



Interoffice Memorandum


AGENDA ITEM

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: April 26, 2016

April 8, 2016

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Eric Ushkowitz, Economic Development Administrator
Office of Economic, Trade & Tourism Development 

SUBJECT: **April 26, 2016 – Consent Agenda Item**
Approval of Grant Agreement for FY 2016 between Orange
County, Florida and FireSpring Fund, Inc. (FireSpring Fund)

Funding in the amount of \$100,000 was provided in the FY 2016-17 adopted budget for the FireSpring Fund. In order to expedite the disbursement of funds, it is required that the Board of County Commissioners approve the grant agreement.

This agreement has been reviewed by the Orange County Attorney's Office.

EU/tp

ACTION REQUESTED: Approval and execution of Orange County, Florida and FireSpring Fund, Inc. FY 2016 Grant Agreement and authorization to disburse \$100,000 as provided in the FY 2016-17 adopted budget.

**ORANGE COUNTY, FLORIDA
AND
FIRESRING FUND, INC.**

FY 2016 GRANT AGREEMENT

THIS GRANT AGREEMENT (“Agreement”) is made and entered into this ____ day of APR 04 2016, 2016, by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“County”), and FIRESRING FUND, INC., a Florida not for profit corporation, (“FireSpring”).

WITNESSETH:

WHEREAS, FireSpring has applied to the County seeking a donation for the seed fund administered by FireSpring to provide early seed funding assistance and accelerator programs to Central Florida technology companies; and

WHEREAS, the County has determined that FireSpring’s seed fund serves a public interest by promoting economic development in Orange County and, to that end, the County has appropriated funds to be donated to FireSpring for such purposes; and

WHEREAS, the County desires to enter into this Agreement with FireSpring whereby FireSpring will receive and disburse donated funds of the County for the purpose of providing activities, programs, and services in accordance with the terms and conditions herein set forth; and

WHEREAS, FireSpring has available the necessary qualified and trained personnel, facilities, materials, and supplies to perform such activities, programs and services as set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

Section 1. County’s Obligation.

1.1 The County has appropriated for the period commencing October 1, 2015 and ending September 30, 2016 the total sum of One Hundred Thousand and No/100 Dollars (\$100,000.00)(“County Contribution”) to be administered and disbursed by FireSpring consistent with **Exhibit “A,”** attached hereto and incorporated herein by this reference. Any portion of the County Contribution not spent or encumbered consistent with **Exhibit “A”** by September 30, 2016 shall be returned to the County. The County Contribution shall be paid to FireSpring no

later than 45 days following execution of this Agreement by both parties hereto. Such payment shall be made in one (1) installment and shall be contingent upon the satisfactory receipt of four (4) quarterly performance and financial reports of FireSpring's activities, programs, and services described in **Exhibit "A."** Each quarterly report is due to the County's Office of Economic, Trade & Tourism Development within 45 days after the end of each calendar quarter ending December 31; March 31; June 30; and, September 30, as described in **Exhibit "B."** Failure by FireSpring to comply with its obligation to submit such reports shall constitute grounds for termination of this Agreement and may result in the ineligibility of FireSpring to receive future contributions from the County.

1.2 No portion of the County Contribution shall be expended for any lobbyist, as such term is defined in section 2-351 of the Orange County Code of Ordinances, to engage in any lobbying activities designed to influence decisions or other foreseeable actions of the Board of County Commissioners ("Board") or the governing body of any other municipality located within Orange County. Furthermore, FireSpring agrees that it shall not undertake, or cause to be undertaken, or participate in, any lobbying before the state legislature in order to advocate for or influence legislative decision making inconsistent with legislative priorities adopted by the Board, without the prior written consent of the Board or the County Administrator.

Section 2. FireSpring's Obligation.

2.1 Representation of FireSpring. FireSpring represents that it will use its best efforts to provide seed funding to qualified businesses in Central Florida consistent with the terms and conditions of this Agreement.

2.2 FireSpring as Independent Contractor. The parties expressly acknowledge that FireSpring is acting as an Independent Contractor, and nothing in this Agreement is intended or shall be construed to establish an agency, partnership or joint venture relationship between the parties.

