

AGREEMENT

This Agreement for Services to Small Businesses and Entrepreneurs ("Agreement") is hereby made this _____ day of _____, 2016 ("Effective Date"), by and between the Community Redevelopment Agency of the City of Clearwater, Florida ("CRA") and Florida Business Incubator, Inc. (a/k/a/ the "Provider"), (together, the "Parties") for the purpose of supporting small businesses as well as individuals aspiring to small business ownership.

WHEREAS, Section 163.387(6), Florida Statutes, allows for use of moneys in the redevelopment trust fund may be expended from time to time for undertakings of a community redevelopment agency as described in the community redevelopment plan; and

WHEREAS, the CRA has adopted a Community Redevelopment Plan (a/k/a Clearwater Downtown Redevelopment Plan) that establishes certain Goals and Objectives to guide the revitalization of the Downtown and East Gateway areas; and

WHEREAS, supporting community learning, entrepreneurship and growing small businesses are important activities which help meet certain Objectives established in the Community Redevelopment Plan including Objective 1E, which states that, "A variety of businesses are encouraged to relocate and expand in Downtown to provide a stable employment center, as well as employment opportunities for Downtown residents"; and

WHEREAS, the Community Redevelopment Plan establishes that funds received by the CRA through the use of Tax Increment Financing (TIF) may be used for certain redevelopment activities; and

WHEREAS, the City has adopted an Economic Development Strategic Plan in November 2011 that calls for the creation of a Technology District to facilitate incentives and/or assistance to foster Information Technology (IT)/Software Provider growth in the City's Community Redevelopment Agency area (CRA); and

WHEREAS, the Economic Development Strategic Plan establishes as "Goal Four: Business Development" that the city should, "support an entrepreneurship and innovation ecosystem and collaborate with regional partners to market Clearwater to target industries;" and

WHEREAS, the Provider is a not-for-profit Florida-based corporation that was established to help build the local start-up and technology eco-system by providing a first class business incubation and co-working space to support

business development in the form of business incubation and business acceleration services; and

WHEREAS, on May 4, 2015, and May 7, 2015, the CRA and the Provider, together with City of Clearwater, a municipal corporation of the State of Florida, Clearwater Regional Chamber of Commerce, and Florida Small Business Development Center (FSBDC) of Pinellas County Economic Development entered into a Memorandum of Understanding to support collaborative and coordinated approaches to serve pre-venture, startup and small business enterprises in the City of Clearwater and the greater Clearwater area; and

WHEREAS, the Urban Land Institute Advisory Services Panel Report (“ULI Report”) issued September 2014 recommended the city “attract and support new entrepreneurial small businesses by investing in a technology innovation center or business incubator”; and

WHEREAS, in November 2014, the Provider began operating a innovation center and incubator for technology and other businesses consistent with the recommendations of the ULI Report; and

WHEREAS, the CRA and the Provider desire to enter into an Agreement for the delivery of services for the period October 1, 2016 to September 30, 2017, outlining the scope of services and responsibilities of the parties; and

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. INCORPORATION. The recitals set forth above are incorporated herein in their entirety.
2. RESPONSIBILITIES OF THE PROVIDER.
 - A. Services. The Provider will provide up to one (1) Monthly Educational Program within the boundaries of the CRA. The Florida Business Incubator’s Monthly Educational Programs may include topics such as, but not limited to:
 - i. Start-up Essentials
 - ii. Innovation to Distribution - Product Development
 - iii. Legal Necessities
 - iv. Patents
 - v. Organizational Leadership – Focus, Plan, Execute

- vi. Brand Building – Vision & Strategy
- vii. Marketing
- viii. Sales
- ix. App Design
- x. Funding
- xi. Entrepreneurial Accounting
- xii. Strategic Staffing

A. Scope of Duties:

- i. Provide meeting space appropriate for delivery of Monthly Educational Program events
- ii. Gather attendance information including names
- iii. The Provider shall provide a quarterly report of service with each applicable quarterly invoice. Said reporting shall be in substantially the form attached hereto as Exhibit A
- iv. Place Clearwater Business SPARK logo and the CRA logo with hyperlinks on Florida Business Incubator website
- v. On a quarterly basis promote Clearwater Business SPARK via Florida Business Incubator e-newsletter/e-mail blast and on Florida Business Incubator social media sites
- vi. Promote downtown Clearwater and its Technology District as a destination for emerging to mid-stage companies

