



Item: CG: A-1

## COMMUNITY AND GOVERNMENTAL RELATIONS COMMITTEE

Tuesday, June 27, 2017

**SUBJECT: RECOMMEND NAMING FAU'S LIFELONG LEARNING PROGRAM THE OSHER LIFELONG LEARNING INSTITUTE AT FLORIDA ATLANTIC UNIVERSITY**

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### PROPOSED COMMITTEE ACTION

Recommend that the BOT:

1. Authorize the President to enter into an Endowment Agreement with Bernard Osher and The Bernard Osher Foundation; and
2. Approve naming FAU's Lifelong Learning Program "The Osher Lifelong Learning Institute at Florida Atlantic University."

### BACKGROUND INFORMATION

In June 2014 the Board of Trustees authorized FAU to enter into an operating agreement with The Bernard Osher Foundation ("Osher" or the "Osher Foundation"). The agreement provided a \$150,000 operating grant from Osher to support FAU's Lifelong Learning Program (the "Program"). FAU and Osher also agreed that if the \$150,000 grant was successfully expended as proposed and if other agreed upon conditions were met, the Osher Foundation would award FAU a \$4,000,000 endowment to permanently support the Program, and in grateful recognition of the gift, FAU would rename the Program "The Osher Lifelong Learning Institute at Florida Atlantic University." All required conditions have been met, and the Osher Foundation has now proffered to FAU a proposed Endowment Agreement (the "Endowment Agreement") that includes the promised \$4,000,000 gift to FAU.

The Osher Foundation was founded in 1977 by Bernard Osher, a respected businessman and community leader. The Osher Foundation seeks to improve quality of life through support for higher education and the arts. One arm of the Osher Foundation supports a national lifelong learning network for seasoned adults. Through the support of generous grants from the Osher Foundation, Osher Lifelong Learning Institutes now operate on well over 100 college and university campuses throughout the country. Recognizing the robust activity in FAU's Lifelong Learning Program, the proposed \$4,000,000 endowment is the highest amount that the Osher Foundation has ever awarded.

The Osher Foundation has five requirements for the lifelong learning programs that it endows:

- The program must offer a diverse and intellectually-stimulating array of non-credit education offerings in an array of academic disciplines.
- The program must be specifically for seasoned adults.
- The host institution must demonstrate strong support of the program and materially contribute to its ongoing development and success.
- The program must offer opportunities for volunteer leadership, have sound organizational structure, and a mechanism to evaluate participant satisfaction.
- Program offerings must occur in real-time.

FAU’s Program more than satisfies each requirement. The additional financial support the Osher Endowment will provide will enable the Program to build upon its nearly three decades of providing exceptionally high quality lifelong learning programs to residents of our service area.

**IMPLEMENTATION PLAN/DATE**

The first \$2,000,000 of the Endowment gift will be transmitted immediately after the Endowment Agreement is executed by all parties. The second \$2,000,000 will be transmitted when FAU submits documentation to the Osher Foundation that it has completed re-branding the Program to “The Osher Lifelong Learning Institute at Florida Atlantic University” on all promotional and collateral materials, including but not limited to the Program’s website, brochures, course catalogs, and letterhead. FAU anticipates completing the re-branding process in 2017.

**FISCAL IMPLICATIONS**

The Endowment will be administered by the FAU Foundation and will annually distribute to the Program 50% of the Endowment’s investment earnings (as calculated per the Endowment Agreement) or a minimum of 5% of the market value of the fund. When fully funded, the Endowment is expected to provide at least \$200,000 per year to support the Program. The cost to re-brand Program materials will be de minimis.

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Supporting Documentation:	Proposed Endowment Agreement	
Presented by:	Mr. David Kian,	Phone: (561) 297-3007
	Vice President and General Counsel	
	Ms. Danita Nias,	Phone: (561) 297-3015
	Vice President for Institutional Advancement and CEO of the FAU Foundation, Inc.	

## Osher Lifelong Learning Institute Endowment Agreement

This Endowment Agreement is entered into by Bernard Osher ("Grantor"), The Bernard Osher Foundation ("Osher Foundation"), Florida Atlantic University Foundation Inc. ("Foundation"), and Florida Atlantic University ("University"). Collectively, the Foundation and University are referred to herein as the "Grantees."

1. **Grant.** Subject to the conditions set forth below, Grantor shall transfer a sum of \$4 million to the Foundation as follows for the purposes set forth herein:

a. \$2 million upon receipt of both executed copies of this Agreement and a letter formalizing the University's commitment to exclusively identify the funded program—formerly known as the Lifelong Learning Society at Florida Atlantic University—as the "Osher Lifelong Learning Institute at Florida Atlantic University" at each of its current and future sites using the Foundation's prescribed logo in combination with the logo of the University in all marketing materials for the project.

b. \$2 million on receipt and acceptance of documentation confirming that the name of the program exclusively appears as the "Osher Lifelong Learning Institute at Florida Atlantic University" on all collateral materials including, but not limited to, the project's website, brochures, course catalogs, and letterhead.

2. **Purposes.**

a. *Initial Purpose.* The Grant shall be used for the sole and exclusive purpose of establishing a Fund-Functioning-as-an-Endowment that is to be used to support and grow the Osher Lifelong Learning Institute program ("Osher Institute"), a non-credit educational program specifically designed for people who are 50 years of age or older, and shall be known as the "Osher Lifelong Learning Endowment" (the "Osher Endowment").

b. *Additional Contributions.* Additional contributions may be made from time to time to the Osher Endowment by the Grantor or by others. All such additional contributions designated to the Osher Endowment and not specified for current use of the OLLI program, shall be added to the principal of the Osher Endowment. Such additional contributions shall not contain restrictions, conditions, or designations which are inconsistent or in conflict with this Agreement.

c. *Change in Purpose or Change in Circumstances.* In the event that the Osher Lifelong Learning Institute program (the "OLLI") is terminated, then the purpose of the Osher Endowment shall be changed to the following: To support scholarships for undergraduate students at Florida Atlantic University with academic promise and financial need who have experienced an interruption in their education of at least five years and who have many years of employability ahead of them. Such students shall be known as Osher Reentry Scholars.

### 3. Investment and Spending Instructions.

#### a. *Spending Policy:*

(i) *Permanent Endowment.* The initial amount of the Osher Endowment and any additional contributions received pursuant to Section 2(b) shall not be available for expenditure, regardless of default provisions in any applicable law (including, without limitation, the Uniform Prudent Management of Institutional Funds Act ("UPMIFA")), except as specifically provided herein.

(ii) *Expenditures.* Earnings generated by the Osher Endowment shall be used for the sole and exclusive purposes set forth in this Agreement. Expenditures shall be determined by the Senior Advisor for Academic Affairs and approved by the Provost or successor positions with equivalent duties.

(iii) *Distribution.* Except as provided in paragraph (v) below, the distribution for expenditure in each year shall be not less than the Minimum Amount.

(iv) *Minimum Amount.* Minimum Amount shall be 50% of investment earnings (calculated on a total return basis), net of investment expenses, determined once per year, based on the average rate of return for the 12 calendar quarters preceding the determination date (or, if less, the number of complete quarters the Osher Endowment has been held), but in no event less than an amount equal to 5% of the market value of the fund as of the beginning of Grantees' prior fiscal year.

(v) *Insufficient Earnings.* If net earnings (calculated on a total return basis) are insufficient to meet the required distribution and the Grantees, in their reasonable discretion, determine that they are unable to provide funds from other sources to meet the shortfall, then, with written approval of the Grantor, the original historic dollar value (original principal amount) may be invaded.

b. *Investment Policy.* The Osher Endowment shall be invested with a view to long-term appreciation so that the purchasing power of the Osher Endowment is not eroded by inflation.

c. *Prohibited Administrative Costs.* Neither the Foundation nor the University may allocate any charges against the Osher Endowment or the earnings thereon for administrative fees, overhead, indirect or related costs. Such expenses are the responsibility of the Grantees in this partnership with the Grantor.

d. *Allowable Costs.* The costs of investment and endowment management fees of professional managers and advisors shall be allowable whether the Osher Endowment is separately managed or commingled with an endowment pool containing other funds. If commingled, the Osher Endowment shall bear not more than its proportionate share of the fees and costs.

**4. Obligations of Grantees.**

a. The University shall continue to provide or cause to be provided appropriate office space and classroom space as necessary for the operation of the Osher Institute.

b. Grantees shall indemnify and hold Grantor and the Osher Foundation, and its directors, officers, employees, and agents, and their executors, administrators, successors and assigns (collectively, the "Indemnitees") harmless from any and all damages, liability, suits, claims, liens, taxes or demands whatsoever arising out of the operation of the Osher Institute to the maximum extent allowed by law, including but not limited to any and all damages for personal injury, death or property damage, and Grantees further agree to defend the Indemnitees from any loss or expense resulting therefrom including the costs and expenses of litigation or arbitration, including reasonable attorneys' fees.

c. Until otherwise notified by the Osher Foundation, Grantees shall submit to the Osher Foundation full and complete annual reports on the manner in which the principal and income (if any) arising from the Grant have been used on a regular basis.

d. Grantees shall maintain records of receipts and expenditures and shall make its books and records related to the Grant available to Grantor, the Osher Foundation, and their authorized representatives at reasonable times.

e. Grantees shall not use any portion or proceeds from the Grant:

(i) to carry on propaganda, or otherwise to attempt to influence legislation (within the meaning of Internal Revenue Code Section 4945(d)(1)),

(ii) to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Internal Revenue Code Section 4945(d)(2)),

(iii) to make any grant to an individual or to another organization unless such grant shall be specifically described in Section 2 hereof, or

(iv) to undertake any activity for any purpose other than one specified in Internal Revenue Code Section 170(c)(2)(B).

f. Grantees shall use the Grant funds in compliance with all applicable anti-terrorist financing and asset control laws and regulations.

g. Grantees shall notify the Osher Foundation of any organizational changes directly related to this Grant, including, but not limited to, any changes in key personnel and changes in the Grantees' tax-exempt status.

**5. Miscellaneous Conditions.** This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements between the parties. This Agreement

may not be modified, and no provision waived, without the prior written consent of the party against whom enforcement of the amendment or waiver is sought.

**The Bernard Osher Foundation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Bernard Osher

Date: \_\_\_\_\_

**Florida Atlantic University Foundation Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Florida Atlantic University**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_