



**PROPOSED AGREEMENT BETWEEN BROWARD COUNTY AND FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES FOR CONSULTANT SERVICES FOR 2021 BROWARD COUNTY
AFFORDABLE HOUSING NEEDS ASSESSMENT UPDATE**
(GEN _____)

This Agreement ("Agreement") is made and entered into between Broward County, a political subdivision of the State of Florida ("County"), and The Florida International University Board of Trustees, a public instrumentality of the State of Florida ("FIU") (collectively, the "Parties").

RECITALS

A. County desires to enter into this Agreement with FIU for consultant services for the 2021 Broward County Affordable Housing Needs Assessment Update in accordance with the terms and conditions set forth herein;

B. This is a reasonable source procurement to update the 2018 affordable housing needs assessment.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida.

1.3. **Contract Administrator** means the Director of the Broward County Planning and Development Management Division, or such other person designated by same in writing.

1.4. **Purchasing Director** means County's Director of Purchasing as appointed by the Broward County Administrator.

1.5. **Services** means all work required by FIU under this Agreement, including without limitation all deliverables, consulting, training, project management, or other services specified in Exhibit A, Scope of Services.

1.6. **Subcontractor** means an entity or individual providing services to County through FIU for all or any portion of the work under this Agreement. The term "Subcontractor" shall include all subconsultants.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A	Scope of Services
Exhibit B	Project Schedule and Costs
Exhibit C	Certification of Payments to Subcontractors

ARTICLE 3. SCOPE OF SERVICES

3.1. **Scope of Services.** FIU shall perform all work identified in this Agreement including, without limitation, the work specified in Exhibit A (the “Scope of Services”). The Scope of Services is a description of FIU’s obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks, whether or not enumerated in this Agreement, that are such an inseparable part of the work described that exclusion would render performance by FIU impractical, illogical, or unconscionable. FIU acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this agreement.

3.2. **Services Schedule.** FIU shall complete the following tasks set forth in the Scope of Services in accordance with the following deadlines, unless otherwise approved in writing in advance by Contract Administrator: the Housing Supply Analysis and Housing Demand Analysis Draft, on or before February 2, 2022; the Municipal and BMSD Housing Supply and Demand Impact Assessment Draft, on or before March 4, 2022; the Draft Study and Presentations, on or before April 3, 2022; and the Final Study, on or before May 3, 2022.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. **Term.** The term of this Agreement begins on the date it is fully executed by the Parties (“Effective Date”) and will end on May 3, 2022, unless terminated earlier or extended pursuant to the terms of this Agreement.

4.2. **Fiscal Year.** The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

4.3. **Time of the Essence.** Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of FIU required by this Agreement shall be completed no later than May 3, 2022. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. COMPENSATION

5.1. Maximum Amounts. For all goods and services provided under this Agreement, County will pay FIU up to a maximum amount of Fifty Thousand Dollars (\$50,000) in accordance with the Project Schedule and Costs set forth in Exhibit B. Payment shall be made only for Services actually performed and completed pursuant to this Agreement, as set forth in the Project Schedule and Costs set forth in Exhibit B, which amount shall be accepted by FIU as full compensation for all such Services. FIU acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County's obligation to compensate FIU for work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon FIU's obligation to perform all Services required under this Agreement. Unless and except to the extent expressly required under this Agreement, FIU shall not be reimbursed for any expenses it incurs under this Agreement.

5.2. Method of Billing and Payment.

5.2.1. FIU may submit invoices for compensation at the completion of the tasks set out in the Project Schedule and Costs set forth in Exhibit B. An original invoice plus one copy are due within thirty (30) days after the date of the completion of each task described in this section and the Project Schedule and Costs in Exhibit B, except that the final invoice must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. Invoices shall designate the Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator. If FIU subcontracts any Services under this Agreement, FIU shall submit with each invoice a Certification of Payments to Subcontractors in the form set forth in Exhibit C. The certification shall be accompanied by a copy of the notification sent to each unpaid Subcontractor listed on the form, explaining the good cause why payment has not been made to that Subcontractor.

