

AGREEMENT

Between

THE ARIZONA COMMERCE AUTHORITY,
an agency of the State of Arizona,

And

THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF
OF NORTHERN ARIZONA UNIVERSITY

AGREEMENT

THIS AGREEMENT (this "Agreement"), dated March 4, 2014, is made by and between (i) the ARIZONA COMMERCE AUTHORITY, an agency of the State of Arizona (the "Authority"); and (ii) the ARIZONA BOARD OF REGENTS, a body corporate with perpetual existence, for and on behalf of NORTHERN ARIZONA UNIVERSITY ("Grantee"). The Authority and Grantee are sometimes referred to individually as a "Party," and, collectively, as the "Parties."

RECITALS:

A. The Authority was established by the State of Arizona with a mission to provide private sector leadership in growing and diversifying the economy of the State, and creating high quality employment in the State through expansion, attraction and retention of businesses and marketing the State for the purpose of expansion, attraction and retention of businesses.

B. One aspect of the Authority's mission is to encourage *rural* business development in Arizona through a variety of development strategies, including specialized training, job creation, economic diversification and attraction of new investment.

C. The Authority has the power and authority, *inter alia*, to provide grants to qualifying parties that promote the mission of the Authority including grants supporting and advancing programs and projects for rural businesses, small businesses, and business development that enhance economic development.

D. Grantee has long been a driver of economic activity in rural northern Arizona. Its constituent organizations, including the W.A. Franke College of Business, the NAU Center for Business Outreach, the NAU Office of Economic Development, the NAU Center for American Indian Economic Development, the NAU EDA University Center and the NAU Rural Policy Institute, are innovators in entrepreneurial education and training, business outreach, business service and engagement, direct job creation, technology transfer and business retention and expansion.

E. Grantee has also been engaged in business and venture incubation and venture acceleration in rural northern Arizona, directly, and through an agreement with the Northern Arizona Center for Entrepreneurship and Technology ("NACET") and the City of Flagstaff (the "City"). Business incubation and venture acceleration are regarded as critical components for economic growth in rural northern Arizona in view of the region's expanding knowledge-based economy in the biosciences, technology, science-based companies, software, advanced manufacturing, astronomical sciences, education and medical services. Grantee's agreement with NACET has had significant success. A recent study concluded that NACET client companies created 165 new jobs in 2009 and 2010 paying an average wage of \$75,000.

F. Grantee has proposed, in collaboration with NACET and the City, the development and operation of an expanded advanced venture acceleration program to accelerate the growth and sustainability of "tier two" start-up companies (i.e., companies in existence for fewer than 10 years

with sustainable revenues and which are adding employees and have infrastructure needs) in rural northern Arizona (the "Project").

G. The Project, proposed to be developed and operated at an approximately 25,000 square foot "tier two" business accelerator building facility to be known as "Innovation Mesa" and to be constructed on the McMillan Mesa in the City at a cost of \$7,762,500 (the "Project Facility"), and intended to redress recent losses of several rural northern Arizona tier-two companies to other states because of insufficient tier-two advanced venture acceleration services and infrastructure, is intended to provide, as available: (a) various advanced venture acceleration services to regional tier-two companies including (i) access to the technical expertise, mentoring, and consulting of Grantee's business and engineering faculty, Grantee's economic development practitioners, research faculty, MBA and engineering graduate students, and interns; (ii) intellectual property and technology transfer capabilities developed by Grantee and cooperating universities; (iii) connections to local, state, and national business incubation resources; (iv) assistance and access to capital in the form of grants from agencies including the EDA (as defined below), the National Science Foundation, the National Institutes of Health, the U.S. Department of Commerce, and the Small Business Innovation Research Program; (v) access to capital from angel and venture investors; (vi) mentoring from a network of professionals including patent attorneys, certified public accountants, experienced entrepreneurs, engineers, and sales and marketing professionals; and (vii) incubation coaching and oversight, and (b) cutting-edge laboratory, production, and manufacturing infrastructure and advanced technology and equipment. Among other efforts in support of the Project, Grantee intends to locate its expanded venture acceleration and ongoing business incubation functions at the Project Facility.

H. In respect to the \$7,762,500 cost of design and construction of the Project Facility, (i) \$4,000,000 will be funded by the U.S. Department of Commerce Economic Development Administration (the "EDA") through a grant to the City, (ii) \$2,662,500 will be funded directly by the City and (iii) \$1,100,000 will be funded by Grantee, \$1,000,000 of which is intended to be provided by means of this Grant.

