

Office of the President  
Willis Holcombe Center  
Phone 954-201-7401  
Fax 954-201-7357

[www.broward.edu](http://www.broward.edu)

# BROWARD COLLEGE

Define yourself.

To: Members of the Board of Trustees

From: J. David Armstrong Jr., President

Date: October 27, 2009

Place: Regular Meeting of the Board of Trustees  
Broward College  
Boardroom #1208, Willis Holcombe Center  
111 East Las Olas Boulevard  
Ft. Lauderdale, FL

Subject: Agenda Item VII-B - University/College Library

**Brief Description:** Renewal of agreement for services between BC and FAU for the University/College Library located at Central Campus. This agreement is for a five (5) year term with a provision to amend the budget annually.

**Benefit to BC:** Broward College provides library services to support FAU programs located on Central Campus. FAU provides financial support for the operation of the library at the Central Campus, resulting in better services for BC students.

**Relationship to College Master Plan:** This relationship supports the college's master plan by improving student success. BC students are afforded the opportunity to use an academic library of high caliber.

Board Agenda Approved: \_\_\_\_\_  
Date: \_\_\_\_\_

Agenda Item VII - B  
Enclosure \_\_\_\_\_

**BOARD OF TRUSTEES  
AGENDA TRANSMITTAL SHEET**

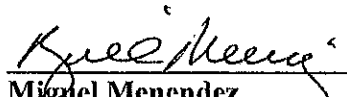
To: J. David Armstrong, Jr., President  
From: Lois Bolton, Central Campus Provost  
Subj: University/College Library


Date: September 29, 2009

**Issue:** Renewal of agreement for services between Broward College and Florida Atlantic University for the University/College Library located at the Central Campus of Broward College.

**Background/Analysis:** The University/College Library at the Central Campus of Broward College provides services to support the Florida Atlantic University academic programs located on Central Campus. The attached document outlines the services provided and the responsibilities of both institutions.

**Fiscal Impact:** Florida Atlantic University provides \$1,032,055.00, representing 40% of the total library operating costs, for the delivery of services to FAU students, faculty and staff. The agreement is written for a five (5) year term with provision for an addendum for each fiscal year of the agreement to reflect changes in the recommended Library budget and contributions.

  
Miguel Menendez  
Dean, U/C Library

  
Lois Bolton  
Central Campus Provost

**Staff Position:** Recommend Approval

**THIS RECOMMENDED ACTION MEETS THE FOLLOWING ELEMENT(S) OF THE COLLEGE'S MISSION STATEMENT:**

- |                                                                                         |                                                                                                    |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Providing high quality educational programs         | <input checked="" type="checkbox"/> Providing high quality services                                |
| <input type="checkbox"/> Providing for affordability to a diverse community of learners | <input checked="" type="checkbox"/> Providing for accessibility to a diverse community of learners |
| <input checked="" type="checkbox"/> Commitment to student achievement                   | <input type="checkbox"/> Commitment to lifelong learning                                           |
| <input checked="" type="checkbox"/> Commitment to academic excellence                   | <input checked="" type="checkbox"/> Providing use of current technology                            |

**BRIEFLY DESCRIBE HOW THIS RECOMMENDATION ACHIEVES THE ABOVE ELEMENT(S) IN THE COLLEGE'S MISSION STATEMENT:**

This agreement provides funding to support the library services, collections and operations for all BC and FAU students, faculty and staff at Central Campus.

**Minority Firm:** Yes \_\_\_ No \_\_\_ N/A x

**Broward Firm:** Yes \_\_\_ No \_\_\_ N/A x

**AGREEMENT FOR SERVICES**

This is an Agreement entered into on June 30<sup>th</sup>, 2009 between the Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida ("FAU") and the District Board of Trustees of Broward College ("COLLEGE"), a political subdivision of the State of Florida.

The parties to this Agreement, in consideration of the mutual covenants and promises contained in it, and other good and valuable consideration, the adequacy and receipt of which are acknowledged, agree as follows:

