

**FIRST AMENDMENT TO THE ENTREPRENEUR CENTER MANAGEMENT
AGREEMENT BETWEEN THE CITY OF DENTON AND THE DALLAS
ENTREPRENEUR CENTER**

This first amendment (“Amended Agreement”) is made between the City of Denton, Texas, a Municipal Corporation formed under the laws of the State of Texas and located at 215 E. McKinney Street, Denton, Texas 76201 (the “City”), and The Dallas Entrepreneur Center, a Texas Nonprofit Corporation organized as a 501(c)3 entity whose principal place of business is located at 311 North Market Street, Dallas, Texas 75202 (“Manager”) for the management of an entrepreneurial space located at 608 East Hickory, Suite 128, Denton, Texas, 76201. (The City and the Manager are collectively referred to as “the Parties”).

WHEREAS, the Economic Development Partnership Board and the City Council have established target industries for economic development recruitment, including a focused initiative on entrepreneurship and technology-based companies; and

WHEREAS, on the 15th day of September, 2015, the City of Denton, Texas approved a Grant Agreement with Rail Yard Partners, Ltd. to utilize Tax Increment Reinvestment Zone Number One Funds to stimulate a catalyst transit-oriented redevelopment project located at 608 East Hickory, Denton, Texas 76201 (the “Property”); and

WHEREAS, on the 15th day of September, 2015, the City of Denton, Texas approved a Commercial Lease Agreement with Rail Yard Partners, Ltd. to lease 9,216 square feet of office space located on the Property (“Commercial Lease”) to operate an entrepreneurial space for a technology recruitment initiative (“Stoke Denton” or Entrepreneurial Center”); and

WHEREAS, the City entered into an Entrepreneur Center Management Agreement with Manager for the management of the Entrepreneurial Center at the Property on or about October 30, 2015 (the “Agreement”); and

WHEREAS, it is in the public interest to amend the Agreement to include terms such as baseline metrics for performance evaluation, termination provisions, and payment details, as set forth herein; and

WHEREAS, the Parties desire that the Manager, a non-profit entity who provides a unique, sole-source management solution for entrepreneurial space, manage and operate Stoke Denton pursuant to Texas Local Government Code Section 252.022(a)(7)(F);

NOW, THEREFORE, for the mutual promises and consideration as described herein, the Parties agree as follows:

I. TERMS

A. **Program Management.** The City hereby authorizes and engages the Manager as its agent to manage the daily operations of the Entrepreneur Center and associated programs during the term of this Amended Agreement. The Manager hereby accepts such engagement subject to the terms and conditions expressed in this Amended Agreement. The City shall

cooperate with the Manager to the extent necessary for the Manager to fulfill its duties under this Amended Agreement. Without limiting the generality of the foregoing, the City is hereby authorized and shall be obligated to do as follows in its discretion and as is allowed under the City's budget processes:

1. Financial responsibility for the Commercial Lease Agreement and associated operating expenses at 608 East Hickory, Suite 128, and Denton, Texas 76201.
2. Provide entrepreneurial office and co-working space located at 608 East Hickory, Suite 128, Denton, Texas 76201 for the operation of the Entrepreneur Center commencing on or about March 1, 2016.
3. Provide appropriate technology, furniture, fixtures, and equipment for the entrepreneurial office and co-working space.
4. Provide staff support and resources to the Manager to assist in the operations of the Entrepreneur Center.
5. Provide marketing resources and assistance as available and budgeted in the Economic Development Division program funding.
6. License the use of any and all branding, logos, program markers, URL addresses, websites, and other marketing materials to the Manager for the promotion of the program.

B. Management of the Entrepreneur Center. The Manager has the responsibility and discretion in the operation, direction, management and supervision of the Entrepreneur Center, subject only to the limitations expressed herein. Commencing with the term of this Amended Agreement, the Manager shall perform the following:

1. Coordinate with the Landlord on the design and layout of the Property, including tenant finish-out selections, interior design, and architectural/construction decisions. The Manager will solicit feedback from the City during this process.
2. Coordinate with the City's marketing/advertising designee to finalize all branding, logos, program markers, and marketing materials for the promotion and launch of the program and Entrepreneurial Center.
3. Coordinate the selection and procurement of all furniture, fixtures, and equipment for the Entrepreneurial Center; working directly with the City and all applicable purchasing laws.
4. Coordinate with the City to finalize membership eligibility, terms, application requirements, membership fees, operating hours, performance measures, and all other programmatic elements.
5. