

**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**

This is the tenth amendment ("Tenth Amendment") to the Agreement for Design, Construction, and Operation of a Joint-Use Library and Parking Garage ("Agreement"), made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida ("COUNTY"), and NOVA SOUTHEASTERN UNIVERSITY, INC., a Florida not for profit corporation ("UNIVERSITY") (collectively, the "Parties").

RECITALS

A. The Parties entered into the Agreement on December 14, 1999, for the design, construction, and operation of a joint-use library, research and technology center (the "Center") and parking garage.

B. Pursuant to the Agreement, both COUNTY and UNIVERSITY are responsible for funding for the Center, as specifically delineated and described therein.

C. As set out in the Agreement, the first four (4) floors of the Center were to be built-out during initial construction, while the fifth (5th) floor was to remain a shell which would be built-out by UNIVERSITY (the "Fifth Floor Build-out") with certain funding provided by COUNTY at a later date, and with the date of commencement of the Fifth Floor Build-out to be determined by the usage and needs of the Center.

D. Pursuant to a Fourth Amendment to the Agreement dated October 27, 2009, the Parties deferred to January 2, 2014, the Fifth Floor Build-out and COUNTY's payment obligations relating to the Fifth Floor Build-out pursuant to Section 6.a of the Agreement.

E. At a COUNTY public workshop held on January 29, 2019 (the "Meeting"), UNIVERSITY made a presentation concerning the use of the fifth floor as an innovation center that, among other things, serves the needs of Broward County in furthering the County Commission's commitment to developing local small businesses (the "Innovation Center"). Recognizing the need for such a facility within Broward County, the County Commissioners present at the Meeting expressed a strong consensus to the establishment of the Innovation Center (formal votes are not permitted at workshops).

F. The Parties agree that, in lieu of what was contemplated by the Agreement, the Fifth Floor Build-out should consist of the development of the Innovation Center as contemplated at the Meeting, and that the Innovation Center ~~should~~ may include, but not be limited to, the following programming: availability of industry experts able and willing to provide advice and mentorship; individual training related to marketing, social media, and digital innovations; networking opportunities; pitch competitions; meeting rooms; boot camps geared toward entrepreneurship for teens and adults; continued development of, and support for, graduates of the Kauffman FastTrac Foundation; hosting of local lectures and seminars in furtherance of the Innovation Center's goals; access to seed investors and venture capitalists; diversity inclusive of minorities, women, individuals with disabilities, and other disadvantaged populations; targeted outreach to distressed communities; and collaboration with other educational entities and community organizations. With respect to funding for the Innovation Center, it is the intent of the Parties that the Innovation Center should be a self-sustaining venture based on public and private investment. Notwithstanding the foregoing, the Parties acknowledge that due to space, personnel or financial considerations, and the general aims and needs of the Innovation Center as described in UNIVERSITY's "White Paper" and other written materials submitted to COUNTY, it may not be feasible to offer all the foregoing programs. The Parties further acknowledge that these services may be provided in varying degrees and all of them may not be provided at any one time.

Commented [RDH1]: NSU's requested change was made.

Commented [MA2]: NSU's requested change was made.

G. The Parties desire to enter into this Tenth Amendment to memorialize their agreement on such matters relating to the Fifth Floor Build-out and set forth the Parties' respective responsibilities regarding the joint development of the Center's fifth (5th) floor as an Innovation Center.

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

1. **RECITALS.** The Recitals set forth above are true and correct and are incorporated herein by reference.

2. **CAPITALIZED TERMS.** Capitalized terms used herein shall have the same meaning set forth in the Agreement unless otherwise specifically defined.

3. **EFFECTIVE DATE.** This Tenth Amendment shall be deemed effective as of the date it is fully executed by the Parties (the "Effective Date").

4. **ACKNOWLEDGEMENTS.** The Parties acknowledge that with respect to the Fifth Floor Build-out as an Innovation Center, (i) the last paragraph of Section 4.a of the Agreement relating to the depreciation schedule, (ii) Section 5.i of the Agreement (Time Period for Permits) and other subsections of Section 5 or portions thereof that by their terms only apply or can only be construed to apply to the initial construction of the CENTER, and (iii) Section 5.I of the Agreement (Construction Draw Schedule for the

~~Center) are not applicable., and (iv) Section 6a of the Agreement (Fifth Floor Build-Out), are not applicable. The Parties further acknowledge that Section 6.a of the Agreement is hereby deleted in its entirety, and the Parties' respective obligations contained therein are replaced by those set forth in this Tenth Amendment.~~

**Commented [MA3]:** Most of NSU's proposed changes were accepted; the stricken-through language was not accepted, and the language thereafter was reinserted.