5.2.2. County shall pay FIU within thirty (30) days of receipt of FIU's proper invoice, as required under the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the then-current form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of FIU to comply with a term, condition, or requirement of this Agreement. Payment shall be made to FIU at the address designated in the Notices section.

5.2.3. FIU shall invoice Subcontractor fees only in the actual amount paid by FIU, without markup or other adjustment. FIU shall pay Subcontractors within the time period required by Florida law and by FIU Regulation, 2202 found at <http://regulations.fiu.edu/regulation>. FIU agrees that if it withholds an amount as retainage from Subcontractors, it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor in accordance with this subsection shall be a material breach of this

Agreement, unless FIU demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor and FIU promptly pays the applicable amount(s) to the Subcontractor upon resolution of the dispute. FIU shall include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors.

5.3. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) FIU's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representation of Authority. FIU represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of FIU, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that FIU has with any third party or violates Applicable Law. FIU further represents and warrants that execution of this Agreement is within FIU's legal powers, and each individual executing this Agreement on behalf of FIU is duly authorized by all necessary and appropriate action to do so on behalf of FIU and does so with full legal authority.

6.2. Solicitation Representations. FIU represents and warrants that all statements and representations made in FIU's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date FIU executes this Agreement, unless otherwise expressly disclosed in writing by FIU.

6.3. Contingency Fee. FIU represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for FIU, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4. Truth-In-Negotiation Representation. FIU's compensation under this Agreement is based upon its representations to County, and FIU certifies that the wage rates, factual unit costs, and other information supplied to substantiate FIU's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current as of the date FIU executes this Agreement. FIU's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

6.5. Warranty of Performance. FIU represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required Services under this Agreement, and that each person and entity that will provide Services under this

Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. FIU represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

6.6. Claims Against FIU. FIU represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of FIU, threatened against or affecting FIU, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of FIU to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of FIU or on the ability of FIU to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.7. Verification of Employment Eligibility. FIU represents that FIU and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If FIU violates this section, County may immediately terminate this Agreement for cause and FIU shall be liable for all costs incurred by County due to the termination.

6.8. Prohibited Telecommunications Equipment. FIU represents and certifies that it and its Subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. FIU represents and certifies that FIU and its Subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

6.9. Breach of Representations. FIU acknowledges that County is materially relying on the representations, warranties, and certifications of FIU stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to FIU; (c) set off from any amounts due FIU the full amount of any damage incurred; and (d) debarment of FIU.

ARTICLE 7. INDEMNIFICATION

To the extent permitted by and within the limitations of Chapter 768.28, Florida Statutes, FIU shall indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses including through the conclusion of any appellate proceedings, raised or

asserted by any person or entity not a party to this Agreement, and caused by any intentional, reckless, or negligent act or omission of FIU, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due FIU under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 8. INSURANCE

8.1. Pursuant to Section 1001.72, Florida Statutes, FIU is a public instrumentality of the State of Florida, and FIU maintains insurance coverage under the State of Florida Risk Management Trust Fund, established pursuant to Chapter 284, Florida Statutes, and administered by the State of Florida Department of Insurance. The Parties acknowledge that County and FIU are self-insured government entities that are subject to the limitations of Section 768.28, Florida Statutes, as may be amended from time to time.

8.2. Each of these entities agrees that it has instituted and maintains a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes, as may be amended from time to time, including Workers' Compensation in accordance with Chapter 440, Florida Statutes, as may be amended from time to time, and including Employer's liability. Nothing herein is intended to serve as a waiver of any party's sovereign immunity. Each party will, upon request, provide the other with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

ARTICLE 9. TERMINATION

9.1. 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 the Board. Termination for convenience by the Board 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. Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in all other instances termination for cause may be effected by the County Administrator or the County representative expressly authorized under this Agreement. This Agreement may also be terminated 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 and FIU shall be eligible for the compensation provided in Section 9.4 as its sole remedy.

