

ITEM #41

**ADDITIONAL MATERIAL
REGULAR MEETING**

JANUARY 12, 2021

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

DATE: January 8, 2021

TO: Board of County Commissioners

FROM: Alan Cohen, Assistant County Administrator

SUBJECT: **BOCC January 12, 2021 Regular Meeting Agenda Item No. 41 - Additional material – KPMG P3 Consulting Agreement for the JGCC**

As indicated in the background material for Agenda Item No. 41, staff was still working with KPMG at the time of Agenda Preparation to finalize the P3 Consulting Agreement (Agreement) for the Joint Government Center Campus (JGCC) project. The discussions with KPMG are concluded and the Agreement has been sent to the City for their review. Please find attached the current draft for your review.

Staff had planned to have sign-off from the City prior to sharing the Agreement with the Board of County Commissioners (Board), but we were unable to finish the Agreement and get it to the City in time for that to happen. The City Manager and City Attorney are now reviewing it and have promised their comments to us by Monday.

The Agreement already includes identical City-approved language regarding the City's rights that was previously included in the Zyscovich agreement. The Agreement also includes additional language that the City suggested relevant to how the KPMG contract would be managed, specifically requiring City Manager sign-off before task orders are issued by the Contract Administrator. As such, while we cannot rule it out, we do not anticipate any substantive changes coming from the City. If there are any agreed upon changes resulting from their review, those will be shared with the Board on Monday.

This deliberately-phased Agreement provides for P3 consulting services to assist with the solicitations, evaluation of proposals, and contracting with a development team that will develop the JGCC. The City is a third-party beneficiary to this Agreement with the right to enforce all obligations of the P3 consulting firm and exercise all the City's rights under the Agreement. The compensation is an hourly maximum not-to-exceed amount as opposed to a lump sum amount, which staff will manage to ensure the County and City are receiving fair value for their investment. The County will be responsible for 57% of compensation under the Agreement, and the City will be responsible for 43%.

This Agreement is structured into phases, with each phase requiring its own Task Order and Notice to Proceed. The Agreement scope represents KPMG's assessment of what is needed to move the JGCC project forward. As KPMG becomes more familiar with the work that has already been done on the project, we expect some scope items to be changed. Each Task Order will be further negotiated with a level of detail to ensure the proposed work is both necessary and being done in an expeditious manner.

To assist with the final development of the P3 solicitation documents, the P3 consultant will perform a 'market sounding' to determine if the JGCC project, as currently envisioned, is of interest to the development community, and to determine if any changes should be made to the solicitation documents before issuance. The P3 consultant will provide a summary of the market sounding findings.

The P3 consultant will assist with the development of both a Request for Qualifications, to qualify developers and their teams, and a Request for Proposals, to evaluate design and financial proposals. This work includes developing financial capacity requirements, risk transfer impacts, Operations and Maintenance (O&M) performance criteria, project schedules and other criteria that would be included in the solicitation documents. The P3 consultant will further assist with the development of specific financial and commercial terms for the project agreement, including payment mechanism, interest rate risk transfer, calculation of relief and compensation events, and termination impacts. The consultant would later assist with the review and analysis of submitted responses and proposals.

If you have any questions, please contact me at 954-801-0242.

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**AGREEMENT BETWEEN BROWARD COUNTY AND KPMG, LLP
FOR CONSULTANT SERVICES FOR THE BROWARD COUNTY – CITY OF FORT LAUDERDALE JOINT
GOVERNMENT CENTER**

This Agreement (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and KPMG LLP, a limited liability partnership authorized to transact business in the State of Florida (“Consultant”) (each a “Party” and collectively referred to as the “Parties”).

RECITALS

A. County and the City of Fort Lauderdale (“City”) have entered into an interlocal agreement to pursue the joint development of a new government center to be located on County owned property in downtown Fort Lauderdale that will be occupied by County and City.

B. County engaged the services of Zyscovich, Inc. to prepare a design criteria package for the proposed new government center, and County and City have accepted that design criteria package.

C. County and City now desire to solicit proposals from real property developers to undertake the development of the new government center as a public-private partnership (“P3”) pursuant to Section 255.065, Florida Statutes.

D. County and City desire to have County engage the services of a consultant with expertise in P3 transactions to assist in the preparation of a P3 solicitation document and the evaluation of proposals that may be received in response to such solicitation, and provide such other professional services as set forth in this Agreement.

E. Consultant has been engaged by the District Board of Trustees of Broward College (“College”) to provide professional consulting services for College in connection with a College P3 project.

F. The professional services provided to College by Consultant consist of the services sought by County and City to assist County and City with the development of the new County and City government center, and County desires to “piggy-back” off of the College’s contract with Consultant and procure substantially the same professional services from Consultant as Consultant has provided and is providing to College.

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

1.2 **College Contract** means the Contract for Services between Broward College and Consultant entered into as of October 23, 2018.

1.3 **Contract Administrator** means the County Administrator, or such other person designated by the County Administrator in writing. The Contract Administrator is the representative of County concerning the Agreement.

1.4 **Notice to Proceed** means a written authorization to proceed with the phase, or task, issued by the Contract Administrator.

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

1.6 **Services** means the work, tasks, and phases set forth in Exhibit B.

1.7 **Subconsultant** means an entity or individual providing services to County through Consultant for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors, if any.

ARTICLE 2. EXHIBITS

Exhibit A College Contract, dated October 23, 2018

Exhibit B Proposed Scope of Services

ARTICLE 3. SCOPE OF SERVICES

3.1 Consultant shall provide all Services as set forth in Exhibits A and B and associated task orders, including all necessary, incidental, and related activities required for full and complete performance of this Agreement (the "Scope of Services").

3.2 This Agreement does not delineate every detail and minor work task required to be performed by Consultant. During the course of the performance of the Services included in this Agreement, if Consultant determines that work should be performed, in Consultant's opinion, that work is outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If Consultant proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by County to Consultant to perform the work. Unless there is a dispute about the level of effort required, any work performed by Consultant outside the originally anticipated level of effort without prior written County approval shall be at no additional cost to County.

3.3 Exhibit B identifies the initial services, and additional negotiations may be required for other phases or additional services. County and Consultant may negotiate additional services, compensation, time of performance, and other related matters, including for other phases of

services. Notwithstanding the foregoing, County shall have the right to terminate negotiations at any time at no cost to County and procure services for other phases from any other source.

3.4 County shall assist Consultant by placing at Consultant's disposal all pertinent information County has available. County shall review any itemized deliverables and documents required to be submitted by Consultant and respond in writing with any comments.

ARTICLE 4. TIME FOR PERFORMANCE; TERM

4.1 Consultant shall perform the Services within the time period specified in the applicable task order. Time periods shall commence from the date of the applicable task order Notice to Proceed.

4.2 Consultant must receive a Notice to Proceed from the Contract Administrator prior to commencement of any phase or task pursuant to a task order under this Agreement. Prior to granting approval for Consultant to proceed to any phase or task, the Contract Administrator may, at his or her sole option, require Consultant to submit the itemized deliverables and documents identified in the task order for the previous phase for the Contract Administrator's review.

4.3 The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall end on January 30, 2022 ("Initial Term"). County may renew this Agreement for up to four (4) additional one (1) year terms (each an "Extension Term") by sending notice of renewal to Consultant at least thirty (30) days prior to the expiration of the then-current term. The Purchasing Director is authorized to exercise this renewal option. This Agreement shall survive the expiration or earlier termination of the College Contract.

