C: Dir., Department of General Services

THE CITY OF NORFOLK

To the Honorable Council
City of Norfolk, Virginia

October 27, 2015

From: David S. Freeman, AICP
Director of General Services

Subject: Lease Agreement between The City of Norfolk and Hatch Operations, LLC located at 111 Granby Street in Norfolk.

Reviewed: Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **PH-7**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance to approve a Lease Agreement between the City of Norfolk ("city") and Hatch Operations, LLC ("Hatch") for continued occupancy and use of the property located at 111 Granby Street.

IV. **Analysis**
The previous lease between the city and Hatch (f/k/a Ashbrooke, LLC) has expired. The city and Hatch have negotiated a new lease to allow Hatch to utilize the space located at 111 Granby Street in support of the administration of the Norfolk Accelerator Program. This Lease Agreement will permit Hatch to continue to operate its programs and services of providing resources and mentorship to both emerging and new entrepreneurs in the city. The term of the lease shall commence thirty (30) days after Council adopts an ordinance authorizing the Lease Agreement and it shall terminate three years from the date of commencement. This agreement is subject to Council revocation and the city reserves the right to terminate the lease agreement with reasonable notice of no less than sixty (60) days given to the lessee in the event of the need of such termination. The city is named as additional insured and proof of insurance is required.

V. **Financial Impact**
The city will allow Hatch to continue utilizing the space located at 111 Granby Street in support of the administration of the Norfolk Accelerator Program. However, Hatch will

continue in its financial and physical responsibility for all utilities, upkeep, and any fees associated with the general maintenance of the property.

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement
- Program Particulars

9/18/2015-lds

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH HATCH OPERATIONS, LLC, AS LESSEE, FOR A PORTION OF THE PROPERTY KNOWN AS 111 GRANBY STREET, IN THE CITY OF NORFOLK.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Lease Agreement between the City of Norfolk as lessor, and Hatch Operations, LLC, as lessee, a copy of which is hereto attached as Exhibit A, by which the City of Norfolk leases to Hatch Operations, LLC, a portion of the property known as 111 Granby Street, are hereby approved.

Section 2:- That the City Manager is authorized to execute said Lease Agreements for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

Lease Agreement

THIS LEASE AGREEMENT made this _____day of _____, 2015, by and between the **CITY OF NORFOLK** (Lessor), a municipal corporation of the Commonwealth of Virginia, and **HATCH OPERATIONS, LLC** (Lessee), a Virginia limited liability company.

WITNESSETH THAT:

1. **PREMISES**. Lessor, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Lessee, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, a portion of the property known as 111 Granby Street, in Norfolk, Virginia, hereinafter referred to as "Premises." Premises consist of 5, 300 square feet, as shown on **Exhibit A**, which is hereto attached and incorporated by reference.

2. **LEASE USE.** Lessee covenants and agrees to use and occupy Premises as office space, as further detailed in Paragraph 9 "Operation" below.

3. **LEASE TERM.** This lease agreement is for a three-year term (Term) beginning thirty (30) days after the Norfolk City Council adopts an ordinance authorizing this Lease Agreement ("Lease") and ending three (3) years from the beginning date, subject to the default provisions of Paragraph 24.

4. **CONSIDERATION:** In consideration for the use of the Premises, Lessee shall function as an incubator for startup businesses in the City. The Lessee shall provide programs to start and grow businesses, and offer entrepreneurial events to educate Norfolk residents who are new business owners with plans to locate their business in the City of Norfolk. The Lessee shall offer a strong network of mentors who shall use their experience to help new entrepreneurs.

5. **NO JOINT VENTURE:** It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other party, or cause either party to be responsible or liable in any way for the debts or obligations of the other party. Lessee is not an agent of Lessor.

6. **UTILITIES:** Lessee shall pay all charges when due for water, garbage removal, All utility charges or fees shall be Lessee's exclusive responsibility .

7. **NO ASSIGNMENT OR SUBLEASE:** Lessee covenants not to assign, mortgage or encumber this Lease nor sublet or suffer or permit the Premises or any portion thereof to be used by others. The use of the Premises will be such that it will not violate any other agreements or covenants affecting the Premises and will not violate or create any potential violation of any laws.

8. **VOLUNTEERS:** Lessor acknowledges that some of Lessee's activities will be organized and conducted by community volunteers. Volunteers shall be supervised by Lessee's staff members at all times that they are in the Premises.

9. **OPERATION:** The Premises shall be used as office space in support of Lessee's activities and clerical needs relating to its administration of the Norfolk Accelerator Program.

10. **LESSEE INDEMNIFICATION AND LESSEE INSURANCE:** Lessee agrees that it will hold harmless Lessor from any and all injury or damage to person or property in, on or about the Premises, including, without limitation, all costs, expense, claims or law suits arising in connection therewith, except for injury or damage arising from Lessor's negligence or willful misconduct. Lessee covenants that it will, at all times during the Term of this Lease and at its own cost and expense, carry public liability insurance on the Premises, with limits of not less than $1,000,000.00 each occurrence, $2,000,000.00 aggregate and $100,000.00 fire legal liability. Lessee further covenants that it will, at all times during the Lease Term and at its own cost and expense, carry insurance against damage by fire or other perils in an amount equal to the replacement value thereof on Lessee's furniture, fixtures and equipment. Each liability insurance policy shall name the City and its employees as additional insured and the originals of each and all such policies of insurance, or certifcates thereof issued by the insurance company, also known as Insurance Certificates, shall be delivered to the Lessor. The Insurance Certificate shall also acknowledge the hold harmless and waiver of subrogation, as described in Paragraph 19 herein. If Lessee fails to provide such insurance, Lessor may terminate this Lease with ten (10) days prior written notice to Lessee. Lessee shall maintain the applicable statutory Workers' Compensation Insurance and or Employer's Liability Insurance with a limit of at least $500,000.00 per accident/injury.

11. **ACCEPTANCE OF PREMISES**: Lessee hereby agrees to accept the Premises from the Lessor as they are found by Lessee on the date that Lessee takes possession in "what is, as is and where is" condition.

12. **SUBORDINATION AND ATTORNMENT:** Lessee agrees that this Lease is subordinate to any mortgage or lien resulting from financing or refinancing, now or hereafter placed upon the land on which the Premises have been built or upon any building hereafter placed upon the land, of which the Premises are a part. Lessee will, further, attorn to and acknowledge the foreclosure purchaser or purchasers as the Lessor hereunder. This shall be self-operative and no further instrument of subordination shall be required by any mortgagee.

13. **QUIET ENJOYMENT:** Lessor hereby covenants that Lessee, upon fully complying with and promptly performing all the terms, covenants and conditions of this Lease, on its part to be performed, shall have and quietly enjoy the Premises for the Lease Term set forth herein.

14. **LESSOR MAINTENANCE:** Lessor covenants that it will be responsible for all structural repairs to the property. At the Landlord's sole discretion, should structural repair be deemed excessive, Landlord may elect to not make the repair. If Landlord elects not to make a

repair, then Tenant may at its option elect to complete that repair at its sole cost and expense, or terminate the lease.

15. **LESSEE MAINTENANCE:** Tenant shall keep and maintain the Premises in a good and complete state of repair and condition, except for ordinary wear and tear. All repairs shall:

(a) be performed in a good and workmanlike manner,
(b) be at least substantially equal in quality and usefulness to the original work,
(c) not diminish the overall value of the Demised Premises.

16. **ADDITIONAL LESSEE COVENANTS:**

(a) Lessee shall not make alterations, additions or improvements to the building structure of which the Premises are a part without first obtaining Lessor's written approval and consent. For purposes of this Lease, the structural components of the building are hereby defined as the foundation, structural steel, roof, exterior walls, doors, deck, existing interior plumbing improvements, exterior plumbing lines, HVAC unit components and ductwork, electric service, ceiling and light fixtures.

(b) All fixtures installed by Lessee shall remain the property of Lessee, and if Lessee is not in default of the Lease, its terms and covenants herein, the same fixtures shall be removed by Lessee at the expense of Lessee at the end of the Lease Term. Lessee further agrees to repair and/or to reimburse Lessor for the cost of repair for any damages to the Premises caused by the installation and removal of its fixtures. In the event that fixtures are left behind or abandoned, Lessee shall pay to Lessor any expenses associated with repairs to the Premises caused by the removal of same fixtures.

(c) Lessee will not use nor permit the Premises to be used for any illegal or immoral purpose. Lessee hereby agrees to comply with all Federal, State and Municipal laws, ordinances and regulations as they relate to Lessee's activities and/or to the Premises and to the use, storage and disposal of hazardous substances.

(d) Lessee agrees to contain within its Premises any and all noise, music, or odors and/or aromas, to the extent that no nuisance will be created to its neighbor.

(e) Lessee shall store all trash, rubbish and garbage in fully closed containers at the rear of the Premises. Lessee shall not burn or otherwise dispose of any trash, waste, rubbish or garbage in and or about the Premises.

(f) Lessor covenants that it will take such steps as shall be necessary to keep the Leased Premises free of termites, rodents, insects and other pests. It is Lessee's obligation to notify Lessor of any unusual infestation. This obligation shall extend to any neighboring Premises should Lessee's use of its Premises be the predominant and likely cause of same problems in the neighbor Premises.

(g) Lessee shall not make any use of the Premises, which would make voidable or void any policy of fire or extended coverage insurance covering any of the building or cause the building to become uninsurable. Lessee covenants that, without prior written consent of the Lessor, Lessee will not do anything, which will increase the rate of fire insurance premium on the building. If by reason of any use by Lessee of the Premises or the keeping by Lessee of any flammable substances in the Premises, the hazardous insurance premiums or policies maintained by Lessor shall be increased over normal rates for comparable premises, the amount of the increase in the Lessor insurance premium shall be paid to Lessor by Lessee from time to time on demand. Lessee hereby covenants that it shall cease and desist any activity so affecting the insurability of the Premises upon written demand of the Lessor.

(h) Lessee will not use nor permit to be used any advertising medium or device such as audio broadcast, loudspeaker, radio, public address system, remote radio station, or flashing or digital reader sign.

(i) All laws and regulations will be adhered to and any required permits shall be obtained by lessee. Lessee shall provide the City with a financial report at the end of the Term pertaining to all activities held at the Premises. The Lessee shall provide an audit if requested by the City.

(j) Lessee shall participate in active recycling. To the extent reasonably possible, Lessee will use environmentally green products.

(k) There shall be no smoking allowed in the building or within Twenty-Five (25) feet of the building.

17. **LESSOR INSPECTION AND ACCESS:** Lessor or its Agent, employees and/or contractors shall have the right to enter the Premises to examine the same and to make such repairs, alterations, improvements or additions as Lessor may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary, Lessor or its Agent may, in the case of emergency, or if the Premises are unsecured and temporarily unoccupied, forcibly enter or secure the same, or take such other steps to address the emergency that Lessor deems appropriate, without rendering Lessor liable therefore. Otherwise, all such work and installation shall be done, so far as practical, so as not to unreasonably interfere with Lessee's use of the Premises.

18. **WAIVER OF SUBROGATION:** Lessor and Lessee waive all right of recovery against each other for any loss in or about the Premises, from perils insured against and under the fire insurance contract, including any all risk endorsements thereof, whether due to negligence or any other cause. This release of liability shall be operative only as long as waiver of subrogation clauses are available on insurance policies, in the amounts, form, kinds and with a company satisfactory to Lessor.

19. **INDEMNITY AGAINST LIENS:** Lessee agrees that it will, at all times during the Term of this Lease, take any and all steps necessary to prevent the filing of mechanics liens

against the Premises. Lessee further agrees to indemnify and save the Lessor harmless from and against any and all liabilities incurred by Lessee or claimed or charged against the Premises for labor or materials contracted for by Lessee or its sublessees. Lessee shall promptly pay, or otherwise discharge, any and all such claims, expenses and liens, including the mechanic's materialmen's and other laborer's liens asserted or claimed against the Premises or any part thereof. In no event shall Lessor or any of the Lessor's property be liable for or chargeable with any expense or lien for work, labor or materials used for and in the Premises; or for any improvements thereof or changes made upon the order of Lessee, or to discharge the obligations of the Lessee.

20. **FIRE AND/OR DESTRUCTION:** If the Premises shall be damaged by fire or other casualty during the Term hereof, Lessor, at its sole discretion, will make the decision as to whether it will restore the structural components and items. Lessor, at its option, may terminate this Lease as of the date of such destruction by giving Lessee written notice of its intention to do so within thirty (30) days after such date of destruction.
Unless Lessor gives such notice, this Lease shall remain in full force and effect and Lessor shall repair such damage as its expense, as expeditiously as possible under the circumstances. Notwithstanding the foregoing, in the event of damage to the Premises by fire or casualty which is not the result of Lessee's negligence, and which cannot be repaired within sixty (60) days of occurrence, Lessor or Lessee shall have the right to terminate this Lease by giving the other party thirty (30) days prior written notice.

21. **FORCE MAJEURE:** In the event that either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such acts shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that the provisions of this Lease Paragraph shall not operate to release Lessee from this Lease nor to excuse Lessee, nor shall Lessee in any event be excused from prompt payment of Rent and all other charges due Lessor by Lessee.