9.2. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.2.1. FIU's failure to suitably perform the Services, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

9.2.2. Failure to suitably perform the work; or

9.2.3. Failure to accomplish the objectives as set forth in this Agreement.

9.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. In the event this Agreement is terminated for convenience by County, FIU shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination plus any non-cancelable commitments entered into by FIU in furtherance of this Agreement prior to receipt of the notice of termination, subject to any right of County to retain any sums otherwise due and payable. FIU acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by FIU, for County's right to terminate this Agreement for convenience.

9.5. In the event this Agreement is terminated for any reason, any amounts due FIU shall be withheld by County until all documents are provided to County pursuant to Section 11.2.

9.6. In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

10.1. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16 ½, as may be amended from time to time. FIU shall include the foregoing or similar language in its contracts with any Subcontractors. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate. FIU shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. FIU shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course

of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, FIU shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Although no CBE goal has been set for this Agreement, County encourages FIU to give full consideration to the use of CBE firms to perform work under this Agreement.

10.2. FIU shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by FIU to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

ARTICLE 11. MISCELLANEOUS

11.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with FIU to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement. The Contract Administrator may approve in writing minor modifications to the Scope of Services provided that such modifications that do not increase the total cost to County or waive any rights of County.

11.2. Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by FIU in connection with performing Services under this Agreement and delivered to the County shall be owned by County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by FIU, whether finished or unfinished, shall become the property of County and shall be delivered by FIU to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to FIU may be withheld until all documents are received as provided in this Agreement. FIU shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.3. Public Records. As a political subdivision and public university of the State of Florida, respectively, County and FIU are each subject to Florida's Public Records Law, Chapter 119 of the Florida Statutes. Notwithstanding anything else in this Agreement, any action taken by Broward County or FIU in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119 shall not constitute a breach of this Agreement. To the extent FIU is acting on behalf of County as stated in Section 119.0701, Florida Statutes, FIU shall:

11.3.1. Keep and maintain public records required by County to perform the services under this Agreement;

11.3.2. 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 Applicable Law;

11.3.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

11.3.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of FIU or keep and maintain public records required by County to perform the services. If FIU transfers the records to County, FIU shall destroy any duplicate public records that are exempt or confidential and exempt. If FIU keeps and maintains the public records, FIU 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.

IF FIU HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FIU'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-8695, ACUMMINGS@BROWARD.ORG, BROWARD COUNTY GOVERNMENT CENTER WEST, ONE NORTH UNIVERSITY DRIVE, BOX 102, PLANTATION, FL 33324.

11.4. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of FIU that are related to this Agreement. FIU shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, FIU shall make same available in written form at no cost to County.

FIU shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). FIU hereby grants County the right to conduct such audit or review at FIU's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after

presentation of County's findings to FIU. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by FIU in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the overcharges, FIU shall pay the actual cost of County's audit or, if the actual cost is unreasonably high, the reasonable cost. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to FIU.

FIU shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

11.5. Independent Contractor. FIU is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither FIU nor its agents shall act as officers, employees, or agents of County. FIU shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

11.6. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

11.7. Sovereign Immunity. 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 County or FIU nor shall anything included herein be construed as consent by County or FIU to be sued by third parties in any matter arising out of this Agreement. County and FIU are state agencies or subdivisions as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees only as set forth in Section 768.28, Florida Statutes.

11.8. Third-Party Beneficiaries. Neither FIU 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.

11.9. Notice and Payment Address. 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). Payments shall be made to the noticed address for FIU. Addresses may be changed by the applicable party giving notice of such change in accordance with this section.

FOR COUNTY:

Josie P. Sesodia, Director
Planning & Development Management Division
Government Center West, Box 102
One North University Drive
Plantation, Florida 33324
Email address: jsesodia@broward.org

FOR FIU:

Email Address: _____

11.10. Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by FIU 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. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

11.11. Conflicts. Neither FIU nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with FIU's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of FIU's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or FIU is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude FIU or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If FIU is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, FIU shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as FIU.

11.12. 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. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the party granting the waiver.

11.13. Compliance with Laws. FIU and the Services must comply with all Applicable Law, including, without limitation, Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

11.14. Severability. In the event 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.

11.15. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either party.

11.16. 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.

