

## AGREEMENT

**THIS AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019, (“Effective Date”) between the City of St. Petersburg, Florida, a municipal corporation existing by and under the laws of the State of Florida, (“City”) and \_\_\_\_\_, (“Company”) (collectively, “Parties”) with regard to the following matters.

### **RECITALS:**

**WHEREAS**, the City desires to utilize a portion of its available funds to support companies that further the City’s economic development by creating and retaining high-wage jobs in the City’s Target Industry Clusters, which are Marine and Life Sciences, Specialized Manufacturing, Financial Services, Data Analytics, and Creative Arts and Design; and

**WHEREAS**, the use of public funds to further the economic development of the City constitutes a valid public purpose; and

**WHEREAS**, the Company has submitted an application to the City (“Application”) to participate in the City’s Grow Smarter Job Creation and Talent Attraction Program (“Program”); and

**WHEREAS**, the Company has represented to the City that it has hired or will hire the employee identified on the Application (“Employee”) and will continue to pay the Employee at or above the annual wage set forth in the Application for a minimum of twelve (12) months; and

**WHEREAS**, the City has agreed to provide the herein described grant funds to the Company, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals (which are hereby incorporated into this Agreement by reference) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Company covenant and agree as follows:

1. **Grant of Funds**. The City shall pay to the Company, on a lump sum basis, an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_) (“Grant”) (unless such Grant amount is decreased in accordance with paragraph 2 of this Agreement) as an incentive for the Company to hire and retain the Employee in accordance with this Agreement, the Program requirements (which are attached hereto as Appendix A), and the completed Application (which is attached hereto as Appendix B). Provided the Company is in compliance with the terms and conditions of this Agreement, and further provided that the Company has more permanent full-time employees at the end of the Twelve-Month Period than the number of permanent full-time employees set forth in the Application, the City shall make the Grant payment to the Company within thirty (30) days after the Company’s written request for payment of the Grant funds and submission of the Final Report (as hereinafter defined) and supporting documentation in accordance with paragraph 8B. Nothing herein shall be construed to create a relationship between the City

and the Employee, and the City shall have no liability whatsoever related to the Employee as a result of this Agreement.

2. **Reduction in Grant Funds.** In the event the Grant amount set forth in paragraph 1 of this Agreement includes a bonus incentive payment based on the Employee's residency but the Employee does not continue to meet the residency-based bonus incentive criteria set forth in the Application for the entire Twelve-Month Period (as hereinafter defined), the Grant amount shall be reduced by the amount of the bonus incentive payment set forth in the Application. As an example, if the Company applied for a bonus incentive payment of \$2,000 based on the Employee's residency in St. Petersburg, but the Employee relocates to an area outside of St. Petersburg during the Twelve-Month Period, the Grant amount would be reduced by \$2,000. As another example, if the Company applied for a bonus incentive payment of \$3,000 based on the Employee's residency in the South St. Petersburg Community Redevelopment Area, but the Employee relocates to a different area in St. Petersburg during the Twelve-Month Period, the Grant amount would be reduced by \$1,000 to reflect the difference in the Program's bonus incentive payment of \$3,000 for an employee residing in the South St. Petersburg Community Redevelopment Area versus the bonus incentive payment of \$2,000 for an employee residing in St. Petersburg.
3. **Appendices.** All appendices referenced in this Agreement are attached to this Agreement and made a part hereof by reference.
4. **Compliance.** The Company shall hire and retain the Employee at or above the annual wage set forth in the Application for a period of at least twelve (12) months beginning on the Employee's hire date ("Twelve-Month Period"), comply with all of the terms and conditions of this Agreement, and continue to meet the Program requirements for the Twelve-Month Period.
5. **Term.** The term of this Agreement ("Term") shall commence on the Effective Date and terminate eighteen (18) months thereafter, unless this Agreement is earlier terminated as provided for herein.
6. **Deadline.** The Company shall submit to the City a written request for the Grant funds along with the Final Report and all supporting documentation no later than sixteen (16) months after the Effective Date. The City shall have a right to terminate this Agreement without paying any of the Grant funds if the Company fails to comply with this deadline.
7. **Repayment of Grant Funds.** If, after the City's disbursement of the Grant funds, the City determines that the Company failed to comply with any of the terms and conditions of this Agreement, the City may, in its sole and absolute discretion, require the Company to repay all or any portion of the Grant funds to the City within thirty (30) days after written notice from the City to repay the Grant funds. This paragraph shall survive expiration or earlier termination of this Agreement.

