

**UCF BUSINESS INCUBATION PROGRAM
AGREEMENT BETWEEN UCFRF AND
THE CITY OF ORLANDO**

BY AND BETWEEN

THE CITY OF ORLANDO, FLORIDA

Orlando City Hall
400 S. Orange Ave.
Orlando, Florida 32801

&

THE UNIVERSITY OF CENTRAL FLORIDA

12201 Research Parkway, Ste. 501
Orlando, Florida 32826

September 1, 2014

THIS UCF INCUBATION PROGRAM AGREEMENT (hereinafter referred to as the “Agreement”) dated _____, 2014 “Effective Date” is made and entered into by the **City of Orlando, Florida**, a municipal corporation existing under and by virtue of the laws of the State of Florida (hereinafter referred to as the “City”), the principal place of business of which is Orlando City Hall, 400 S. Orange Avenue, Orlando, Florida 32801, and the **University of Central Florida Research Foundation, Inc.**, a Florida 501(c)3 not for profit corporation and a direct support organization to promote, encourage, and provide assistance to the research activities of faculty, staff and students of the University of Central Florida, with an office located at 12201 Research Parkway, Ste. 501, Orlando, FL 32826 (hereinafter referred to as “UCFRF”), and together hereinafter singularly referred to by their respective name or as the “Party”, and collectively as the “Parties”.

WITNESSETH

WHEREAS, as provided in Article VIII, section 2(b) of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City, as a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, UCFRF, is acting on behalf of, as an instrumentality of, and for the benefit of UCF and its Board of Trustees, and UCF is vested by law with all the powers and authority to administer UCFRF in accordance with Article IX, Section 7 of the Constitution of the State of Florida, the laws of the State of Florida, and the rules and policies of the Florida Board of Governors; and

WHEREAS, the City hereby finds that development of the local economy directly promotes the health, safety, welfare, and morals of the City, and its citizens, and therefore serves an important public purpose, and further, the City recognizes the importance of improving and diversifying the local economy and otherwise supporting education, research, and other endeavors that promote local business development; and

WHEREAS, UCFRF recognizes that it has a special responsibility to the people of the City, to the Orlando metropolitan region, and to the State of Florida, in furthering its mission of education, research, and public service, and further recognizes the essential role that UCFRF plays in the continued development and prosperity of the local and regional economy; and

WHEREAS, the City and UCFRF, in fulfilling their respective missions, recognize that it is in the best interest of both organizations to work cooperatively to address issues of common concern, including the sound and responsible economic development of the Orlando metropolitan region; and

WHEREAS, since its founding in 1999, the UCF Business Incubation Program (“UCFBIP”) has helped hundreds of local startup companies (including nearly 150 current clients and 100 graduates) reach their potential faster by providing vital business development resources.

With eight facilities throughout the region, the UCF Business Incubation Program is an economic development partnership between the University of Central Florida, the Florida High Tech Corridor Council, Orange, Osceola, Seminole and Volusia Counties, and the cities of

Apopka, Kissimmee, Orlando, St. Cloud and Winter Springs. From October 2011 to June 2013, the UCF network of current and graduated clients has helped create a total regional output of over \$620 million resulting in a \$6.16 return for every \$1.00 invested in the program while sustaining (directly and indirectly) over 3,300 jobs in the Central Florida region

The UCF Business Incubation Program was named *Incubator of the Year* for 2004 and *Incubator Network of the Year* for 2013 by the National Business Incubation Association; and

WHEREAS, the establishment of a general business incubator within the City of Orlando will provide essential infrastructure and support to local entrepreneurs and increase the potential for creating and growing sustainable businesses within the City's local economy; and

WHEREAS, the City wishes to provide certain funds to UCFRF and otherwise cooperate with UCFRF, in accordance with this Agreement, for the purpose of developing a general business incubator within the City of Orlando, to be known as the "UCF Business Incubator Orlando" (the "Project"), and as more fully described herein below, and UCFRF wishes to accept such funds and work with the City by providing certain services in relation to the development and operation of the Project; and

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, terms, and conditions set forth herein below, and for other good and valuable consideration as set forth herein below, the receipt and sufficiency of which is hereby acknowledged by both Parties, the City and UCFRF agrees as follows:

SECTION 1: Authority. The City Council of the City of Orlando, Florida, has the authority to approve and enter into this Agreement pursuant to section 2(b), Article VIII of the Constitution of the State of Florida, Chapter 166, Florida Statutes, and other law of the State of Florida. The University of Central Florida Research Foundation Inc., as a direct support organization of the University of Central Florida pursuant to 1004.28, Florida Statutes, has the authority to act on behalf of and for the benefit of UCF, who has the authority to approve and enter into this Agreement pursuant to Chapter 1001, Florida Statutes, and other law of the State of Florida. Additionally, both Parties assert that they have the legal authority to perform their respective duties under this Agreement.

SECTION 2: Recitals. The recitals and findings set forth hereinabove are true and correct and are incorporated herein by this reference as a meaningful and essential part of this Agreement.

SECTION 3: Term of this Agreement. The term of this Agreement shall commence on September 1, 2014 and shall expire on September 30, 2015, unless terminated earlier.

SECTION 4: General Project description. The general purpose of this Agreement is for the City to provide funding to UCFRF for the continued operation of the Project, and to memorialize the agreement and understanding of the Parties as to their respective duties and responsibilities as it relates to this undertaking. The Project will be a general business incubator, modeled after the highly successful UCFBIP, funded by the City and established and operated by UCFRF with the advice and support of the City. As a general business incubator, the Project will continue with acting as an economic development tool designed to accelerate the growth and success of entrepreneurial companies through an array of business support resources and services developed or orchestrated by incubator management and offered both in the incubator and through a

network of contacts. Companies that utilize the services of the Project have the potential to create jobs and wealth, revitalize neighborhoods, commercialize new technologies and strengthen local, regional, and national economies. The Project will continue to provide management guidance, technical assistance and consulting tailored to young, growing companies, and will provide access to office space, shared equipment, technology support and assistance in obtaining financing necessary for company growth. Clusters of firms in an incubator derive strength from working with one another, thus encouraging innovation. The goal of the Project is to produce successful firms that will graduate from the Project financially viable and freestanding.

SECTION 5: Project Office. UCFRF shall provide services for the Project at office space of the Project (the “Project Office”), located at 3218 E. Colonial Drive, Suite G, Orlando, FL 32803. The Project Staff, as detailed in section 7 herein, shall keep regular business hours and conduct the business of the Project at the Project Office. As determined by the Project Staff and UCFRF, in conjunction with the Project Board, the Project Office shall include rental space for Project Clients and will have access to the Project Office’s shared office services and equipment, technology support services, and access to Project Staff. UCFRF has designed and constructed the Project Office layout, attached as Exhibit “A”, with the advice and consent of the City. Substantial modifications to the current interior physical layout and interior design of the Project Office shall be approved by the City prior to the commencement of the modifications.

SECTION 6: Location of the Project Office. The Project Office shall be located within the boundaries of the City of Orlando , as those boundaries exist as of the Effective Date.

SECTION 7: Project Staff. UCFRF shall provide one (1) professional business incubator consultant to manage the Project in accordance with UCFRF's existing incubator models, and one (1) administrative assistant (the "Project Staff"). UCFRF will develop the job descriptions and requirements, organize a selection committee, and conduct interviews for the Project Staff. The Project Staff will be employees of UCF and will be hired upon terms that are customary for such positions as they currently exist at UCF.

SECTION 8: Project Clients. UCFRF shall establish and maintain express policies and procedures for the selection of businesses and proposed businesses that will receive assistance from the Project (the "Project Clients"). The Project Client selection process will be tailored for use in a mixed-business environment, inclusive of all industry sectors, and shall utilize the established success of the UCFBIP model.

SECTION 9: Project Tenants. Subject to the Project Operating Procedures, as described in Section 10 herein, and also subject to the advice and consent of the City, and of the advice of the Project Advisory Board, UCFRF will establish a program as part of the Project whereby qualified Project Clients can sublet specified space within the Project Office for use as customary commercial business space ("the Project Tenants"). The terms of the sublet program shall be established by the Project Operating Procedures.

SECTION 10: Project Operating Procedures. UCFRF has developed and will enforce operating policies and procedures for the Project (the "Project Operating Procedures"). UCFRF will use the Project Operating Procedures to set measurable expectations and expected performance standards from the Project Clients, and such other rules and policies as UCFRF shall determine as advantageous from time to time.

SECTION 11: Business Incubator Industry Best Practices. UCFRF shall create and operate the Project pursuant to recognized business incubator industry best practices as defined by the National Business Incubation Association. Successful incubators strive to:

- A. Commit to two core principles that characterize effective business incubation:
 - 1. The incubator aspires to have a positive impact on its community's economic health by maximizing the success of emerging companies.
 - 2. The incubator itself is a dynamic model of a sustainable, efficient business operation; and
- B. obtain consensus among partners, economic development organizations and supporters on a mission that meets market needs (i.e. technology vs. mixed use vs. other) and defines its role in the community; and
- C. develop a strategic plan containing quantifiable objectives to achieve the program mission; and
- D. seek to integrate the incubator program and activities into the fabric of the community and its broader economic development goals and strategies as a way to strengthen the role of Small and Medium Sized Enterprises (“SMEs”) and reduce the local and regional dependence on corporate recruitment; and
- E. structure for financial sustainability by developing and implementing a realistic business plan; and

- F. recruit and appropriately compensate management capable of achieving the mission of the incubator and having the ability to help companies grow; and
- G. build an effective and experienced board of advisors committed to the incubator's mission and to maximizing management's role in developing successful companies; and
- H. develop effective screening of applicants and consistently push companies to pursue activities necessary to continue strong growth and graduate within prescribed timeframes; and
- I. prioritize management time to place the greatest emphasis on client assistance, including proactive advising and guidance that results in company success and wealth creation; and
- J. develop an incubator facility, resources, methods and tools that contribute to the effective delivery of business assistance to client firms and that addresses the developmental needs of each company; and
- K. develop stakeholder support, including a resource network, which helps the incubation program's client companies and supports the incubator's mission and operations; and
- L. maintain a management information system and collect statistics and other information necessary for ongoing program evaluation, thus improving a program's effectiveness and allowing it to evolve with the needs of the clients.

SECTION 12: Maximum Funding. The City shall reimburse UCFRF for all expenses and costs, excluding rent, that are associated with the Project, including the hiring and retention of the Project Staff and any and all other reasonable costs and expenses incurred by UCFRF pursuant to this Agreement, except however, that the total amount to be paid by the City to

UCFRF for providing the goods and services described in this Agreement shall not exceed Three Hundred Thousand Dollars and No Cents (\$300,000.00) minus rent paid by the City for the Project Office, for the term of this Agreement, inclusive of all fees and costs of any kind whatsoever. All disbursements from the City to UCFRF shall be used by UCFRF only for the purposes detailed in this Agreement and pursuant only to the terms and conditions set forth herein.

SECTION 13: Disbursement of funds and method of payment. The City shall disburse funds to UCFRF only after the City receives a monthly invoice and certification from UCFRF that the work billed has been satisfactorily completed. UCFRF shall submit a single invoice to the City each month in a format mutually agreeable to the Parties, incorporating all expenses and costs associated with the Project, excluding rent, that incurred during the preceding month. A final invoice from UCFRF shall be submitted to the City within sixty (60) days of expiration and/or termination of this Agreement. Supporting documentation for the costs included in UCFRF's monthly invoices is available for inspection by the City in accordance with Section 16 herein. Disbursement of funds from the City to UCFRF shall only be made after approval of invoices by the City and verification of work completed in accordance with this Agreement. The City shall disburse funds to UCFRF in immediately available United States currency drawn on a local depository institution. Upon all preconditions being met by UCFRF, the City shall disburse the check to UCFRF no later than seven (7) days after receipt of the monthly invoice and other required documentation. UCFRF is permitted to revise budget line items as needed in order to meet the program requirements outlined in this Agreement.