- I. The foregoing recitals are incorporated in this AGREEMENT by this reference and are deemed by the parties to be true and correct.
- II. The parties agree as follows:
  - A. The COLLEGE shall employ all library personnel and act as the sole administrative agency of the COLLEGE employees.
  - B. The COLLEGE shall provide full library services to support the FAU academic programs, faculty students and classrooms within the boundaries of the campus located in the town of Davie.
  - C. The Governance/Policy Advisory Committee: Broward College and FAU will form a Governance/Policy Advisory Committee (GPAC). The GPAC will have 8 voting members comprised of 4 voting members from Broward College and 4 voting members from FAU. The Library Dean shall serve as Executive Secretary will not have a vote but will participate with GPAC. GPAC will consider and make recommendations to the Central Campus Provost and FAU's Vice President for Broward Campuses on major policy matters and will participate in the annual budget process. The Library Dean will be responsible for the day-to-day operations of the library and shall report directly to the Central Campus Provost.
  - D. GPAC and FAU's Vice President for the Broward Campuses will consult with the Central Campus Provost annually on the performance of the Library Dean and the Central Campus Provost will consider all viewpoints but is ultimately and singularly responsible for making staffing recommendations to the President of Broward College.
  - E. The Library Advisory Committee (LAC) is a faculty advisory committee to the library dean and will be concerned with the overall service aspects of the College/University Library as well as having the responsibility for collection development advisement. The committee will consist of six (6) voting members as follows: FAU-three (3) and COLLEGE-three (3). The library dean will serve as executive secretary to the committee and does not have a vote. The committee shall also develop a selection/appointment process enabling student membership to the committee.
  - F. FAU and COLLEGE funds shall be combined in order to establish a single library budget for all library staff, resources, and services.
  - G. Financial responsibility shall be divided between the COLLEGE (60%) and FAU (40%) for the duration of the AGREEMENT. The percentage of financial responsibility assigned to each institution shall be reviewed, and if necessary, re-negotiated every five years.
  - H. GPAC will submit each fiscal year's recommended budget to the COLLEGE, Central Campus Provost and to FAU, Vice President for the Broward campuses. In turn, these two (2)

individuals shall make a joint recommendation to the parties' Presidents and upon agreement; an addendum to this agreement will be entered into for each appropriate fiscal year amending the annual budget and the parties' contribution to same.

I. It is understood that the foregoing items related to financing the library represent a basic (or minimum) effort. It is to the benefit of each institution to build upon this base so that the College/University Library will develop and optimally fulfill its mission. To this end, any special government or private sector library allocations or grants which either institution obtains for the benefit of the library should be contributed over and above the general budgeted funds.

J. This is a five (5) year agreement. The COLLEGE shall begin performance under the terms of this Agreement no earlier than July 1<sup>st</sup>, 2009 and this agreement shall expire on or about June 30, 2014 or as soon thereafter as the parties execute a new agreement.

K. This Agreement may be renewed for two (2) additional three (3) year periods. Renewal shall be on a triennial basis by mutual agreement of the College and FAU and subject to the availability of funds.

III. The total amount payable by the University under this Agreement for the fiscal year 2009-2010 shall not exceed \$ 1,032,055.00, payable in quarterly installments.

Invoicing for this agreement shall be quarterly by the College to the University.

- a) In the event the University owes payment to the College, the University shall mail the College's payment within forty (40) days after receipt of an invoice, and receipt, inspection and acceptance of the goods or services. Failure to mail the warrant within 40 days shall result in the University paying interest at a rate of one percent per month on the unpaid balance. The interest penalty shall be mailed within 15 days after mailing the warrant.
- b) When necessary partial payment of the full amount of the value of service received and accepted may be requested by the submission of a properly executed invoice, with supporting documents.
- c) The College agrees that bills and invoices for fees or other compensation for services or expenses shall cite the Agreement number and shall be submitted to the Controller in detail sufficient for a proper pre-audit and post-audit. Each bill or invoice must clearly identify the services, portion of services and expenses for which compensation is sought. Payment will be tendered only for services, or the portion of services, completed prior to the submission of the bill or invoice, or for expenses incurred prior to the submission.
- d) The performance of the University of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Legislature of the State of Florida, the obligation of funds by the prime funding agency, or otherwise lawfully expendable for the purposes of this Agreement for the current and future periods. The University shall give notice to the College of the non-availability of such funds when University has knowledge of such fact and shall terminate all use and access to College facilities affected by such non-availability of funds. Upon receipt of such notice by the College and termination of all use and access to College facilities affected, the College shall be entitled to payment only for those services performed and expenses incurred prior to the date notice is received and termination of use completed.
- e) All reimbursement for travel expenses must comply with Section 112.061, Florida

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**Agreement No. BP-104**

Statutes and will be processed in accordance with the terms and conditions herein.

- IV. To the extent provided under Section 768.28 of the Florida Statutes, University assumes any and all risks of personal injury and property damage, deprivation, or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of the University and its officers, employees, servants, and agents while acting within the scope of their employment by University. College assumes any and all risks of personal injury and property damage, deprivation, or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of College and its officers, employees, servants, and agents while acting within the scope of their employment by College. 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; (2) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of the Florida Statutes.
- V. The College and University agree to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by either party in conjunction with this Agreement. Refusal by either party to allow such public access shall be grounds for cancellation of this Agreement.
- VI. This Agreement shall be subject to cancellation by either party upon thirty (30) days written notice to the other party. A cancellation penalty may not be charged by either party. However, the University shall be liable only for payment for services rendered, allowable expenses incurred or both, prior to the effective date of termination within the limits of the description provided in this Agreement.
- VII. Any renewals, amendments, alterations, or modifications to the Agreement must be signed or initialed and approved by the signatories to this Agreement. If a new agreement has not been entered into upon the expiration of this agreement and University continues to accept the continuation of services provided hereunder from College, the rendering and payment of such services shall be provided during the interim in accordance with the terms and conditions herein.
- VIII. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. The University and the College are agencies, or political subdivisions of the State of Florida. Both are entitled to the benefits of sovereign immunity, including immunities from taxation. In the event either party is required to obtain from any governmental authority any permit, license or authorization as a prerequisite to perform its obligations under this Agreement, the cost shall be borne by the party required to obtain such permit, license or authorization.
- IX. In accordance with Section 112.3185, Florida Statutes, the University and the College certify that to the best of their knowledge and belief, no individual employed by them or subcontracted by them has an immediate relation to any employee of the College or University who was directly or indirectly involved in the procurement of the services described in this Agreement. Violation of this section shall be grounds for cancellation of this Agreement.
- X. The College may not, without the advance written approval of University, assign any right under this Agreement nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in any portion of this Agreement. Nothing herein shall prohibit College from subcontracting any of the services provided hereunder. The University may not, without advance written approval of College, assign any right under this agreement or transfer, pledge, surrender or otherwise encumber or dispose of it interests in any portion of this agreement.

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- XI. This Agreement may be terminated by either party upon breach or default of the other party of its obligations hereunder, provided that the breaching party shall be provided with written notice by the non-breaching party of the alleged grounds for the breach and allowed a thirty (30) day period for cure following such notice (ten (10) days if the failure is nonpayment); provided, however that if the defaulting party proceeds with reasonable diligence during such cure period and is unable, because of circumstances beyond its control or because of the nature of the default, to cure the default within such applicable time period, the time for cure shall be extended for a reasonable period of time.
- XII. It is understood and agreed that nothing contained in this Agreement is intended, nor should be construed, as creating or establishing the relationship of partners between the parties, nor any type of agency. Neither party has the right or authority to bind or obligate the other as a result of this Agreement.
- XIII. University's representative for purposes of this Agreement shall be the Vice President for Broward Campuses or his/her designee; the College's representative for purposes of this Agreement shall be the Vice President of Facilities & College Services for BC/CFO or his/her designee.
- XIV. No failure to exercise or delay in exercising any right, power or remedy accruing to University or College for any breach or default of either party under this Agreement shall impair any such right, power or remedy of either party, nor be construed as a waiver by University or College of any such breach or default or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default thereafter occurring.
- XV. This Agreement embodies the entire agreement of the parties and there are no other representation, promises, agreements, conditions or understandings, either oral or written between University and the College other than are set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either University or the College unless reduced to writing and signed by them and by direct reference made a part of this Agreement.
- XVI. The University and the College may not accept a competitive solicitation from, or purchase commodities or contractual services from a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date the person or affiliate was added to the convicted vendor list.
- XVII. Both parties agree to abide by all applicable federal, state and local laws, ordinances and regulations in connection with this Agreement.
- XVIII. Severability Clause:  
In the event any provision of this agreement shall be held invalid or unenforceable by applicable judicial or administrative authorities, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the contract goes to the whole of the contract, the contract is unenforceable.
- XIX. Force Majeure:  
No default, delay or failure to perform on the part of the College or the University shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default,

delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform. Force Majeure does not apply to the payment obligations of this contract.

XX All notices required to be given under this Agreement shall be sent by certified mail to:

Florida Atlantic University  
Attn: Purchasing, ADM 121  
777 Glades Road  
Boca Raton, FL 33431-0991

Broward College  
Attn: Library Dean  
3501 S W Davie Road  
Davie, Florida 33314

XXI. This agreement has been negotiated by all the Parties. Therefore, in the event of an ambiguity, such ambiguity shall not be construed against any party as the author of this Agreement.

IN WITNESS OF THE FOREGOING, the parties have signed this Agreement.

COLLEGE

UNIVERSITY

BROWARD COLLEGE  
225 East Las Olas Blvd.  
Fort Lauderdale, FL 33301

FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES,  
A public body corporate of the  
State of Florida

\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Director, Purchasing  
\_\_\_\_\_  
Title

PUR-100 (4/09)

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
KEVIN FERNANDER  
COLLEGE ATTORNEY

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