

ITEM #79₍₂₎

(Final Term Sheet (Mutually agreed upon by County and NSU))

ADDITIONAL MATERIAL

Regular Meeting

JUNE 11, 2019

SUBMITTED AT THE REQUEST OF

COUNTY ADMINISTRATION

**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. Within five (5) years of the effective date of the Tenth Amendment, NSU shall provide to County NSU's plan for phasing for the complete construction of the Innovation Center.

- If within five (5) years of the effective date of the Tenth Amendment the Innovation Center has not been completely constructed, the Parties shall mutually agree in writing to the continued use or an alternative use of the Innovation Center space.
- NSU intends to operate the Innovation Center for a period of ten (10) years 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, (iii) if within five (5) years of the effective date of the Tenth Amendment it is determined that the Innovation Center is not self-sustaining, or (iiii) upon the expiration or termination of the Agreement. In the event NSU ceases operations of the Innovation Center, the Parties shall mutually agree in writing to an alternative use of the Innovation Center space consistent with the use of the Center as stated in the Agreement.
- 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.

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.