

## CITY OF DUNEDIN / FLORIDA BUSINESS INCUBATOR

### AGREEMENT

This Agreement for Services to Small Businesses and Entrepreneurs ("Agreement") is hereby made this ~~15<sup>th</sup>~~ day of October 201~~8~~, ("Effective Date"), by and between the City of Dunedin ("City"), a Florida municipal corporation and the FLORIDA BUSINESS INCUBATOR, INC. ("Provider"), (together, the "Parties") for the purpose of supporting small businesses as well as individuals aspiring to small business ownership.

**WHEREAS**, supporting community learning, entrepreneurship and growing small businesses are important activities which help meet certain City Objectives; and

**WHEREAS**, the City has adopted a Economic Development Master Plan (2013 – 2023) ("Plan") that calls for business diversification to foster growth in the City's overall Economic Development; and

**WHEREAS**, the Plan supports an entrepreneurship and innovation ecosystem and collaboration with regional partners to market the City of Dunedin.

**WHEREAS**, Provider is a Florida-based non-profit corporation that was established to help build the local start-up and technology eco-system by providing first class incubation services and collaboration space facilitation to support business development in the form of business incubation and business acceleration services; and

**WHEREAS**, in November 2016, the Provider began operating a 501c3 non-profit entity known as the Florida Business Incubator, Inc. [EIN: 81-3913990]; and

**WHEREAS**, Provider utilizes a coordinated approach among the City of Dunedin, the Dunedin Chamber of Commerce, the Dunedin Merchants Association, and the Dunedin Library serve pre-venture, startup, and small business enterprises in the City of Dunedin and greater Dunedin area; and

**WHEREAS**, the City and Provider desire to enter into an Agreement for the delivery of services for the period October 1, 2018 to September 30, 2019, outlining the scope of services and responsibilities of the parties.

**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. RECITALS. The recitals set forth above are incorporated herein in their entirety.
2. RESPONSIBILITIES OF PROVIDER.
  - A. Services. Provider will provide weekly Spark Tank meetings with no less than 36 meetings per year within the boundaries of the City of Dunedin. All meetings will be published on Provider's website and a quarterly Program Calendar will be provided to the City of Dunedin. Educational Programming provided at Spark Tanks may cover topics such as, but are not limited to:
    - i. Business Planning*
    - ii. Business Strategy*
    - iii. Financial Planning*
    - iv. Sales/Marketing*
    - v. Launch & Strategic Growth*
  - B. Scope of Duties:
    - i. Facilitate meeting space appropriate for delivery of Educational Program events.
    - ii. Report to City Commission semi-annually at City Commission meetings or as needed.
    - iii. Provide a quarterly report of service that includes Date & Time of Event, Title of Event, Speaker/Special Program (if provided), Number of Attendees and a list of First name and Initial of Last Name of the Attendees.
    - iv. Provide a quarterly overview of participant industries.
    - v. Place City of Dunedin logo with hyperlinks on FLORIDA BUSINESS INCUBATOR website.

- vi. Promote City of Dunedin via FLORIDA BUSINESS INCUBATOR e-newsletter/e-mail blast and on FLORIDA BUSINESS INCUBATOR social media sites.
- vii. Promote City of Dunedin as a destination for emerging to mid-stage companies.
- viii. Provide Agenda and Minutes of Board meeting to the City of Dunedin Economic Development Director.
- ix. City of Dunedin representation on Florida Business Incubator, Inc. Advisory Committee.

3. RESPONSIBILITIES OF CITY.

- A. The payment will be made in quarterly payments in an amount not to exceed \$6,875.00 commencing October 1, 2018, and continuing January 1, 2019, April 1, 2019, and July 1, 2019. per quarter for Educational Programs as described in Section 2.A above.
- B. Total amount of quarterly payments for FY 2018-2019 is not to exceed \$27,500.00.
- C. 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 Weekly Educational Programs as appropriate.
  - iv. Promote the City of Dunedin as destination for emerging to mid-stage companies
  - v. Meet quarterly with Executive Director and Board Chair to jointly evaluate the collaborative program goals and maintain the mutual commitment to open communication.

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. Any and all obligations under this Agreement are contingent upon the availability of funds. If funds are not available by the City for any or all of the obligations in this Agreement, the City shall not be obligated to pay for any Services provided pursuant to this Agreement. The City agrees to promptly notify Provider in writing of such failure of fund availability, and upon such notice, this Agreement shall terminate without penalty to the City.

- 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 City 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 City 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 City 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 City of Dunedin, their officials, officers, employees and agent from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the City, 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 City of Dunedin.

- 7. AUTHORIZATION. 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 Pinellas County, 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 Dunedin  
Housing & Economic Development  
Attn: Robert Ironsmith, Director  
737 Loudon Avenue  
Dunedin, FL 34698  
727-298-3204

Florida Business Incubator  
David Poll, Board Chair  
495 Alt 19, #2  
Palm Harbor, FL 34683  
727-945-4118

11. **FORCE MAJEURE**. Notwithstanding anything contained in this Agreement to the contrary, and subject to the terms of this Section, Provider's 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; 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; 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 City 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 City and Provider, with the rights and remedies intended to be provided herein. Nothing herein shall preclude either the City or 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 October 1, 2018 and, unless sooner terminated, shall continue in force through September 30, 2019.
14. AMENDMENTS. This Agreement shall not be amended 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. Provider represents and warrants to the City that as of the date hereof and throughout the term of this Agreement:
    - i. Provider is a non-profit corporation, 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 Provider;
    - ii. 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;

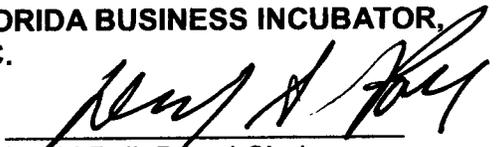
- iii. This Agreement (a) is the lawful, valid and binding agreement of Provider, in its name enforceable against Provider, in accordance with its terms; (b) does not violate any order of any court or other agency of government binding on Provider, the charter documents of Provider, or any provision of any indenture, agreement or other instrument to which 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 Provider, in its non-profit company name is a party;
  - iv. Provider, has not received written notice of any action having been filed against Provider, that challenges the validity of this Agreement or 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 Provider and reviewed by City and its attorney. Provider and City believe that this Agreement expresses their understanding and that it should not be interpreted in favor of either Provider or City or against Provider or City 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.

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

WITNESSES:

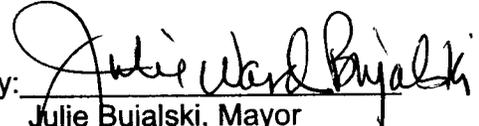
  
Print Name: Seanmax Garner

  
Print Name: DANNY CRAIG

**FLORIDA BUSINESS INCUBATOR, INC.**  
By:   
David Poll, Board Chair

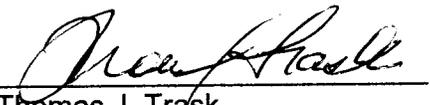
Date: 8/20/18

Countersigned:

By:   
Julie Bujalski, Mayor  
City of Dunedin

**CITY OF DUNEDIN, FLORIDA**  
By:   
Jennifer K. Bramley, City Manager

Approved as to form:

  
Thomas J. Trask  
City Attorney

Attest:

  
Denise Kirkpatrick  
City Clerk