

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 among them 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 ~~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; ~~robust~~ 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 ~~agree~~ 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.~~

F.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.

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

2.3. 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 4a of the Agreement relating to the depreciation schedule, (ii) Section 5i 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, (iii) Section 5(l) of the Agreement (Construction Draw Schedule for the Center), and (iv) Section 6a of the Agreement (Fifth Floor Build-Out), are not applicable.

~~3.5. FIFTH FLOOR BUILD-OUT PURPOSE.~~ The Parties agree that the Innovation Center, ~~with the objective of furthering development of local small businesses,~~ is in the best interest of the Parties and would serve as the best use of the Center's fifth (5th) floor ~~and the Fifth Floor Build-out contemplated in the Agreement.~~ This Tenth Amendment, and the Parties' respective responsibilities herein, are intended to effectuate such use ~~of the Center's fifth (5th) floor and the Fifth Floor Build-out.~~

4.6. STATEMENT OF INTENT REGARDING COUNTY'S AND UNIVERSITY'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 57.a 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 UNIVERSITY is also not liable or responsible for any financial obligations relating to the Fifth Floor Build-out other than its portion of the Capital Contribution. Any disagreement, dispute, or claim between the Parties relating to the foregoing Fifth Floor Build-out obligations shall be resolved in a manner consistent with this Section 46. Tenth Amendment and, in particular, in a manner consistent with this statement of intent.

7. UNIVERSITY AND COUNTY CONTRIBUTIONS; ADDITIONAL CONTRIBUTIONS. The Parties hereby covenant to each contribute Five Million Dollars (\$5,000,000) for a total of Ten Million Dollars (\$10,000,000) (the "Contribution") due on or about the Effective Date. The Contribution shall be used to pay the Soft Costs and Hard Costs of the Fifth Floor Build-Out and start-up expenses, with any remaining funds to be used to support the Innovation Center's operations and future growth. The Parties portions of the Contribution shall be expended equally, dollar for dollar. The UNIVERSITY also intends to raise up to Ten Million (\$10,000,000) from third party contributors including, but not limited to, the Broward County business community (the "Private Contribution") to support the Innovation Center.

Innovation Center start-up costs advanced by the UNIVERSITY prior to the Effective Date shall be considered expenditures from the Contribution.

The Parties acknowledge that other than the County's portion of the Contribution, the County shall have no other financial responsibility with respect to the Innovation Center.

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. The funding necessary for (i) the design and construction of the Innovation Center and (ii) the Innovation Center's operating and maintenance expenses (e.g., staffing, utilities,

security, marketing, maintenance and repairs, and insurance) shall be in accordance with the following:

a. 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") to be used solely for the design and construction of the Innovation Center (with one limited exception as stated below), with the Parties' respective obligations to provide such contributions strictly conditioned upon the following: UNIVERSITY is seeking to raise Ten Million Dollars (\$10,000,000) from the private business community (the "Private Contribution"), which funds would be used to fund any costs of constructing the Innovation Center exceeding the Capital Contribution referenced above or, to the extent not needed to fund any such excess costs, to fund the costs to operate and maintain the Innovation Center. For each dollar UNIVERSITY raises from the private business community that is earmarked to be expended in connection with the Innovation Center, UNIVERSITY and COUNTY will each contribute one dollar (up to their maximum obligation of Five Million Dollars (\$5,000,000) for each entity). COUNTY shall pay the amounts due from it under this paragraph within thirty (30) days after its receipt of notice that UNIVERSITY has raised funds from the private business community and has matched the funds raised (up to UNIVERSITY's maximum capital contribution of Five Million Dollars (\$5,000,000)). Under no circumstance will COUNTY be obligated to contribute any amounts toward the Capital Contribution (or otherwise in connection with the Innovation Center) exceeding the amount contributed by UNIVERSITY based on UNIVERSITY's raising of contributions from the private business community. 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.

b. 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.

e. 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 these terms are defined in the Agreement), except that UNIVERSITY may use up to Five Hundred Thousand Dollars (\$500,000) of the Capital Contribution 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 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.~~

~~d. 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.~~

8. CONTRIBUTION TO BE HELD BY THE UNIVERSITY. The Contribution to the Innovation Center project made by the Parties and contributions by all others shall be part of the UNIVERSITY's general funds. An accounting of the Contribution received, and expenditures funded therefrom, will be maintained by the UNIVERSITY in a unique general ledger account earmarked for the Innovation Center.