2.3 Unlawful Discrimination. FireSpring, in performing its obligations under this Agreement, shall not unlawfully discriminate against any worker, employee, applicant or member of the public because of race, religion, sex, sexual orientation, gender expression/identity, color, age, disability or national origin.

2.4 Accounting. FireSpring will utilize such accounting procedures and practices in maintenance of the records of receipts and disbursements of the County Contribution as will be in accordance with generally accepted accounting principles.

2.5 Non-Profit Status. FireSpring agrees to maintain its non-profit corporate status in the State of Florida throughout the term of this Agreement, as defined herein. Should FireSpring, during the term of this Agreement, lose its non-profit corporate status, it shall immediately notify the County in writing and the County reserves the right to terminate this Agreement immediately.

2.6 Right to Inspect and Audit Accounts. During the term of this Agreement, FireSpring, with respect to the receipt and expenditure of the County Contribution, shall permit County staff and the office of the Orange County Comptroller to inspect and audit FireSpring's books and accounts at any time during normal working hours, provided that reasonable notice is given to FireSpring prior to any such inspection. Any costs incurred by FireSpring as a result of a County audit shall be the sole responsibility of and shall be borne solely by FireSpring. In addition, should FireSpring provide any or all of the County Contribution to sub-recipients, then FireSpring shall include in written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the County or the County's designee.

2.7 Maintenance of Records; Audit. For a period ending five (5) years after the expiration or termination of this Agreement, FireSpring shall make all records and documents relating to this Agreement available for inspection and copying by the County or any agent designated by the County.

2.8 Assignment. FireSpring may not assign its rights hereunder, without the prior, written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

2.9 Indemnification. FireSpring agrees to indemnify and save harmless the County from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including reasonable attorney's fees through all appellate proceedings, of any kind and nature arising or growing out or in any way connected with the performance of this Agreement itself.

Section 3. Term & Termination; Remedies for Default.

3.1 Term and Termination. The term of this Agreement shall commence on October 1, 2015 and shall terminate on September 30, 2016. However, the County may terminate this Agreement, at its sole discretion and with or without cause, upon no less than 15 days written notice to FireSpring. Said notice shall be delivered by certified mail or in person to FireSpring's business address.

3.2 Events of Default. Each of the following shall constitute an event of default ("Event of Default") on the part of FireSpring:

- a. The failure of FireSpring to comply with the terms and conditions of this Agreement;
- b. Fraud or material misrepresentation by FireSpring with respect to its obligation to administer and disburse the County Contribution consistent with **Exhibit "A."**

3.3 Remedies. Should an Event of Default occur, the County hereby reserves the right to immediately terminate this Agreement. In the event of such termination, the County shall be entitled to recover immediately upon demand from FireSpring the entire amount of the

County Contribution. The Parties agree that the County shall have the specific rights and remedies set forth in this Agreement. Such rights and remedies are in addition to and cumulative with any and all other rights or remedies, now or hereafter available to the County at law or in equity in order to enforce the provisions of this Agreement. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Event of Default. The exercise of any such right or remedy by the County shall not release FireSpring from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by FireSpring.

Section 4. Miscellaneous.

4.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written are merged herein. No other agreement, whether verbal or written, with regard to the subject matter hereof, shall be deemed to exist.

4.2 Waivers. Performance of this 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.

4.3 No Third Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity other than the parties to the Agreement.

4.4 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation occurring as a result of this Agreement shall be held in Orange County, Florida.

4.5 Severability. It is agreed by and between the parties that if any covenant, condition or provision contained in this agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.

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



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs,
Orange County Mayor

Date: 4.26.16

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Martha O. Haynie*
for Deputy Clerk
Clerk/Deputy Clerk of the Board

FireSpring Fund, Inc.

