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**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**THE UNIVERSITY OF PUERTO RICO**

**AND**

**THE PUERTO RICO INDUSTRIAL DEVELOPMENT COMPANY**

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**I. PARTIES**

This document constitutes an agreement between the University of Puerto Rico (UPR) and the Puerto Rico Industrial Company (PRIDCO) for the purposes herein set.

**II. PURPOSE**

The purpose of this memorandum of understanding (MOU) is solely to define the agreements between the PARTIES regarding the initial planning, design, development, funding, organization, construction, and ownership, of a Bioprocess Research & Workforce Development Complex which would be located in Mayagüez, Puerto Rico.

**III. BACKGROUND**

On September 2003 the University of Puerto Rico at Mayagüez (UPRM) approached the Economic Development Administration (EDA) of the U.S. Department of Commerce to seek their economic support for a facility that will allow its Industrial Biotechnology Program (IBP) to improve the human resources, training and manufacturing processes and to address research needs of the expanding biotechnology cluster in Puerto Rico. The EDA initial reaction encouraged the UPRM to submit a pre-application in March 2004 for a \$2.5 million grant to develop a Bioprocess Research & Workforce Development Complex (BRWDC) at a UPRM site known as Cornelia Hill in Cabo Rojo, Puerto Rico. This proposal was prepared by UPRM's Economic Development University Center (EDUC) and the IBP with the technical support of the Fluor Daniel engineering consulting firm. The proposed BRWDC concept incorporated the recommendations of the Puerto Rico Biotechnology Allegiance, and the Science and Technology Office of PRIDCO. The proposal was reviewed favorably and UPRM was invited by the EDA to submit a final application by June 30, 2004 in order for the project to be considered for the current fiscal year funding.

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Complementary to UPRM efforts, on November 2003 PRIDCO commissioned to the Pharmabiosource, Inc. consulting firm a feasibility study for the establishment of a

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biotechnology pilot plant on the Island. The findings of the study were presented to industry representatives in the Innovation Forum organized by the Industry University Research Consortium (INDUNIV) in May 13, 2004. In summary, the reported conclusions and industry feedback at the Forum validated the BRWDC concept. The study strongly recommended that the facility day-to-day operations be administered by an autonomous private corporation for assuring flexibility towards the industry needs and achieving economic sustainability. It also raised concerns on the implications for expeditious development of the project of environmental and infrastructure aspects associated to the UPRM-owned Cornelia Site and expanded the project research capabilities to include, at a minimum, a 2 liter Bioreactor. Following the Innovation Forum, and also on May 2004, PRIDCO and UPRM officials participated in a benchmarking data gathering trip to Ireland where similar facilities to the one proposed for Puerto Rico are in operation.

After consideration of the committed report results, industry feedback, and benchmarking efforts, the PARTIES understood that it will satisfy industry needs, as well as the public service mission of both agencies, to modify the pre-application submitted to the EDA and submit the final application as a joint project of both agencies by the established deadline of June 30, 2004. As a result of this understanding, UPR proceeded to prepare the final application to the EDA with assistance from Fluor Daniel and the Infrastructure Development Office of PRIDCO. The application was eventually submitted to the EDA on June 29, 2004, complying with the specified deadline. The parties filed their respective petition for EDA's \$2.5 million grant on September 2004, and were awarded on September 22<sup>nd</sup>, 2004.

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Furthermore, in August 14<sup>th</sup>, 2004, the Governor of Puerto Rico, Hon. Sila María Calderon, signed Act No. 214. Act No. 214 creates the *Puerto Rico Science, Technology and Research Trust* which seeks to formulate and implement the Commonwealth of Puerto Rico's public policy in the science and technology and research and development areas. The Trust is to serve as an agent for the promotion, investment and financing of basic, applied and clinical research, specifically in the biological sciences field, including the pharmaceutical, biotechnology, medical devices and information technology sectors. Both the Secretary of the Department of Economic Development and Commerce (EDC) and the President of the UPR are trustees as per Act No. 214, which dictates that the Trust shall, among other initiatives, provide financial support to the Bioprocess Research and Workforce Development Complex (BRWDC). The Trust will be nurtured from different sources including the 20% from the Special Fund created by Section 16(c) of Act No. 135, December 2, 1997, which it is administer by PRIDCO.

The parties agree to carry out the BRWDC project subject to the following terms and conditions of this MOU.

IV. PROJECT DESCRIPTION

The BRWDC consists of a building with an area of approximately 17,300 square feet distributed in an area 8,700 square feet that would house an administration and training area and another

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area of 8,600 square feet that would be designed or use to house state-of-the-art bioprocess engineering laboratories with supporting infrastructure (the "Project"). The complex would serve as an educational, training, trouble shooting and process development in support of the biotechnology industry in Puerto Rico, providing, also, well-trained, highly-skilled, human resources and state of the art biotechnology process development research capacity needed to nurture this growing sector of the local economy. Once this complex is fully operational, it would be used by UPR's faculty and students, educational institution and other public or private entity (pharmaceutical or any similar industry) subject to the regulations approved by the non-for profit corporation or any other applicable legislation or regulation. A more detailed description of the project is affixed in the proposal already submitted to the EDA, which by reference is incorporated as part of this agreement. See Appendix A.