SECTION 14: Funding contingent on appropriations. Notwithstanding any other provision of this Agreement, the amount of any funding to be transferred to UCFRF by the City, as

calculated or payable pursuant to this Agreement is subject to appropriation by the Orlando City Council.

SECTION 15: Performance Measures. Prior to the disbursement of any funds from the City to UCFRF within any City fiscal year, UCFRF shall submit and have approved by the City, which approval the City may grant or withhold at its sole discretion, a schedule of performance measures (the “Performance Measures”) by which the City can reasonably evaluate and document achieved goals and benchmarks of the Project. At a minimum the Performance Measures shall contain data including the number and status of Project Clients, Project Tenants, and Project Staff, utilization of Project Office space, participation and graduation from the Excellence in Entrepreneurship Certification (EIE) program, intakes and graduations from the Project and its programs, consideration of the number of employees of Project Clients, and the achieved revenues and successes in attracting private venture capital by Project Clients.

SECTION 16: Accounting. UCFRF shall maintain accurate accounting information and financial records regarding the Project in conformity with generally accepted accounting principles. The City shall have access to such records at any reasonable time during normal business hours through the entire term of this Agreement and for five (5) years thereafter. UCFRF shall keep complete records as to all payments, invoices, statements of costs and supporting records in auditable form. The City shall have the right, at its own expense, to conduct an audit of the foregoing records during normal business hours at the office at UCFRF where the records are stored and maintained. If, as a result of any such audit, it is established that the City has overpaid UCFRF, UCFRF shall forthwith refund the amount owing the City.

SECTION 17: Access. The City shall retain all rights to access the Project Office, and the lease agreement between UCFRF and the landlord of the Project Office shall so state.

SECTION 18: Initial progress. The Parties acknowledge that time is of the essence, and further, acknowledging that the term of this Agreement is for one (1) year, UCFRF will work diligently to commence the Project as soon as possible after the Effective Date.

SECTION 19: Publicity. No advertising material by any third party shall be supported or permitted by either Party without the express written consent by both Parties. All such publicity shall be agreed upon by both Parties prior to release, and all such materials shall appropriately acknowledge the Parties and their respective roles within the Project. Nothing in this Agreement shall prevent either Party from complying with applicable public records laws or prevent a Party from complying with its institutional reporting requirements.

SECTION 20: Nondiscrimination. UCFRF will provide the Project without regard to any individual's race, color, creed, sex, age, national origin, disability, sexual orientation, marital status, and in compliance with Chapter 57 of the Orlando City Code, Title VII of the United State Civil Rights Act of 1964, and any and all other applicable federal, state or local laws, rules or regulations, whether presently existing or hereafter enacted.

SECTION 21: Liability. All employees engaged to perform under this Agreement for UCFRF will be UCF employees and therefore, UCF assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of UCF and its employees, agents, officers and servants thereof, while acting within the scope and course of their employment by UCF. The City assumes any and all risks of personal injury and property

damage attributable to the negligent acts or omissions of the City's officers, employees, servants, and agent thereof, while acting within the scope and course of their employment by the City. UCFRF and the City further agree that nothing in this Agreement shall be construed or interpreted to (1) deny to either Party any remedy or defense available to the Party under the laws of the State of Florida, and (2) comprising the consent of the State of Florida or its agents and agencies to be sued, and (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28, Florida Statutes.