By: *Donna Mackenzie*
Donna Mackenzie,
Executive Director

Date: 4/4/2016

EXHIBIT A

PROGRAM (S) FOR WHICH FUNDING IS REQUESTED

FireSpring will utilize the County Contribution to provide early seed funding assistance and accelerator programs to technology companies owned and operated in Central Florida. FireSpring will:

- a. raise, deploy and manage FireSpring Fund ("Fund"), as set forth in the "Scope of Work from the "UCF Startercorps Seed Fund' Proposal to Department of Commerce, Submitted November 2014" ("SOW"), which, for reference purposes, is incorporated into the 2015 Collaboration Agreement between UCF and Firespring.
 - i. with a year one floor of \$1 million committed funds,
 - ii. seeking annual commitments of \$1 million in years two through five,
 - iii. receiving funding for operations for the first two years,
 - iv. seeking operational funding for years three and four from regional partners,
 - v. becoming self-sustaining in year five by utilization of a maximum of 10% of Fund return for operational support, and
 - vi. investing in 12-15 regional Starter Teams during the first three years,
- b. ensure the Fund will be competitively available to any Central Florida technology company, but deploy the Fund in innovative technology and advanced manufacturing startups in Central Florida, providing the most promising graduates of the Starter Studio Accelerator and the I-Corps Program, each as respectively described in the SOW, with access to incremental rounds from the Fund, in order to mature these "Starter" teams into Starter Companies that are attractive to angel groups, early-stage venture capitalists, and federal SBIR agencies; and
- c. structure the Fund as an evergreen fund , with all investment proceeds and profits returned to the Fund to be redeployed in future Starter Company investments, subject to operational needs beginning in year five, as set forth in the SOW.
- d. provide equity-based funding in a series of milestone-based investments, with such milestones based on a Starter team's:
 - i. aggressive progress in transforming commercially viable prototypes into viable technology companies ("Starter Companies") that gain early market traction,
 - ii. establishment of a complete founding team (business and technical skills),
 - iii. secure Intellectual Property ("IP"), and
 - iv. prove the addressing an urgent market opportunity.
- e. provide three tranches of seed funding as follows:
 - i. \$25,000 used to migrate working prototypes into first customer adoption, fill gaps in the founding team, secure IP and complete corporate legal structure ("1st Round Investments", as described in the SOW). Funded Starter Companies will be required to participate in Starter Studio's Stage II Accelerator Program , and will be provided with a set of milestones targeted to improve the likelihood of receiving 2nd Round Investments.
 - ii. \$100,000 (competitively available after successful completion of Starter

- Studio's Stage II Accelerator Program)("2nd Round Investments", as described in the SOW)in funds to be used to reach first revenues and to validate an urgent market need by identifying a tangible 12-month customer/revenue pipeline of at least \$500,000
- iii. \$100,000 that will be syndicated with angel financing or as a Phase I SBIR award ("3rd Round Investments"). Starter Companies must receive an investor term sheet or SBIR grant to be eligible for 3rd Round Investments.
 - f. raise a minimum of \$1,000,000, which is enough to fund twelve Starter Companies through the first year following establishment of the Fund, which will be accomplished by October 2015
 - g. be managed by a Board of Directors as follows:
 - i. FireSpring Fund Executive Director (currently Donna Mackenzie)
 - ii. Canvs Board Member (currently Phillip Holt)
 - iii. Florida Angel Nexus Executive Director (currently Michael O'Donnell)
 - iv. I-Corps Director (currently Thomas O'Neal)
 - v. Starter Studio Founding Director (currently Gregg Pollack)
 - vi. A minimum of four Directors from angel groups or venture capital firms that actively invest in Florida.
 - vii. Orange County Economic Development Administrator (currently Eric Ushkowitz)
 - h. utilize a "simple agreement for future equity" ("SAFE") transaction agreement for all portfolio investments, which:
 - i. will be a hybrid between convertible debt and equity transaction agreements,
 - ii. will include a valuation cap, agreed upon by the Fund and the Starter Company, and utilized to price Fund shares during future funding round(s) from angel groups or institutional investors, with Fund shares converting to participating preferred shares at valuation no larger than the valuation cap,
 - iii. will include a share discount price, and,
 - iv. with respect to 1st Round Investments, will retain a right for the Fund to convert all 1st Round Investments into participating preferred shares even if a Starter Company declines pursuit of 2nd Round Investments to pursue alternative funding sources, and
 - v. with respect to 2nd Round Investments, may include a higher valuation cap, as agreed upon by the Fund and the Starter Company, and depending upon the Starter Company progress, and
 - vi. with respect to 3rd Round Investments, will be triggered to convert into participating preferred shares at the specified valuation cap(s).
 - i. evaluate and select an application portal platform to receive, review and select applications for the 1st Round Investments,
 - j. run three selection boards each year for the 1st Round Investments, to align the StarterCorps Program application process with the completion the I-Corps and Starter Studio programs. The following 1st Round Investment selection process will be used:
 - i. FireSpring due diligence staff will prioritize applications based on input from feeder programs, quality of the applications, and initial due diligence