8. **Reports.**

- A. Periodic Reports. If any of the following conditions occur, the Company shall notify the City in writing no more than 30 days after the occurrence:
- (1) The Employee discontinues employment with the Company for any reason prior to the expiration of the Twelve-Month Period; or
  - (2) The Employee's annual wage falls below the annual wage set forth in the Application; or
  - (3) The Company relocates to a location other than the company address set forth in the Application (such notice shall include the new Company address and indicate whether the Company is still located within the municipal boundaries of the City of St. Petersburg); or
  - (4) The Employee's job relocates to a location other than the new job location set forth in the Application (such notice shall include the new job location and indicate whether the new job is located within the municipal boundaries of the City of St. Petersburg); or
  - (5) The Employee no longer meets the residency requirements for the bonus incentive payment set forth in the Application, if applicable (such notice shall include the Employee's updated residential address).
- B. Final Report. Within thirty (30) days after the end of the Twelve-Month Period, the Company shall provide a final report ("Final Report") to the City indicating that the number of permanent full-time employees at the end of the Twelve-Month Period is greater than the number of permanent full-time employees set forth in the Application, identifying positions that have been created and retained by the Company during the Twelve-Month Period, providing evidence that the Employee has remained employed with the Company and was paid at least the annual wage set forth in the Application during the Twelve-Month Period, and indicating whether the Employee has retained the residency required for a bonus incentive payment, if applicable. As supporting documentation, the Company shall provide the City with redacted payroll documents or payroll information in a form acceptable to the City and any other support documentation requested by the City. Such Final Report and support documentation shall accompany the Company's written request for payment of the Grant funds.

9. **Compliance with Laws.** The Company shall comply at all times with all applicable federal, state, and local statutes, rules, regulations and ordinances, the federal and state constitutions, and the orders and decrees of lawful authorities (collectively, "Laws"), including but not limited to Florida public records laws.

10. **Reservation of Rights.** In order to determine the Company's compliance with this Agreement, the City may at any reasonable time enter and inspect the premises identified

in the Application as the location of the Employee's new job. Such inspection may include, but shall not be limited to, review or analysis of the financial or service records of the Company.

11. **Default and Termination.**

- A. The City may terminate this Agreement if the following events occur:
- (1) The Company fails to observe or perform any term or condition of this Agreement and such failure continues for ten (10) days after written notice thereof from the City to the Company in accordance with paragraph 15 of this Agreement ; or
  - (2) The Company fails to meet any of the eligibility requirements for the Program during the Twelve-Month Period; or
  - (3) The Employee discontinues employment with the Company, for any reason, prior to the expiration of the Twelve-Month Period; or
  - (4) The Company submits an application for the State of Florida's Qualified Target Industry Tax Refund (QTI) Program during the Twelve-Month Period; or
  - (5) The Employee's annual wage falls below the annual wage set forth in the Application; or
  - (6) The Company relocates to a location outside of the municipal boundaries of the City of St. Petersburg during the Twelve-Month Period; or
  - (7) The Employee's job is relocated to a location outside of the municipal boundaries of the City of St. Petersburg during the Twelve-Month Period.
- B. The Company may terminate this Agreement upon fifteen (15) days written notice to the City subject to paragraph 11E.
- C. Notwithstanding anything to the contrary contained in this Agreement, the Company shall not be relieved of liability to the City for damages sustained by the City by virtue of the Company's failure to comply with any of the terms and conditions of this Agreement. In addition to the City's other rights and remedies and without limiting such other rights and remedies, the City may withhold any payments to the Company equal to the amount of damages incurred by the City as a result of the Company's breach. If the amount of damages incurred by the City cannot immediately be determined, the City may withhold any payments to the Company equal to the estimated damages incurred by the City until such time as the exact amount of damages due the City from the Company is determined.
- D. The City's liability and obligations to the Company or any person having a claim