5. **FIFTH FLOOR BUILD-OUT PURPOSE.** The Parties agree that the Innovation Center is in the best interest of the Parties and would serve as the best use of the Center's fifth (5th) floor. This Tenth Amendment, and the Parties' respective responsibilities herein, are intended to effectuate such use.

6. **STATEMENT OF INTENT REGARDING ~~COUNTY'S~~ FIFTH FLOOR BUILD-OUT OBLIGATIONS.** The Parties intend and agree that each and every obligation relating to the Fifth Floor Build-out that COUNTY undertook pursuant to the Agreement, as previously amended, is hereby replaced by the obligations stated in this Tenth Amendment. Upon COUNTY's payment of its share of the Capital Contribution (as defined below in Section ~~6-a~~7 of this Tenth Amendment), all of COUNTY's obligations in connection with the Fifth Floor Build-out pursuant to the Agreement shall be deemed satisfied and COUNTY will have no further financial or other responsibility or obligation in connection with the Fifth Floor Build-out. COUNTY acknowledges that, other than operational and programming costs, UNIVERSITY is also not liable or responsible for any financial obligations relating to the Fifth Floor Build-out after payment of its portion of the Capital Contribution, except as expressly stated in Section 8. Any disagreement, dispute, or claim between the Parties relating to the Fifth Floor Build-out shall be resolved in a manner consistent with this Tenth Amendment and, in particular, in a manner consistent with this statement of intent.

**Commented [BK4]:** NSU's change was incorporated with a carveout for operating and programming expenses.

7. **UNIVERSITY AND COUNTY CONTRIBUTIONS.** Within thirty (30) days of the Effective Date, COUNTY and UNIVERSITY shall each contribute ~~up to~~ Five Million Dollars (\$5,000,000) for a total of ~~up to~~ Ten Million Dollars (\$10,000,000) (the "Capital Contribution"). UNIVERSITY also intends to raise ~~up to~~ Ten Million Dollars (\$10,000,000) (the "Private Contribution") from third party contributors including, but not limited to, the Broward County business community to support the Innovation Center. In no event shall COUNTY be obligated to contribute more than Five Million Dollars (\$5,000,000) regardless of how much is raised from the private business community or contributed by UNIVERSITY. Further, the Capital Contribution and the Private Contribution shall be subject to the following conditions:

a. All funds contributed by COUNTY and UNIVERSITY as part of the Capital Contribution shall be deposited into an account that maintains only such funds (and no other funds of UNIVERSITY), with such account and all such funds earmarked for the design and construction of the Innovation Center (the "Capital Fund"). Private Contribution funds shall, at UNIVERSITY's discretion, be deposited into the Capital Fund account to the extent UNIVERSITY determines such funds are needed to pay excess construction costs or, alternatively, into a separate account established and earmarked as an endowment for the operation and maintenance of the Innovation Center (the "Operating Fund").