screening (competitive analysis, quality of application, and market opportunity)

ii. The FireSpring Board of Directors will select 10 applicants that will be invited to present their companies in a 10-minute presentation format.

Additional investors will be invited to attend the presentation sessions

iii. A standard scorecard will be used to assess the applicants. Scores will be tallied and used to help rank the presenting applicants.

iv. FireSpring Board of Directors will make a final decision on the slate of selected Starter Teams, but a Director may abstain from the selection process as deemed necessary and according to his/her sole discretion to avoid any appearance of a potential conflict of interest.

k. Operate and manage the Stage II Accelerator Program, completion of which is mandatory to compete for 2nd Round Investments, which will include, but is not limited to, as further described in the SOW:

i. a two-day boot camp,

ii. constant access to Starter Studio's deep mentor network,

ii. opportunity for dry-run pitches, and

iii. panel presentations.

I. Use the following selection process for 2nd Round Investments:

i. FireSpring will present progress reports for every Starter Company to the Board of Directors, but a Director may abstain from any or all phases of the selection process as deemed necessary and according to his/her sole discretion to avoid any appearance of a potential conflict of interest.

ii. The Board of Directors will decide if any Starter Company(s) should be eliminated from consideration for additional funding due to barriers in advancing products, limited progress on customer acquisition or lack of active participation in the Stage II Acceleration Program.

iii. Non-eliminated Starter Companies will present to a panel of investors and seasoned startup veterans in a half-day "showcase" event. The panel will provide the Board of Directors with feedback on the viability of each Starter Company's potential for attracting venture capital.

iv. The Board of Directors will use the panel's input to make final decisions on which Starter Companies will receive 2nd Round Investments.

m. Optionally participate in 3rd Round Investments:

i. upon Board of Director's approval, and,

ii. with Starter Companies that:

receive a term sheet from an accredited investment group, or

for I-Corps Program graduates or Starter Company with manufacturing-intensive products, receive an SBIR/STTR Phase I award or financial commitment from a strategic industry partner.

EXHIBIT B

The following reports are to be submitted to the Orange County Office Economic, Trade & Tourism Development as indicated:

1) Within 45 days of the end of the quarter, FireSpring shall provide the County with a copy of its quarterly performance and financial reports of the agency's activities/programs/services. Quarterly reporting periods shall end on December 31, March 31, June 30 and September 30.

Quarter	Reports Due (no later than)	Payment Due to FIRESRING FUND
First (1 st)	February 15	One-time payment upon execution of the agreement and BCC approval
Second (2 nd)	May 15	
Third (3 rd)	August 15	
Fourth (4 th)	November 15	

Within each quarterly report, the following information needs to be included as it pertains to the agency's activities/programs/services offered to companies located within unincorporated Orange County:

- Amount of funding raised
- List of companies funded and amount paid to each company during the quarter
- Economic Impact:
 - Amount of revenue earned by funded companies
 - Amount of co-investment funded to each company
- Job Creation:
 - Number of jobs created in Orange County
 - Number of jobs saved/retained in Orange County
 - Average salaries for the above

2) Within 30 days of its release, The Fund shall provide the County with a copy of its annual financial report, external audit reports, and any performance or statistical data requested by Orange County.

Reports and Communications to the COUNTY:

Orange County
Office of Economic, Trade & Tourism Development
ATTN: Eric Ushkowitz, Economic Development Administrator
201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32802

Phone: (407) 836-7370
Fax: (407) 836-7399

Reports and Communications to FireSpring:

FireSpring Fund, Inc.
ATTN: Donna Mackenzie, Executive Director
101 S. Garland
Orlando, Florida 32801

Phone: (407) 399-5137