ARTICLE 5. COMPENSATION AND METHOD OF PAYMENT

5.1 Amount and Method of Compensation. Each phase of Services shall be governed by a written task order executed by County and Consultant that includes, but may not be limited to, the scope of work for the phase and tasks, the time for Consultant's performance, associated compensation for the tasks to be performed, and any unique terms or conditions applicable to the phase. The total consideration for all Services shall not exceed the cumulative estimated cost for all phases set forth on Exhibit B, and the total consideration for each phase shall not exceed the estimated cost allocated for each respective phase set forth on Exhibit B. The associated compensation payable to Consultant shall be based upon the Hourly Rates (as hereinafter defined) set forth on Exhibit B, shall be mutually agreed upon in writing by the Parties prior to task authorization by County, and constitute a limitation upon County's obligation to compensate Consultant for Services under this Agreement, but do not constitute a limitation of any sort upon Consultant's obligation to perform all Services required under this Agreement. The Contract Administrator is hereby authorized to execute task orders after written approval by City (through its City Manager) so long as the respective task order does not exceed the estimated cost amount for that phase set forth on Exhibit B.

5.1.1 Maximum Amount Not-To-Exceed Compensation. For Services identified in a task order as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Hourly Rates as described in Section 5.2 up to a

maximum not-to-exceed for that phase set forth on Exhibit B.

5.1.2 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses as defined in Section 5.3 up to a maximum not-to-exceed amount of \$0.00. Unused amounts of those monies shall be retained by County.

5.1.3 Hourly Rates. The maximum billing rates payable by County for each of Consultant's employee categories are shown on Exhibit B and are further described in Section 5.2.

5.1.4 Subconsultant Fees. Consultant shall bill Subconsultant fees, if any, using the employee categories for Hourly Rates for each Subconsultant shown on Exhibit B as defined in Section 5.2 and Reimbursable Expenses defined in Section 5.3. Consultant shall bill Subconsultant fees with no mark-up and within any applicable maximum not to exceed amount.

5.2 Hourly Rates. The term Hourly Rates as used herein shall mean the hourly rates set forth in Exhibit B for each category of Consultant's personnel that will provide or perform Services. These Hourly Rates shall remain in effect for the term of this Agreement.

5.3 Reimbursable Expenses. For reimbursement of any travel costs, travel-related expenses, or other direct nonsalary expenses directly attributable Consultant's performance of Services, permitted under this Agreement, Consultant agrees to adhere to Section 112.061, Florida Statutes, except to the extent otherwise stated herein. County shall not be liable for any such expenses that have not been approved in writing in advance by the Contract Administrator. Reimbursable Subconsultant expenses must also comply with the requirements of this section.

5.4 Method of Billing.

5.4.1 For Maximum Amount Not-To-Exceed Compensation under Section 5.1.1. Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner for all Hourly Rates and Reimbursable Expenses attributable to the performance of Services. These billings shall identify the nature of the work performed, the total hours of work performed, and the employee category of the individuals performing same. Billings for each phase shall not exceed the estimated cost amount allocated to said phase. Billings shall itemize and summarize Reimbursable Expenses by category and identify the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. The statement shall show a summary of Hourly Rates and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to Consultant's performance of Services. Subsequent addition of the identifier to the invoice or receipt by Consultant is not acceptable except for meals and travel expenses. Internal expenses must be documented by appropriate Consultant's cost accounting forms with a summary of charges by category. When requested, Consultant shall provide backup for past and current invoices that records hours and Hourly Rates by

employee category, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

5.5 Method of Payment.

5.5.1 County shall pay Consultant within thirty (30) days after receipt of Consultant's proper invoice, as defined by County's Prompt Payment Ordinance, minus any applicable deductions permitted by this Agreement.

5.5.2 Payment will be made to Consultant at the following address:

[REDACTED]

5.6 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.

5.7 Foreign Entity Tax Withholding. Amounts due to certain foreign persons or entities may be subject to backup withholding taxes under federal law. If Consultant is a foreign person or entity that is required to complete Internal Revenue Service ("IRS") Form W-8ECI, Consultant shall provide County a copy of Consultant's current Form W-8ECI prior to issuance of any invoice or payment under this Agreement. If Consultant fails to timely provide a completed, current Form W-8ECI, County will withhold all backup withholding taxes from the amounts due Consultant, remit such sums to the IRS, and pay Consultant only the remainder. County makes no representation regarding the tax treatment of amounts due to Consultant, and Consultant releases and holds County harmless from any claims or damages in any way relating to or arising from any tax withholding by County pursuant to this section.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1 Representation of Authority. Consultant represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Consultant, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Consultant has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Consultant. Consultant further represents and warrants that execution of this Agreement is within Consultant's legal powers, and each individual executing this Agreement on behalf of Consultant is duly authorized by all necessary and appropriate action to do so on behalf of Consultant and does so with full legal authority. County represents to KPMG that the County has obtained all legal consents necessary to award this contract to KPMG without competition other than the public solicitation completed by the College, and that award of this contract is made in accordance with all applicable law, regulations, rules, policies, and requirements.

6.2 Claims Against Consultant. Consultant 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 Consultant, threatened against or affecting Consultant, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Consultant 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 Consultant or on the ability of Consultant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

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

6.4 Public Entity Crime Act. Consultant represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Consultant further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether Consultant has been placed on the convicted vendor list.

6.5 Discriminatory Vendor and Scrutinized Companies Lists. Consultant represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Section 215.473, Florida Statutes. Consultant represents and certifies that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

6.6 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Consultant certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement. The contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

6.7 Breach of Representations. In entering into this Agreement, Consultant acknowledges that County is materially relying on the representations, warranties, and certifications of Consultant stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation, warranty, or certification is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Consultant, to deduct from the compensation due Consultant under this Agreement the full amount of any value paid in violation of a representation or warranty, and to recover all sums paid to Consultant under this Agreement. Furthermore, a false representation may result in debarment from County’s procurement activities.

ARTICLE 7. INSURANCE

7.1 For the duration of the Agreement, Consultant shall, at its sole expense, maintain the minimum insurance coverages stated in the College Contract in accordance with the terms and conditions of this article.

7.2 Consultant shall ensure that “Broward County” is listed and endorsed as an additional insured on the General Liability insurance policy required under the College Contract and provide a blanket endorsement with written language on the certificate.

7.3 On or before the date this Agreement is fully executed or at least fifteen (15) days prior to commencement of Services, Consultant shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required by this Agreement.

7.4 Consultant shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Consultant has been completed, as determined by Contract Administrator. Consultant shall provide notice to County of any cancellation of any required policy at least thirty (30) days prior to the effective date of cancellation, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Consultant shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this Agreement.

7.5 Consultant shall require that each Subconsultant maintains insurance coverage that adequately covers the Services provided by that Subconsultant on substantially the same insurance terms and conditions required of Consultant under this article. Consultant shall ensure that all such Subconsultants comply with these requirements and that "Broward County" is named as an additional insured under the Subconsultants' applicable General Liability insurance policies.

7.6 Consultant shall not permit any Subconsultant to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Consultant shall provide, within one (1) business day, evidence of each Subconsultant's compliance with this section.

7.7 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the date this Agreement is fully executed; (2) the required coverage must be maintained after termination or expiration of this Agreement, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the date this Agreement is fully executed, Consultant must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in the College Contract.

ARTICLE 8. NON-DISCRIMINATION

8.1 Neither Party 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. Consultant shall include the foregoing or similar language in its contracts with any Subconsultants.

ARTICLE 9. MISCELLANEOUS

9.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Consultant 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 provided that such instructions and determinations do not change the Scope of Services. The Contract Administrator may designate one or more County employees with authority pertaining to day-to-day management or activities related to this Agreement. Consultant shall notify Contract Administrator in writing of Consultant's representative(s) to whom matters involving this Agreement shall be addressed.

9.2 Public Records. To the extent Consultant is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Consultant shall:

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

9.2.2 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 law;

9.2.3 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 this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

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

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If that a third party submits a request to County for records designated by Consultant as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend County and its employees and agents from any and all claims, causes

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of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) _____, _____@BROWARD.ORG, 115 S. ANDREWS AVE., SUITE _____, FORT LAUDERDALE, FLORIDA 33301.

9.3 Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

9.4 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 e-mail, 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: _____
115 South Andrews Avenue, Room ____
Fort Lauderdale, Florida 33301
Email address: _____

FOR CONSULTANT:

Email address: _____

9.5 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. All references to College in the College Contract shall be replaced by County.

9.6 Consultant’s Staff. Consultant will provide the key staff identified in Exhibit B for as long as said key staff are in Consultant’s employment. Consultant will obtain prior written approval of Contract Administrator to change key staff. Consultant shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications. If Contract Administrator desires to request removal of any of Consultant’s staff, Contract Administrator shall first meet with Consultant and provide reasonable justification for said removal; upon such reasonable justification, Consultant shall use good faith efforts to remove or reassign the staff at issue.

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

9.8 Independent Contractor. Consultant 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 Consultant nor its agents shall act as officers, employees, or agents of County, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements. Consultant shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

9.9 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 County’s regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances 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.

9.10 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 nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a 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.

9.11 Third-Party Beneficiaries. The City is a third-party beneficiary to this Agreement with the rights to enforce all obligations of Consultant and exercise all rights of County with respect to and as such obligations and rights apply to the City. Except for the City, neither Consultant nor County intends to directly or substantially benefit any third party other than City by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement

other than City and that no third party other than City shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.12 Conflicts. Neither Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Consultant's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Consultant is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her 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 court process. The limitations of this section shall not preclude Consultant 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 Consultant is permitted pursuant to this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Consultant shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as Consultant.

9.13 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 waiving Party.

9.14 Compliance with Laws. Consultant and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

9.15 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.

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

9.17 Priority of Provisions. If there is a conflict or inconsistency between or amongst 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 9 of this Agreement, the documents shall govern in the following order of precedence: (1) the provisions contained in Articles 1 through 9; (2) Exhibit A; Exhibit B.

9.18 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. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

9.19 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 A and B are incorporated into and made a part of this Agreement. County shall have all rights and remedies enjoyed by College, and Consultant shall have the obligations of Vendor, pursuant the College Contract. To the extent of any inconsistency or conflict between Exhibit A and Exhibit B, Exhibit B shall control.

9.20 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.

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

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: 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 _____, 20____, and **CONSULTANT**, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

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

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____

_____ day of _____, 20____

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 (Date)
Senior Assistant County Attorney

By: _____
Michael J. Kerr (Date)
Deputy County Attorney

**AGREEMENT BETWEEN BROWARD COUNTY AND KPMG, LLP
FOR CONSULTANT SERVICES FOR THE BROWARD COUNTY – CITY OF FORT LAUDERDALE JOINT
GOVERNMENT CENTER**

FOR INDIVIDUAL:

Consultant

WITNESSES:

Signature

By _____

Print/Type Name

(Please Type Name)

Signature

____ day of _____, 20____.

Print/Type Name

FOR CORPORATION:

Consultant

ATTEST:

(Typed Name of Consultant/Firm)

Secretary

By _____
President/Vice President

(Typed Name of Secretary)

(Typed Name and Title)

CORPORATE SEAL

____ day of _____, 20____.



**CONTRACT FOR SERVICES
TERMS AND CONDITIONS**

This contract for services ("Contract") is entered into as of October 23, 2018 between the District Board of Trustees of Broward College, Florida ("College") and KPMG LLP ("Vendor") (collectively, the "Parties"), will be in effect until three (3) years after execution ("Contract").

1. INVOICES AND PAYMENTS.

A copy of all invoices (including an itemization of the date, hours expended, and description of the deliverable) shall be sent to the attention of Sharon Daley, sdaley1@broward.edu. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from the College will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the College conditions that are detailed herein.

2. INDEMNIFICATION.

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the Contract. The Vendor further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

3. INDEMNIFICATION FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY CLAIMS.

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees for any claim or lawsuit brought alleging infringement of any intellectual property right based on any software, books, articles or any other materials ("Materials") used by Vendor in accordance with this Contract. Vendor warrants that the materials are owned by or licensed to the Vendor. Vendor is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

4. TERMINATION FOR DEFAULT.

A "material breach" of this Contract is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the Contract. If the Vendor materially fails to fulfill its obligations under this Contract, the College will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The Vendor shall have thirty (30) days to cure the breach. If the Vendor fails to cure the breach within the thirty (30) day period, the College shall issue a Termination for Default Notice. The College may pursue whatever legal and/or equitable remedies it chooses regarding Vendor's breach of contract.

5. TERMINATION FOR CONVENIENCE.

The College may terminate this Contract with or without cause at any time for convenience upon 30 calendar days' prior written notice to the Vendor. In the event of termination for convenience, the College shall compensate the Vendor for all authorized and accepted deliverables and/or services completed through the date of termination in accordance with the Statement of Work, which is attached hereto and incorporated herein as Exhibit "A." The College shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this Contract. The College may withhold all payments to the Vendor for such work until such time as the College determines the exact amount due to the Vendor.

6. AUDIT.

The Vendor shall maintain all records, books and documents pertinent to the performance of this Contract in accordance with generally accepted accounting principles consistently applied. The College shall have inspection and audit rights to such records for a period of 3 years from final payment under this Contract. Records relating to any legal disputes arising from performance under this Contract shall be made available until final disposition of the legal dispute. If the audit reveals that Vendor owes the College any funds, Vendor shall pay for the audit and return all funds to the College immediately.

7. NONDISCRIMINATION.

The Vendor hereby assures that no person shall be excluded on the grounds of race, color, religion, national origin, disability, age, gender, marital status, sexual orientation or any other basis prohibited by law from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The Vendor shall take all measures necessary to effectuate these assurances.

8. PUBLIC ENTITY CRIMES/SDN LIST.

The Vendor, by its execution of this Contract, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, affiliates or consultants who shall perform work which is intended to benefit the College, is a State of Florida convicted vendor or is included on the State of Florida's discriminatory vendor list. The Vendor further understands and accepts that this Contract shall be either void or subject to immediate termination by the College, in the event there is any misrepresentation or lack of compliance with the laws and the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The College, in the event of such termination, shall not incur any liability to the Vendor for any work or materials furnished.

9. PUBLIC RECORDS/REQUEST FOR CONTRACTOR RECORDS.

The Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Vendor and Vendor shall bear all costs and fees related to the same.

If the Vendor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, the Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by the College to perform the service.
- (b) Upon request from the College, provide the College with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost 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 records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the College.
- (d) Upon completion of the Contract, transfer, at no cost, to the College all public records in possession of the Vendor or keep and maintain public records required by the College to perform the service. If the Vendor transfers all public records to the College upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the College, upon request from the College's custodian of public records, in a format that is compatible with the information technology systems of the College
- (e) IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COLLEGE AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, THE VENDOR ACKNOWLEDGES THAT THE COLLEGE CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO THE VENDOR WITH RESPECT TO ITS OBLIGATIONS PURSUANT TO THIS SECTION RELATED TO PUBLIC RECORDS. THE VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON THE COLLEGE OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT THE VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS CONTRACT. THE VENDOR ACKNOWLEDGES THAT ITS FAILURE TO

COMPLY WITH FLORIDA LAW AND THIS CONTRACT WITH RESPECT TO PUBLIC RECORDS SHALL CONSTITUTE A MATERIAL BREACH OF THIS CONTRACT AND GROUNDS FOR TERMINATION PURSUANT TO PARAGRAPH 4.

10. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing contained herein shall be construed or interpreted as: (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida or the United States; (2) the consent of the State of Florida or their respective officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida or the United States by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Florida Statutes Section 768.28 or beyond that provided by applicable law. This section shall survive the termination of all performance or obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

11. COLLEGE'S TAX EXEMPTION.

The Vendor shall not utilize the College's tax exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the College. The Vendor shall be responsible and liable for the payment of all applicable FICA/Social Security and other taxes resulting from this Contract.

12. ASSIGNMENT/GUARANTOR.

The Vendor shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of the College. Any attempted assignment in violation of this provision shall be null and void. The Vendor shall not pledge the College's credit or make the College a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging the College's credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

13. FORCE MAJEURE.

Notwithstanding any provisions of this Contract to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this Contract that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this Contract shall otherwise remain in effect.

14. AMENDMENTS.

This Contract may be amended only when reduced to writing and signed by both Parties.

15. ENTIRE AGREEMENT.

This Contract states the entire understanding and agreement between the Parties and no course or prior dealing, usage of the trade or extrinsic or parol evidence shall be relevant to supplement, vary or explain any term used with respect to this Contract. The acceptance or acquiescence of any course of performance rendered under this Contract shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein. This Contract shall inure to the benefit of and shall be binding upon the Parties, their respective assigns and successors in interest.

16. COMPLIANCE.

The Vendor, its employees, subcontractors or assigns shall comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract.

17. APPLICABLE LAW/VENUE.

The laws of the State of Florida shall govern all aspects of the Contract. In the event it is necessary for either Party to initiate legal action regarding the Contract, venue for all claims shall be in Broward County, Florida.

18. VENDOR NOT TO LIMIT WARRANTY.

The Vendor shall not limit or exclude any express or implied warranties and any attempt to do so shall render this Contract void, at the option of the College. The Vendor warrants that the services comply with the deliverables in the Statement of Work, and are expressly fit for their particular purpose, and are in accordance with industry standards.

19. TERMS/PROVISIONS.

Should any term or provision of this Contract be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Contract, and the Contract shall remain operable, enforceable and in full force and effect to the extent permitted by law.

20. STATEMENT OF SERVICES.

The Vendor shall, to the satisfaction of the College, fully and timely perform all work items described in the Statement of Work. As part of the services to be provided by the Vendor under this Contract, the Vendor shall substantiate, in whatever form reasonably requested by the College, the methodology, lab analyses, scientific theories, data, reference materials and research notes to formulate its opinions. This requirement shall survive the expiration or termination of this Contract. The Parties agree that time is of the essence in the performance of each and every obligation hereunder. It is the Vendor's responsibility to advise its employees or hired workers of the nature of the project, as described in the Contract and the Statement of Work attached hereto. The Vendor shall determine the method, details and means of performing the services, within the parameters established by the Statement of Work. The College may provide additional guidance and instructions to the Vendor's employees or hired workers where necessary or appropriate as determined by the College. The Vendor agrees to abide by any and all additional guidance and instructions.

21. COMPENSATION/CONSIDERATION.

The total consideration for all work required by the College pursuant to the Contract shall not exceed the amount indicated in the Statement of Work. Should the Vendor incur any travel expenses, payment for such travel will be in accordance with Section 112.061, Florida Statutes. The Vendor shall supply the College with receipts and supporting documentation for all reimbursable travel expenses. The Vendor, by executing the Contract, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting. If the total consideration for this Contract is subject to multi-year funding allocations, funding for each applicable fiscal year of this Contract will be subject to College Board of Trustees budgetary appropriation. In the event the College does not approve funding for any subsequent fiscal year, this Contract shall terminate upon expenditure of the current funding, notwithstanding other provisions in this Contract to the contrary. The College will notify the Vendor of the termination in writing.

22. INSURANCE.

The insurance requirements in terms of types of insurance and the amount of insurance will vary depending on the Statement of Work. The College will determine the amounts and types of insurance required, if any, for the work performed. The Vendor shall procure and maintain, through the term of this Contract, insurance coverage required by the College, each with a limit of not less than \$3,000,000 in general liability insurance, \$1,000,000 in automobile liability insurance, \$1,000,000 in professional liability insurance, and all Florida statutorily required workers' compensation insurance. The coverage required shall extend to all employees and subcontractors of the Vendor. The Vendor must provide a Certificate of Insurance completed in full, indicating the producer, insured, carrier's name, and Best rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by an authorized representative and shall identify the College as an additional insured as required. No work is authorized until such time as the College has received a Certificate of Insurance in compliance with the above requirements.

23. OWNERSHIP.

The College shall retain exclusive title, copyright and other proprietary rights in all work items, including, but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the Vendor under this Contract. The Vendor shall grant to the College a perpetual, non-transferable, exclusive right to use any proprietary software, if any. Any equipment purchased by the Vendor with College funding shall be returned and title transferred from the Vendor to the College upon expiration or termination of the Contract.

24. COMPLIANCE/LICENSES.

The Vendor, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the Contract. The Vendor is also responsible for compliance with all labor and employment laws as well as all Federal, State, and local discrimination laws. The Vendor is solely responsible for compliance with all labor and tax laws pertaining to its officers, agents, and Vendor employees and shall indemnify and hold the College harmless from any failure by Vendor to comply with such laws.

25. INDEPENDENT CONTRACTOR.

The Vendor shall be considered an independent contractor and nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of the Contract. Both Parties are free to enter into contracts with other Parties for similar services. The College assumes no duty with regard to the supervision of the Vendor and the Vendor shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under the Contract. In the event the Vendor is a sole proprietor, the Vendor is responsible for submitting legally required tax returns to the Federal Government.

26. DISPUTES.

In the event a dispute arises which the Vendor and the College cannot resolve between themselves, the Parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law. Mediation shall not occur unless both Parties agree in writing.

27. IMMIGRATION.

The Vendor shall be responsible for verifying employee authorization to work in the U.S. and make a good faith effort to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to, USCIS Form I-9. Written verification shall be kept by the Vendor and made available for inspection on demand by the College. The hourly rate of pay for each employee shall comply with State law and industry standards for similar work performed under the Contract. The Vendor shall maintain records verifying the rate of pay for each employee working on this Contract and make such records available for inspection on demand by the College. Failure to comply with these provisions shall be a material breach of the Contract and cause for termination of the Vendor.

28. CHANGE IN PERSONNEL.

The College may at any time and at its sole discretion request that the Vendor replace any Vendor personnel provided by the Vendor to work on this Contract if the College believes that it is in the best interest of the College to do so. The College may, but will not be required to, provide a reason for requesting the replacement of personnel. Such change in personnel shall be made immediately upon the College's written request for a change of personnel. The Vendor shall place the above language in any contract that it has with subcontractors. The Vendor will enforce the replacement of subcontractor personnel upon a request by the College.

29. BACKGROUND CHECKS.

This clause applies to long term Vendors working on site, including, but not limited to, Childcare services, Janitorial Services, Food Services and Security. Vendor shall conduct thorough background checks for all of the Vendor's employees or hired workers who will be working on any College site. The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with the above provision titled "IMMIGRATION." After reviewing the results of the background check, the Vendor shall determine whether the Vendor's employee and/or hired worker meets the necessary criteria for the position sought to be filled by the College. The College

will rely on the Vendor's assessment of its employees' or hired workers' suitability to be hired for the position(s) sought to be filled by the College, based on the background check conducted by the Vendor. Prior to allowing any employees or hired workers to work on-site at College facilities, the Vendor will provide written verification to the College that a complete background check, as described above, was conducted for any such employee or hired worker. The Vendor will place the above language in any contract that it has with its subcontractors and is responsible for enforcement of this provision.

Vendor who has long term onsite workers performing work at College facilities agrees to be bound by the College policies and standards of conduct listed in the "Contractor Policy Code Acknowledgement Form," which is attached hereto and incorporated herein as Exhibit "B."

30. MARKETING.

Vendor may use the College's name in marketing materials for the purpose of publicizing contract awards; however, Vendor is prohibited from obtaining affirmations from College staff regarding its products or services. Affirmations include any kind of testimonials or endorsements of the Vendor as well as the products and/or services offered by the Vendor. The College, as a government entity, must fairly and equitably compete for goods and services, and therefore the endorsement of any particular firm, product, or service is strictly prohibited. Vendor is strictly prohibited from releasing any statements to the media regarding work performed under this Contract without the review, and the express prior written approval of the College. The College's approval is at its sole discretion; however, such approval will not be unreasonably withheld.

31. EMPLOYMENT BENEFITS.

Vendor expressly understands and agrees that Vendor, its officers, agents, and employees, are not entitled to any employment benefits from the College.

32. STOP WORK ORDER.

The College may order that all or part of the work stop if circumstances dictate that this action is in the College's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the College's Board of Trustees, a condition of immediate danger to the College, the Vendor or the public, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the Vendor to the College. If this provision is invoked, the College shall notify the Vendor in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The Vendor shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the College is received. If deemed appropriate by the College and in the event work is resumed, the College may amend this Contract to reflect any changes to the Statement of Work and/or the project schedule.

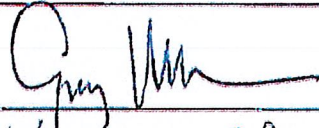
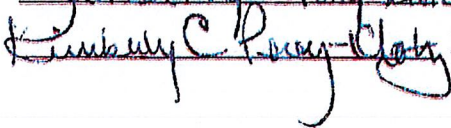
33. ADDITIONAL TERMS AND CONDITIONS.

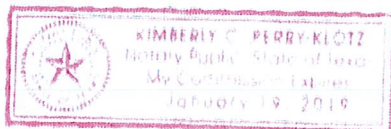
Parties shall initial here if there are any additional terms and conditions and they are contained in Exhibit "C."


College


Vendor

FOR VENDOR USE ONLY

Vendor Name (type)	<u>KPMG LLP</u>	Tax ID No.	<u>13-5565207</u>
Authorized Representative	<u>Guy Wilkinson</u>	Title	<u>Principal</u>
Address	<u>111 Congress Avenue</u> <u>Austin, TX 78701</u>	Telephone	<u>512-501-5325</u>
Signature of Vendor		Date	<u>12-20-18</u>
Attested By Name (type)	<u>Kimberly C. Perry-Klotz</u>	Title	<u>Notary</u>
Signature of Attester		Date Signed	<u>12-20-18</u>



FOR COLLEGE USE ONLY

Contract Originator Name _____ Title _____

Signature _____ Date _____

AVP/Dean Name _____ Title _____

Signature _____ Date _____

Campus President/VP Name Jayson Troff Title CFO

Signature _____ Date 2/7/2019

Senior Vice President _____ Title _____

Signature _____ Date _____

IF REQUIRED

College President Name _____

Signature _____ Date _____

Approved as to Form and Legality

Signature _____ Date _____

Board Chairperson Name _____

Signature _____ Date _____



Contract for Services

Statement of Work

Exhibit "A"

PURPOSE: The Vendor will be assisting the College by providing advisory services related to possible development of real estate assets. The Vendor will assist the College by exploring the feasibility of innovative financing and delivery models and structure marketable transactions. The College is looking for support in conceptualizing, structuring, negotiating and implementing successful Public Private Partnerships. Advisory services will include but are not limited to early stages of analysis, planning, project evaluation, procurement assistance, contract development, proposal evaluations and contract negotiation through financial close.

SCOPE OF SERVICES: The College is looking to procure advisory services related to possible development of its real estate assets. The College is looking for support in conceptualizing, structuring, negotiating and implementing successful Public Private Partnerships. Advisory services will include but are not limited to early stages of analysis, planning, project evaluation, procurement assistance, contract development, proposal evaluations and contract negotiation through financial close.

Strategic opportunities would be coordinated with College's Bond Counsel/legal advisor(s).

The College intends to review all of its real property and assets, to determine what opportunities exists to partner with the public or other agencies to possibly develop those assets. The College is looking to identify advisors who can assist with the following:

- **Planning and Strategy:** Provide expertise and focus including upfront planning on issue identification to ensure an effective and efficient procurement.
 - **Procurement:** Create value and improve project outcomes through communication with the bidders during the RFP. Create a commercial framework that attracts interest and creates a competitive bidding environment.
 - **Proposal Evaluation and Contract Negotiation:** Ensure the integrity of the evaluation process through expert financial analysis to help evaluate proposals received.
 - **Contract Negotiation and Document Development:** Develop contracts that address College needs and desired outcome. Develop contracts that adhere to federal, state, and College requirements and ensure market compatibility and alignment.
-



Supplemental resources might be necessary such as accounting, tax optimization, and certain Real Estate services.

TASK/PURCHASE ORDERS (PO'S): Each task will be separately authorized by the College. The services scope of work for the tasks, associated pricing and any applicable unique terms or conditions, etc will be mutually agreed upon by the parties prior to task authorization to proceed by the College which will be via released purchase or task order. The College may issue open (blanket) purchase orders as required. Receipt of an open order does not authorize the providing of services. For all open orders, services will be ordered on an as needed basis through the use of an order form. Services rendered as a result of an open order, where an order form has not been released, will not be accepted and no cost shall be incurred by the College as a result.

PRICING: Prices will be in accordance with the Exhibit A-1 Pricing unless mutually agreed to by the parties. The parties may mutually agree upon other creative Vendor compensation models and strategies for rendered services for each task/PO.

CONTRACT TERM AND RENEWALS: The contract commences on the date of the last executed signature and continues for a period of three (3) years. The term of the contract may, by mutual agreement between the College and the Vendor, upon final College approval, be renewed for three (3) additional one-year periods, and if needed, extended for 90 days beyond the expiration date of the final renewal period. Procurement Services Department will, if considering renewal, request a letter of intent to renew from the Vendor awardee. The Vendor will be notified when the recommendation has been acted upon by the College. All prices submitted shall be firm for the term of the contract unless agreed to otherwise in writing.

PROBATION PERIOD: The first three months of the contract will be considered probationary. The probationary period may be extended for additional three month periods, upon written notification by the College as the College deems necessary. The total probationary time will not to exceed one (1) year. The College representative will notify the Vendor in writing if the College does not intend to continue with the Contract. In addition, the College reserves the right in its best interest to re-award to the next approved Proposer or to review its needs to re-solicit.

Broward College Pricing	Contract for Services Exhibit A-1
------------------------------------	--

KPMG Professional Services	Hourly Rate
Partner/ Principal/ Managing Director/ Senior Executive	\$ 560
Director/ Executive	\$ 500
Senior Manager	\$ 500
Manager	\$ 420
Senior Consultant	\$ 350
Consultant	\$ 350
Administrative Staff	\$ 140

CPM Professional Services	Hourly Rate
Partner/ Principal/ Managing Director/ Senior Executive	NA
Director/ Executive	NA
Senior Manager	\$ 200
Manager	\$ 185
Senior Consultant	\$ 165
Consultant	\$ 125
Administrative Staff	\$ 60

JRD Professional Services	Hourly Rate
Partner/ Principal/ Managing Director/ Senior Executive	\$ 298
Director/ Executive	\$ 278
Senior Manager	\$ 268
Manager	\$ 233
Senior Consultant	\$ 220
Consultant	\$ 161
Administrative Staff	\$ 44

Additional/Value added services:

Professional Services	Hourly Rate
TBD as necessary	TBD

Vendor shall utilize the above rates for all efforts unless the parties agree to other Vendor compensation models/strategies.



Exhibit "B"

Not Applicable

EXHIBIT "C"
SPECIAL PROVISIONS

The purpose of this Exhibit "C" is to delineate any and all changes, deletions and/or additions to the General Terms & Conditions. In the event of any conflict between this Exhibit "C" and any other provision specified in this Contract, this Exhibit "C" shall take precedence.

The Parties hereby agree to a Non-Disclosure Agreement, incorporated herein and attached hereto as Exhibit D.

Paragraph 22 is amended to add the following language:

Commercial General Liability Insurance:

1. Each Occurrence \$1,000,000
2. General Aggregate \$3,000,000
3. Excess Umbrella Liability \$5,000,000
4. Professional Liability (including Cyber Liability) per claim of \$1,000,000 for a period of three (3) years after project completion and policy is to be on a primary basis if other professional liability is carried.

Automobile Liability Insurance covering non-owned and hired vehicles used in connection with this Contract of \$1,000,000.

The coverage required shall extend to all employees of the Vendor.

Paragraph 2 is hereby stricken and amended as follows:

For value received, the Vendor shall indemnify and hold the College, its officers, directors, board of trustees, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Vendor and other persons employed or utilized by the Vendor in the performance of the Contract. However, in the event that the College fails to follow the professional advice provided by the Vendor and the College's failure to follow such advice is the direct or proximate cause of a third-party claim, then the College will hold the Vendor harmless for the College's failure to follow that professional advice.

The Vendor further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this Contract. This paragraph shall survive the expiration or termination of this Contract.

Paragraph 5 is hereby stricken and amended as follows:

The Vendor shall maintain all timekeeping and expense records ("Records") pertinent to the performance of this Contract in accordance with generally accepted accounting principles consistently applied. The College shall have inspection and audit rights to such Records for a period of 3 years from final payment under this Contract. Records relating to any legal disputes arising from performance under this Contract shall be made available until final disposition of the legal dispute. If the audit reveals that Vendor owes the College any funds, Vendor shall pay for the audit and return all funds to the College immediately.

Paragraph 8 is hereby stricken and amended as follows:

The Vendor, by its execution of this Contract, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, affiliates or consultants who shall perform work which is intended to benefit the College, is a State of Florida convicted vendor or is included on the State of Florida's discriminatory vendor list. The Vendor further understands and accepts that this Contract shall be either void or subject to immediate termination by the College, in the event there is any misrepresentation or lack of compliance with the laws and the mandates of Section 287.133, Section 287.134, or Section 287.135, respectively, Florida Statutes. The College, in the event of such termination, shall not incur any liability to the Vendor for any work or materials furnished.

Paragraph 9(d) is hereby stricken and amended as follows:

Upon completion of the Contract, transfer, at no cost, to the College all public records in possession of the Vendor or keep and maintain public records required by the College to perform the service. If the Vendor transfers all public records to the College upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata, which will be destroyed in due course. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the College, upon request from the College's custodian of public records, in a format that is compatible with the information technology systems of the College.

Sentence 4 of Paragraph 20 is hereby stricken.

Paragraph 23 is stricken and amended as follows:

The College shall retain exclusive title, copyright and other proprietary rights in all work items, including, but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated and specified in the Statement of Work as a Deliverable hereunder by the Vendor under this Contract. The Vendor shall grant to the College a perpetual, non-transferable, exclusive right to use any proprietary software, if any. Any equipment purchased by the Vendor with College funding shall be returned and title transferred from the Vendor to the College upon expiration or termination of the Contract.

Upon full and final payment to Vendor under the Contract, Vendor assigns and grants to College, title in the tangible items specified as deliverables or work product in Contract (the "Deliverables") and any copyright interest in the Deliverables; provided that if and to the extent that any Vendor property is contained in any of the Deliverables ("KPMG Property"), Vendor hereby grants College, under Vendor's intellectual property rights in such KPMG Property, a royalty-free, non-exclusive, nontransferable, perpetual license to use such KPMG Property solely in connection with College's use of the Deliverables. Vendor acknowledges that it shall obtain no ownership right in Confidential Information of College. In addition, College acknowledges and agrees that Vendor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards.

Sentence 3 and 4 of Paragraph 25 is hereby stricken.

The following Paragraphs are hereby added to amend the Contract:

34. Limitation of Liability. Notwithstanding anything else in this contract to the contrary, including all attachments, the liability of the Vendor on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Contract shall be limited to the amount of fees paid or owing to the Vendor under the Contract. In no event shall the Vendor be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, rule, regulation or tort (including but not limited to negligence) or otherwise, and shall survive contract termination or expiration.

35. Management Decisions. The College acknowledges and agrees that the Vendor's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, College. KPMG will not perform management functions or make management decisions for College.

36. Third Party Usage. College acknowledges and agrees that any advice, recommendations, information, Deliverables or other work product ("Advice") provided by the Vendor in connection with the services under the Contract is intended for College's sole benefit and the Vendor does not authorize any party other than College to benefit from or rely upon such Advice, or make any claims against the Vendor relating thereto. Any such benefit or reliance by another party shall be at such party's sole risk. KPMG may, in its sole discretion mark such Advice to reflect the foregoing. Except for disclosures that are required by law or that are expressly permitted by this Contract, College will not disclose, or permit access to such Advice to any third party without KPMG's prior written consent.

37. California Accountancy Act. For engagements where services will be provided by KPMG through offices located in California, College acknowledges that certain of Vendor's personnel who may be considered "owners" under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.

38. Electronic Communications. Vendor and College may communicate with one another by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. Each party accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). College agrees that the final hardcopy or electronic version of a document, including a Deliverable, or other written communication that the Vendor transmits to College shall supersede any previous versions transmitted by the Vendor to College.

39. **Active Spreadsheets and Electronic Files.** Vendor may use models, electronic files and spreadsheets with embedded macros created by Vendor to assist Vendor in providing the services under the Contract. If College requests a working copy of any such model, electronic file or spreadsheet, the Vendor may, at its discretion, make such item available to College for its internal use only on an as-is basis and such item shall be considered a Deliverable; provided that College is responsible for obtaining the right to use any third party products necessary to use or operate such item. Vendor retains ownership of and all rights in such models, electronic files, and/or spreadsheets with embedded macros; except for the College data contained therein.

40. **Use of Service Providers.** College acknowledges and agrees that in connection with the performance of services under the Contract, Vendor and its Member Firms, in their discretion or at College's direction, may utilize the services of third parties within and outside of the United States to complete the services under the Contract. College further acknowledges and agrees that Vendor controlled parties, member Firms of KPMG International, and other third party service providers (collectively, "Service Providers") may have access to Confidential Information from offshore locations, and that the Vendor uses Service Providers within and outside of the United States to provide at Vendor's direction administrative or clerical services to Vendor. These Service Providers may in the performance of such services have access to College's Confidential Information. Vendor represents to College that with respect to each Service Provider, Vendor has technical, legal and/or other safeguards, measures and controls in place to protect Confidential Information of College from unauthorized disclosure or use. Vendor shall be responsible to College for Vendor controlled, member Firms or Service Provider's failure to comply.

41. **Volume Rebates.** Where Vendor is reimbursed for expenses, Vendor's policy is to bill clients the amount incurred at the time the good or service is purchased. If Vendor subsequently receives a volume rebate or other incentive payment from a Service Provider relating to such expenses, Vendor does not credit such payment to its clients. Instead, Vendor applies such payments to reduce its overhead costs, which costs are taken into account in determining Vendor's standard billing rates and certain transaction charges that may be charged to clients.

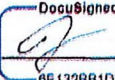
42. **College Vendors and Conflicts.** College is aware that Vendor may be providing assurance, tax and/or advisory services to other actual or potential Vendors of the College. Vendor will perform an internal search for any potential client conflicts relating to any of College's Vendors identified by College as having a role in connection with Vendor's performance of this Contract. College hereby agrees that a Vendor's status as the Vendor's client does not impact Vendor's engagement to perform this Contract. Vendor will advise College of any conflicts of interest that could prevent it from performing the Contract. However, Vendor is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in Vendor's firm. Should any new information come to Vendor's attention, Vendor will promptly inform the College. Vendor shall perform this Contract in accordance with applicable professional standards.

43. **Export Control.** KPMG and College acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective activities under the Contract. College shall not provide KPMG, or grant KPMG access to, (a) information (including technical data or technology), verbally, electronically, or in

hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Administration Act of 1979, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR.

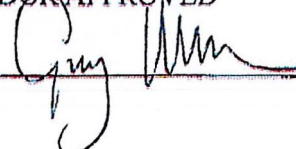
44. **Municipal Advisor.** It is understood and agreed that KPMG LLP is not registered with the SEC as a municipal advisor and that College is not asking KPMG LLP to provide, and KPMG LLP will not provide, any services to College which would require registration as a municipal advisor, including but not limited to advice with respect to municipal financial products or the issuance of municipal securities. Accordingly, KPMG LLP will not make recommendations relating to municipal financial products or the issuance of municipal securities, and KPMG LLP will not owe a fiduciary duty to College under Section 15B of the Securities Exchange Act of 1934. College represents to KPMG LLP that if College desires municipal advisor services in connection with or related to the subject matter of this engagement, it will obtain such services from another party.

BC APPROVED

By:  Date: 2/7/2019
DocuSigned by: 0E132BB1DBE8420...

 DocuSigned by: C0722F81CA80465

VENDOR APPROVED

By:  Date: 12-20-18

Broward College | **Contract for Services**
NON-DISCLOSURE AGREEMENT | **Exhibit D**

This Agreement is by and between KPMG LLP (Vendor), a corporation with offices at 111 Congress Avenue, Austin, TX 78701, and The Board of Trustees of Broward College for Broward College (the College) with offices at 6400 NW 6th Way, Fort Lauderdale, FL 33309 (each a "Party" and, together, the "Parties").

In connection with a business relationship, each Party may disclose to each other certain confidential and/or proprietary information that the disclosing Party regards as "Confidential Information," as described below.

In consideration of the receipt of such Confidential Information, the Parties hereto agree as follows:

1. For the purpose of this Agreement, Confidential Information shall include any information or data of a confidential nature, including, but not limited to proprietary, developmental, technical, marketing, sales, operating, customer lists and any information related to customers of a party, supplier lists, cost and know-how information as well as information relating to business, financial condition, results of operations, prospects, assets, properties and processes, in whatever media stored, which is disclosed pursuant to this Agreement.

2. Vendor shall establish administrative, technical and physical safeguards for THE COLLEGE's customer records and information in Vendor's control or possession from time to time. Such safeguards shall be designed for the purpose of, (1) ensuring the security of such records and information; (2) protecting against any anticipated threats or hazards to the security or integrity of such records and information; and (3) protecting against unauthorized access to or use of such records and information that would result in substantial harm or inconvenience to THE COLLEGE.

To the extent that any of THE COLLEGE's information or records in Vendor's control or possession from time to time constitutes "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act ("HIPAA") and regulations issued thereunder, or that constitutes "protected education records" as that is defined in the Family Education Rights and Privacy Act ("FERPA") Vendor shall maintain the confidentiality and security of that information as required of THE COLLEGE under HIPAA and FERPA respectively. The College shall notify the Vendor in writing in advance of providing any "protected health information" or "protected education records"

3. The Parties agree that only those employees, agents, service providers, and advisors of each Party having a need to know shall be privy to said Confidential Information and each shall be required by the Parties to abide by the obligations of confidentiality requirements no less restrictive than this Agreement,

4. Any Confidential Information received by any Party under this Agreement shall:

(a) not be copied or distributed, disclosed, or disseminated in any way or form by the receiving Party to anyone except its employees or authorized agents, or service providers, or advisors who have a reasonable need to know said Confidential Information, and who agree to be bound by confidentiality requirements;

(b) be treated by the receiving Party with the same degree of care, to avoid disclosure to any third party, as is used with respect to the receiving Party's own information of like importance which is to be kept secret;

(c) not be used by the receiving Party for its own purposes or any other purpose except the purposes set forth in the Contract, other than as otherwise expressly stated herein, without the express written permission of the disclosing Party; and

(d) remain the property of the disclosing Party, and be returned to the disclosing Party (along with all copies thereof) within two days of receipt by the receiving Party of a written request from the disclosing Party setting forth that the Confidential Information be returned, except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata, which will be destroyed in due course.

5. The obligations of Paragraph 4 shall not apply however to any information which:

(a) is already in the public domain or becomes available to the public through no breach of this Agreement by the receiving Party;

(b) was, as between the Parties, lawfully in the receiving Party's possession prior to receipt from the disclosing Party, as evidenced by the receiving Party's written records;

(c) is received independently from a third party free from any known obligation to keep said information confidential;

(d) is independently developed by the receiving Party without reliance upon any of the Confidential Information; or

(e) is disclosed pursuant to law, legal process, professional standard, or to an order of a governmental agency or court order, provided that the receiving Party shall give prompt written notice to the disclosing Party of the existence of such order and an opportunity to oppose or object to such order, unless the receiving Party is restrained by law or order of a court from doing so.

6. Nothing herein shall obligate either Party to disclose to the other any Confidential Information. Neither Party hereto shall be obligated to compensate the other for exchanging any information pursuant to this Agreement, nor have any representations or warranties of any kind been given hereunder with respect to Confidential Information disclosed pursuant hereto.

7. It is expressly understood and acknowledged by Vendor that any breach or threatened breach of this Agreement cannot be remedied solely by the recovery of damages and that in the event of a breach or threatened breach hereof by Vendor, THE COLLEGE may pursue both injunctive relief and any and all other remedies available at law or in equity for any such breach or threatened breach, including the recovery of damages and reasonable attorneys' fees and costs, subject to the Limitation of Liability set forth in the Contract.

8. No patent, copyright, trademark or other proprietary right or license is granted by this Agreement. The disclosure of Confidential Information and materials, which may accompany the disclosure, shall not result in any obligation to grant the receiving Party rights therein.

9. This Agreement shall be effective as of the date of the last signature as written below. The rights and obligations arising hereunder with respect to any Confidential Information delivered shall survive any termination of this Agreement.

10. Each Party represents that it possesses all necessary powers, right and authority to lawfully make the disclosures subject to this Agreement.

11. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understanding. The provisions of this Agreement may not be modified, amended, nor waived, except by a written instrument duly executed by both Parties. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns and may not be assigned by either Party without the prior written consent of the other. This Agreement shall be governed by Florida law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative on dates specified below.

Name of Vendor:

District
The Board of Trustees of Broward College, Florida

By: 

By: 

Printed Name: Guy Wilkinson

Name: Jayson Iroff

Title: Principal

Title: CFO

Date: December 20, 2018

Exhibit B

PROPOSED SCOPE OF SERVICES FINANCIAL ADVISOR GOVERNMENT CENTER CAMPUS

The **Broward County, Florida** (hereinafter “County”) for itself and also serving as agent for the City of Fort Lauderdale, and **KPMG LLP** (hereinafter “KPMG”), KPMG shall do, perform, and carry out in accordance with the applicable professional standards the following services relating to the Joint Government Center Campus (hereinafter “Project”):

Phase 1: Pre-Procurement Support – 1-2 months

Estimated cost: \$70,000

- 1) Review and comment on existing P3 procurement schedule and assist County in refining schedule considering: program objectives; decision milestones; work streams; and feedback from market soundings;
- 2) Conduct market sounding exercise with local and national infrastructure funds and real estate developers to discuss: commercial structure; risk transfer considerations; real estate market etc.;
- 3) Support County staff in the development of briefing meetings for Administrator and Commissioners including development of presentation material (assume 2 meetings).

