receive this additional payment, Dr. Kelly must not only serve out his existing contract, but his performance as President must be such that he secures three one-year extensions to his contract. (The State University System of Florida, Board of Governors currently does not allow universities to extend existing contracts or implement new contracts with a term of more than one year.) This "retention payment" is a multi-year incentive payment, where the Board must decide whether the overall quality of his performance justifies his continued employment.

October 1, 2016

Mr. David L. Kian
Vice President, Legal Affairs and General Counsel
Florida Atlantic University
777 Glades Road
Admin Bldg. Room 370
Boca Raton, Florida 33431

Re: Reasonable Compensation

Dear David:

As you requested, I am writing to provide my opinion on the reasonableness of the compensation that the Board of Trustees has proposed to pay to Dr. John W. Kelly, President of Florida Atlantic University (“FAU”). For purpose of clarity, the terms used herein and the market pay rates referenced are derived from my report of September 23rd.

The Board met recently and increased Dr. Kelly’s base salary from \$400,000 to \$475,000. This positions his salary at 4% over the market median of \$455,000 and well within the range of his peers. There are no proposed changes to the other guaranteed portions of his contract (deferred compensation, retirement, annual retention.) With the salary increase, his guaranteed pay is 611,750 – 9% over the median and again well within the range of his peers.

In addition to the salary increase, the Board intends to amend his employment contract to include a contingent retention payment of \$350,000 that will only be made if he is still employed as President at the end of February 2022. Dr. Kelly’s current contract expires at the end of February in 2019. To receive this additional payment, Dr. Kelly must not only serve out his existing contract, but his performance as President must be such that he secures three one year extensions to his contract¹. This “retention payment” is a multi-year incentive payment, where the Board must decide whether the overall quality of his performance justifies his continued employment. While this is not a typical incentive arrangement, stripped to its essence it is such an arrangement. Since this payment accrues over a period of five and a half years, we add \$63,636 to

¹ The State University System of Florida, Board of Governors currently does not allow universities to extend existing contracts or implement new contracts with a term of more than one year.

his incentive opportunities for a total compensation of \$770,400 – 14% over the median and 5% over the level that my report identified as “high”. It should be noted that in my report, market is the median (weighted 50% on the median of Florida Schools and 50% on national peers) and the high and low were derived from the 25th and 75th percentile respectively. While this is a common scope for a working range, it is much narrower than the range we would consider for a “reasonable compensation” purposes. Here, we would look to the maximum paid among the small group of Florida schools and the 99th percentile of the much larger group of national peers. Weighting these data points 50%/50% produces a high end for a reasonable compensation range of over \$1 million. Thus, although the proposed incentive arrangement is currently above the high end of the working range, it is my opinion that it is well below the true high end of the market.

Based on the facts and circumstances described herein (and referenced from my earlier report), it is my professional opinion that the compensation package that the Board of Trustees has proposed for Dr. Kelly is reasonable compensation within the meaning of §1.162-7(b)(3) of IRS regulations.

Please call if you require any further clarification.

* * * * *

Very truly yours,



Paul J. McConnell