3. RESPONSIBILITIES OF THE CRA.

- A. As consideration for Provider's performance of Services under this Agreement, the CRA will pay the Provider a fixed price, equal to Two Thousand eighty-three and 33/100 dollars (\$2,083.33) for each Monthly Educational Programs as described in Section 2.
- B. The payment will be made in quarterly payments in an amount not to exceed Six Thousand Two Hundred Fifty and xx/100 dollars (\$6,250.00) to be made after receipt of invoice and report after January 1, 2017, April 1, 2017, July 1, 2017, and October 1, 2017
- C. Total amount for FY 2016-2017 is not to exceed Twenty-Five Thousand and xx/100 (\$25,000)

D. Scope of Duties:

- i. Provide in-kind support in the areas of business networking, marketing, partnering, and advocacy, as appropriate
- ii. Participate and promote Provider events as appropriate
- iii. Refer potential clients for the Monthly Educational Programs as appropriate
- vii. Promote downtown Clearwater and its Technology District as a destination for emerging to mid-stage companies

4. TERMINATION OF AGREEMENT.

- A. The failure of either party to comply with any material provisions of this Agreement shall be considered a breach thereof, and shall be cause for termination of the Agreement by giving ninety (90) days advance written notice via U.S. Mail to the other party of its election to terminate pursuant to this provision to the defaulting party.
- B. The funds to be used for this Agreement are subject to periodic appropriation of funds by the CRA Board of Directors. Further, any and all obligations under this Agreement are contingent upon the availability of funds. If funds are not appropriated by the CRA for any or all of the obligations in this Agreement, the CRA shall not be obligated to pay for any Services provided pursuant to this Agreement beyond the portion for which funds are appropriated. The CRA agrees to promptly notify Provider in writing of such failure of appropriation, and upon such notice, this Agreement shall terminate without penalty to the CRA.

5. COMPLIANCE WITH LAWS. The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including but not limited to public records laws.

6. LIABILITY AND INDEMNIFICATION.

- A. Neither the CRA nor Provider shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other party. Neither the CRA nor Provider shall be obligated by or have any liability under any

agreements or representations made by the other that are not expressly authorized hereunder. The CRA shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by the Provider, whether caused by Provider's negligence or willful action or failure to act.

- B. Provider shall indemnify, pay the cost of defense, including attorney's fees, and hold harmless the CRA, their officials, officers, employees and agent from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the CRA, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of the Provider; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as shall have been occasioned by the negligence of the CRA.
7. DUE CRA. Each party to this Agreement represents and warrants to the other party that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this agreement; (ii) each person executing this Agreement on behalf of the party is authorized to do so; and (iii) this Agreement constitutes a valid and legally binding obligation of the party, enforceable in accordance with its terms.
8. ASSIGNMENT. No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.
9. CONTROLLING LAW. This Agreement is entered into pursuant to the laws of the State of Florida, and shall be construed and enforced thereunder. In the event of litigation for any alleged breach of this Agreement, exclusive jurisdiction and venue for such litigation shall be in the Circuit Court of the Sixth Judicial District, in and for City of Clearwater, Florida, or the United States District Court for the Middle District of Florida, Tampa Division. In the event of any litigation concerning this Agreement, the parties waive all rights to a jury trial.
10. NOTICE. Any notices required under this Agreement shall be in writing and be addressed to the parties as shown below. Notices

shall be delivered by certified or registered first class mail or by commercial courier service, and shall be deemed to have been given or made as of the date received.

City of Clearwater
Community Redevelopment Agency
Attn: Seth Taylor, Director
112 S. Osceola Ave
Clearwater, FL 33756
727-562-4072

Florida Business Incubator,
Inc.
Attn: Elaine Mann, Exec Dir.
1499 Gulf to Bay Blvd
Clearwater, FL 33755
727-945-4118

11. FORCE MAJEURE. Notwithstanding anything contained in the Act or this Agreement to the contrary, and subject to the terms of this Section, the Provider failure to perform its obligations under this Agreement, other than with respect to the payment of money or the giving of any notice required hereunder, shall not be a default, and no disqualification shall occur as a result thereof, if any such failure or delay is due in whole in part to acts of God; acts of public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of either party hereto engaged in renovation or construction at the Facility); civil disturbance; terrorist act; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Facility, over the renovation or construction anticipated to occur thereon or over any uses thereof, or by delays in inspections or in issuing approvals by private parties or permits by governmental agencies; discovery of hazardous or toxic materials; failure of the Internet; failure of power, telecommunication, data connectivity or other services to be delivered to the Facility by any third party including any local utility Provider; delays caused by any dispute resolution process; or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required hereunder, or any of its contractors or other representatives, whether or not similar to any of the causes hereinabove stated.
12. CONFLICTING LAW; SEVERABILITY. If a Conflicting Law is enacted after the Effective Date, then the CRA and the Provider, shall meet and confer in good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an

