



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 11

**DATE:** August 3, 2017

**TO:** Mayor Teresa Jacobs  
and the  
Board of County Commissioners

**THROUGH:** Paul Sladek, Manager *PS*  
Real Estate Management Division

**FROM:** Mary Ann Keller, Assistant Manager *PS for max*  
Real Estate Management Division

**CONTACT PERSON:** Paul Sladek, Manager

**DIVISION:** Real Estate Management  
Phone: (407) 836-7090

**ACTION REQUESTED:** APPROVAL AND EXECUTION OF AFFILIATE SERVICE PROVIDER AGREEMENT BETWEEN ORANGE COUNTY AND UNIVERSITY OF CENTRAL FLORIDA, BOARD OF TRUSTEES, AND DELEGATION OF AUTHORITY TO THE REAL ESTATE MANAGEMENT DIVISION TO EXERCISE RENEWAL OPTION, IF NECESSARY

**PROJECT:** NEC Fashion Square Mall  
3201 East Colonial Drive  
Orlando, Florida 32803  
  
District 5

**PURPOSE:** To provide training and meeting rooms, and associated equipment and resources, for the provision of business training and consulting services at the National Entrepreneur Center.

**ITEM:** Affiliate Service Provider Agreement  
Term: Until December 30, 2020  
Option: One, 5-year renewal

**APPROVALS:** Real Estate Management Division  
County Attorney's Office  
Office of Economic, Trade and Tourism Development  
Risk Management Division

**REMARKS:** The National Entrepreneur Center (NEC) is a public-private partnership between Orange County (County), Disney Worldwide Services, Inc. and the University of Central Florida designed to provide educational training services to small business owners in the Central Florida area. The existing Lease Agreement was approved by the Orange County Board of County Commissioners (BCC) on August 31, 2010.

Under the terms of the Cosponsorship Agreement, approved by the BCC on March 29, 2011, the County is responsible for providing resources, equipment, training, and meeting rooms and use of the facilities to Affiliate Service Providers.

This Affiliate Service Provider Agreement (Agreement) will authorize the NEC to allow the University of Central Florida, Board of Trustees, for the benefit of its Business Incubation Program (BIP) to become a recognized affiliate Service Provider, and will enable the County to provide the necessary training and meeting rooms at the NEC to BIP so BIP may provide networking events, business seminars, and collaborative partnerships with both the public and private sectors, promote global business contracting opportunities, and provide other services as described in the Service Provider Services attached as Exhibit A to the Agreement. BIP must also provide the NEC with timely activity reporting each quarter, and other items as specified in the Agreement. BIP will pay a lump sum of \$5,000 annually in January of each calendar year to the NEC. Additionally, BIP will pay the NEC for long distance and other charges incurred by BIP. BIP will not occupy any private office space in the NEC.

AUG 22 2017

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**ORANGE COUNTY, FLORIDA**

*and*

**UNIVERSITY OF CENTRAL FLORIDA**

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**AFFILIATE SERVICE PROVIDER AGREEMENT**

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THIS AFFILIATE SERVICE PROVIDER AGREEMENT ("Provider Agreement") made as of the date fully executed below ("Effective Date"), by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("County") and the **UNIVERSITY OF CENTRAL FLORIDA, BOARD OF TRUSTEES**, for the benefit of its **Business Incubation Program** ("Service Provider"), hereinafter collectively referred to as the "Parties" or "Party."

WHEREAS, County, Disney Worldwide Services, Inc., and the University of Central Florida entered into a Cosponsorship Agreement dated March 29, 2011, as amended by the Amendment to Cosponsorship Agreement dated December 15, 2015 (collectively "Cosponsorship Agreement") to establish the National Entrepreneur Center ("Center"); and

WHEREAS, County leases approximately 20,977 square feet of office space and 364 square feet of storage space for the Center from UP Fieldgate US Investments – Fashion Square, LLC ("Landlord"), successor in interest to PR Orlando Fashion Square LLC, under a Lease Agreement approved by the Board of County Commissioners August 31, 2010, as renewed ("Lease Agreement"). Said office space is located at 3201 East Colonial Drive, Orlando, Florida 32803 within the Orlando Fashion Square Mall ("Premises"); and

WHEREAS, the purpose of the Center is to house a variety of non-profit organizations offering comprehensive small business training, information, business events, and educational activities for small business in the Central Florida area; and