pursuant to this Agreement shall be limited solely to the amount set forth herein and subject to the terms and conditions of this Agreement.

- E. If this Agreement is terminated by the City or the Company for any reason prior to the expiration of the Twelve-Month Period, the City shall have no obligation to pay any of the Grant funds to the Company.

12. **Indemnification.**

- A. The Company shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, including but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:

- (1) The performance of this Agreement (including changes and amendments thereto) by the Company, its employees, agents, representatives, contractors, subcontractors or volunteers; or
- (2) The failure of the Company, its employees, agents, representatives, contractors, subcontractors or volunteers to comply and conform with any applicable Laws; or
- (3) Any negligent act or omission of the Company, its employees, agents, representatives, contractors, subcontractors or volunteers, whether or not such negligence is claimed to be either solely that of the Company, its employees, agents, representatives, contractors, subcontractors or volunteers or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or
- (4) Any reckless or intentional wrongful act or omission of the Company, its employees, agents, representatives, contractors, subcontractors or volunteers.

- B. The provisions of this paragraph 12 are independent of, and will not be limited by, any insurance required to be obtained by the Company pursuant to this Agreement or otherwise obtained by the Company, and shall survive the expiration or earlier termination of this Agreement with respect to any Claims or liability arising in connection with any event occurring prior to such expiration or termination.

13. **Insurance.**

- A. The Company shall maintain workers' compensation insurance as required by law; and employers' liability insurance.

- B. Within thirty (30) days after the Effective Date and again prior to the City's distribution of any Grant funds pursuant to this Agreement, the Company shall provide the City with a certificate of insurance on a standard ACORD form reflecting all required coverage.

14. **Records, Reports and Inspection.**

- A. The Company shall maintain financial books, records, and accounting information related to this Agreement. These books, records, and information shall comply with generally accepted accounting principles. The Company shall provide an independent audit of such books, records and information by a Certified Public Accountant upon request by the City, at no cost to the City, within ninety (90) days of such request. Except as otherwise authorized by the City, the Company shall retain all such books, records and information for a minimum of five (5) years after the end of the Term. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders and any other accounting documents pertaining in whole or in part to this Agreement, and all such documents shall be clearly identified and accessible.
- C. The Company, at such times and in such forms as the City may require, shall furnish to the City such statements, records, reports, data and information as the City may request.
- D. The Company shall, at any reasonable time requested by the City and as often as the City may deem necessary, make available to the City for examination all of its books, records and information with respect to all matters covered by this Agreement and shall permit the City or its designated authorized representatives to audit and inspect all such books, records and information, including but not limited to invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

15. **Notices.** Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals or other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, or upon the expiration of five (5) business days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the authorized representative of the recipient at the address provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient at the address provided below.

**CITY OF ST. PETERSBURG:**  
City of St. Petersburg, Florida  
Economic Development Division  
P. O. Box 2842  
St. Petersburg, Florida 33731  
Attn: Sophia Sorolis  
Economic Development Manager

**COMPANY:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

16. **Nondiscrimination.** The Company shall not discriminate against anyone in the completion of the Project because of race, color, religion, gender, national origin, marital status, age, disability, sexual orientation, genetic information or other protected category.
17. **Assignment.** The Company shall not assign this Agreement without the prior written consent of the City. Any assignment of this Agreement contrary to this Paragraph 17 shall be void and shall confer no rights upon the assignee.
18. **Governing Law and Venue.** The laws of the State of Florida shall govern this Agreement. Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
19. **Due Authority.** Each party to this Agreement represents and warrants to the other party that: (i) it is duly organized, qualified and existing entities under the laws of the State of Florida; and (ii) all appropriate action has been taken so as to duly authorize the persons executing this Agreement to so execute the same and fully bind the parties on whose behalf he or she is executing.
20. **Headings.** The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
21. **Non-Appropriation.** The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.
22. **No Third Party Beneficiaries.** Notwithstanding anything to the contrary contained in this Agreement, persons or entities not a party to this Agreement, including but not

limited to the Employee, may not claim any benefit hereunder or as third party beneficiaries hereto.

23. **Entire Agreement and Modification.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matters covered herein and there are no oral representations, arrangements or understandings between or among the Parties relating to the subject matters of this Agreement. No change to this Agreement will be valid unless made by a written amendment executed by the Parties.
24. **Waiver.** No provision of this Agreement will be deemed waived by the City unless expressly waived in writing by the City. No waiver shall be implied by delay or any other act or omission of the City. No waiver by the City of any provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the City's consent respecting any action by the Company shall not constitute waiver of the requirement for obtaining the City's consent respecting any subsequent action.
25. **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 a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this Agreement.
26. **City Consent and Action.**
  - A. For purposes of this Agreement, any required written permission, consent, acceptance, approval, or agreement by the City means the approval of the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.
  - B. For purposes of this Agreement, any right of the City to take any action permitted, allowed, or required by this Agreement may be exercised by the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.
27. **Survival.** All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, including but not limited to those obligations and rights related to indemnification, shall survive such expiration or earlier termination.
28. **Order of Precedence.** In the event of an inconsistency between or among the documents referenced in this Agreement, the following order of precedence shall control: (i) this Agreement, exclusive of its appendices; (ii) Appendix A; and (iii) Appendix B.

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

**COMPANY:**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title): \_\_\_\_\_

**WITNESSES FOR COMPANY:**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

**CITY OF ST. PETERSBURG, FLORIDA**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Chan Srinivasa, City Clerk

(Seal)

Approved as to Form and Content:

\_\_\_\_\_  
City Attorney (designee)  
00315378

## **Appendix A**

### **Grow Smarter Job Creation and Talent Attraction Program**

#### **Background**

Companies that have high growth potential and create high wage jobs are of critical importance to the City's economic vitality. These companies (which include any kind of business entity) generate positive multiplier effects or spin-off economic inputs. The City has focused resources geared to attracting and retaining companies in the City's defined target industry business clusters through its investment in the St. Petersburg Area Economic Development Corporation ("EDC") and in other ways.

One of the major issues facing these high growth companies is talent attraction. Companies need to recruit employees with the required skill levels and expertise to sustain their growth. This Program is designed to provide an incentive for companies to increase employment by creating jobs within the City's Target Industry Clusters, which are Marine and Life Sciences, Specialized Manufacturing, Financial Services, Data Analytics, and Creative Arts and Design. The creation of high-wage jobs in Target Industry Clusters has been declared a public purpose by the Florida Legislature in Chapter 288.106, Florida Statutes.

The RIMS II economic modeling software used by the City shows that for every 1 job created in the Data Processing, Hosting, & Related Services category - NAICS Code 5182 (used here for illustrative purposes) there is a total of 1.2073 jobs created including the original job.

-For a job paying \$54,364 (115% of the average wage of Pinellas County) in the same NAICS Code, there would be a direct and indirect economic impact of \$88,613.

-For a job paying \$70,910 (150% of the average wage of Pinellas County) there would be a direct and indirect economic impact of \$115,584.

-For a job paying \$94,546 (200% of the average wage of Pinellas County) there would be a direct and indirect economic impact of \$154,110.