11.17. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect.

11.18. 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.19. 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 FIU.

11.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

11.21. Payable Interest

11.21.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to FIU for any reason, whether as prejudgment interest or for any other purpose, and FIU waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

11.21.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.22. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.23. 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.

11.24. Use of County Logo. FIU 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.

11.25. Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, FIU certifies that it has a drug-free workplace program that it will maintain such drug-free workplace program for the duration of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, through its Director of Purchasing, and FIU, signing by and through its Assistant Vice President for Research, duly authorized to execute same.

COUNTY

WITNESSES:

Broward County, through its
Broward County Administrator

Signature

By: _____
Bertha Henry

Print name of Witness above

_____ day of _____, 2021

Signature

Print name of Witness above

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
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By: _____
Maite Azcoitia (Date)
Deputy County Attorney

MA/
Housing Council Needs Assessment
5/28/2021
#

AGREEMENT BETWEEN BROWARD COUNTY AND THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES FOR CONSULTANT SERVICES FOR 2021 BROWARD COUNTY AFFORDABLE HOUSING NEEDS ASSESSMENT UPDATE IN BROWARD COUNTY, FLORIDA (GEN_____)

FIU

WITNESSES:

The Florida International University Board of Trustees

Signature

By: _____
Asst. Vice President for Research

Print name of Witness above

Print name

Signature

____ day of _____, 2021

Print name of Witness above

ATTEST:

Corporate Secretary or other person authorized to attest

(CORPORATE SEAL OR NOTARY)

EXHIBIT A
SCOPE OF SERVICES

I. Purpose / Scope of Work

The Broward Housing Council (BHC), an advisory board to the Board of County Commissioners (Board), is seeking professional consulting services to update the Broward County Affordable Housing Needs Assessment (Assessment). Since 2009, the BHC has sponsored the development of an Assessment and subsequent updates, which provide a current market perspective on the key demand and supply factors impacting the production and availability of affordable housing in Broward County. The findings are used to develop housing policy recommendations to the Board.

The Planning and Development Management Division (PDMD) provides staff support to the BHC.

The scope for the updated Assessment generally includes, but is not limited to, the following:

A comprehensive housing market analysis of the key housing and economic market data that determine the availability (supply) of affordable housing in Broward County;
An analysis of key housing and economic market data that will objectively determine the extent of affordable housing need (demand) within Broward County; and
The Assessment will include all 31 municipalities, plus each of the six (6) designated Census Designated Places (CDPs) in the Broward Municipal Services District (BMSD), and Broward County as a whole.

II. Detailed Product/Service Requirements

A. The Contractor shall update the most recent (2018) Affordable Housing Needs Assessment (a copy is attached to these specifications as EXHIBIT A). The updated (2021) Assessment shall incorporate the following data and analysis:

- A current perspective on the economy and housing needs for the Broward County Service Area (Service Area) which includes the 31 municipalities in Broward County *plus* six (6) CDPs within the Broward Municipal Services District (BMSD), also known as the unincorporated area.
- An assessment on the key supply and demand factors impacting the production and how they have changed since the 2018 update.
- The availability of affordable housing and assessment of the progress in addressing the existing and future demand on affordable and workforce housing based on new socio-economic data.
- Population Trend Analysis:
 - Population changes between 2015 and 2020 (or most recent available ACS data), with an emphasis on recent shifts due to economic and housing conditions
 - Changes in racial/ethnic group populations
 - Family and household changes

