

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Seminole County/UCF Technology Accelerator Partnership Agreement

**DEPARTMENT:** Economic Development **DIVISION:** Economic Development

**AUTHORIZED BY:** William McDermott **CONTACT:** Sabrina O'Bryan **EXT.** 7134

<b>Agenda Date</b> 09/26/06 <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input checked="" type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/> <b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>
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**MOTION/RECOMMENDATION:**

Approve and authorize Chairman to execute the Seminole County/UCF Technology Accelerator Partnership Agreement.

**BACKGROUND:**

The BCC authorized staff to create a partnership agreement for the Technology Accelerator at the April 11, 2006 BCC meeting.

The purpose of the Accelerator is to encourage job growth and economic development in Seminole County with later stage incubator companies. The facility is anticipated to be located on the Southwest side of Seminole County; therefore providing employment opportunities for the surrounding residents.

Seminole County will pay \$300,000 per year for three years for the professional and technical services provided to the clients at the Seminole Accelerator.

Over 87% of companies that graduate from an accelerator or incubator program remain viable businesses five years after graduation. Additionally more than 85% of companies who graduate from an incubator locate within five miles of the facility resulting in significant and tangible return on investment for the local community.

Funds are included in the Economic Development budget to support this partnership. This project meets the stated goals of the Economic Development Strategy.

Attachment: UCF Business Accelerator Agreement

Reviewed by:	
Co Atty:	<i>[Signature]</i>
DFS:	<i>[Signature]</i>
Other:	<i>[Signature]</i>
DCM:	<i>[Signature]</i>
CM:	<i>[Signature]</i>
File No.	CE001

SEMINOLE COUNTY/UCF TECHNOLOGY ACCELERATOR PARTNERSHIP AGREEMENT

THIS AGREEMENT is effective as of the 26th day of September, 2006, by and between SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY," and the UNIVERSITY OF CENTRAL FLORIDA acting for and on behalf of its Board of Trustees and for the benefit of the University of Central Florida Technology Incubator, a public university existing and operating under the laws of the State of Florida, whose address is 12201 Research Parkway, Suite 501, Orlando, FL 32826 , hereinafter referred to as the "UCFTI".

W I T N E S S E T H:

WHEREAS, it is the policy of the COUNTY to aggressively stimulate economic growth in Seminole County by, among other things, either attracting new industries and businesses to Seminole County or by encouraging the expansion of existing industries and businesses within Seminole County; and

WHEREAS, the creation of new employment opportunities for residents of Seminole County and the increased tax revenues resulting from such industry or business expansion and relocation within Seminole County is beneficial to the local economy; and

WHEREAS, Seminole County, through its Board of County Commissioners, has enacted a Jobs Growth Incentive Ordinance and has the fiscal capacity to conduct and accomplish the programs relating thereto; and

**WHEREAS**, a jobs growth/economic development business technology accelerator will be located in the Southwest portion of the county; and

**WHEREAS**, UCFTI has proposed and demonstrated to the COUNTY that they can fully and adequately provide administrative support, consistent with the terms of this Agreement, for the UCF Seminole County Business Technology Accelerator; and

**WHEREAS**, UCFTI and the COUNTY desire to enter into this Agreement for the purpose of encouraging job growth and economic development in Seminole County; and

**WHEREAS**, the COUNTY has determined that in order to enhance and preserve the economic well-being and health and welfare of the citizens of the COUNTY it is necessary, proper and desirable to enter into this Agreement with UCFTI in order to enhance the economic development of Seminole County; and

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

**SECTION 2. PURPOSE.** The purpose of this Agreement is for UCFTI to provide the following services to the COUNTY in the manner hereinafter set forth:

- (a) UCFTI will leverage the resources and infrastructure in place at UCF, specifically at the UCF Technology Incubator to aide in the development of companies located in the Seminole accelerator. This includes:
- Use the existing client application and screening process and oversee selection process. This includes using the Excellence in Entrepreneurship Course developed for UCFTI.
  - Utilize UCF service provider network and expand to include additional resources focused on later stage incubator companies.
  - Utilize educational programs available through the NEC and resident small business service providers.
  - Provide marketing for the Accelerator and its clients.
  - Use existing criteria to graduate companies out of the program.
  - Oversee the selection of location and design for the Accelerator.
  - Provide staffing for the Accelerator.
  - Providing annual reports which shall include, but not be limited to, recommendations relative to the continuing development and operation of the Seminole Accelerator. Additionally, on or before May 1, of each year of this agreement UCFTI will provide a verbal report to the Board of County Commissioners.
  - In summary, UCF will expand its current award winning incubator program by establishing and operating a second stage incubator, or accelerator in cooperation with Seminole County. This includes hiring, training, and managing staff, selecting and managing clients, establishing mentoring and coaching programs, and

establishing criteria for graduating companies into the community.

**SECTION 3. SERVICES.** The COUNTY agrees to purchase and UCFTI agrees to furnish, during the term of this Agreement, the services described in Section 2 of this Agreement.

**SECTION 4. BILLING AND PAYMENT.** The COUNTY hereby agrees to pay UCFTI the sum of NINE HUNDRED THOUSAND AND NO/00 DOLLARS (\$900,000) for all services provided hereunder by UCFTI during the three year term of this Agreement. Said sum is payable each year in increments of THREE HUNDRED THOUSAND AND NO/00 DOLLARS (\$300,000) on or before September 30, of each year.

**SECTION 5. TERM.**

This Agreement shall be effective from September 26, 2006 and shall remain effective until May 1, 2009.

**SECTION 6. REPORTS.** UCFTI shall provide the COUNTY with an annual report regarding the activities pursuant to this Agreement at the time of each twelve (12) month period under this Agreement.

**SECTION 7. FORCE MAJEURE.** In the event any party hereunder fails to satisfy a requirement imposed in a timely manner, due to a hurricane, flood, tornado, or other act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect, unless such force majeure event rendered the performance impossible or impractical.

**SECTION 8. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and designees of the parties.

**SECTION 9. ASSIGNMENT.** This Agreement shall not be assigned by either party without the prior written approval of the other.

**SECTION 10. PUBLIC RECORDS.** UCFTI shall allow public access to all documents, papers, letters or other materials which have been made or received by UCFTI in conjunction with this Agreement.

**SECTION 11. RECORDS AND AUDITS.**

(a) UCFTI shall maintain in its place of business all non-exempt books, documents, papers and other evidence pertaining to work performed under this Agreement. Such non-exempt public records shall be and remain available at UCFTI's main campus at all reasonable times during the term of this Agreement and for five (5) years after Agreement closure.

(b) UCFTI agrees that the COUNTY or its duly authorized representative shall, until the expiration of five (5) years after Agreement closure, have access to examine any of UCFTI's non-exempt books, documents, papers and records involving transactions related to this Agreement. UCFTI agrees that payments made under this Agreement shall be subject to reduction for amounts charged which are found on the basis of audit examination not to constitute allowable costs.

(c) All required records shall be maintained until an audit has been completed and all questions arising from it are resolved or until five (5) years after closure of the Agreement, in writing and submission of a final invoice, whichever is sooner. UCFTI will provide proper facilities for access to and inspection of all required records.

(d) The phrase "non-exempt," as used herein, means that the record is not exempt under the public records law of the State of Florida.

**SECTION 12. NOTICES.**

(a) Whenever either party desires to give notice unto the other, notice may be sent to:

**For COUNTY:**

County Manager  
Seminole County Services Building  
1101 East First Street  
Sanford, Florida 32771

**With copies to:**

Economic Development Director  
Seminole County Government  
1301 East Second Street  
Sanford, Florida 32771

**For UCFTI:**

**Technical:**

Dr. Thomas O'Neal  
Chief Executive Officer  
UCF Technology Incubator  
12565 Research Parkway, Suite 300  
Orlando, FL 32826

**Administrative:**

Mary B. Stanley  
Senior Contract Manager  
Office of Research and Commercialization  
12201 Research Parkway, Suite 501  
Orlando, FL 32826

(b) Either of the parties may change, by written notice as provided herein, the address or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

**SECTION 13. INDEMNITY AND INSURANCE**

(a) Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent act or omissions of that party and officers, employees and agents thereof.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of either Party beyond the waiver provided for in Section 768.28, Florida Statutes.

(c) UCFTI shall provide necessary workers compensation coverage and unemployment compensation for its employees.

**SECTION 14. CONFLICT OF INTEREST.**

(a) UCFTI agrees that it will not knowingly engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would knowingly violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) UCFTI hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312, Florida Statutes) either directly or indirectly, in the business of UCFTI to be conducted here and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, UCFTI hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or other State or Federal Agency.

**SECTION 15. EQUAL OPPORTUNITY EMPLOYMENT.**

(a) UCFTI agrees that it will not discriminate against any contractor, employee or applicant for employment or work under this Agreement because or on account of race, color, religion, sex/ age or national origin and will insure that applicants and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include but not be limited to, the following: retention, award of contracts, employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) UCFTI agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

**SECTION 16. COMPLIANCE WITH LAWS AND REGULATIONS.** In performing under this Agreement, the parties shall abide by all applicable laws, statutes, ordinances, rules and regulations pertaining to, or regulating the performance set forth herein, including those now in effect and here- inafter adopted. Any material violation of said laws, statutes, ordi- nances, rules or regulations shall constitute a material breach of this Agreement, and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termina- tion to the violating party.

**SECTION 17. EMPLOYEE/UCFTI STATUS.**

(a) Persons employed or retained by UCFTI in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil

service or other employee rights or privileges granted to the COUNTY's officers and employees either by operation of law or by the COUNTY.

(b) UCFTI assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and Federal, State and local employment taxes, if any, attributable to UCFTI personnel or contractors and agrees, to the extent required in Section 768.28, Florida Statutes, to indemnify and hold the COUNTY harmless from any responsibility for same.

(c) In performing this Agreement, planning, development, constructing, equipping and operating the project or carrying out any of the activities to be carried out by UCFTI, UCFTI will be acting independently, in the capacity of an independent entity and not as a joint venture, associate, employee, agent or representative of the COUNTY.

**SECTION 18. NO THIRD PARTY BENEFICIARIES.** This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to UCFTI's interest in the Project and is not intended to and shall not benefit a third party. No third party shall have any rights hereunder or as a result of this Agreement or any rights to enforce any provisions of this Agreement.

**SECTION 19. CONTINGENT FEES/CONFLICTING EMPLOYMENT.**

(a) UCFTI covenants that it has employed and retained only bona fide employees working for UCFTI and attorneys and consultants, to solicit or secure this Agreement. The COUNTY warrants that it has not paid or agreed to pay any personal company, corporation, individual or

firm, other than a bona fide employee working for UCFTI any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making this Agreement.

**SECTION 20. GOVERNING LAW/ATTORNEY'S FEES.** This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be entitled to recover from the other, reasonable fees and costs as allowable by law.

**SECTION 21. CONSTRUCTION OF AGREEMENT.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, COUNTY and UCFTI have contributed substantially and materially to the preparation hereof.

**SECTION 22. CONSTITUTIONAL AND STATUTORY LIMITATION ON AUTHORITY OF THE COUNTY.** The terms and conditions of this Agreement placed upon the COUNTY are applicable only to the extent they are within and consistent with the constitutional and statutory limitation of the authority of the COUNTY. Specifically, the parties acknowledge that the COUNTY is without authority to grant or pledge a security interest in any of the COUNTY's revenue.

**SECTION 23. - Events of Default/Remedies**

- (a) For purposes of this Agreement, "Event of Default" shall mean any of the following:

- (1) UCFTI shall misapply or cause the misapplication of COUNTY funds or credits received pursuant to this Agreement.
- (2) Any representation or warranty made by UCFTI herein or in any statement, invoice or certificate furnished to the COUNTY in connection with the performance of the Agreement proves to be untrue in a material respect as of the date of issuance or making thereof and shall not be corrected or brought into compliance within thirty (30) days after written notice thereof to UCFTI by the COUNTY.
- (3) UCFTI shall materially breach any covenant contained in this Agreement and such breach shall not be corrected or cured within thirty (30) days after written notice thereof to UCFTI by the COUNTY, provided however; that the COUNTY may declare a lesser time period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety or welfare.
- (4) UCFTI fails to provide to the COUNTY the written verification, satisfactory to the COUNTY, of its performance obligations herein.
- (5) UCFTI fails to expend Grant Funds in accordance with this Agreement.

**SECTION 24. TERMINATION.** The COUNTY may, by written notice to UCFTI, terminate this agreement, in whole or in part, at any time, either for the COUNTY'S convenience or because of the failure of UCFTI to fulfill the agreement obligations. Upon receipt of such notice, UCFTI shall:

(a) Immediately discontinue all services affected unless the notice directs otherwise, and

(b) Deliver to the COUNTY all plans, studies, reports, estimates, summaries, and such other information and materials as may have been accumulated by the UCFTI in performing this agreement, whether completed or in process. In no event shall such delivery include UCFTI's background intellectual property or any intellectual property developed solely by UCFTI during the performance of this project.

(c) If the termination is for the convenience of the COUNTY, UCFTI shall be paid compensation for costs and uncancellable obligations properly incurred through the effective date of termination. If the termination is due to an "Event of Default" by either Party, UCFTI shall be paid compensation for costs and uncancellable obligations properly incurred through the effective date of termination.

(d) If the termination is due to the failure of the UCFTI to fulfill their agreement obligations, the COUNTY may take over the work and prosecute the same to completion by agreement or otherwise. UCFTI shall not be liable for such additional costs if the failure to perform the agreement arises out of causes beyond the control and without the fault or negligence of UCFTI. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the

failure to perform must be beyond the control and without the fault or negligence of UCFTI.

(e) If, after notice of termination for failure to fulfill agreement obligations, it is determined that UCFTI had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(f) The rights and remedies of the Parties provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

**SECTION 25. COUNTERPARTS.** This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be original, but all counterparts shall together constitute one and the same instrument.

**SECTION 26. HEADINGS.** All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

**SECTION 27. SEVERABILITY.** If any provision, term or clause of this Agreement is determined to be invalid or unenforceable, then such provision term or clause shall be null or void and shall be deemed separable from the remaining covenants of this Agreement and shall in no way affect the validity of the remaining covenants and provisions of this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the dates indicated below.

ATTEST:

UNIVERSITY OF CENTRAL FLORIDA

By: Mary B Stanley  
Mary B. Stanley  
Senior Contract Manager

Date: 9/7/06

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
Carlton D. Henley, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.

As authorized for execution by  
the Board of County Commission-  
ers at their \_\_\_\_\_,  
\_\_\_\_\_, regular meeting.

Approved as to form and  
legal sufficiency

\_\_\_\_\_  
County Attorney

Revised Draft # 4 08/22/06