

ITEM #79

(Revised Motion Statement and Term Sheet for NSU Innovation Center (Redline Outstanding Issues))

ADDITIONAL MATERIAL

Regular Meeting

JUNE 11, 2019

SUBMITTED AT THE REQUEST OF

COUNTY ADMINISTRATION

Item 79 on the Agenda for the June 11, 2019, Commission Meeting

Please note that the motion language has been revised to authorize the County Administrator to execute the Tenth Amendment, subject to approval as to form and legal sufficiency by the Office of the County Attorney.

Currently reads:

MOTION TO APPROVE Tenth Amendment to the Agreement between Broward County (County) and Nova Southeastern University (NSU) for the Design, Construction, and Operation of a Joint-use Library and Parking Garage, to provide for the development of an Innovation Center, update the obligations of the parties related to the Library's fifth floor buildout, provide for cash contributions by the County and NSU in the amount of \$5,000,000 each towards the Innovation Center, and detail the scope of services for the Innovation Center; authorize the County Administrator to implement all necessary administrative and budgetary actions; and authorize the Mayor and Clerk to execute same. (Commission District 7)

Should read:

MOTION TO AUTHORIZE County Administrator to approve and execute a Tenth Amendment to the Agreement between Broward County (County) and Nova Southeastern University (NSU) for the Design, Construction, and Operation of a Joint-use Library and Parking Garage, in accordance with the attached term sheet and subject to approval as to form and legal sufficiency by the Office of the County Attorney, to provide for the development of an Innovation Center, update the obligations of the parties related to the Library's fifth floor buildout, provide for cash contributions by the County and NSU in the amount of \$5,000,000 each towards the Innovation Center, and detail the scope of services for the Innovation Center; authorize the County Administrator to negotiate any remaining open issues, provided the terms developed do not increase the County's financial obligation or materially vary any term stated on the attached term sheet, with such negotiated terms also subject to review and approval as to legal sufficiency by the Office of the County Attorney; and authorize the County Administrator, or designee, to take any and all necessary administrative and budgetary actions to effectuate the transaction, including transferring funds from reserve.

**TERM SHEET FOR
TENTH AMENDMENT TO AGREEMENT
BETWEEN
BROWARD COUNTY
AND
NOVA SOUTHEASTERN UNIVERSITY, INC.
FOR
DESIGN, CONSTRUCTION, AND OPERATION OF A JOINT-USE
LIBRARY AND PARKING GARAGE (the "Agreement")**

1. Parties:

- Broward County ("County"), a political subdivision of the State of Florida.
- Nova Southeastern University, Inc., a Florida not for profit corporation ("NSU").
- County and NSU are collectively referred to herein as the "Parties."

2. Fifth Floor Build-out to be designated as an Innovation Center:

- The Fifth Floor Build-out (as described in the Agreement) is to consist of the development of an innovation center that, among other things, serves the needs of Broward County in furthering the County Commission's commitment to attract and retain high-tech and bio-tech business as well as developing local small business innovation (the "Innovation Center").
- Inclusion of: (i) a statement of intent regarding the Fifth Floor Build-out and the Parties' responsibilities with respect to the Fifth Floor Build-out pursuant to the Agreement, as amended; (ii) an acknowledgement that certain provisions in the Agreement relating to the Fifth Floor Build-out are either not applicable or deleted in their entirety; and (iii) an acknowledgment that upon County's payment of its share of the Contribution (as defined below) pursuant to the Tenth Amendment, all of County's obligations in connection with the Fifth Floor Build-out shall be deemed satisfied.

3. NSU and County Contributions:

- Within thirty (30) days of the effective date of the Tenth Amendment, County and NSU shall each contribute \$5,000,000, for a total of \$10,000,000 (the "Contribution") that will be used to pay for the costs of the design, construction, equipping, and start-up operational activities of the Innovation Center. The County's portion of the Contribution shall be solely used to pay for the related Soft Costs and Hard Costs (as those terms are defined in the Agreement), except that \$500,000 of County's share of the Contribution may be used by NSU to pay for operational start-up expenses of the Innovation Center or to facilitate NSU's efforts to raise additional funds from third parties. The use by NSU of any amounts of County's share of the Contribution in excess of \$500,000 for purposes other than the Soft Costs and Hard Costs of the construction of the Innovation Center requires written County approval. NSU's portion of the Contribution shall be used without restriction to support any design, construction, equipping, or start-up operational related

expenses.