SECTION 22: Insurance. The parties acknowledge that all technical activities performed under this Agreement will be implemented by UCF employees. During the term of this Agreement, UCFRF and UCF shall maintain the appropriate coverages as outlined below:

UCF:

The state of Florida is self-insured. As a state university, UCF participates in the State Risk Management Trust Fund for General Liability, Automobile Liability and Workers Compensation coverage with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by UCF. Under this program, UCF shall, provide and maintain: General Liability coverage with limits of \$200,000 each person and \$300,000 each occurrence; Workers' Compensation coverage with limits of \$200,000 each person and \$300,000 each occurrence; Automobile Liability coverage limits for General Liability of \$200,000/person, \$300,000/occurrence and for Personal Injury of \$10,000 each person and \$10,000 each occurrence.

UCFRF:

The UCFRF is insured through Travelers Property Casualty Company of America with Commercial General Liability Coverage limits of the following:

| | |
|-------------------|-------------------|
| General Aggregate | \$2,000,000 limit |
|-------------------|-------------------|

| | |
|---|------------------------|
| Products-Completed Operations Aggregate | \$2,000,000 limit |
| Personal and Advertising Injury | \$1,000,000 limit Each |
| Occurrence | \$1,000,000 limit |
| Automobile | \$ 1,000,000 limit |
| Damages to Premised Rented | \$ 300,000 limit |
| Medical Payments (to any one person) | \$ 5,000 limit |
| Fine Arts | \$ 25,000 limit |

UCFRF SITE COVERAGE FOR PROJECT OFFICE:

| | |
|--------------------------------------|-------------------|
| Commercial General Liability | \$1,000,000 limit |
| Damages to Premised Rented | \$ 100,000 limit |
| Medical Payments (to any one person) | \$ 5,000 limit |
| Personal and Advertising Injury | \$1,000,000 limit |
| Each Occurrence | \$1,000,000 limit |
| General Aggregate | \$2,000,000 limit |

UCFRF and UCF shall provide certificates of insurance to the City within ten (10) days of the Effective Date, and shall notify the City within thirty (30) days of receiving notice of cancellation, changes, or material alterations in the coverages.

SECTION 23: Force Majeure. The Parties acknowledge and agree that unforeseen and uncontrollable Acts of God or acts of people may interfere with UCFRF's ability to perform its responsibilities and duties as required by this Agreement. Such occurrences may include, but is not limited to, hurricane, tornado, tropical storm, tropical depression, earthquake, flood, lightning, water damage, severe weather conditions, accidents to or failure of essential equipment or machinery, fire, labor controversy, riot, civil unrest, civil commotion, terrorist activity, war, acts of a public enemy,

or major upheaval, law, enactment, rule, or order of any government, failure of essential technical facilities, failure or delay of essential transportation facilities, incapacity of essential personnel, or other cause of a similar or like nature not reasonably within the control of UCFRF and which UCFRF could not have avoided by exercise of reasonable and prudent diligence. In the event such an occurrence forces UCFRF to cancel or postpone any or all its activities or endeavors related to this Agreement, UCFRF shall make all reasonable efforts to mitigate the costs associated with such occurrence, and UCFRF shall immediately notify and consult with the City concerning appropriate efforts to continue with the Project.

SECTION 24: Limitations of government liability. Nothing in this Agreement shall be deemed a waiver of sovereign immunity beyond any statutory limited waiver of immunity, or limits of liability contained in section 768.28, Florida Statutes, as amended, or any other such privilege or immunity created by law. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the doctrine of sovereign immunity or by any other operation of law.

SECTION 25: No waiver of regulatory authority. UCFRF acknowledges, understands, and agrees that the City is the entity responsible for issuing building permits and certain other types of permits, and for performing certain inspections and reviews that will be required in connection with the design and construction of the Project Office, and that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority.

SECTION 26: Modification of this Agreement. Any waiver, alteration, or modification of any part or provision of this Agreement, or the cancellation or replacement of this Agreement, shall not be valid unless in writing of like import and executed by both Parties hereto.

SECTION 27: Correspondence and notices. Unless otherwise specifically provided for herein, all correspondence and notices related to the performance of this Agreement shall be deemed to be delivered when: (i) hand delivered to the office designated below, or (ii) upon receipt of such correspondence or notice when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith.