amendment to this Agreement providing the CRA and the Provider, with the rights and remedies intended to be provided herein. Nothing herein shall preclude either the CRA or the Provider, from challenging the validity of any Conflicting Law. Each provision in this Agreement is severable. If any such provision is determined to be invalid or illegal, the validity and enforceability of the remainder of this Agreement shall be unaffected.

13. TERM. The term of this Agreement shall commence on the date of last signatory hereto (the "Effective Date") and, unless sooner terminated, shall continue in force through September 30, 2017.
14. AMENDMENTS. This Agreement shall not be changed except by written instrument signed by all the parties.
15. BINDING EFFECT AND EFFECTIVENESS; REPRESENTATIONS AND WARRANTIES
 - A. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns, notwithstanding changes in corporate or other governance.
 - B. The Provider represents and warrants to the CRA that as of the date hereof and throughout the term of this Agreement:
 - i. The Provider is a limited liability Provider, duly organized under the laws of the State of Florida, maintains a place of business within the State of Florida, and is validly existing and is doing business in the State of Florida as the Provider,.
 - ii. The Provider has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;
 - iii. This Agreement (a) is the lawful, valid and binding agreement of the Provider, in its limited liability name enforceable against the Provider, in accordance with its terms; (b) does not violate any order of any court or other agency of government binding on the Provider,, the charter documents of the Provider, or any provision of any indenture, agreement or other instrument to which

the Provider, is a party; and (c) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any material indenture, agreement or other instrument to which the Provider, in its limited liability Provider name is a party;

- iv. The Provider, has not received written notice of any action having been filed against the Provider, that challenges the validity of this Agreement or the Provider's, right and power to enter into and perform this Agreement; and

- 16. AUDIT OF RECORDS. Provider shall, upon request, permit the City to examine or audit all records and documents related to the Agreement. Provider shall maintain all such records and documents for at least three (3) years following termination of this Agreement.
- 17. NO THIRD PARTY BENEFICIARY. Persons not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.
- 18. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT. This Agreement has been prepared by the CRA and reviewed by the Provider and its professional advisors. Provider and the CRA believe that this Agreement expresses their understanding and that it should not be interpreted in favor of either Provider or the CRA or against Provider or the CRA merely because of their efforts in preparing it.
- 19. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.
- 20. SEVERABILITY. Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.
- 21. EFFECTIVE DATE. This Agreement shall be effective on the date of the last signatory hereto.

22. GOVERNING LAWS AND VENUE. The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.

23. CONDITIONS AND ASSURANCES.

A. Access to Records: Consultant agrees that Client or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant for the purposes of making audit, examination, excerpt, and transcripts.

B. Retention of Records: The Consultant will be required to comply with Section 119.0701, Florida Statutes, specifically to:

- a. Keep and maintain public records required by the City of Clearwater to perform the service;
- b. Upon request from the City's Custodian of Records, provide the City of Clearwater with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer to the City of Clearwater; and
- d. Upon completion of the contract, transfer, at no cost, to the City of Clearwater all public records in possession of the contractor or keep and maintain public records required by the City of Clearwater to perform the service. If the Consultant transfers all public records to the City of Clearwater upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Clearwater, upon request from the City of Clearwater's Custodian of Public Records, in a format that is compatible with the information technology systems of the City of Clearwater.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT

THE CUSTODIAN OF PUBLIC RECORDS, ROSEMARIE CALL AT 727-562-4090, rosemarie.call@myclearwater.com, and/or 112 S. Osceola Ave., Clearwater, FL, 33617.

IN WITNESS WHEREOF, the City and have executed the Agreement as of the date first above written.

**FLORIDA BUSINESS INCUBATOR,
INC.**

WITNESSES:

By: _____
Elaine Mann, Executive Director

Print Name: _____

Date: _____

Print Name: _____

Countersigned:

**COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF
CLEARWATER, FLORIDA**

George N. Cretelos
Chairperson

By: _____
Seth Taylor
Director

Approved as to form:

Attest:

Pamela K. Akin
City Attorney

Rosemarie Call
City Clerk