Phase 1 Deliverables

- Project management plan – this will set out key work streams and dependencies for KPMG’s work as well as establishing cadence protocols for meetings and project updates
- Revisions to P3 procurement schedule
- Summary of market sounding findings

Phase 2: Request for Qualifications (RFQ) Phase – 3 months

Estimated cost - \$215,000

KPMG will assist the County with the following tasks related to the development of RFQ documents and RFQ submittal evaluations:

- 1) Assist the County develop its objectives and commercial structure for a draft RFQ;
- 2) Provide input to financial terms of the RFQ including evaluation criteria and weightings, pass/fail thresholds, financial capacity and experience requirements;
- 3) Assist draft and provide on-going comment on the RFQ;
- 4) Assist the County in RFQ response evaluations (assuming up to six responses) including evaluation factors to consider/guidelines and proposal clarifications;
- 5) Assist County in conducting financial capacity analysis and provide comment to the County – including review and commentary of financial statements; ratio analysis; industry benchmarking; analysis of credit rating reports; and media search; and
- 6) Attend the County’s RFQ development meetings and SOQ evaluation meetings as needed.

Deliverables

- Input into evaluation guidelines and factors to consider
- Financial capacity report on each bidding team
- Prepare presentation of KPMG analysis for County staff, Administrator and Commissioners

Phase 3: Detailed Bid Development –10 months

Estimated cost: \$740,000

Request for Proposal (RFP)

KPMG will assist the County with the following tasks in support of RFP development, evaluations, contract negotiations, and pre-development support:

- 1) Help the County develop its objectives for a draft RFP including evaluation criteria and weightings including development of scoring methodology;
- 2) Provide input to the financial and commercial submission requirements of the RFP including working with the County's legal counsel and external advisors to draft financial/commercial sections of the RFP documents including but not limited to the following: proposal security requirements; updated financial capacity requirements; financing plan requirements; financial price proposal requirements – including bid template forms; financial model requirements; and detailed cost data requirements;
- 3) Discuss with the County the financial criteria for the RFP including financial proposal requirements including development of factors to consider and evaluation guidelines;
- 4) Read and provide comment on drafts of the RFP documents;
- 5) Assist the County in responding to clarifications on the RFP documents;
- 6) Review and provide comment on the final version of the RFP documents;
- 7) Assist the County in reviewing bidder financial models and evaluation of responses to commercial/financial RFP bid submission requirements; and
- 8) Support County staff in briefing meetings on evaluation with Administrator and Commissioners including development of presentation materials.

Project Agreement Assistance

- 1) Help the County develop its objectives for a draft project agreement;
- 2) Work with the County's legal advisors to help identify key terms in the project agreement to meet the County's objectives and policy priorities;
- 3) Provide input on the specific financial and commercial terms within the project agreement, including payment mechanism, interest rate risk transfer, treatment of financial model, calculation of relief and compensation events and termination impacts;
- 4) Help the County with the development of the availability/performance criteria including coordination with County and its technical advisors to assist in development of O&M output specifications and link to payment mechanism; and
- 5) Provide support with respect to clarifications submitted on the project agreement.

Deliverables

- Draft financial and commercial bid submission requirements for RFP
- Input into evaluation guidelines and factors to consider
- Financial and commercial analysis report on RFP bid responses
- Payment mechanism principals paper

Phase 4: Financial and Commercial Close Support – 3 months

Estimated cost - \$175,000

- 1) Provide negotiation support to the County as it finalizes the project agreement with a preferred bidder – including financial analysis of key commercial and financial terms and finalization of payment mechanism to align with preferred bidder's proposal;
- 2) Provide on-going support to financial close procedures with equity and lenders – including development of financial close protocol and benchmarking of financial interest rates at close; and
- 3) Attend meetings with the County to complete financial close.

Deliverables

- Financial closing protocol

Total estimated cost - \$1,200,000

The County may request through this engagement “option analysis” to develop quantitative and qualitative comparative analysis of delivery options e.g. DB and/or DBB with traditional municipal finance; P3 availability DBFOM; traditional lease; Design Build Finance. This is not included in estimated fees above and scope, deliverables and fees will be developed and agreed by mutual consent between County and KPMG at a future point in time.

Assumptions

- Site for development has been identified
- County will appoint staff project manager for development who will act as day to day point of contact for KPMG and will coordinate project schedule, meetings etc.
- The County will be primarily responsible for the drafting and development of RFQ and RFP documents with KPMG’s assistance and input
- County will instruct and hire external legal and technical advisors with P3 experience who along with the County will be primarily responsible for development of the Project Agreement and Technical Specifications/Bid Submission Requirements, respectively
- Assumes 6-8 respondents to the RFQ
- Assumes 3 teams are short-listed to participate in RFP bidding stage
- Total assumed schedule is 18 months from issuance of RFQ to commercial/financial close
- Assumes a two-step procurement process with RFQ and RFP
- Excludes costs associated with work performed by municipal advisor PRAG

Professional Fees

As compensation for the services to be provided by KPMG within the Scope of Work, the County agrees to pay KPMG on a time and materials basis based on the following hourly fee schedule:

Partner/ Principal / Managing Director	\$576.00
Director / Senior Manager	\$515.00
Vice President / Manager	\$432.00
Associate / Senior Consultant	\$360.00
Analyst / Consultant	\$360.00
Administrative Staff	\$144.00

Professional fees for work under this Scope of Work are estimated to be \$1,200,000 for the services outlined above. The hourly rates do not include travel expenses which will be reimbursed separately.

KPMG and the County will endeavor to optimize the use of alternative methods of communication in lieu of in-person meetings, including telephone and video conferences and other cost conservative methods of meeting and communicating.

Fees and out-of-pocket expenses for the Scope of Work will be billed on a monthly basis. Services will be billed in increments of one-tenth of an hour. The County shall remit payment to KPMG within 30 days after receipt of an invoice for services rendered. The County acknowledges and agrees that KPMG's fees hereunder are not in any way contingent upon the specific results, outcomes or conclusions reached by KPMG.

Other Matters

In providing these services, KPMG will not undertake any role or view that could be considered public policy advocacy or lobbying.

KPMG is not providing any legal advice or counsel under this engagement letter. Without limiting the foregoing, KPMG is not providing any interpretation of any laws, regulations or contract provision that may be applicable to the County or that are otherwise related to the work hereunder. While KPMG personnel working on this project may, through experience or specialized training or both, be familiar with the general contractual environment in their capacity performing financial advisory or management consulting services, they will work under the direction of the County and its legal counsel regarding the specific legal, regulatory, and contractual requirements in which the County operates.

The County is aware that KPMG may provide assurance, tax and/or advisory services to potential vendors. At the point that the County identifies potential vendors for consideration, KPMG will perform an internal search for professional relationships with the potential vendors selected for RFP distribution by the County. KPMG will advise the County of the general nature of services provided to the potential vendor, as permitted. However, the County acknowledges that we are a large firm that is engaged by new clients on a daily basis and as a result, we cannot guarantee that following our initial relationship search, an engagement for a potential vendor under consideration will not be accepted somewhere else in our firm. Should any new information come to our attention, KPMG will promptly inform you.

KPMG's services as outlined in this engagement letter constitute an advisory engagement conducted under the American Institute of Certified Public Accountants ("AICPA") Standards for Consulting Services. Such services are not intended to be an audit, examination, attestation, special report or agreed-upon procedures engagements as those services are defined in AICPA literature applicable to such engagements conducted by independent auditors. Accordingly, these services shall not result in the issuance of a written communication to third parties by KPMG directly reporting on financial data or internal control or expressing a conclusion or any other form of assurance.

It is understood and agreed that KPMG is not registered with the US Securities and Exchange Commission as a municipal advisor and that the County is not requiring KPMG to provide, and KPMG will not provide, any services to the County which would require registration as a municipal advisor, including but not limited to advice with respect to municipal financial products or the issuance of municipal securities.

The County represents to KPMG that the County has obtained all legal consents necessary to award this contract to KPMG without competition, and that award of this contract is made in accordance with all applicable law, regulations, rules, policies, and requirements.