I. In the initial five (5)-year period commencing on the date of issuance of a certificate of occupancy for the Project Facility (the "Effective Date") and ending on the five (5)-year anniversary of the date of issuance of such certificate of occupancy (the "Maturity Date"), Grantee anticipates that the Project will assist in the creation and maintenance of at least three hundred (300) new Qualified Jobs (as hereinafter defined) by client companies which will pay average annual wages of \$60,000. Grantee also anticipates a capital investment in respect to the Project of at least \$7,762,500 associated with the design and construction of the Project Facility.

J. The Authority, in view of its mission to promote economic development throughout Arizona, including rural regions, and based upon preliminary fiscal and economic impact projections for the Project, seeks to assist Grantee in causing development of the Project in Arizona by offering a grant to Grantee in the amount of \$1,000,000 (the "Grant") for use in constructing the Project Facility.

K. The Authority has further determined that the Project's anticipated resulting employment of 300 employees in Quality Jobs (as hereinafter defined) will enhance the economic vitality of Arizona by generating employment opportunities and tax revenues that would not

otherwise exist but for development and implementation of the Project in Arizona pursuant to the terms of this Agreement, and has further determined that the Grant will be of material benefit to Arizona generally, and to rural northern Arizona particularly, in light of such employment opportunities and revenues generated by the development and implementation of the Project in Arizona and potential future expansion of businesses in this State aided by the Project.

L. Based on the Grant provided by the Authority, and acting in reliance thereon, Grantee has agreed to assist the City and NACET in the construction of the Project Facility and the development, operation, and maintenance of the Project in Arizona, and to be bound by the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions, representations and warranties herein contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

1.1. Defined Terms. For purposes of this Agreement, the following terms shall have the meanings ascribed to them below, unless the context requires otherwise:

1.1.1. “Agreement” shall mean this Agreement and all exhibits and supplements hereto as it or they may be amended or supplemented from time to time as provided in this Agreement.

1.1.2. “Applicable Laws” shall mean the federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the State of Arizona (or any applicable political subdivision or agency thereof, including but not limited to the City).

1.1.3. “Applicable Percentage” shall mean as defined in Section 3.1.3.

1.1.4. “Authority” shall mean as set forth in the first grammatical paragraph of this Agreement.

1.1.5. “Business Day” shall mean any day of the year, excluding Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions are authorized by law or other governmental actions to close and are actually closed in Phoenix, Arizona.

1.1.6. “City” shall mean the City of Flagstaff.

1.1.7. “EDA” shall mean as set forth in Recital H.

1.1.8. “Effective Date” shall mean as set forth in Recital I.

1.1.9. “Event of Default” shall mean any of the events described in Section 8.1.

1.1.10. “Governmental Authority” shall mean, as applicable, the United States of America, the State of Arizona, the City, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Grantee and or the Project.

1.1.11. “Grant” shall mean as set forth in Recital J.

1.1.12. “Grant Payments” shall mean payment of the Grant in accordance with Article 3.

1.1.13. “Grantee” shall mean as set forth in the first grammatical paragraph of this Agreement.

1.1.14. “Grantee Information” shall mean as set forth in Section 9.6.

1.1.15. “Grantee’s Closing Affidavit” shall mean Grantee’s Closing Affidavit in form and substance satisfactory to the Authority, to be executed and delivered by Grantee to the Authority upon execution of this Agreement, substantially in the form attached hereto as Exhibit A.

1.1.16. “Grantee’s Payment Affidavit” shall mean Grantee’s Payment Affidavit to be executed and delivered by Grantee to the Authority coincident with any request for a Grant Payment, each substantially in the form attached hereto as Exhibit B.

1.1.17. “Grantee’s Project Obligations” shall mean all of the following:

(i) Grantee shall assist the City and NACET in the construction of the Project Facility and the development, operation and maintenance of the Project;

(ii) Grantee shall commit all Grant Payments exclusively to design and construction of the Project Facility which shall entail a projected capital investment of at least \$7,762,500;

(iii) Grantee shall provide advanced venture acceleration and related services to the Project through at least the Maturity Date; and

(iv) Within the five (5)-year period commencing on the Effective Date and concluding on the Maturity Date, Grantee shall assist in the Project’s creation and maintenance in Arizona of at least 300 new Quality Jobs (“New Jobs”).