- In no event shall County be obligated to contribute more than \$5,000,000 regardless of how much is raised from third parties or contributed by NSU, unless otherwise approved by the County Commission.
 - Innovation Center start-up costs advanced by NSU prior to the Tenth Amendment's effective date are to be considered expenses reimbursable from the Contribution.
 - The Contribution may be held by NSU within its general funds; provided, however, that NSU shall earmark such funds in a unique general ledger account for purposes related to the Innovation Center (such purposes to be described in further detail in the Tenth Amendment) and shall maintain an accounting of said funds.
 - All records relating to the Contribution and expenditures therefrom are subject to inspection and audit by the County. Records of NSU that are not related to the Contribution or expenditures therefrom are only subject to inspection and audit by the County to the extent provided for in the Agreement.
 - If the County's portion of the Contribution (excluding any funds properly expended from the \$500,000 as referenced above) exceeds the actual Soft Costs and Hard Costs of the Innovation Center, NSU shall reserve such funds for other purposes related to the Innovation Center including, but not limited to, repair, replacement and renewal.
- NSU states its intention to raise at least an additional \$10,000,000 from third parties to support the Innovation Center.
- NSU may, at its discretion, use third party funds to pay excess construction costs.

4. Commencement and Completion of Construction and the Continued Operation of the Innovation Center:

- If commencement of the construction of the Innovation Center does not occur within one year of the effective date of the Tenth Amendment (except if a force majeure (defined in the Agreement) event takes place during such period), County is entitled to 4% interest on its share of the Contribution until construction is commenced, with such interest to be paid to County on a quarterly basis. If commencement of the construction of the Innovation Center does not occur within two years of the effective date of the Tenth Amendment (except if a force majeure event takes place during such period), NSU is required to return County's portion of the Contribution. For purposes of this Section, the words "commence construction" means that NSU has completed all drawings and specifications for the initial phase of the Innovation Center and has obtained all required government approvals and permits.
- The County acknowledges that the construction of the Innovation Center shall be performed in progressive phases ~~agreed upon by the Parties~~. Within five years of the effective date of the Tenth Amendment, ~~the Parties must agree to phasing that provides~~ NSU shall provide to County NSU's plan for phasing for the complete construction

of the Innovation Center.

- NSU intends to operate the Innovation Center for a period of ten (10) years ~~(the "Initial Period")~~ after completion of the initial phase of construction (the date that a certificate of completion or occupancy is issued by the appropriate governmental authority). Notwithstanding anything to the contrary contained in the foregoing, the Parties acknowledge and agree that NSU may cease operations of the Innovation Center, in whole or in part, (i) in the event that third party contributions are not sufficient to pay the Soft Costs and Hard Costs of future phases of the Innovation Center after expenditure of the Contribution and all the ongoing operating costs of the Innovation Center (it being the understanding of the Parties that third party funding would be the sole source of funding of the Soft Costs, Hard Costs, and ongoing operations), (ii) upon the occurrence of a force majeure event which materially effects the operation of the Innovation Center, or (iii) upon the expiration or termination of the Agreement. In the event NSU ceases operations of the Innovation Center, the Parties shall agree in writing to an alternative use of the Innovation Center space consistent with the use of the Center as stated in the Agreement.

Commented [BK1]: County Administration position:
The stricken language here is a proposed revision by NSU.
County maintains that this is to remain an open term.
County maintains that this should be a joint decision.

- ~~If NSU ceases operations of the Innovation Center at any point prior to the expiration of the Initial Period, NSU shall reimburse the County \$500,000 for each full year remaining on the Initial Period (i.e., one full year being equal to one-tenth (1/10) of County's share of the Contribution), with the total amount of such reimbursement to be prorated as necessary.~~

- NSU agrees that County shall have a representative on any governing boards or selection committees that NSU creates/utilizes for purposes related to the Innovation Center.

Commented [BK2]: County Administration position:
The stricken language here (and in the above bullet) is a proposed revision by NSU.
County maintains that this is to remain an open term.
The County is agreeable to the above (i.e., NSU's ability to cease operations of the Innovation Center), so long as there is some provision for County funds to be returned if NSU ceases operations within the first ten years.

5. Programming Opportunities Accessible to Broward Start-up, Entrepreneurs, and First Stage Businesses:

- To the extent feasible and consistent with the "White Paper" and other written materials submitted to County on January 29, 2019, the Innovation Center should include the specific programming previously identified by the Broward County Office of Economic and Small Business Development.