b. The Capital Contribution, to be held in the Capital Fund as described above, shall be solely used to pay for the costs of the design and construction of the Innovation Center, including related Soft Costs and Hard Costs (as those terms are defined in the Agreement), except that UNIVERSITY may use up to Five Hundred Thousand Dollars (\$500,000) of the Capital Contribution (inclusive of the reimbursable expenses stated in the paragraph immediately below) to pay for start-up expenses of the Innovation Center or to facilitate UNIVERSITY's efforts to raise the Private Contribution. UNIVERSITY may not use any amount of the Capital Contribution in excess of Five Hundred Thousand Dollars (\$500,000) for any purpose other than paying for the costs of the design and construction of the Innovation Center unless UNIVERSITY obtains COUNTY's prior written consent. The Parties' respective shares of the Capital Contribution shall be expended equally, dollar for dollar, and for the same purpose. Under no circumstance shall COUNTY have any obligation to contribute toward the cost of designing, constructing, operating, or maintaining the Innovation Center in any amount beyond its share of the Capital Contribution. If the actual cost of design and construction of the Innovation Center (inclusive of any funds properly expended from the Five Hundred Thousand Dollars (\$500,000) as referenced above in this paragraph) is less than the total Capital Contribution provided by COUNTY and UNIVERSITY, UNIVERSITY shall refund to County, within thirty (30) days after completion of construction, fifty percent (50%) of the difference between such actual cost and the amount of the total Capital Contribution, unless the Parties mutually agree in writing to reserve such funds for future construction phases or capital replacement costs of the Innovation Center. ~~In addition to providing its share of the Capital Contribution, UNIVERSITY shall exert all good faith efforts to raise from the business community the Private Contribution. To the extent UNIVERSITY determines that Private Contribution funds are not needed to fund any costs of constructing the Innovation Center exceeding the \$10,000,000 Capital Contribution referenced above, such Private Contribution funds may be used to: (i) to create an endowment fund to pay for operating and maintenance expenses of the Innovation Center (e.g., staffing, utilities, security, marketing, maintenance and repairs, and insurance); and (ii) fund any future growth of the Innovation Center as determined by UNIVERSITY to be necessary or desirable.~~

**Commented [MA5]:** Deleted at NSU's request.

c. Innovation Center start-up costs advanced by UNIVERSITY prior to the Effective Date shall be considered expenses reimbursable expenditures from UNIVERSITY's portion of the Capital Contribution. UNIVERSITY represents that those start-up costs are equal to or less than \$ \_\_\_\_\_.

**Commented [MA6]:** Added sentence requested from NSU. Inserted subsequent sentence with blank to be filled in by NSU.

d. All records related to the construction of ~~The final costs for~~ the Fifth

Floor Build-out ~~and all records pertaining thereto~~ shall be subject to inspection and audit by COUNTY pursuant to Section 24 of the Agreement, and UNIVERSITY shall promptly make them available for that purpose upon request of COUNTY.

8. COMMENCEMENT AND COMPLETION OF THE INNOVATION CENTER PROJECT; GOVERNING BOARDS. UNIVERSITY shall promptly commence ~~construction of the Fifth Floor Build-out project upon obtaining a sufficient amount of funds as determined in UNIVERSITY's reasonable discretion; provided, however, that if UNIVERSITY does not until such time as UNIVERSITY commences the actual construction of the Fifth Floor Build-out project within one (1) year after the Effective Date, UNIVERSITY shall pay to COUNTY four~~~~six~~ percent (46%) interest on COUNTY's portion of the Capital Contribution until such time as actual construction is commenced. ~~every six (6) months, with the last of such interest payments prorated as necessary, and UNIVERSITY shall take all necessary and prudent actions to complete the initial phase of construction within a reasonable time, not to exceed five (5) years after the Effective Date, except in the event of a force majeure occurrence as defined in the Agreement. UNIVERSITY's obligation to complete the Fifth Floor Build-out by January 2, 2014, as set forth in the Fourth Amendment to Agreement, is hereby extended to January 2, 2022.~~ If UNIVERSITY does not commence construction of the Innovation Center within two (2) years after the Effective Date, [time period], UNIVERSITY shall return to COUNTY all funds COUNTY provided as Capital Contribution within thirty (30) days ~~thereafter, after the end of such [time period]~~ and all of COUNTY's obligations regarding the Fifth Floor Build-out shall be deemed to have been fully satisfied.

~~If UNIVERSITY creates or utilizes COUNTY and UNIVERSITY shall each have representation on~~ any governing boards or selection committees related to the Fifth Floor Build-out, COUNTY and UNIVERSITY shall each have representation thereon.

Commented [MA7]: Some words added.

9. INNOVATION CENTER PROGRAMMING. UNIVERSITY shall work with COUNTY's Contract Administrator to develop a comprehensive programming plan that supports the growth and development of entrepreneurship in Broward County. As part of such programming, COUNTY and UNIVERSITY shall each have representation on any governing boards or selection committees related to UNIVERSITY's programming. UNIVERSITY's programming shall consist of, but is not be limited to, the characteristics and/or components identified in Recital F above, subject to the limitations contained therein.