1.1.18. “Material Adverse Change” shall mean, in respect to Grantee or the Project, a material and adverse change in the business, operations or financial condition of Grantee or the Project, as the case may be.

1.1.19. “Maturity Date” shall mean as set forth in Recital I.

1.1.20. “New Jobs” shall mean as defined at clause (iv) of Section 1.1.17.

1.1.21. “Notice and Cure Period” shall mean, as used in this Agreement, 5:00 p.m. Arizona Time on the 45th day after the deemed receipt by Grantee from the Authority or by the

Authority from Grantee, in accordance with Section 9.1, of a written notice of failure to perform any covenant or agreement or to pay when due any payment of principal, interest, fees, late charges, or other sums due under the this Agreement, during which forty-five (45)-day period the payment may be made or the performance undertaken and completed.

1.1.22. “Party” or “Parties” shall mean as set forth in the first grammatical paragraph of this Agreement.

1.1.23. “Progress Reports” shall mean the reports required by the Authority from time to time relating to the status of the Project, including as provided by under Section 2.2.1.

1.1.24. “Project” shall mean as set forth in Recital F.

1.1.25. “Project Facility” shall mean as set forth in Recital G.

1.1.26. “Qualified Jobs” shall mean those jobs each of which possesses all of the following characteristics:

- (i) The job is new to Arizona;
- (ii) The job is a permanent job (i.e., not seasonal, on a contract basis for a prescribed period, or otherwise temporary);
- (iii) The job requires a minimum of 1,750 hours of work per year based on the employee’s normal work week;
- (iv) The job is filled by an Arizona resident legally authorized to work in the U.S.;
- (v) The job, when averaged with all New Jobs, provides an average gross annual cash wage of at least \$60,000; and
- (vi) The job includes health insurance benefits for which the employer pays at least 65% of the insurance premium for the employee.

1.1.27. “State” shall mean the state of Arizona.

1.1.28. “Year Three” shall mean the twelve-month period concluding on the third anniversary of the Effective Date.

ARTICLE 2: GRANTEE’S AGREEMENT TO CO-CONSTRUCT THE PROJECT FACILITY
AND CO-DEVELOP, OPERATE AND MAINTAIN THE PROJECT; RELATED
OBLIGATIONS

2.1 Agreement to Perform Grantee Project Obligations. Subject to the terms and conditions of this Agreement, Grantee shall perform Grantee’s Project Obligations.

2.2 Progress Reports; Site Access.

2.2.1 Schedule and Reporting Periods of Progress Reports. Grantee shall submit Progress Reports to the Authority, in a form satisfactory to the Authority, in accordance with the following schedule:

- (i) Annually, on or before July 31 of each calendar year within the term of this Agreement, reporting on the twelve-month (or shorter) period ending the previous June 30 (coinciding with the date of closing of the Authority's fiscal year).
- (ii) Until the calendar quarter following the close of Year Five quarterly, on or before fifteen (15) Business Days following the close of each calendar quarter; reporting on the period since the preceding quarterly report except in the case of the first quarterly report.
- (iii) Within twenty (20) Business Days after Year Three, reporting on the period from the Effective Date through the close of Year Three.
- (iv) Within twenty (20) Business Days after the Maturity Date, reporting on the period from the Effective Date through the Maturity Date.

The Progress Reports shall detail the following information as applicable: (i) the status of construction of the Project Facility, including the extent of the aggregate capital investment expended thereon; (ii) confirmation of the use made by Grantee of the Grant Payments; (iii) the efforts expended by Grantee in connection with business incubation and advance venture acceleration program activities in respect to the Project including a description of the services provided by Grantee during the period following the preceding Progress Report (if applicable); (iv) the number and identity of the client companies receiving advanced venture acceleration services at the Project Facility; (v) the number of New Jobs created by the Project and the nature thereof as well as the wages and benefits payable in connection with the New Jobs, (vi) the number of New Jobs described in the preceding clause (v) that are maintained through the relevant date addressed by the Progress Report and (vii) such additional information as the Authority may request of Grantee from time to time. If Grantee fails to submit a Progress Report on a timely basis after such document being due, then, subject to the Notice and Cure provisions of Article 8, Grantee shall be authorized to suspend further Grant Payments.

