



Interoffice Memorandum

March 30, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Ed Torres, M.S., P.E., LEED AP, Director
Utilities Department

A handwritten signature in black ink, appearing to read "Ed Torres", written over the "FROM:" line.

SUBJECT: **BCC AGENDA ITEM – Consent Agenda**
April 11, 2023, BCC Meeting
Non-Disclosure Agreement by and between University of Central Florida
Research Foundation, Inc. and Orange County
Contact Person: Benjamin Yoakum, Ph.D., P.E., Project Manager
Utilities Water Division
407-254-9598

Orange County Utilities (OCU) is partnering with the University of Central Florida Research Foundation, Inc. (UCFRF) to survey and conduct research at the Orange County landfill; these activities have the potential to improve management of landfill operations. A non-disclosure agreement protects confidential information relating to surveying and operational data, and interpretation of such data gathered from the research.

The scientific/technical representatives for this project are Dr. Peng “Patrick” Sun from UCFRF and Dr. Benjamin Yoakum from OCU.

The County Attorney’s Office and Risk Management Division have reviewed the agreement and find it acceptable as to form. Utilities Department staff has reviewed the agreement and recommends approval.

Action Requested: **Approval and execution of Non-Disclosure Agreement by and between University of Central Florida Research Foundation, Inc. and Orange County to protect confidential research data related to landfill surveying.**

District 4

BCC Mtg. Date: April 11, 2023

NON-DISCLOSURE AGREEMENT

This non-disclosure agreement (“Agreement”) is made effective as of the date of last signature (“Effective Date”) by and between University of Central Florida Research Foundation, Inc. (“UCFRF”), a direct support organization and instrumentality acting for the benefit of and on behalf of The University of Central Florida Board of Trustees (“UCF”), and Orange County, a charter county and political subdivision of the state of Florida (“County”), each individually a “Party” and collectively the “Parties”.

UCFRF shall be: a Disclosing Party a Receiving Party Both
County shall be: a Disclosing Party a Receiving Party Both

UCFRF scientific/technical representative

Name: Dr. Peng “Patrick” Sun
Address: 12800 Pegasus Drive, Suite 211
City State Zip: Orlando, Florida 32816-2450
Phone: 407- 823-1206
Email: Peng.Sun@ucf.edu

County scientific/technical representative

Name: Dr. Benjamin Yoakum
Address: 9150 Curry Ford Road
City State Zip: Orlando, Florida 32825
Phone: 407-254-9598
Email: Benjamin.Yoakum@ocfl.net

In consideration of the Purpose (as defined below), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Scope and Purpose

Disclosing Party (“Disclosing Party”) is in possession of confidential information that Disclosing Party considers confidential and in which Disclosing Party has a proprietary interest (“Confidential Information”), which is generally described as:

<u>UCFRF</u>	<u>County</u>
Technical information relating to surveying and operational data, and interpretation of such data, from landfills.	Technical information relating to surveying and operational data, and interpretation of such data, from landfills.

Receiving Party (“Receiving Party”) wishes to receive disclosure of the Confidential Information from Disclosing Party and agrees to hold that disclosure in confidence subject to the terms and conditions in the Agreement. Disclosing Party is willing to make this disclosure to Receiving Party for the purpose(s) of:

The “Purpose”:

UCFRF and County will discuss future research activities involving landfill annual topology surveying and surface emission monitoring using unmanned aerial vehicle (UAV) and equipped remote sensors.

2. Confidential Information

Confidential Information. Confidential Information includes, but is not limited to, any confidential or proprietary information, knowledge, software, documents, drawings, sketches, models, designs, data, memoranda, tapes, records, material and/or know-how whatsoever, provided by Disclosing Party. All Confidential Information disclosed to Receiving Party in written form shall be clearly marked as confidential or proprietary by Disclosing Party. All Confidential Information disclosed orally or in any other form shall be identified as confidential or proprietary by Disclosing Party at the time of disclosure, summarized in a writing clearly marked as confidential or proprietary, and delivered to Receiving Party within thirty (30) days of disclosure by Disclosing Party.

3. Duties

3.1 Permitted Use. Receiving Party will use Disclosing Party's Confidential Information only for the Purpose as provided in the Agreement, and any other use must be defined in advance by a separate document executed by the Parties. Receiving Party may disclose the Confidential Information to its directors, officers and employees who: 1) have a need to know the Confidential Information in order to explore or facilitate the Purpose and 2) have agreed to, or have a duty to, hold such Confidential Information in confidence in a manner consistent with the terms of this Agreement. Receiving Party will not disclose Confidential Information to any third party without prior written consent of Disclosing Party.

County understands and agrees that UCFRF does not have any employees and that all personnel performing under this Agreement are employees or agents of UCF. As a result and notwithstanding anything to the contrary hereunder, UCFRF shall be able to disclose Confidential Information, for the Purpose described, to employees of UCF who have a legitimate need to know the Confidential Information.

3.2 Unauthorized Use. No license (express, implied, by estoppel, or otherwise) or intellectual property right is conveyed by this Agreement, except for the limited right to use Confidential Information for the Purpose. Receiving Party shall protect Disclosing Party's Confidential Information from unauthorized use, and unauthorized or accidental disclosure, by the exercise of the same degree of care as it employs to protect its own information of a like nature, but not less than reasonable care.

