

Item # 30

ADDITIONAL MATERIAL

Regular Meeting

OCTOBER 6, 2020

SUBMITTED AT THE REQUEST OF

COUNTY

ADMINISTRATION

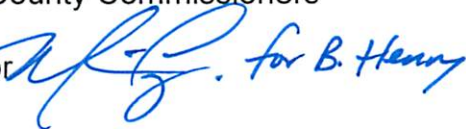


BERTHA W. HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

MEMORANDUM

TO: Mayor, Vice-Mayor, and Board of County Commissioners

FROM: Bertha Henry, County Administrator 

DATE: October 5, 2020

SUBJECT: **Additional Material – October 6, 2020 Commission Meeting (Item No. 30) – Broward Bridge Scholarship Program**

Item 30 on the October 6, 2020 Commission Agenda seeks authorization for the County Administrator to negotiate and execute an agreement for the Broward Bridge Scholarship Program between the County and Broward College. Attached is the Agreement that has been negotiated between the County and Broward College. The Agreement has been reviewed and approved to legal form by the County Attorney's Office.

The Agreement deviates from the County's standard contract language as it provides that the County will not seek termination for convenience before August 2022. This is to ensure that eligible students who are granted the Bridge Scholarship and maintain eligibility will be able to receive the funding for at least two academic years. Upon receipt of the first payment on October 15, 2020, Broward College will begin awarding the Broward Bridge Scholarship for the Spring 2021 term.

Should you have any questions or like to discuss further, please do not hesitate to contact me.

cc: Monica Cepero, Deputy County Administrator
Kevin Kelleher, Assistant County Administrator
Norm Foster, Director, Office of Management and Budget
Andrew Meyers, County Attorney
Bob Melton, County Auditor

**AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA AND BROWARD COLLEGE FOR THE
BROWARD BRIDGE SCHOLARSHIP PROGRAM**

This is an Agreement ("Agreement") made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and The District Board of Trustees for Broward College, Florida, a political subdivision of the State of Florida ("College") (individually a "Party" and collectively referred to as the "Parties").

RECITALS

A. County and College desire to provide a means to make attending college attainable and affordable for low income students who have graduated from a Broward County public high school.

B. County has approved and budgeted funds to cover the gap between non-loan based financial aid received by College's students and the cost of tuition and fees and agrees to provide those funds to College for use in the Program (as hereinafter defined) on the terms and conditions set forth in this Agreement.

C. County and College desire to set forth the terms and conditions for the awarding of scholarship funds by College to low income students to cover the gap between non-loan based financial aid and the cost of tuition and fees ("Gap Award").

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

1. **Program.** The Parties desire to establish a program that will provide a Gap Award to qualified low income students of College who meet the Eligibility Criteria (defined below), to cover the gap or deficiency between non-loan based financial aid received by the student and the cost of tuition and fees to attend College ("Bridge Scholarship Program" or "Program"). The Program is available to pay up to a maximum of one hundred percent (100%) of the costs of tuition and fees for the credits needed to complete the associate or bachelor degree, or financial aid eligible technical certificate, in which the student is enrolled and is eligible and available for enrollment during College's fall, spring, or summer academic terms.
2. **Eligibility.** The Program will be available to residents of Broward County who meet the following criteria ("Eligibility Criteria"):
 - A. Graduated from a Broward County Public High School with at least a 2.5 unweighted grade point average (this does not include individuals who have attained

a General Equivalency Diploma as they are not graduates of Broward County Public Schools);

B. Are enrolled at least three-quarters ($\frac{3}{4}$) time (9 credit hours in the fall and spring terms) at College pursuing an associate or bachelor degree, or financial aid eligible technical certificate;

C. Have completed a Free Application for Federal Student Aid (FAFSA);

D. Are Pell Grant eligible or have otherwise demonstrated financial need to College's satisfaction. For purposes of this Agreement, the determination of financial need by College is to be based upon a FAFSA that demonstrates an income lower than the sustainability budget for a household of two adults, two school-aged children in the Asset Limited, Income Constrained, Employed Report ("ALICE") as published by the United Way of Florida. The ALICE can be found at: <https://unitedforalice.org/county-profiles/florida>; and

E. Have a deficiency between the cost of tuition and fees and the amount of non-loan based financial aid available to the student to pay the costs of tuition and fees. Students are required to apply for any scholarships that the College may offer that student based on their individual circumstances before any Program funds are awarded to that student.