WHEREAS, in accordance with the provisions of the Cosponsorship Agreement and Lease Agreement, County shall grant the use of the Premises by organizations for business training and consulting services to benefit the Center; and

WHEREAS, Service Provider desires to provide business training and consulting services to the individuals who use the Center; engage and promote the mission of the Center, and provide detailed reporting of activity as required by the County; and

WHEREAS, all previous service provider agreements between the Parties have expired.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the Parties agree as follows:

**Section 1. Recitals.** The above are true and correct and form a material part of this Provider Agreement.

**Section 2. County Responsibilities.**

The County shall:

(a) Make training and meeting rooms, and use of the facilities located at the Premises available to Service Provider in accordance with the terms and conditions of the Lease Agreement.

**Section 3. Service Provider Responsibilities.**

The Service Provider shall:

(a) Provide business training and consulting services, as set forth in Exhibit "A," attached hereto and made a part hereof.

(b) Complete and provide the Center a copy of the Service Providers quarterly activity report. A sample of which is attached hereto as Exhibit "B" and made a part hereof.

(c) Promote the goals and objectives of the Service Provider.

(d) Abide by and adhere to all the provisions of the Lease Agreement, with the exception of the payment of rent.

(e) Actively participate in, and support the collaborative environment created by assembling a variety of service provider organizations at the Center.

(f) Pay to the Center's fiscal agent, the University of Central Florida Research Foundation ("Fiscal Agent"), the amounts listed hereafter for use of the training/meeting facilities located on the Premises during the term of this Provider Agreement:

Lump sum of \$5,000.00 due annually in January of each calendar year

(g) Pay to the Fiscal Agent the cost of all long distance charges placed by Service Provider from the Premises, which shall be billed monthly along with any other miscellaneous charges incurred by center on behalf of the Service Provider.

(h) Not occupy the Premises as its principal place of business or for use as its private office space.

During the term of this Provider Agreement, all annual payments required by this section shall be rendered without demand on or before the last day of each January. All payments are to be made to the Fiscal Agent's address provided herein or at an address to be determined in writing by the Fiscal Agent. The initial annual payment must be received by the Fiscal Agent no more than 30 days after receipt of the Fiscal Agent's invoice.

**Section 4. Term.** The initial term of this Provider Agreement shall commence on the Effective Date and terminates December 31, 2020. Thereafter, unless renewed as provided herein, this Provider Agreement shall continue on a month-to-month basis and either Party may terminate this Provider Agreement upon forty eight (48) hours' written notice to the other Party. The Parties may renew this Provider Agreement for an additional five (5) year term by agreeing to terms and conditions in writing. The Manager of County's Real Estate Management Division is authorized to approve and exercise said renewal option.

**Section 5. Termination.** This Provider Agreement can be terminated by either Party at any time, with or without cause, upon no less than ninety (90) days' notice in writing to the other Party. Such notice shall be delivered as provided herein or in person to the business address of the Party upon whom such notice is served. If this Provider Agreement is terminated, Service Provider shall pay a pro-rata share of its annual payment through the date of termination.

**Section 6. Notice.** Any notice provided for in this Provider Agreement must, unless otherwise expressly provided herein, be in writing, and be forwarded by registered or certified mail, return receipt requested, postage prepaid, or nationally recognized overnight courier service such as FedEx or UPS. Either Party may change its address to any other address in the United States of America by notice in writing given to the other Party in the manner herein provided.

As to Service Provider: Mr. Thomas O'Neal  
UCF Business Incubation Program  
12201 Research Parkway, Ste. 501  
Orlando, FL 32826

As to County: Manager  
Orange County Real Estate Management Division  
P.O. Box 1393  
Orlando, FL 32802

With a copy to: County Attorney  
Orange County  
P.O. Box 1393  
Orlando, FL 32802

AND

UCF Research Foundation  
12201 Research Parkway, Suite 501  
Orlando, FL 32826  
Attn: Ed Jacobs

AND

National Entrepreneur Center  
3201 E. Colonial Drive, Suite A20  
Orlando, FL 32803  
Attn: Jerry Ross, President

AND

UCF General Counsel Office  
Millican Hall, Suite 360  
4365 Andromeda Loop North  
Orlando, FL 32816  
Attn: Sandra Sovinski

**Section 7. Signs.** In accordance with the Lease Agreement, Service Provider may not erect, install or display any sign upon the Premises, the exterior of the Premises (including any exterior doors), or the exterior walls thereof, or in any window therein, without the prior written consent of both the County and the Landlord. Any signs erected, installed or displayed by Service Provider upon the interior of the Premises shall be subject to the County's prior written approval.