- Housing Demand Analysis:
 - Family and household income
 - Employment by industry and occupation
 - Location and type of employment concentrations
 - Salaries and wages
 - Employment projections
 - Worker migration patterns
 - Housing demand by household income category
 - Housing demand by housing type and location
 - Future housing demand by family and household income category
 - Introduce the concept of Housing and Transportation cost impacts (see Center for Neighborhood Technology and Broward County's Qualified Transit Areas (QTA) Map (QTA Map provided by PDMD)
- Housing Supply Analysis:
 - Current trends and overview of the housing market
 - Housing inventory by type
 - Housing vacancies by type
 - Housing type by tenure
 - Existing single-family home values
 - Existing condominium values
 - Existing rental housing prices
 - New housing production activity by type, price points and location
 - New unit absorption rates
 - Building permit activity
 - Housing conditions
 - Home foreclosure activity
 - Public Housing
 - Number of units by bedroom size
 - Number and percentage of vacancies by unit and bedroom size
 - Types of support services available and provided
 - Other types of housing without full-time residents, such as vacation homes and rentals (i.e., Airbnb)
- Housing Demand and Supply Impact Assessment:
 - Affordability analysis (surplus/gap) by housing type and household income category
 - Target affordable housing share by municipality and each CDP within the BMSD
 - General findings and conclusions
- Housing Demand and Supply Analysis for Service Area:
 - Chart showing Owner demand and supply by household income category for Broward County, each municipality and the 6 CDPs in the BMSD
 - Chart showing Renter demand and supply by household income category for Broward County, each municipality and the six (6) CDPs in the BMSD
- All documents shall be produced using Microsoft Office (Word, Excel and PowerPoint) in letter size, with full color text and graphics, using consistent data dates/ranges, and with all data sources clearly labeled.

- A digital copy of each document, formatted with ability to edit, shall be provided to PDMD staff. All electronic documents must be produced using the most current version of Adobe Acrobat Pro.
 - A digital copy of all tabular data used to generate Affordable Housing Supply and Demand by Municipality (including the BMSD), by both Renter and Owner, shall be provided to PDMD staff.
 - The Contractor shall utilize the latest available data (2020) from the US Census / American Community Survey. Any alternate data sources must be the latest available data and may require approval by PDMD staff.
- B.** The Contractor shall identify any **optional, fee-based services** that are offered and/or recommended for successful implementation of the Assessment's findings. This must include the Contractor's **hourly professional fee** for any proposed optional services.

III. Timeline and Delivery

All product deliverables, as shown in Section VIII (Deliverables), must adhere to the following deadlines:

Contractor Project Kick-Off / Notice to Proceed	January 3, 2022
Draft of Housing Supply Analysis and Housing Demand Analysis to PDMD staff for review and comment	February 2, 2022
Draft of Municipal and BMSD Housing Supply and Demand Impact Assessments to PDMD staff for review and comment	March 4, 2022
Draft of Full, Updated Study to PDMD staff and Presentation to BHC	April 3, 2022
Submittal of Full, Final Updated Study to PDMD staff	May 3, 2022
Presentation of Full, Final Updated Study to Board of County Commissioners	June 2020 <i>(not included in total timeline)</i>
Total Project Timeline	120 Days

Delivery of copies of the draft and final versions of the Assessment, as described in Section VIII of this Project Specifications (Deliverables), is required. The Contractor shall coordinate delivery with the Planning and Development Management Division's office located at Broward County Government Center West, 1 North University Drive, Box 102, Plantation, FL 33324. All delivery costs are the responsibility of the Contractor.

IV. Installation

Not applicable.

V. Experience

- The Contractor shall have been in current business for at least five (5) consecutive years.
- The Contractor shall have completed a minimum of three (3) consulting projects for local governments in the area of housing research and analysis. The Contractor shall provide a list of these projects, including the local government agency, contact name and information and scope of work/title of deliverable, performed for each.
- The Contractor shall provide five (5) customer references, with at least two (2) being located within Broward County, who have utilized the Contractor's professional consulting services. Provide customer name, contact phone number and email address for each reference.
- The Contractor shall provide competent supervision and an adequate number of experienced, highly knowledgeable, technically proficient employees and agrees to utilize only such qualified employees in the performance of work on this contract.
- The Contractor and Contractor's personnel must be highly knowledgeable in utilizing Microsoft Office, Adobe Acrobat and Microsoft Outlook software for meeting coordination purposes and for the production and submittal of deliverables.
- The Contractor shall have the ability to access and import data tables into Microsoft Excel format and provide to Planning and Development Management staff.

VI. Warranty

Not applicable.

VII. Training

Training for County staff not required.