3. **Maintaining Eligibility.** After a student has been deemed eligible for a Gap Award and the Gap Award has been made, in order to remain eligible for a Gap Award in subsequent academic terms, the student must continue to meet the Eligibility Criteria set forth in Section 2 and:

A. Maintain both a 2.0 grade point average with College and, as determined by College, satisfactory academic progress towards their degree or technical certificate; and

B. Annually complete a FAFSA that demonstrates a financial need.

An eligible student is not required to be enrolled three-quarters ($\frac{3}{4}$) time during the summer term to maintain eligibility for the Gap Award in subsequent academic terms. However, if a student does enroll three-quarters ($\frac{3}{4}$) time during the summer term, the student would be eligible for a Gap Award for that summer term.

4. **County Grant to College.** County agrees to provide College with the sum of One Million Dollars (\$1,000,000) to fund the Program ("Gap Funds") as follows:

Payment 1: On or before October 15, 2020, Five Hundred Thousand Dollars (\$500,000) to be used for Gap Award funding for the Spring 2021, Summer 2021 and subsequent academic terms.

Payment 2: On or before June 15, 2021, Five Hundred Thousand Dollars (\$500,000) to be used for Gap Award funding for the Fall 2021 academic term and subsequent academic terms.

Gap Funds are to be used by College only for the purpose of Gap Award funding to College's students who meet the Eligibility Criteria and for no other purpose whatsoever including, but not limited to, the payment, reimbursement, or defraying of any costs or expenses of any nature borne by College in administering and marketing the Program.

If any Gap Funds remain unawarded or have been refunded to College because a student does not maintain eligibility after all Gap Awards have been made for the Fall 2021 academic term, College will continue to award Gap Funds to eligible students eligible under the Program for subsequent academic terms.

5. **Reporting and Auditing.** College will develop a mechanism for tracking and documenting Gap Award funding under the Program. Within thirty (30) days after the last day of classes of each major academic term (Fall and Spring), College will provide County with a written report with information on the Program to include, but not limited to:

- A. The number of students who received Gap Award funding during the just completed academic term, with the report for the Fall term to include information for about any Gap Award funds awarded for the Summer term;
- B. The total amount of Program funds awarded;
- C. The number of awards and amounts that have not been maintained; and
- D. Any further information that County may require to ensure that the intent of the Program is met.

College shall preserve all Program Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Program Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). County may, without limitation, verify information and amounts through interviews, written affirmations, and on-site inspection with College's employees, and recipients of Gap Award funds.

Program Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, recordings, agreements, contracts, commitments, arrangements, notes, daily diaries, receipts, vouchers,

memoranda, and any and all other documents that pertain to College's rights, duties, obligations, or performance under this Agreement. Program Records include hard copy and electronic records, written policies and procedures, cancelled checks, work sheets, correspondence, invoices and related payment documentation, and any other records pertaining to College's rights, duties, obligations or performance under this Agreement. However, to the extent that County seeks Program Records that contain personally identifiable information of a College student(s), College will not disclose such personally identifiable information unless and until a waiver from the student(s) is obtained under Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), which is the student's right to grant or not to grant. If personally identifiable information is contained within an otherwise disclosable record, Collage shall make a good faith effort to redact the personally identifiable record and produce the unredacted portion of the record.

County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Program Records at a location within Broward County. College hereby grants County the right to conduct such audit or review at College's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. College agrees to provide adequate and appropriate work space. College shall provide County with reasonable access to College's facilities, and County shall be allowed to interview all current or former employees and recipients of Gap Award funds to discuss matters pertinent to the performance of this Agreement.

Should County determine that a student who received Gap Award funding did not meet or maintain eligibility requirements required under Sections 2 and 3, College shall replace the amount awarded to the ineligible student in the Gap Funds from College's funds within thirty (30) days after notice and demand from County.

This Section 5 shall survive the expiration or earlier termination of this Agreement.

6. **Communication/Marketing Plan.** Within thirty (30) days after the Effective Date, College shall create, institute, and provide a copy to County of a communications and

- A. Creates a system for tracking;
- B. Identifies enrollment point person(s), and existing programs to provide support for maintaining eligibility of Gap Award recipients; and
- C. Launches the Program through a telephone campaign using recruiters and coaches that will contact students with talking points about the Program, an email marketing campaign, a direct mail campaign, and College's financial aid website updates on scholarships, and general website updates promoting the Program.