22. **EMINENT DOMAIN:** If all the Premises are condemned or taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the date that the Lessee is required to vacate the Premises. Lessee hereby waives any right that it may have to any condemnation award or sum paid under threat of condemnation as a result of a complete or partial taking of the Premises and/or any portion of the Common Areas if any. If there is only a partial taking of the Common Areas, this Lease shall not terminate and this Lease shall remain in full force and in effect. After partial taking of the Common Areas, the Lessor, within a reasonable time thereafter, shall repair or reconstruct the remaining portion of the Common Areas to the extent necessary to make the same a complete architectural unit.

23. **LESSEE DEFAULT:** The occurrence of any one of the following events constitutes a default by the Lessee and a breach of this Lease and its covenants by the Lessee, if such default, breach or non performance is continued and not cured within ten (10) days after written notice from Lessor: (a) The vacating or abandonment of the Premises by Lessee, or the failure of the Lessee to occupy and use the Premises as described in the Use Clause Paragraph or the Operation Paragraph found in this Lease Agreement, (b) The failure by Lessee to perform any covenants herein or the breach by Lessee of any Lease covenants herein, other than those described in section (a) of this Paragraph, and the further failure by Lessee to cure such covenant breach or non-performance, or to commence to cure and diligently pursue the cure of the covenant breach or non-performance which cannot be fully remedied within ten (10) days, (c) Petition by Lessee for bankruptcy, insolvency, or general assignment for the benefit of its creditors, or receiver appointment for Lessee for the substantial part of its assets and properties and such receiver is not removed with ten (10) days after its appointment.

24. **LESSOR REMEDIES:** In the event of Lessee Default, including Lessee's abandonment or vacating the Premises, Lessor shall have the right, in addition to all other rights and remedies provided by the law, to terminate this Lease, and/or to re-enter and take possession of the Premises, peaceably or by force, and/or to change the locks thereto and to remove any property therein, without liability to Lessee for damage arising therefrom and without obligation to Lessee to store any property. Any costs of removal and storage of Lessee's fixtures, inventory, equipment or any other personal property shall be the expense of Lessee. Lessor may, at its option and without subsequent notice to Lessee, re-let the Premises for such term and on such covenants and purposes as Lessor, in its sole discretion, may determine are in the best interest of the Lessor.

25. **HOLDOVER AND SUCCESSIVE LESSEE:** Lessee acknowledges that possession of the Premises must be surrendered to Lessor on the Termination Date or sooner. Lessee agrees to indemnify and save Lessor harmless from any and all costs, claims, loss or liability resulting from delay by Lessee in so surrendering the Premises. Nothing herein contained shall be deemed to permit Lessee to retain possession of the Premises after the termination of the Lease Term, unless specifically agreed to in writing. The provisions of this Paragraph shall survive the expiration or said sooner termination of Lease Term.

26. **TERMINATION AND SURRENDER:** Upon the expiration or termination of this Lease, Lessee shall surrender the Premises to Lessor in as good as condition as they were found upon the Lessee taking possession of the Premises; except for ordinary wear and tear, reduction of the Premises by condemnation or damage by fire, destruction or other casualties or causes beyond Lessee's control. Lessee shall deliver to Lessor or its Agent all keys to the Premises and remove all its personal property, and make such necessary repairs or reimbursement, pursuant to Paragraphs 17(b) found in this Lease. After Lessee vacating or Lessee abandonment, Lessor may elect to retain or dispose of, in any manner, Lessee alterations and improvements or Lessee's personal property that Lessee does not remove from the Premises before or after the Termination Date of the Term. Title to any such Lessee alterations or Lessees personal property, that Lessor elects to retain or dispose of after the Term, shall vest to and in the Lessor. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention or disposition

of any such alterations or personal property. Lessee is further liable to Lessor for Lessor's expenses and costs for removing and disposing of any Lessee alterations or Lessee personal property, which Lessor does not elect to acquire.

27. **LESSEE WAIVERS:** The failure of Lessor to insist, in any one or more instances, to strict performance by Lessee as to any Lease covenants shall, not be construed as a waiver by Lessor or relinquishment, in the future, of such covenants, but the same shall continue and remain in full force and effect.

28. **EXCULPATION:** The term "Lessor" as used in this Lease means only the owner, for the time being or at the time of Lease execution by Lessee, of the building in which the Premises are located. Lessor shall be liable for the performance of its obligations hereunder only to the extent of Lessor's assets as they pertain to the Premises.

29. **SUCCESSORS AND ASSIGNS:** All the terms, covenants and agreements of this Lease shall extend to and be binding upon the Lessor and be binding upon the Lessee and its respective heirs, administrators, executors, successors, assignees, sublessees, concessionaires, if any, and their respective assigns; and/or upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

30. **NOTICES:** Any notice herein provided for to be given to Lessor shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to:

LESSOR'S NOTICE ADDRESS:
City of Norfolk
Attn: Director, Department of General Services
232 East Main Street
Suite 250
Norfolk, Virginia 23510

With copy to :
City Manager
City Manager's Office
11th Floor – City Hall
810 Union Street
Norfolk, Virginia 23510

LESSEE'S NOTICE ADDRESS:
Zack Miller
Hatch Operations, LLC
111 Granby Street
Norfolk, Virginia 23510

Any notice herein provided for to be given to Lessee shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid. Either party may,

at any time, change its address for the purposes of notice hereof by sending a written notice to the other party stating the change and setting forth the new address.

31. **LEASEHOLD TAXES:** Lessee will be responsible for the payment of all leasehold taxes if any levied on Premises.

32. **OPTION:** Providing Lessee is not in default at any time during the term of this Lease, Lessee must notify Lessor, in writing, no less than ninety (90) days prior to the expiration of the original Lease term if it wishes to negotiate a new lease.

36. **EARLY TERMINATION RIGHT:**
Lessor and Lessee shall have the right to terminate the lease at any time with sixty (60) days prior written notice.

34. **AMERICANS WITH DISABILITIES ACT:** In the event that any federal, state, or local government authority (the "Applicable Authority") with jurisdiction determines that the exterior and interior of the Prmises is not in compliance with the Americans with Disabilities Act of 1990 (the "ADA"), Lessor, at its sole cost, agrees to take such remedial action as is required by the Applicable Authority pursuant to the ADA to correct or remedied such noncompliance. Alternatively, if in Lessor's judgment the remedial or corrective measures proposed by the Applicable Authority do not have to be performed in order for Lessor to be in compliance with the ADA, Lessor may contest, at its sole cost, such matter in lieu of performing the remedial action. However, upon final judgment being entered against Lessor in a court of competent jurisdiction with regard to ADA requirements, Lessor agrees to take such remedial actions, at its sole cost, as ordered by such court.

35. **ENTIRE AGREEMENT:** This Lease contains the entire agreement of the parties hereto. Any and all oral or written agreements understandings, representations and warranties, promises and statements of the parties hereto or from their respective officers and directors or from their partners with respect to the subject matter of this Lease, and any matter not covered and mentioned in this Lease, shall be inferior and be merged in and by this Original Lease. No such prior oral or written agreement, understanding, representation or warranty, promise or statement shall be effective or binding for any reason or purpose, unless specifically set forth in this original Lease. No provision of this Lease may be amended or added to except by an agreement in writing, signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

36. **SEVERABILITY:** In the event that any provision herein is unlawful, or otherwise unenforceable, it shall be severed and deemed null and void ab initio and shall not impair the validity of the remaining provisions of this Lease.

IN WITNESS WHEREOF, the parties have caused this lease agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

CITY OF NORFOLK

_____
Marcus D. Jones, City Manager

Attest:

_____
City Clerk Date

HATCH OPERATIONS, LLC

_____
Zack Miller, President

APPROVED AS TO CONTENTS:

_____
David S. Freeman, AICP
Director of Department of General Services

APPROVED AS TO FORM AND CORRECTNESS

_____
Deputy City Attorney

Exhibit A

Profile for a Norfolk Accelerator Program

What is an Accelerator?

- An increasingly common economic development tool
- Started in New York and the San Francisco Bay Area
- Currently dozens of accelerator programs throughout the US

Types of Startups

- Technology & innovative business models - not "Life-style" companies"
- Rapid, high growth potential
- Can develop a prototype/prove a business model in 2-3 months.

Resources Offered

- **Office space**
  - Table, chair, power outlets, Wi-Fi, white boards, printer
- **Mentorship**
  - Intense, hands-on advice from [illegible]
- **Capital**
  - From subsistence stipend to seed capital

Ideal Model

- 2-3 Month Program: May 15 - June 1, 2012
- Located in Downtown Norfolk
- Attract entrepreneurs from Hampton Roads and Mid-Atlantic region
- [illegible] NSU, EVMS, ODU
- [illegible] gaining PR and "status

What the Program Already Has

- Vision & Operational Model
- Organizational management
- Mentors & potential in-kind supporters

What the Program Needs

- **Location** (Selden Arcade? Monticello Arcade? Waterside? TCC?)
- **City Promotion**
- **Swag** (tickets to Norfolk summer events, free passes

are living expenses or

people))