VIII. Deliverables

- A. The Contractor shall prepare and electronically submit a DRAFT copy of the Housing Supply Analysis and Housing Demand Analysis to PDMD staff for review and comment. The DRAFT shall be provided in editable pdf format.
- B. The Contractor shall prepare and electronically submit a DRAFT copy of the Municipal and BMSD Housing Supply and Demand Impact Assessments to PDMD staff for review and comment. The DRAFT shall be provided in editable pdf format.
- C. The Contractor shall prepare and electronically submit the DRAFT version of the full, updated 2021 Assessment to the BHC Coordinator. The submittal shall be provided in editable pdf format.
- D. The Contractor shall present the DRAFT version of the full, updated 2021 Assessment to the Broward Housing Council and solicit comments from the BHC members. The presentation will occur during a regularly scheduled BHC meeting or special workshop. The dates, location and notification of said meeting which shall be the responsibility of the BHC Coordinator.
- E. The Contractor shall prepare and electronically submit the FINAL version of the full, updated 2021 Assessment to the BHC Coordinator, which incorporates BHC and PDMD comments, to the BHC Coordinator. The submittal shall be provided in editable pdf format.

- F. A digital copy of all tabular data used to generate Affordable Housing Supply and Demand by Municipality (including the BMSD), by both Renter and Owner, shall be provided to PDMD staff.
- G. Following acceptance of the updated Assessment by the BHC, the Contractor shall present the FINAL version of the full, updated 2021 Assessment to the Broward County Board of County Commissioners (Board) for their acceptance. The presentation will occur during a regularly scheduled Board meeting. The dates, location and notification of said meeting which shall be the responsibility of the BHC Coordinator.
- H. All documents shall be produced using Microsoft Office (Word, Excel and PowerPoint) in letter size, with full color text and graphics.

IX. Maintenance

None required.

X. Quality Assurance

All deliverables must be electronically submitted to PDMD staff for review and comment, prior to the issuance of Contractor payment:

- ❖ Clarity of text, graphics and other images (charts, graphs, etc.)
- ❖ Logical formatting of content, including clean page breaks.
- ❖ Ability to create legible photocopies (no dark colors)

If these quality standards are not met, PDMD staff will provide the Contractor with a written request for changes. The Contractor is responsible for making all changes as directed by PDMD staff, at the Contractor's expense.

XI. Customer Support Requirements

The Contractor shall be available to respond to Broward County staff, Monday through Friday (except holidays), 8 a.m. to 5 p.m.

XII. Safety

The Contractor is solely responsible for the health, safety, and protection of all Contractor personnel during the performance of the work on this contract.

EXHIBIT B

Project Schedule and Costs

Based on the proposed work program detailed above, the proposed Project Schedule and Costs are as follows:

Project Tasks and Deliverables	Deadline	Costs
Project Kick-off /Notice to Proceed	January 3, 2022	NA
Task #1: Housing Supply Analysis	February 2, 2022	\$10,000
Task #2: Housing Demand Analysis	Concurrent with Task #1	\$10,000
Task #3: Municipal Housing Supply and Demand Impact Assessment	March 4, 2022	\$15,000
Draft Study and Presentations	April 3, 2022	\$10,000
Final Study	May 3, 2022	\$10,000
Total:	120 business days	\$55,000

FIU shall invoice for each Project Task and Deliverable only upon written confirmation by the Contract Administrator of the satisfactory completion of that Project Task and Deliverable in accordance with the requirements of Exhibit A.

EXHIBIT C
Certification of Payments to Subcontractors

RLI/Bid/Contract No. GEN _____
Project Title: Needs Assessment

The undersigned FIU hereby swears under penalty of perjury that:

1. FIU has paid all Subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with the "Compensation" article of this Agreement, except as provided in paragraph 2 below.
2. The following Subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractors name and address	Date of disputed invoice	Amount in dispute

3. The undersigned is authorized to execute this Certification on behalf of FIU.

Dated _____, 2021

FIU
By _____
(Signature)
By _____
(Name and Title)

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20_____, by who is personally known to me or produced identification. Type of identification produced _____.

(Seal)

NOTARY PUBLIC:

Print name:
My commission expires: