



## **Special Executive Committee Meeting**

Wednesday September 13, 2023 at 9:00 AM

*Advancement Conference Room 10/247 Boca Raton, FL or via Zoom*

### **AGENDA**

#### **I. Call to Order**

Chair Poulin

A. Public Comments

B. Roll Call

J. Camacho

#### **II. New Business**

A. FAU-FAUF MOU for AD Henderson/Florida Atlantic University  
High School Advance on Pledges\*

D. Kian

#### **III. Adjourn**

*\*Approval Items*

# FAU-FAUF MOU for AD Henderson/Florida Atlantic University High School Advance on Pledges

## FAUF Support for Phase 2 Construction of the AD Henderson Campus Project

- Foundation will advance \$420,000 to FAU from unrestricted assets
- Pledges in the amount of \$420,000 have already been committed by donors
- As pledges are paid into the construction campaign fund (Fund No EDU 635), FAUF is repaid
- No interest charged
- Should existing pledges not be fulfilled, FAUF will be paid back from new pledges

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “**MOU**”) is made and entered into effective as of September \_\_, 2023 (the “**Effective Date**”) by and between The Florida Atlantic University Board of Trustees on behalf of the A.D. Henderson University School/Florida Atlantic University High School (“**FAU**”) and the Florida Atlantic University Foundation, Inc. (the “**FAUF**”).

### WITNESSETH:

**Whereas**, FAU is in the process of constructing a new campus for the A.D. Henderson University School;

**Whereas**, FAU has launched a capital campaign called Let’s Build This Together to raise philanthropic funds to support construction of the new campus and all pledge payments received are added to FAUF Fund Number EDU635;

**Whereas**, Phase II of the project will commence and complete the build out of the campus;

**Whereas**, to allow FAU to commence Phase II, FAUF has agreed to advance funding to FAU; and

**Whereas**, in return for providing the advanced funding for construction of Phase II, FAU has agreed to use reasonable efforts to restore advanced funds to FAUF on the terms and conditions set forth herein.

**NOW THEREFORE**, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Advance Amount. FAUF hereby makes up to \$420,000 available to FAU from its unrestricted net assets in order to allow FAU to pay Phase II construction costs. FAUF will not charge interest on amounts advanced to FAU pursuant to this MOU.

2. Repayment Obligation. As of the Effective Date, a balance of just over \$420,000 in currently scheduled pledges has been committed to the Let’s Build This Together campaign and, upon receipt, will be allocated in full to FAUF, up to the total amount of the advance taken, in repayment of the advance taken. The amount advanced to FAU will be restored to FAUF as and when the currently scheduled pledge payments are received and deposited into EDU635 by FAUF. All currently scheduled pledge payments received by FAUF and deposited into EDU635 will be applied first to pay off any advances taken by FAU pursuant to this MOU. Should the currently scheduled pledges be insufficient to fully repay the advance because the pledges are not fulfilled or for any other reason, the amount advanced remaining unpaid will be paid to FAUF from new pledges deposited into EDU635. In accordance with the payment schedules of pledges, FAU anticipates and will use reasonable efforts to have the balance fully restored by philanthropic giving on or before June 30, 2027. This is a non-recourse loan.

3. FAU Right to Repay from Other Sources. Nothing in this MOU precludes FAU from restoring FAUF advanced funds from any available funds received or held by the FAUF for FAU, so long as those received or held funds are not restricted to another purpose and are legally available for this purpose.

4. Documentation. FAU will draw on the advanced amounts as needed for the Phase II construction. Each draw by FAU shall be documented in sufficient detail for audit review and shall be accompanied by a certification that the advanced funds will be used solely for the Phase II construction. Furthermore, FAU

## MEMORANDUM OF UNDERSTANDING

will timely provide FAUF any information and documents reasonably requested by FAUF related to the Phase II construction.

5. FAU Best Fundraising Efforts. FAU agrees to use its best philanthropic fund raising efforts to ensure adequate pledge payments are received by FAUF to ensure all advanced funds are restored.

6. Term and Termination. The initial term of this MOU will commence on the Effective Date and shall continue until the last payment due and owing to FAUF has been made. FAU may terminate this MOU upon giving FAUF at least thirty (30) days prior written notice, provided that termination of this MOU will not relieve FAU of its obligation to reimburse FAUF for any amounts owed to FAUF under this MOU and an alternative arrangement for repayment is required as a condition to termination.

7. No Assignment. Neither party may assign this MOU nor any interest herein, whether by operation of law or otherwise, without the other party's express prior written consent. Any assignment made without consent by a party shall be voidable at the option of the other party.

8. Independent Contractors. Each party is and will remain solely and exclusively an independent contractor of the other party. Nothing in this MOU will be construed to create a partnership, joint venture or agency relationship between the parties, and in no event will either party be, claim to be, or be deemed to be, an employee, agent or partner of the other party by reason of or with respect to this MOU.

9. Governing Law. This MOU shall be governed by and construed according to the laws of the State of Florida. Venue for any disputes hereunder shall be in Palm Beach County, Florida.

10. Amendments. No amendment or modification of this MOU shall be valid or binding upon the parties unless made in writing and signed by their duly authorized officials.

11. Entire Agreement. This MOU embodies the entire understanding of the parties and supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof.

12. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy for all purposes.

## MEMORANDUM OF UNDERSTANDING

The parties hereto have caused this MOU to be executed by duly authorized representatives effective as of the Effective Date.

**The Florida Atlantic University Board of Trustees      Florida Atlantic University Foundation, Inc.**

By: \_\_\_\_\_  
Name: Stacy Volnick  
Title: Interim President

By: \_\_\_\_\_  
Name: David Kian  
Title: Interim CEO

### **Acknowledged & Agreed To:**

By: \_\_\_\_\_  
Name: Stephen Silverman, Ed.D.  
Title: Dean, College of Education

By: \_\_\_\_\_  
Name: Joel D. Herbst  
Title: Superintendent of FAU School District