**Section 8. Indemnification.** Up to the amount permitted by Florida Statute 768.28, each party agrees to defend, indemnify and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes.

**Section 9. Insurance.** The Service Provider shall obtain and maintain, at its expense, insurance in accordance with provisions of the Lease Agreement as follows:

(a) General liability insurance in an amount not less than \$2,000,000 to cover the Service Provider, Orange County, and the Center, and any others designated by County against liability for injury and/or death of any persons and for damage to personal property occasioned by or arising out of any construction, condition, use, or occupancy of the Premises. Said general liability policies shall carry the name of the Service Provider as the named insured. Service Provider shall provide the County with a certificate of insurance prior to the commencement of this Provider Agreement, and shall exhibit receipts showing payment of premiums. Such policy shall further provide that the

insurer shall not cancel, alter, or allow expiration or other termination thereof without at least thirty (30) days prior written notice from such insurer to the County.

All-risk property insurance in an amount not less than \$1,000,000 to cover the full replacement value of Service Provider's furniture, equipment, supplies, and any other property owned, leased, held, or possessed by it.

(b) In lieu of the insurance required above, if the Service Provider is governed by section 768.28, Florida Statutes, it may self-insure in accordance with the provisions of that section. Lessee agrees to provide a certificate of insurance evidencing its insurance or election to self-insure

**Section 10. Liability.** County and its respective officers and employees shall not be deemed to assume any liability for the acts, omissions, and negligence of Service Provider, its guest, employees or agents.

**Section 11. Right to Inspect and Audit Books.** During the term of this Provider Agreement, Service Provider shall permit the County, or any agent designated by the County, to inspect and audit Service Provider's books and accounts in relation to this Provider Agreement, except such books and accounts which are deemed by Service Provider to be confidential, exempt or protected by federal, state or local law. Such inspection or audit shall occur at any time during normal working hours, provided that reasonable notice is provided to Service Provider prior to any such inspection.

**Section 12. Public Records.** Pursuant to section 119.0701, Florida Statutes, Service Provider shall be responsible for complying with the provisions of Florida's public records laws.

**IF THE SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Official Records  
PO Box 38  
Orlando, FL 32802  
407-836-5115**

To the extent that Service Provider meets the definition of "Contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Service Provider must comply with public records laws, including the following provisions of Section 119.0701, Florida Statutes:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.

Project: NEC Fashion Square Mall  
Provide Agreement #2062-ASP3

3. 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 contractor does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

**This Service Provider and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

***Section 13. Amendments.*** This Provider Agreement may be amended only through a written document executed by both Parties.

***Section 14. Assignment.*** This Provider Agreement may not be assigned by either Party without the prior written consent of the other Party. Failure to comply with this provision may result in immediate termination of this Provider Agreement.

***Section 15. Severability.*** In the event that any section, paragraph, sentence, clause or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Provider Agreement and the same shall remain in full force and effect.

***Section 16. Waiver.*** Performance of this Provider Agreement by either Party, after notice of default of any of the terms, covenants or conditions, shall not be deemed a waiver of any right to terminate this agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

***Section 17. Third-Party Rights.*** The provisions of this Provider Agreement are for the sole benefit of the Parties hereto and will not be construed as conferring any rights on any other person or entity.

***Section 18. Independent Contractor Status.*** Service Provider is an independent contractor and neither Service Provider nor anyone employed by Service Provider shall be deemed for any purpose to be an employee of County in the performance of the work hereunder.

**Section 19. Civil Rights.** Neither Service Provider nor County will discriminate against any person or persons, with regard to race, color, sex, age, religion, ancestry, national origin, handicap, or marital status in the performance of this Provider Agreement.

**Section 20. Governing Law.** This Provider Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**Section 21. Litigation and Venue.** In the event a Party deems it necessary to take legal action to enforce any provision of this Provider Agreement, venue shall be in the Circuit Court of the Ninth Judicial Circuit in Orange County, Florida.