10. CONTINUING PURPOSE AND OBLIGATIONS. The Parties agree that the Center's fifth (5<sup>th</sup>) floor shall remain in operation as an Innovation Center as described in this Tenth Amendment for a period of ~~twentyten (2010)~~ consecutive years after the construction of the Innovation Center is completed, with the Parties having the option to mutually agree in writing to extend such operation in increments of five (5) year terms thereafter. UNIVERSITY agrees that this obligation may be judicially enforced through an action for specific performance.

11. PUBLIC RECORDS. To the full extent Chapter 119, Florida Statutes, is applicable to ~~the Agreement~~this Tenth Amendment and UNIVERSITY is acting on behalf

of COUNTY pursuant to ~~the Agreement~~this Tenth Amendment, in accordance in Section 119.0701, Florida Statutes, UNIVERSITY shall:

- a. Keep and maintain public records required by COUNTY to perform the services and/or obligations under ~~the Agreement~~this Tenth Amendment;
- b. Upon request from COUNTY, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of the Agreement and following completion or termination of the Agreement if the records are not transferred to COUNTY; and
- d. Upon completion or termination of the Agreement, transfer to COUNTY, at no cost, all public records in possession of UNIVERSITY or keep and maintain public records required by COUNTY to perform the services and/or obligations under the Agreement. If UNIVERSITY transfers the records to COUNTY, UNIVERSITY shall destroy any duplicate public records that are exempt or confidential and exempt from public record requirements. If UNIVERSITY keeps and maintains public records, UNIVERSITY shall meet all applicable requirements for retaining public records consistent with General Records Schedule GS1-SL. All records stored electronically must be provided to COUNTY upon request in a readily-accessible format or as otherwise agreed by the Parties~~that is compatible with the information technology systems of COUNTY~~.

The failure of UNIVERSITY to comply with the provisions of this Section 110 of the Tenth Amendment shall constitute a material breach of the Agreement entitling COUNTY to exercise any remedy provided in the AGREEMENT or under applicable law.

UNIVERSITY will provide any requested records to COUNTY to enable COUNTY to timely respond to any public records request.

12. SEVERABILITY. If any provision of this Tenth Amendment, or the application thereof to any person or circumstance, shall be found to be invalid or unenforceable by a court of competent jurisdiction, through any applicable appeal, then the remainder of this Tenth Amendment, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each unaffected provision of this Tenth Amendment shall be valid and enforceable to the fullest extent permitted by law.

13. INTERPRETATION AND JOINT PREPARATION. Should any of the provisions of this Tenth Amendment require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms of any such

provision shall be more strictly construed against the party who itself or through its agents prepared the same. The Parties acknowledge that the agents and attorneys for each party have participated in the preparation of the provisions of this Tenth Amendment and that all terms have been negotiated by the Parties. Any reference to "days" in this Tenth Amendment means calendar days unless expressly stated otherwise.

14. RATIFICATION. Except as provided for in this Tenth Amendment, the terms and conditions set forth in the Agreement, as previously amended and not inconsistent herewith, shall remain in force and effect.

15. MULTIPLE ORIGINALS. This Tenth Amendment may be fully executed in multiple copies by the Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of the page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Tenth Amendment to the Agreement for Design, Construction, and Operation of a Joint-Use Library and Parking Garage on the respective dates under each signature: NOVA SOUTHEASTERN UNIVERSITY, INC., signing by and through its President, duly authorized to execute same, and BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2019.

**UNIVERSITY**

WITNESSES:

NOVA SOUTHEASTERN UNIVERSITY,  
INC., a Florida not-for-profit corporation

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
George L. Hanbury II, Ph.D.,  
President

\_\_\_\_\_  
Print

\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Name



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

**COUNTY**

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_ day of \_\_\_\_\_, 2019

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
~~Insurance requirements~~ Fort Lauderdale,  
Florida 33301  
~~approved by Broward County~~ Telephone:  
(954) 357-7600  
~~Risk Management Division~~ Telecopier:  
(954) 357-7641

By \_\_\_\_\_ By \_\_\_\_\_

Signature \_\_\_\_\_ (Date) \_\_\_\_\_  
\_\_\_\_\_  
Keoki M. Baron (Date)  
Assistant County Attorney

\_\_\_\_\_  
~~Print Name and Title above~~

By \_\_\_\_\_  
(Date)  
Deputy County Attorney