The communications and marketing plan must also:

- A. Target unknown individuals outside of College's student body who may qualify for the Program;
- B. Include a digital marketing campaign including school media, web search, and geotargeting;
- C. Target parents/caregivers of high school-aged students and high school counselors on social media; and
- D. Target Broward County Public Schools through communication with high school counselors, the provision of flyer and digital assets for high school counselors to share with their students, and work with recruitment team to update Jumpstart presentation materials to feature the Program.

College must also (i) update Program communications and other external-facing assets, include Program promotion in scholarship session on BECON Television, (ii) issue press releases and pitch to local and hyperlocal news media, (iii) create a blog feature on College's website, and (iv) launch a social media campaign featuring Gap Award recipients.

7. **Liability.** Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by any Party nor shall anything included herein be construed as consent by any Party to be sued by third parties in any matter arising out of this Agreement. Each Party is a public entity or political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.
8. **Termination.** This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by County. Termination for convenience by County shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. Termination for convenience will apply only to obligations arising after the date of termination and will not have retroactive application. The County agrees not to terminate for convenience prior to August 1, 2022. If Gap Funds remain unawarded by that date, and if there are eligible students who received Gap Awards for the Spring 2022 academic term and have maintained eligibility for a Gap Award for the Fall 2022 academic term, County agrees that its termination for convenience will be a partial termination and that award to those students is permitted for the Fall 2022 academic term. If County exercises its right to terminate for convenience, any Gap Funds remaining unawarded on August 1, 2022, after taking into account Gap Awards for the Fall 2022 academic term as permitted above, shall be returned to County by College on or before September 1, 2022.

This Agreement may also be terminated for convenience by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause was provided. A non-breaching Party's right of termination is in addition to all other rights and remedies the non-breaching Party may have at law or in equity, and all rights and remedies shall be cumulative and not exclusive.

9. **Notices.** In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County

Attn: Kevin Kelleher, Assistant County Administrator

115 South Andrews Avenue, Room 409

Fort Lauderdale, Florida 33301

Email address: KKELLEHER@broward.org

FOR COLLEGE:

Broward College

Attn: Lacey Hofmeyer, Esq.

General Counsel and Vice President of Public Policy and Government Affairs

111 E. Las Olas Blvd., Suite 33-522

Ft. Lauderdale, FL 33301

LHofmeyer@Broward.Edu

10. **Independent Contractor.** The Parties are independent from one another, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In performing its obligations under this Agreement, neither College nor its agents shall act as officers, employees, or agents of County. College shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.
- 11 **Third-Party Beneficiaries.** Neither College nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there

are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12. **Assignment.** Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by College without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.
13. **Materiality and Waiver of Breach.** Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.
14. **Severability.** If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
15. **Joint Preparation.** This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.
16. **Interpretation.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.
17. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this

Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, COLLEGE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

18. **Amendments.** No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and College.
19. **Prior Agreements.** This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.
20. **Incorporation by Reference.** Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference.
21. **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
22. **Use of County Logo.** College shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County. Likewise, County shall not use College's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior consent of the College.
23. **Effective Date.** This Agreement shall be effective on the date it is last executed by the Parties.
24. **Term.** This Agreement shall remain in full force and effect until the Gap Funds have been depleted and College has satisfied all of its obligations under this Agreement.

INTENTIONALLY LEFT BLANK

AGREEMENT BETWEEN BROWARD COUNTY AND BROWARD COLLEGE FOR THE BROWARD BRIDGE SCHOLARSHIP PROGRAM IN BROWARD COUNTY, FLORIDA

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute this Agreement by Board action on October 6, 2020, and COLLEGE, signing by and through its President duly authorized to execute same.

COUNTY

WITNESS:

BROWARD COUNTY, by and through its County Administrator

By: _____

By: _____

Name: _____

Bertha Henry
County Administrator

___ day of _____, 2020

By: _____

Name: _____

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: _____

Jeffrey S. Siniawsky
Senior Assistant County Attorney

Date: _____

By: _____

Michael J. Kerr
Deputy County Attorney

Date: _____

**AGREEMENT BETWEEN BROWARD COUNTY AND BROWARD COLLEGE FOR THE BROWARD
BRIDGE SCHOLARSHIP PROGRAM IN BROWARD COUNTY, FLORIDA**

COLLEGE

WITNESS:

**THE DISTRICT BOARD OF TRUSTEES FOR
BROWARD COUNTY FLORIDA**

By: _____

(Print/Type Name)

Gregory Haile, J.D.
President

(Print/Type Name)

(Print/Type Name)

___ day of _____, 2020