2.2.2 Site Visits. The Authority shall be authorized to conduct site visits during construction of the Project Facility and thereafter. Grantee shall provide access to the Authority for this purpose. In the event Grantee fails to provide requested access, then, subject to the Notice and Cure provisions of Article 8, Grantee shall be authorized to suspend further Grant Payments.

ARTICLE 3: AUTHORITY'S AGREEMENT TO MAKE THE GRANT; PAYMENT OF THE GRANT

3.1 Grant Payments.

3.1.1 General. Subject to the remaining terms and conditions of this Agreement, the Authority shall make Grant Payments to Grantee in an aggregate amount not exceeding \$1,000,000 in accordance with the remaining provisions of this Section 3.1.

3.1.2 Periodic Payments. Subject to Section 3.1.3, the Authority shall make Grant Payments to Grantee following:

- (i) Initial payment of the underlying cost for design and construction of the Project Facility by the City;
- (ii) Transmittal of a written request for reimbursement of Grantee's share of such cost from the City to Grantee;
- (iii) Grantee's transmittal to the Authority of the written request for reimbursement received by Grantee from the City; and
- (iv) Grantee's transmittal to the Authority of Grantee's Payment Affidavit..

Subject to Section 3.1.3(iii), it is expressly provided herein that Grantee need not first pay the City the amount reflected in the request for reimbursement by the City in order to be eligible for a Grant Payment.

3.1.3 Limitations on Payment. Notwithstanding the provisions of Section 3.1.2, the Authority shall not:

- (i) Make Grant Payments to Grantee more frequently than one time each calendar quarter;
- (ii) Make a Grant Payment to Grantee for reimbursement of a share of the Project Facility design and construction cost for which the City has not also requested reimbursement of a share of the cost from the EDA;
- (iii) Make any Grant Payment to Grantee until Grantee has paid the City at least \$100,000 of Grantee's aggregate \$1.1 million share of the Project Facility building design and construction costs, as more particularly described at Recital H of this Agreement;
- (iv) After Grantee's payment to the City described in the preceding clause (iii), make a Grant Payment to Grantee greater than the Applicable Percentage of the then remaining design and construction cost(s) for which reimbursement is sought; or
- (v) After Grantee's payment to the City described in the preceding clause (iii), make a Grant Payment at any time if the then cumulative Grant Payments plus the Grantee's \$100,000 payment to the City described in the preceding clause (iii) would exceed the product of (x) the Applicable Percentage multiplied by (y) the then cumulative cost expended by the City (without regard to reimbursements by the EDA grant or Grantee) in respect to the

design and construction of the Project Facility (but not costs in excess of \$7,762,500).

For purposes of this Agreement, the term “Applicable Percentage” shall mean 14.1706924 percent, which represents the amount, expressed as a percentage, computed by dividing (a) \$1.1 million (corresponding to the maximum amount of the Grant plus Grantee's payment to the City of \$100,000 described in the preceding clause (iii)) by (b) the projected aggregate cost of design and construction of the Project Facility to be funded in total by the City, the EDA, and Grantee (\$7,762,500). Accordingly, it is contemplated that of the first \$705,682 of Project Facility design and construction costs, Grantee will pay the City \$100,000 (the product of (i) \$705,682 multiplied by 14.1706924 percent. Of the next \$7,056,818 in Project Facility design and construction costs, the Authority will pay to Grantee \$1 million (the amount, rounded off, equal to the product of (i) \$7,056,818 multiplied by 14.1706924 percent. The sum of (i) \$705,682 plus (ii) \$7,056,818 equals \$7,762,500, the projected minimum design and construction cost of the Project Facility.

3.1.4 Additional Conditions to Payment. All requests for reimbursement from the City to Grantee shall include copies of applicable vendor's invoices detailing the services provided in respect to the Project as well as the related proof of payment by the City and must also be acknowledged and approved by the City as representing an accurate accounting of construction expenses incurred in respect to the Project.

3.1.5 Ceiling on Payments. Anything in this Agreement to the contrary notwithstanding, if design and construction of the Project Facility is completed at a cost of less than \$7,762,500, the Grant Payments shall be limited to the product of (i) 12.882 percent multiplied by (ii) the actual cost of construction of the Project Facility. The aforementioned 12.882 percent represents the percentage derived by dividing \$1 million by the originally projected \$7,762,500 design and construction cost of the Project Facility.

3.2 Repayment Obligation. Grantee acknowledges and agrees that it will repay all Grant Payments received if Grantee fails to perform clauses (ii) and (iii) of the definition of Grantee's Project Obligations (pertaining to Grantee's obligations to commit all Grant Payments to design and construction of the Project Facility and to provide venture acceleration and related services to the Project through the Maturity Date). Accordingly, the provisions of Section 8.2.3 shall govern if Grantee fails to perform clauses (ii) and (iii) of Grantee's Project Obligations.

ARTICLE 4: CONDITIONS TO THE GRANT PAYMENTS

4.1. Conditions to the Grant. As a condition to receiving any Grant Payment, Grantee shall have satisfied the conditions and requirements of this Section 4.1:

4.1.1 Grantee shall have delivered to the Authority the following documents, duly executed and acknowledged as necessary:

(i) Grantee's Closing Affidavit as of the date of execution of this Agreement;

(ii) Grantee's Payment Affidavit; and

(iii) Copies of all construction contracts for the Project Facility and amendments thereto.

4.1.2 No Event of Default shall exist, and no event of non-performance shall exist which, with the passage of time, could constitute an Event of Default; and

4.1.3 No Material Adverse Change shall have occurred either in respect to Grantee or in respect to the Project since the date of Grantee's application to the Authority for the Grant or since the date of the preceding Grant Payment.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY

The Authority hereby represents to Grantee as of the Effective Date as follows:

5.1 The Authority is duly created pursuant to A.R.S. §§ 41-1501 *et seq.*;

5.2 The Authority has duly authorized its President and Chief Executive Officer, Sandra Watson, to enter into this Agreement on behalf of the Authority; and

5.3 The Authority knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Authority or its officials with respect to this Agreement that has not been disclosed in writing to Grantee.

ARTICLE 6: REPRESENTATIONS AND WARRANTIES OF GRANTEE

Grantee hereby represents and warrants to the Authority as of the date of execution of this Agreement and as of the time immediately preceding any Grant Payment as follows:

6.1. All information supplied or delivered to the Authority by Grantee, whether verbally or in writing, in connection with the transactions contemplated by this Agreement is materially true, correct, and complete as of the dates specified therein.

6.2. There are no actions, suits, or proceedings pending or, to Grantee's knowledge after due inquiry, threatened in any court or before or by any Governmental Authority which materially and adversely (i) affect Grantee's ability to perform Grantee's obligations under the Agreement, (ii) affect the ability to construct and develop the Project, or (iii) which involve the validity, enforceability, or priority of any provision of this Agreement.

6.3. This Agreement constitutes a valid and binding obligation of Grantee, enforceable in accordance with its terms.

6.4. Grantee has the organizational power and authority to enter into this Agreement and to carry out the transactions contemplated to be carried out hereunder. The individuals signing this Agreement on behalf of Grantee have full organizational power and authority to do so. All necessary consents, approvals, resolutions and other action required to duly authorize, execute and deliver the Agreement and to perform hereunder, to the extent required by Grantee for such authorization, execution, delivery and performance hereunder, have been obtained or taken by Grantee.

ARTICLE 7: ADDITIONAL COVENANTS AND AGREEMENTS OF GRANTEE

Grantee hereby covenants and agrees with the Authority as follows:

7.1. Grantee, at the Authority's cost, shall cause to permit the Authority, upon reasonable notice during normal business hours, while this Agreement is in effect (i.e., through the Maturity Date), and for one (1) year thereafter, to examine and audit the books and records relating to the Project.

7.2. All representations and warranties made by Grantee in this Agreement (whether contained in Article 6, Article 7 or elsewhere in this Agreement) shall be true and correct in all material respects as of the date of execution hereof and as of the date of any Grant Payment, and Grantee will execute and deliver a Closing Affidavit and Payment Affidavits, affirming that all representations and warranties contained in this Agreement remain materially true and correct at the applicable times.

ARTICLE 8: EVENTS OF DEFAULT; REMEDIES

8.1. Event of Default. The occurrence of any of the following shall constitute an Event of Default by Grantee under this Agreement:

8.1.1 Subject to the Notice and Cure Period to the extent applicable, the failure by Grantee to comply with, perform and discharge, fully and timely, any material covenant, agreement, condition or obligation to be performed by Grantee hereunder, including the obligations set forth in Section 2.2.1, Section 2.2.2, and clauses (ii) and (iii) of Grantee's Project Obligations.