3.3 Governmental Rights. Receiving Party understands that Disclosing Party's Confidential Information may have been developed under a grant or contract from the federal government of the United States or the government of the State of Florida. The federal or state government may be entitled to certain rights in the Confidential Information and may also be entitled to exercise certain rights to the Confidential Information.

3.4 Export Control. Each Party acknowledges that it is subject to and agrees to abide by the United States laws and regulations controlling the export or transfer of information, technical data, software, items, materials, mockups/prototypes, biological materials and other items, (including the Arms Export Control Act ("AECA"), as amended, and enumerated in the International Traffic Arms Regulations ("ITAR") 22 CFR Parts 123 – 130, and the Export Administration Act ("EAA") of 1979 enumerated in the Export Administration Regulations ("EAR") 15 CFR Parts 300 - 799). The transfer of such items and technical data may require a license from the cognizant agency of the U.S. Government or written assurances by County that it shall not export such items to certain foreign countries and/or foreign persons without prior approval of the cognizant agency. UCFRF neither represents that a license is or is not required or that, if required, it shall be issued.

4. Term and Termination

4.1 Term. Receiving Party will use the Confidential Information only during the term of the Agreement, which begins on the Effective Date and terminates two (2) years from the Effective Date unless terminated earlier ("Term"). Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party.

4.2 Non-Disclosure Period. Termination or expiration shall not affect Receiving Party's obligations with respect to Confidential Information disclosed under this Agreement, but such obligations shall continue in accordance with this paragraph 4.2. Receiving Party agrees that it shall, to the extent permitted by law, keep in

confidence and not disclose any part of Disclosing Party's Confidential Information, in any form, to a third party or parties for a three (3) year period beginning on the Effective Date of this Agreement.

4.3 Termination Obligations. Upon termination of this Agreement, Receiving Party will return or destroy all Confidential Information provided by Disclosing Party, together with all copies, other forms of reproduction, or description of the Confidential Information made by Receiving Party, except that Receiving Party may retain one copy of Confidential Information for legal, public records, and/or archival purposes only.

5. Excluded Information

Receiving Party shall have no obligation of confidentiality and shall not be liable for disclosing Disclosing Party's Confidential Information to others that is evidenced by written record as:

- a) already known to Receiving Party at the time of disclosure;
- b) generally available to the public or becomes available to the public through no fault of Receiving Party;
- c) developed independently of and without reference to Disclosing Party's Confidential Information;
- d) received from a third party who had a legal right to disclose such Confidential Information without restriction;
- e) disclosed in accordance with public record requirements, under operation of law, regulation, or in response to a judicial, administrative or legislative order, but Receiving Party shall, to the extent permitted by law, first notify Disclosing Party to provide Disclosing Party an opportunity to prevent disclosure; or
- f) disclosed by Receiving Party with Disclosing Party's prior written approval.

6. Correspondence and Notice

Addresses of the Parties for correspondence and notices concerning this Agreement are:

<u>UCFRF</u>	<u>County</u>
Name: <u>Alyssa Lindemuth</u>	Name: <u>Dr. Benjamin Yoakum</u>
Address: <u>12201 Research Parkway, Suite 501</u>	Address: <u>9150 Curry Ford Road</u>
City State Zip: <u>Orlando, Florida 32826</u>	City State Zip: <u>Orlando, Florida 32825</u>
Phone: <u>407-823-1253</u>	Phone: <u>407-254-9598</u>
Email: <u>Alyssa.Lindemuth@ucf.edu</u>	Email: <u>Benjamin.Yoakum@ocfl.net</u>

This information may be revised by written notice to other Party.

7. Miscellaneous

7.1 Injunctive Relief. Receiving Party acknowledges that a breach by it of any of the terms of this Agreement may cause irreparable harm to Disclosing Party and that damages may be difficult to determine. Accordingly, in the event of a default, Disclosing Party's only remedy will be to seek injunctive relief restraining Receiving Party from any further or continued breach of its obligations hereunder.

7.2 No Warranties. The Parties agree that any Confidential Information is disclosed "as-is" and that any use by Receiving Party of that Confidential Information will be at the sole risk of Receiving Party. DISCLOSING PARTY MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO CONFIDENTIAL INFORMATION DISCLOSED UNDER THIS AGREEMENT.

7.3 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Florida, without regard to conflict of law principles and, to the extent applicable, by the laws of the United States. Any dispute between the Parties concerning the terms of this Agreement shall be decided in a court of competent jurisdiction located in Orange County, Florida.

7.4 No Assignment. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without obtaining prior written consent of the other Party.

7.5 Entirety, Amendment, and Severability. This Agreement constitutes the entire agreement of the Parties concerning the matters discussed herein. If any of the provisions of this Agreement are determined to be invalid under applicable law, they are, to that extent, deemed omitted. The invalidity of any portion of this Agreement shall not render any other portion invalid. This Agreement may be amended only by a written instrument executed by authorized representatives of the Parties.

In witness thereof, the Parties hereby execute this Agreement by their authorized representatives.

UNIVERSITY OF CENTRAL FLORIDA
RESEARCH FOUNDATION, INC.

Orange County, Florida

By: Board of County Commissioners

Name: Amanda Coveney

By: Jerry L. Demings

Title: Assistant Director

Title: Orange County Mayor

Signature: *Amy*

Signature: *Byron Brooks*

Date: 3/6/2023

Date: 20 April 2023



ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Gloria Hernandez*
Title: Deputy Clerk

Signature: *Gloria Hernandez*

Date: 20 April 2023