



## **Agenda Item 6**

# **UMBC Research Park Corporation Investment Agreement**



**BOARD OF REGENTS**

SUMMARY OF ITEM FOR ACTION  
**INFORMATION** OR DISCUSSION

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**TOPIC:** UMBC Research Park Corporation Investment Agreement (information item)

**COMMITTEE:** Economic Development and Technology Commercialization

**DATE OF COMMITTEE MEETING:** March 27, 2014

**SUMMARY:** The UMBC Research Park Corporation, Inc. (RPC) established an Investment Committee in 2011. UMBC determined that the consolidation of its incubator equity management with RPC's Investment Committee would allow for improved efficiency and effectiveness in the administration of UMBC's equity interests.

In October 2013, a transfer agreement between UMBC and RPC was approved by the Board of Public Works and subsequently fully executed. This agreement assigns responsibility for the administration and management of UMBC's incubator equity portfolio to RFP and the majority of any proceeds from the sale of equities flow back to UMBC. The Committee will be briefed on this agreement.

**ALTERNATIVE(S):** This item is for information purposes.

**FISCAL IMPACT:** This item is for information purposes.

**CHANCELLOR'S RECOMMENDATION:** This item is for information purposes.

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COMMITTEE RECOMMENDATION:

DATE:

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BOARD ACTION:

DATE:

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SUBMITTED BY: Joseph F. Vivona (301) 445-2783

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## AGREEMENT

THIS AGREEMENT dated as of October 16, 2013 between the State of Maryland for the use of the University System of Maryland on behalf of its constituent institution, the University of Maryland, Baltimore County ("UMBC"), and UMBC Research Park Corporation, Inc., a Maryland nonstock corporation ("RPC"),

WITNESSETH:

WHEREAS, UMBC has operated a business incubator known as bwtech South since 1989 and receives an equity interest in many of the companies which locate at the incubator in return for business advisory services; and

WHEREAS, RPC was formed in 1993 for the purpose, among others, of supporting the mission of UMBC and is recognized by the Internal Revenue Service as an organization the income of which is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and as a public charity under Section 509(a)(3) of the Internal Revenue Code because it is a supporting organization of UMBC; and

WHEREAS, UMBC has determined that it is in its best interests to grant, contribute and transfer all equity interests in incubator companies which it currently holds to RPC and for future equity interests in incubator companies located at bwtech South to be vested in RPC, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuation consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Transfer of Existing Interests; Holding of Future Interests. UMBC hereby grants, contributes and transfers to RPC all rights, title and interests in, to and under its equity interest in each of the companies set forth on Schedule A attached hereto (collectively, the "Incubator Company Portfolio"). RPC shall also hold future equity interests granted by incubator companies, as directed by UMBC, pursuant to Section 4(h) of this Agreement. Without prejudice to the generality of the foregoing, the stockholding agreements between RPC and the incubator companies, governing the holding of future equity interests, shall provide that RPC shall hold the equity interests on UMBC's behalf. UMBC shall be provided with copies of the fully executed stockholding agreements.

2. Responsibilities of RPC. RPC agrees to manage the Incubator Company Portfolio with a goal of maximizing its value to UMBC. Specifically, subject to the terms of this Agreement, RPC and its Investment Committee will administer the Incubator Company Portfolio by regularly tracking the financial condition and progress of all companies included in the Incubator Company Portfolio, valuing the equity



investments included in the Incubator Company Portfolio, reviewing requests for approvals under and modifications of organizational documents and other legal documents relating to the Incubator Company Portfolio and implementing RPC's decisions with respect to such requests for approvals and modifications, selling equity interests when attractive opportunities to sell are present, and periodically reporting to the individual at UMBC identified in Section 4(h) of this Agreement with respect to the above. Notwithstanding the foregoing, RPC shall obtain prior written approval as provided in Section 4(h) prior to selling equity interests.

RPC's Investment Committee will meet as frequently as it deems appropriate to oversee the responsibilities of RPC under this Agreement, but in any event not less frequently than twice each year, and shall periodically report to the RPC Board and the individual at UMBC identified in Section 4(h) of this Agreement with respect thereto as requested, but in any event not less frequently than twice each year. UMBC shall receive reasonable notice of all meetings of RPC's Investment Committee and shall have the right to appoint and send a representative of UMBC to attend (but not participate in) such meetings, subject to any necessary confidentiality and related requirements.

3. Proceeds of Equity Interests. The parties anticipate that from time to time RPC will receive proceeds ("Proceeds") from the Incubator Company Portfolio, either in the way of dividends or distributions or proceeds from the sale or other liquidation of portions of the Incubator Company Portfolio. With regard to any such Proceeds, the parties agree that RPC will use the same (a) first, to pay or reimburse itself for any reasonable out of pocket expenses incurred in connection with such Incubator Company Portfolio item, including, for example, reasonable and actual legal and other fees and charges and any and all taxes that are due and payable (if any) with respect to such Incubator Company Portfolio item, provided, however, that RPC will obtain prior written approval from UMBC as provided in Section 4(h) with respect to reimbursement of any legal or other professional fees that in the aggregate exceed Five Thousand Dollars (\$5,000.00) for any one transaction involving an Incubator Company Portfolio item; and (b) second, promptly to distribute and grant a range of seventy-five percent (75%) to eighty-five percent (85%) (as designated by UMBC pursuant to Section 4(h) depending on the nature and size of the transaction) of the remaining Proceeds ("Net Proceeds") to UMBC; and (c) lastly, to retain the balance, being a range of fifteen percent (15%) to twenty-five percent (25%) of the Net Proceeds, for its use in connection with carrying out its tax exempt purposes.

Notwithstanding the foregoing, and with the reasonable concurrence of RPC, UMBC may from time to time direct RPC in writing, as provided in Section 4(h), to retain all or a portion of UMBC's share of the Net Proceeds for reinvestment in specific economic development projects being carried out, or to be carried out, by RPC. RPC agrees to notify UMBC promptly of any Proceeds which it expects to receive relating to the Incubator Company Portfolio and to request written instructions from UMBC as

provided in Section 4(h) as to whether the Net Proceeds should be distributed to UMBC or otherwise applied as provided above.

4. Miscellaneous.

(a) UMBC and RPC each binds itself, its successors, permitted assigns and legal representatives to the terms of this Agreement.

(b) RPC shall not assign or transfer its interest in this Agreement without the written consent of UMBC. Nothing set forth herein shall constitute UMBC and RPC as partners, members of a joint venture, or employer/employee.

(c) This Agreement shall, unless otherwise provided, be governed by the law of the State of Maryland.

(d) This Agreement constitutes the entire agreement between the parties with respect to the matters which are the subject of this Agreement and incorporates all prior agreements and understandings in connection with the subject matter hereof. This Agreement may be amended only by a written amendment signed by UMBC and RPC. Nothing contained in this Agreement is intended to benefit any third party.

(e) If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such portion.

(f) All notices required by this Agreement or other communications to either party by the other shall be deemed given when made in writing and sent by email or deposited in the United States Mail, certified, postage prepaid, addressed as follows (or to such other address as either party may designate by written notice to the other party):

If to UMBC:

University of Maryland, Baltimore County  
1000 Hilltop Road  
Baltimore, Maryland 21228  
Attention: Lynne C. Schaefer, Vice President for Administration and Finance  
Email: lschaefer@umbc.edu

With a copy to:

Thomas Faulk  
Chief Counsel



Educational Affairs Division  
Attorney General's Office  
200 St. Paul Place, 17<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Email: tfaulk@oag.state.md.us  
If to RPC:

UMBC Research Park Corporation, Inc.  
5523 Research Park Drive, Suite 310  
Baltimore, Maryland 21228  
Attention: Ellen J. Hemmerly, President and Executive Director  
Email: hemmerly@umbc.edu

(g) UMBC agrees that it will execute such other and further assurances as may be reasonably required by RPC in order to vest in RPC full right, title and interest in and to the Incubator Company Portfolio. For example, if the consent of any incubator company or other third party is required in order to transfer full right, title and interest in and to UMBC's equity interest in such company, UMBC agrees to use its reasonable efforts to obtain such consent.

(h) All consents, approvals and directions to be given by UMBC under this Agreement shall be effective if given in writing by the President or by the Vice President for Administration and Finance or by such other designee as may be appointed in writing by the President from time to time. All requests for consents, approvals and directions shall be sent as set forth in Section 4(f) of this Agreement. UMBC shall use its good faith effort to provide its written response within three (3) business days of receipt of a written request for approval, consent or direction. The failure of UMBC to provide a written response shall not be deemed an approval of or consent to the request or other matter set forth in the notice.

(i) RPC shall retain and maintain all records and documents relating to this Agreement for at least the longest of (i) three (3) years after the close of the year to which they relate, (ii) three (3) years after final payment by RPC to UMBC under this Agreement or (iii) any applicable statute of limitations, and make such records and documents available for inspection and audit by authorized representatives of UMBC at all reasonable times.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date set forth on page 1 hereof.

UNIVERSITY SYSTEM OF MARYLAND

By: WE Kirwan  
William E. Kirwan, Chancellor

UNIVERSITY OF MARYLAND,  
BALTIMORE COUNTY

By: Freeman Hrabowski  
Freeman Hrabowski, III, President

UMBC RESEARCH PARK CORPORATION,  
INC.

By: Ellen J. Hemmerly  
Ellen J. Hemmerly, President


Approved as to form and legal sufficiency this 27<sup>th</sup> day of September, 2013.

MOE Oyenusi  
Morenike Euba Oyenusi, Assistant Attorney General

Approved by the Maryland Board of Public Works at its October 16, 2013 meeting, as Item No. 6-6M University System of Maryland Agenda.

STATE OF MARYLAND  
BOARD OF PUBLIC WORKS

  
Martin O'Malley, Governor

  
Sheila McDonald, Executive Secretary

  
Nancy K. Kopp, Treasurer

  
Peter Franchot, Comptroller