8.1.2 Subject to the Notice and Cure Period to the extent applicable, the material breach of any representation or warranty made by Grantee.

8.1.3 The appointment of a receiver, trustee, conservator, or liquidator in respect to the Project.

8.2 Effect of Event of Default; Remedies.

8.2.1 Termination of Authority's Payment Obligations. Except as otherwise agreed by the Authority in its sole discretion, upon the occurrence of an Event of Default to the extent applicable, the Authority's commitment under this Agreement to make Grant Payments or any outstanding Grant Payments shall immediately terminate.

8.2.2 Remedies. Except as otherwise provided herein, upon the occurrence of an Event of Default by Grantee, including any uncured breach of any provision of this Agreement by Grantee, the Authority may exercise any one or more of the following remedies, all of which are cumulative and non-exclusive and may be pursued separately, successively, or concurrently against Grantee: (i) any remedy contained in this Agreement, including without limitation, the remedies set forth in Section 2.2.1, Section 2.2.2, and Section 3.2, and (ii) any right and remedy available at law or in equity. In the event of any action by the Authority to exercise any such remedies, the Authority shall also be entitled to recover its (i) reasonable attorney's fees and (ii) costs if the

Authority is the prevailing Party in such action.

8.2.3. Repayment Contingency. Notwithstanding the Authority's discretion to exercise any right or remedy at law or in equity following an Event of Default by Grantee, the Authority shall insist on repayment of all Grant Payments made to Grantee only in the event that Grantee fails to perform clauses (ii) and (iii) of Grantee's Project Obligations (pertaining to Grantee's obligations to commit all Grant Payments to design and construction of the Project Facility and to provide venture acceleration and related services to the Project through the Maturity Date). In any such event, Grantee shall be required to repay all Grant Payments received hereunder within twenty (20) Business Days following written notice thereof from the Authority. In the event of any action by the Authority to recover any such amounts required to be repaid by Grantee in accordance with this Section 8.2.3, in whole or in part, the Authority shall be entitled to recover, in addition to the foregoing amounts specified in this Section 8.2.3, its reasonable attorneys fees and costs if it is the prevailing party in such action.

8.3 Remedy of Grantee for Breach by Authority. Upon the occurrence of any breach of this Agreement by the Authority, Grantee, as its sole and exclusive remedy against the Authority, subject to the Notice and Cure Period and subject to Section 9.15, may seek specific performance of the Authority's obligations arising under this Agreement.

8.4 Nonliability of Officials. Notwithstanding anything in this Agreement to the contrary, no officer, representative, agent, attorney or employee of either Party shall be personally liable to any other Party hereto, or to any successor in interest to such Party, in the event of any non-performance or breach hereunder with respect to any obligation under the terms of this Agreement.

ARTICLE 9: GENERAL TERMS AND CONDITIONS

9.1 Notices. Except as otherwise expressly provided herein, all notices, demands, requests, and other communications required or permitted hereunder, shall be in writing and shall be delivered by hand, telegram, facsimile or deposited with the United States Postal Service postage prepaid, registered or certified mail, return receipt requested, or delivered by courier or personal delivery addressed as follows:

If to the Authority: Arizona Commerce Authority
333 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attn: Greg Linaman
Telephone No.: 602-845-1255
Facsimile No.: 602-845-1201

with a required copy to: Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012
Attn: David I. Thompson, Esq.

Telephone No.: 602-285-5021
Facsimile No.: 602-285-5100

If to Grantee:

Attn: Jennus Burton
Vice President, Finance and Administration
Northern Arizona University
P.O. Box 4088
Flagstaff, Arizona 86011-4088
Phone: 928-523-2708
Facsimile No.: 928-523-4230

with a required copy to:

Richard Bowen
Associate Vice President, Economic Development,
Northern Arizona University
P.O. Box 4074
Flagstaff, Arizona 86011-4088
Phone: 928-523-8831
Facsimile No.: 928 - _____

All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Agreement will be in writing and will be deemed to have been duly given: (i) on the date of delivery, if personally delivered by hand, (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (iii) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a Business Day, or otherwise on the next Business Day or (iv) if delivered by facsimile, courier or by personal delivery, then notice is deemed delivered upon the date and time of confirmed, actual receipt or refusal of delivery by the representative's agents and employees of Grantee. Any Party may designate a different address or person to whom such notices should be sent by giving notice thereof as provided in this Section 9.1, which change of address shall be effective upon receipt.