#### V. LEGAL AUTHORITIES

A. The UPR has authority to participate in the BRWDC Project with PRIDCO under the following authorities:

- (1) Act 1 of January 20, 1966, which provides that the UPR, as [an] organ of higher education, in its obligation of service to the people of Puerto Rico and its adherence to the ideals of an integrally democratic society, has as an essential mission [to attain] the following objectives, with which is consubstantial the fullest freedom of professorship and scientific research to transmit and increase learning by means of the sciences and the arts, making it serve the community through the action of its professors, investigators, students and graduates and collaborate with other organizations, within its appropriate sphere, in the study of the problems of Puerto Rico.
- (2) Act 214 of August 18, 2004 that creates the *Puerto Rico Science, Technology and Research Trust*. Both parties recognized that this Trust is in charge of implementing and executing the task of conducting Puerto Rico to a new technological development level that will compete with other countries that has developed this type of economic activity
- (3) Memorandum of Understanding between PRIDCO and the UPR signed February 11, 2004.

B. PRIDCO has authority to participate in the Pilot Plan Project, under the following authorities:

- (1) Act 188, May 11, 1942, as amended, which states that PRIDCO has the duty of promoting, persuading and inducing by itself or associated with the private and other public organizations all kinds of commercial enterprises that would foster the

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economic growth in Puerto Rico. PRIDCO may initiate one or more of such operations on its own or by association with public or private entities.

- (2) Act 214 of August 18, 2004 that creates the *Puerto Rico Science, Technology and Research Trust*. Both parties recognized that this Trust is in charge of implementing and executing the task of conducting Puerto Rico to a new technological development level that will compete with other countries that has developed this type of economic activity.
- (3) Memorandum of Understanding between PRIDCO and the UPR signed February 11, 2004.

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## VI. RESPONSIBILITIES OF THE PARTIES

- A. PRIDCO's Infrastructure Development Office would be designated as the administrative and fiscal agent to manage and administer the project construction before the EDA. To such purposes, authority to execute and sign all procurement documents and contracts is delegated to the Executive Director of PRIDCO or such other officer or director designated by him. Progress reports as required by the federal agency should be submitted in a timely manner to the EDA with copies to the President of the UPR and to the Chancellor of the UPRM. Staff from the EDUC and the IBP of the UPRM will collaborate with the Infrastructure Development Office and the selected architectural/engineering consultant to assure the final design of the BRWDC complies with the infrastructure, technological, security, space and architectural elements requirements in light of its intended use.
- B. PRIDCO's Infrastructure Development Office would be in charge in the execution and management during the construction phase of this Plant. This Office would evaluate, corroborate and approve all invoices and/or change orders and would keep informed the Executive Director of PRIDCO and the President of UPR of the advances or delays in the project.
- C. UPR and PRIDCO will collaborate in organizing, in a maximum period of 45 days after signing this MoU, a non-for profit corporation with fiscal and operational autonomy to administer the day-to-day operations and undertake facilities maintenance of the BRWDC.
1. Before organizing this non-for profit corporation, UPR and PRIDCO would require from their respective Board of Directors the authorization to create, organize and record in Puerto Rico's State Department the new non-for profit corporation.

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2. If each Board of Directors approved the creation of the non-for profit corporation, the President of the UPR and the Executive Director of PRIDCO would incorporate and organized the non-for profit corporation within 45 days after such approval.
3. Both, UPR and PRIDCO, after their respective Board of Directors approved the creation of the non-for profit corporation, would draft a set regulation or by-laws to be considered by the non-for profit corporation's board of Directors. *conseguir este doc \**
4. The balances of the Funding described on Section VII, as well as any other funds raised according to Section VI(C)(2) of this Memorandum, should be rolled over to this new corporation once established.
5. UPR and PRIDCO would designate who would compose the Board of Directors.
  - 5.1 This Board of Directors would be composed of no more that seven people, including two representatives from PRIDCO designated by the Executive Director, two representatives from the UPR designated by its President, one of whom should be from the IBP and three from the private industry (preferably from the biotechnology industry), chosen by mutual consent between PRIDCO and the UPR. The Board of Directors could name additional members to the non-for profit Board of Directors. The Board of Directors could name up to two additional members unanimously. ?
  - 5.2 This Board of Directors shall designate the Executive Director of the corporation.
  - 5.3 The Board of Directors would develop a framework for the establishment of this entity. In doing so, they should consider the feasibility study recommendations prepared previously by PharmaBioSource, Inc., and other pertinent data, including successful models already presented and evaluated by the parties. *conseguir este doc \**
- D. THE PARTIES agree that governance of the corporation to be created should have a clear mandate for financial sustainability within a three to five year period.
- E. The BRWDC will be developed and administered in compliance with the grant awarded by the EDA.