The final costs for the Fifth Floor Build-out and a~~All records pertaining thereto to the expenditures of the Contribution 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.~~

7.—9. COMMENCEMENT AND COMPLETION OF THE INNOVATION CENTER PROJECT; GOVERNING BOARDS. UNIVERSITY shall promptly commence the Fifth Floor Build-out project upon obtaining a sufficient amount of funds as determined in UNIVERSITY's reasonable discretion, and shall take all necessary and prudent actions

to complete the initial phase of construction within a reasonable time, not to exceed five (5) years from 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 six (6) months after COUNTY provides the above referenced approval, UNIVERSITY shall return to COUNTY all funds COUNTY provided as Capital Contribution within thirty (30) days after the end of such six month period and all of COUNTY's obligations regarding the Fifth Floor Build-out shall be deemed to have been fully satisfied.

COUNTY and UNIVERSITY shall each have representation on any governing boards or selection committees related to the Fifth Floor Build-out, provided that University decides to create any such board or committee.

10. 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~~must consist of, but is not be limited to, the characteristics and/or components identified in Recital F above subject to the limitations contained therein.

11. CONTINUING PURPOSE AND OBLIGATIONS. It is the intent of the UNIVERSITY to continue operations of the Innovation Center until the earlier of (i) twenty (20) years after the completion of construction, or (ii) the expiration or termination date of the Agreement. In connection therewith, the Parties acknowledge that there are factors including, but not limited to, the lack of funds, the occurrence of a force majeure event, or the failure to accomplish the goals of the Innovation Center as determined in UNIVERSITY'S discretion, that may cause operations to cease prior to the referenced time period and dates. The Parties agree that the Center's fifth (5th) floor shall remain in operation as an Innovation Center as described in this Tenth Amendment for a period of twenty (20) 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.

12. PUBLIC RECORDS. To the full extent Chapter 119, Florida Statutes, is applicable to the Agreement Tenth Amendment and UNIVERSITY is acting on behalf of COUNTY pursuant to the Agreement 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 Tenth Amendment. ~~For purposes of this Tenth Amendment, public records shall be defined as documentation to support Contribution expenditures.~~

Commented [CG1]: Before we agree to inclusion of this section on Public Records, we need to understand the following: Does Section 119 apply to this contract? If so, to what extent does the statute apply?

Commented [CG2]: If Section 119 applies, clarifying language must be added so that both parties understand what will be maintained.

- 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. All records stored electronically must be provided to COUNTY upon request in a format that is compatible with the information technology systems of COUNTY.

Commented [CG3]: What is the COUNTY's data retention for these types of Public Records? Where can I find applicable requirements for retaining these records?

Commented [CG4]: We will not be transferring records, and instead NSU will maintain them. Therefore, what is the format that is compatible with the IT systems of the county? Or would print documentation suffice (upon request).

The failure of UNIVERSITY to comply with the provisions of this Section 10 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.

~~TIME IS OF THE ESSENCE. The terms of Section 33 of the Agreement apply to this Tenth Amendment, and time is of the essence in the performance of the duties, obligations, and responsibilities required by this Tenth Amendment.~~

13. 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.

14. 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.

| **15. 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.

| **16. 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

Insurance requirements
approved by Broward County
Risk Management Division

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

By _____
Signature (Date)

By _____ (Date)
Assistant County Attorney

Print Name and Title above

By _____ (Date)
Deputy County Attorney