The incentive will be paid to the company after a qualifying job has been created and filled by a qualified employee, as outlined below. Once the incentive has been paid to the company, it may use the funds as it deems fit.

#### **Program Requirements**

- Companies must be physically located within the municipal boundaries of the City of St. Petersburg and the job location must be at those facilities.
- Eligible companies for this incentive must be in one of the Grow Smarter Target Industry Clusters (Marine and Life Sciences, Financial Services, Data Analytics, Specialized Manufacturing, and Creative Art and Design).
- Companies must have less than 50 full-time employees when the application is made.

- Companies must create new, high wage jobs for permanent employees and maintain a consistent or growing number of employees in St. Petersburg. The number of employees employed by the company will be established when the application is made, and the number of St. Petersburg-based employees hired during the time frame in which the company is participating in the Program shall not decrease. This incentive can only be used for companies that are not participating or in the process of applying for the State’s Qualified Target Industry Tax Refund (QTI) Program, however, the base wage of newly hired employees must meet the (QTI) Tax Credit Refund wage criteria to qualify for this grant, annually adjusted. Current Pinellas County wage requirements are:
  - 115% of Pinellas County Average Wage                      \$54,364
  - 150% of Pinellas County Average Wage                      \$70,910
  - 200% of Pinellas County Average Wage                      \$94,546
- A bonus will be paid if the qualifying employee is a resident of St. Petersburg and an additional bonus is available if the qualifying employee is a resident of the South St. Petersburg Community Redevelopment Area.

Applications for the Program will be processed on a first-come-first served basis based on when the application is complete. The POD will notify the applicant within 10 days of receiving the application if it is not complete and identify all required information.

**Incentive Schedule**

- For each new job created at 115% or more of the average county wage, the incentive amount is \$3,000 per new job.
- For each new job created at 150% or more of the average county wage, the incentive amount is \$4,000 per new job.
- For each new job created at 200% or more of the average county wage, the incentive amount is \$5,000 per new job.
- For each new job created and filled by the City resident, there will be a bonus \$2,000 incentive paid.
- For each new job created and filled by a resident of the South St. Petersburg Community Redevelopment Area, there will be a bonus \$3,000 incentive paid.
- The residential bonus incentives are not cumulative.

**Program Administration**

- The City will accept applications for this Program with a three month look-back period, meaning a company that hires a qualifying employee will have three months from the qualifying employee's first day of work to submit an application to the City with all required documentation. To be eligible for this Program, all hires must be made after this Program is approved by City Council. To ensure that funding is available, companies must submit an application for each newly hired position that meets the Program's requirements.
- After consideration of the application and information provided, the City will determine whether the application/hire meets the Program requirements and, if so, will provide a grant agreement to the company for the specific employee. The company shall provide all required documentation; however, information which is exempt from disclosure pursuant to the Public Records Law, such as social security numbers, may be redacted. All applications and documentation are public records.
- The company's baseline employment numbers will be established at the time an application is submitted. If total employment falls below the established baseline during the time frame in which the company is participating in the Program, no incentive will be paid.
- Employees hired under this Program must remain employed by the company for at least twelve months in order for the company to claim the incentive. The incentive will be paid at the end of the twelve-month period.
- If for any reason an employee hired under this Program does not complete the twelve (12) month employment period, then the grant agreement for that employee shall terminate and no incentive will be paid. If the company hires another qualifying employee, the company may make another application, if funding is available, but the twelve (12) month period would begin anew for that employee.
- The City will provide incentives for up to ten employees per company per in each City fiscal year (i.e., October 1 through September 30). If the Program is undersubscribed, the City may increase the employee cap for companies that create more than ten qualifying jobs within a fiscal year.
- No applications will be approved after the amount in the committed grant agreements matches the funding available for the Program.

**Appendix B**  
**Completed Application for Grow Smarter Job Creation and Talent Attraction Program**