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- F. The PARTIES commit to engage in the required procedures to expedite the availability of funds at stated in paragraph VII in the appropriate accounts to conduct the implementation of the project in a timely manner.
- G. UPR and UPRM personnel would assist PRIDCO or the non-for profit corporation in the preparation of the progress report to be filed before EDA.
- H. The BRWDC will be constructed in lots 1, 2 and 3 located in PRIDCO's Guanajibo Industrial Park in Mayagüez. PRIDCO shall retain all title and/or ownership on the building to be erected on those lots and also on lots 1, 2, and 3.
- I. Both PARTIES agrees that the engineering design of this facilities could take at least six (6) months and the construction would take approximately fourteen (14) months or up to thirty months (including unforeseen delays and bidding process). These estimates are scheduled based upon traditional engineering and construction approach where construction starts as soon as the engineering designs are finished.
- J. PRIDCO would conduct the bidding process and shall obtain proposals from recognized construction firms.
- K. The initial budget to hire an Executive Director and basic administrative support will be provided by the non-for-profit corporation to be created. The Executive Director must be a self-starter person with knowledge of the academic culture and dynamics, as well as full acquaintance of the actual trends in the biotechnology industry and with an already established industrial network. The person to be hired as Executive Director shall be chosen by a majority of the new corporation Board of Directors. Among others, it will be the responsibility of the Executive Director to obtain the remaining needed funds from private and public sources through proposals for grants and services to clients and hiring a management team with the talent and experience necessary to assure success.
- L. In establishing final rates, an escalating provision and preferential treatment to the extent allowable by regulations will be considered to facilitate the goal of promoting economic sustainability of the management corporation. Revenues derived from these sources should be deposited in an escrow account to be distributed equally between PRIDCO and UPR at the end of each fiscal year.
- M. Revenues derived from these sources should be deposited in an escrow account. Eighty percent of the net revenues remaining after covering legitimate operating and capital expenses will be reinvested in the Center in a manner to be determined by the Board.
- N. Both, UPR and PRIDCO, acknowledges that the BRWDC's operation would not have any profit during its firsts of existence. However, both parties agrees that the profit or loss would be shared equally and would seek funds in order to cover those losses.

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- O. Neither PRIDCO nor UPR would be responsible in paying the rents, utilities and expenses in the administration, operation and management of the BRWDC.
- P. Neither Party, either in the BRWDC Project or in any act related to it, shall act unjustifiably or arbitrarily to injure particular persons or entities or particular categories of persons or entities.
- Q. Both Parties shall act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the BRWDC Project and any other activity related.

**VII. FUNDING**

The established budget for construction of the complex is \$12.5 million including:

- A. \$5 million from the UPR Centennial Fund.
  - a. After signing this MoU, UPR would seek and commence immediately the solicitation of these funds through the Governmental Development Bank (GDB) and after approval, would transfer such sums of money to PRIDCO in order to continued the designing and construction phase, according to the terms and conditions of this MoU.
- B. \$2.5 million requested and granted by the EDA.
- C. \$5 million assigned by Joint Resolution 2008 signed on September 28<sup>th</sup>, 2004


The use of these funds is detailed in Table I.

 Both Parties agrees that this estimate does not necessary consider all the costs for the construction of the new facilities since the available information at the time of the preparation of this MOU were preliminary.

The Parties shall agree apportionment of the costs of designing and construction, if it exceeds the budgeted amount of \$12.5 million.

**VIII. APPORTIONMENT OF START-UP COSTS**

Prior to the birth of the corporation to be established, THE PARTIES shall agree the distribution of the costs of any other activity not included under this Agreement.



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**IX. INTELLECTUAL PROPERTY**

All of the intellectual property associated with the educational material developed for the training programs to be offered in the facility will be owned solely by the UPR faculty who prepare them, according to the UPR regulations and as determined by the non-for profit corporation.

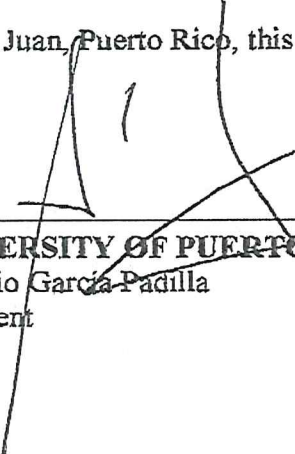
**X. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION**

This Agreement will become effective when signed by all parties and may only be amended by mutual written agreement of the parties.

**XI. PREVIOUS AND SUBSEQUENT AGREEMENTS**

This Agreement will prevail over previous agreements by the parties, written or verbal, not consistent with the terms and conditions hereby included. Nothing in this memorandum will prevent the PARTIES to enter into new agreements, or modifications to this one, that may be deemed necessary in the future regarding this issue. Nonetheless, no amendment to this memorandum will take effect unless it is an express written agreement.

In San Juan, Puerto Rico, this 31<sup>st</sup> of December, 2004.

  
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**UNIVERSITY OF PUERTO RICO**  
Antonio García Padilla  
President

  
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**PUERTO RICO INDUSTRIAL  
DEVELOPMENT COMPANY**  
Hiram Ramírez Rangel  
Executive Director