If to the City: Director, Economic Development Department
 City of Orlando
 Orlando City Hall
 400 South Orange Avenue
 Orlando, Florida 32801

If to UCFRF: Amanda Wilcox, Senior Contract Manager
 University of Central Florida
 Office of Research and Commercialization
 12201 Research Parkway, Suite 501
 Orlando, Florida 32826-3246

SECTION 28: Assignment. This Agreement, and the rights and privileges established by it, shall not be assigned or transferred in whole, or in part, by either Party without the advanced written consent of the other Party, which consent may be granted or withheld in that Party's sole discretion, and any attempted assignment or transfer without the other Party's consent shall be null, void, and of no legal effect.

SECTION 29: No waiver. Failure of either Party to insist upon the prompt or full performance of any obligation pursuant to this Agreement shall not be deemed a waiver of such obligation or

of the right to insist upon the prompt and full performance of such obligation or of any other obligation or responsibility established by this Agreement.

SECTION 30: Default. Both Parties are hereby obligated to immediately notify the other in the event of any default hereunder.

SECTION 31: No agency. The Parties, along with their respective agents, representatives, officers, employees, contractors, subcontractors, or other related parties, shall perform their respective duties and responsibilities under this Agreement as independent parties. Nothing in this Agreement shall be construed to establish an agency, partnership, or joint venture relationship between the Parties.

SECTION 32: Third parties. This Agreement is solely for the benefit of the City, UCF, and UCFRF, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

SECTION 33: Severability. Any provision or part of this Agreement that is declared invalid by a court of competent jurisdiction shall be severable, the remainder continuing in full force and effect, but only to the extent that the remainder does not become unreasonable, absurd, or otherwise contrary to the purpose and intent of this Agreement.

SECTION 34: Controlling law and interpretation. This Agreement shall be governed and interpreted in accordance with Florida law. All proceedings or actions in law or equity shall be brought and heard in Orange County, Florida. The Parties negotiated this instrument as an arm's

length transaction, with the opportunity to consult counsel, and neither Party shall be entitled to any benefits of interpretation.

SECTION 35: Authority to execute and comply. The Parties both represent and warrant that the signatories to this Agreement have been duly and legally authorized by the appropriate body or official(s) to execute this Agreement. The Parties have complied with all applicable requirements of law, and both have full power and authority to comply with the terms and provisions of this Agreement.

SECTION 36: Captions and headings. The headings and captions used in this Agreement are for convenience only and shall not be used to interpret meaning or intent.

SECTION 37: Computation of time. In computing any period of time prescribed or allowed under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

SECTION 38: Merger. This Agreement supersedes any and all agreements, whether oral or in writing, between the City and UCFRF with respect to the subject matter hereof. The City and UCFRF acknowledge and agree that no representations, inducements, promises, or statements, whether oral or in writing, have been made by either Party, or anyone acting on behalf of a Party, which are not expressly set forth herein.

SECTION 39: Effective Date. The effective date of this Agreement shall be September 1, 2014.

SECTION 40: Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the Parties, and all of which together shall constitute one instrument.

SECTION 41: Termination. Either party may terminate this Agreement upon thirty (30) days written notification to the other party.

IN WITNESS WHEREOF, having carefully considered the rights, duties, and obligations established herein, the Parties hereto accept and agree to be bound by the terms of this Agreement by setting their hands and seals below in Orange County, Florida.

****[Remainder of page intentionally left blank. Signature page(s) to follow.]****

For the University of Central Florida Research Foundation, Inc.:

Signature

Date

Print Name

Title

Attesting for the University of Central Florida Research Foundation, Inc.:

Signature

Date

Print Name

Title

For the City of Orlando, Florida:

Signature

Date

Print Name

Title

Attesting for the City of Orlando, Florida:

Signature

Date

Print Name

Title

Approved as to form and legality for the City of Orlando, Florida:

Signature

Date

Print Name

Title