**Section 22. Remedies.** No remedy herein conferred upon any part is intended to be exclusively of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any rights, power, or remedy hereunder shall preclude any other or further exercise thereof.

**Section 23. Headings.** The headings or captions of articles, sections or subsections used in this agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Provider Agreement.

**Section 24. Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Provider Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Provider Agreement as stated.

**Section 25. Documentation.** Service Provider hereby acknowledges and agrees County has provided Service Provider a copy of the Cosponsorship Agreement and the Lease Agreement.

**Section 26. Entire Agreement.** This Provider Agreement contains the entire agreement between the Parties. No promises, representations, warranties or covenants not included herein has been or shall be relied upon by either Party. Any modifications, additions, or amendments hereto must be in writing, and signed by the Parties.

(SIGNATURE PAGE TO FOLLOW)

Project: NEC at Fashion Square Mall  
Agreement #2062-ASP3

IN WITNESS WHEREOF, the Parties hereto have signed and executed this Service Provider Agreement on the dates indicated below.



COUNTY:  
ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

Date: 8.22.17

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

By: *Kate Smith*  
Deputy Clerk  
Date: AUG 22 2017

ATTEST/WITNESS:

*KMS*  
Print Name: KMSMITH  
*Justin Matthews*  
Print Name: Justin Matthews

SERVICE PROVIDER:  
UNIVERSITY OF CENTRAL FLORIDA  
BOARD OF TRUSTEES

By: *Dr. Thomas O'Neal*  
Dr. Thomas O'Neal  
Associate Vice President  
Office of Research & Commercialization

Date: 12/9/2016

Approved as to Form and Legality  
*5/13*, 12/9/2016

## **EXHIBIT "A"**

### **SERVICE PROVIDER SERVICES**

Service Provider shall support, and actively participate in the collaborative model established at the Center, while providing practical training and services to individuals who use the Center.

These services include the following:

- Promote business opportunities within the Central Florida business community through networking events, business seminars, and collaborative partnerships with both the public and private sectors.
- Advocate, promote and engage with the technical business assistance available through the in-house service providers at the NEC.
- Promote global business contracting opportunities within the community.

Service Provider shall provide services to individuals who use the Center. General expectations of Service Provider and its employees include the following:

- Regularly Scheduled and Dependable Office hours at the Center
- Professional Appearance and Demeanor
- Provision of professional and quality services and programs
- Excellent Customer Service
- Regular and timely communication with the Center
- Attendance by Service Provider CEO/Director at the Center's Management Board meetings
- Timely reporting of Quarterly Activity to the Center
- Active participation in Center activities and initiatives
- Willing cooperation and collaboration with the Center and other resident providers
- Demonstrate responsibility and care for the shared facility, resources and equipment
- Maintain an informative and up-to-date client friendly website with the Center's affiliation and link clearly displayed.

## Exhibit "B"

### Sample - NEC Quarterly Activity Report

Service Provider OR Community Partner: UCFBIP		July 16	Aug 16	Sept 16	Total
# Training Workshops					0
# Training Attendees					0
# Counseling Sessions*					0
# People Counseled					0
<b>Total Clients*</b>		0	0	0	0
<b>Gender/Ownership</b>					
Woman-Owned (>50%)					0
Male-Owned (>50%)					0
Woman/Male Owned (50/50)					0
Not Available					0
<b>Total Clients*</b>		0	0	0	0
<b>Race</b>					
African American					0
Asian American					0
Native American					0
Caucasian					0
Not Available					0
<b>Total Clients*</b>		0	0	0	0
<b>Ethnicity</b>					
Hispanic					0
Non-Hispanic					0
Not Available		0	0	0	0
<b>Total Clients*</b>		0	0	0	0
<b>Veteran</b>					
Veteran					0
Service Disable Veteran					0
Non-Veteran					0
Not Available		0	0	0	0
<b>Total Clients*</b>		0	0	0	0
<b># Contacts**</b>					0
<b># of Referrals to other NEC Providers:</b>					0
<b>Finance</b>					
# Loans Originated					0
\$ Loans Originated					0
Other Capital (\$)					0
<b>Impact</b>					
Sales Increase (\$)					0
Jobs Created & Retained					0
New Business Starts					0