9.2 Deleted.

9.3 Amendments; Modifications. No provision of this Agreement may be amended or modified, except by written instrument executed by the Party against whom such amendment or modification is sought to be enforced.

9.4 Limited Severability. The Authority and Grantee each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the Authority to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, code or charter), such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required.

Telephone No.: 602-285-5021
Facsimile No.: 602-285-5100

If to Grantee:

Attn: Jennus Burton
Vice President, Finance and Administration
Northern Arizona University
P.O. Box 4088
Flagstaff, Arizona 86011-4088
Phone: 928-523-2708
Facsimile No.: 928-523-4230

with a required copy to:

Richard Bowen
Associate Vice President, Economic Development,
Northern Arizona University
P.O. Box 4074
Flagstaff, Arizona 86011-4088
Phone: 928-523-8831
Facsimile No.: 928 - 523-4230 _____

All notices, requests, demands or other communications that are required or may be given pursuant to the terms of this Agreement will be in writing and will be deemed to have been duly given: (i) on the date of delivery, if personally delivered by hand, (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (iii) upon the date scheduled for delivery after such notice is sent by a nationally recognized overnight express courier if the delivery date is a Business Day, or otherwise on the next Business Day or (iv) if delivered by facsimile, courier or by personal delivery, then notice is deemed delivered upon the date and time of confirmed, actual receipt or refusal of delivery by the representative's agents and employees of Grantee. Any Party may designate a different address or person to whom such notices should be sent by giving notice thereof as provided in this Section 9.1, which change of address shall be effective upon receipt.

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9.3 Amendments; Modifications. No provision of this Agreement may be amended or modified, except by written instrument executed by the Party against whom such amendment or modification is sought to be enforced.

9.4 Limited Severability. The Authority and Grantee each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the Authority to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, code or charter), such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required.

Unless prohibited by Applicable Laws, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

9.5 No Waiver; the Parties' Standard for Consents. No waiver by either Party of any of that Party's rights or remedies hereunder, shall be considered a waiver of any other or subsequent right or remedy of either Party; no delay or omission in the exercise or enforcement by either Party of any rights or remedies shall be construed as a waiver of any other right or remedy of either Party; and, to the extent permitted by applicable law, no exercise of enforcement of any such rights or remedies shall be held to exhaust any right or remedy of either Party. Unless otherwise provided in this Agreement, all consents of either Party permitted or required under this Agreement shall be given or withheld in that Party's sole discretion.

9.6 Confidentiality. The Authority may not disclose to any Person any confidential, proprietary or non-public information of Grantee furnished to the Authority by Grantee or its representatives (such information being referred to collectively herein as the "Grantee Information"), except that the Authority may disclose Grantee Information (i) to its and its affiliates' employees, officers, directors, agents and advisors who have a need to know (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Grantee Information and instructed to keep such Grantee Information confidential on substantially the same terms as provided herein), (ii) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (iii) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, and (iv) with the consent of Grantee. The obligations under this Section 9.6 shall survive the termination of this Agreement.

9.7 No Third Party Beneficiary. This Agreement is for the sole benefit of the Authority and Grantee and, except insofar as it relates to assistance with the design and construction of the Project, is not for the benefit of any third party.

9.8 Number and Gender. Whenever used herein, the singular number shall include the plural and the singular and the use of any gender shall be applicable to all genders.

9.9 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

9.10 Governing Law; Venue. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained solely and exclusively in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona). The Parties irrevocably consent to sole and exclusive jurisdiction and venue in such courts for such purposes and waive all rights to seek transfer or removal of any action commenced under or in connection with this Agreement.

9.11 Time of the Essence. Time is of the essence with respect to each and every term and condition of this Agreement to be performed by Grantee hereunder.

9.12 Attorneys' Fees. In the event of a breach by any Party of any provision of this Agreement and commencement of a subsequent legal action in an appropriate forum, or in the event of an action seeking a declaration of the rights or liabilities of the Parties, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

9.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same document.

9.14 Recitals. The Recitals are incorporated herein by this reference and made an integral part hereof.

9.15 Unavailability of Funds. In the event no funds or insufficient funds are available or allocated for any payment that may be due under this Agreement, including no funds or insufficient funds resulting from an act (or a failure to act) of the Legislature of the State, for any portion of the term or renewal of the Agreement, the Parties will be without further obligation under the Agreement. No liability shall accrue to the Parties or to any agency of the State in the event the provision of this paragraph is exercised or occurs, and neither the Parties nor any agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination of the Agreement under this paragraph; provided, however, the Authority shall request approval or appropriation from the legislature as needed to make payments due under this Agreement.

9.16 Conflict of Interest. The requirements of A.R.S. § 38-511 apply to this Agreement. The Authority may cancel the Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on the Authority's behalf is, at any time while this Agreement or any extension is in effect, Grantee's employee or agent with respect to the subject matter of the Agreement.

9.17 Compliance with the Law. Grantee shall promptly execute and comply with A.R.S. § 41-4401, immigration laws and E-Verify requirement. Grantee warrants compliance with all federal immigration laws and regulations relating to its employees and warrants compliance with A.R.S. § 23-214. A breach of Grantee's warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and the Authority, in such event, may terminate this Agreement; provided, however, that the Authority shall not deem Grantee to be in material breach of the Agreement if it has complied with the employment verification provisions prescribed by sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, subsection A. The Authority retains the legal right to inspect the papers of any employee who works on this Agreement to ensure Grantee is in compliance with Grantee's warranty under this paragraph.

9.18 No Assignment. The Parties acknowledge that this Agreement, and the Grant made to Grantee, is personal to Grantee and is based solely and exclusively upon factors relevant to Grantee's unique qualifications and experience, and that Grantee may not assign or transfer (which shall include but not be limited to encumbering or hypothecating), in whole or in part, this Agreement, or its rights or obligations arising under this Agreement (including its right to receive any funds or grant monies payable hereunder), in whole or in part, to any other person or entity, or for any purpose not specified herein, without the prior written consent of the Authority, which may be granted, withheld, delayed or conditioned in the Authority's sole, absolute and unfettered discretion. Any assignment, or attempted or purported assignment, in violation of this Section 9.18 shall be void, and not voidable, and shall vest no rights in the purported assignee or transferee.

9.19 Successors Bound. This Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their successors and assigns hereunder.

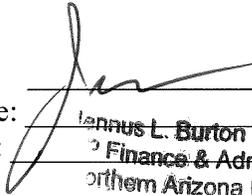
9.20 Force Majeure. Each party shall be excused from performance in its obligations hereunder to the extent such failure to perform is caused by an event of "Force Majeure." "Force Majeure" means the actual period of any delay caused by any legal challenges or defenses to the actions taken or to be taken in connection with this Agreement, condemnation, strike or labor disputes, unavailability of materials, extraordinarily severe weather conditions, riot or civil disorder, other acts of God or other cause beyond such party's reasonable control. The party claiming Force Majeure shall give prompt written notice to the other party of the occurrence of such Force Majeure and shall use reasonable efforts to remove or minimize its effects forthwith.

[Signatures are on the following page.]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the Parties on the date set forth in the first grammatical paragraph hereof.

GRANTEE:

ARIZONA BOARD OF REGENTS , a body corporate with perpetual existence, for and on behalf of NORTHERN ARIZONA UNIVERSITY

By: 
Name: Jannus L. Burton
Title: Finance & Admin
Northern Arizona University

AUTHORITY:

ARIZONA COMMERCE AUTHORITY,
an agency of the State of Arizona

By: 
Name: Sandra Watson
Its: President and CEO

Exhibit A

CLOSING AFFIDAVIT

The undersigned hereby certifies that he/she is the VP FINANCE & ADMIN of Northern Arizona University ("Grantee"), and is authorized to deliver this affidavit for and on behalf of Grantee; and further declares, solely in such capacity for Grantee and not individually, that:

1. The undersigned has examined the Agreement dated March 4, 2014 by and between Grantee and the Arizona Commerce Authority, an agency of the State of Arizona (the "Agreement"); and

2. To the knowledge of the undersigned, the representations and warranties of Grantee set forth in Article 6 of the Agreement are true and correct in all material respects.

Executed this ___ day of March, 2014.

By: [Signature]
Name: Jennus L. Burton
Its: VP Finance & Admin
Northern Arizona University

STATE OF ARIZONA)
) ss.
County of Coconino)

On March ____, 2014, before me, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My Commission Expires:

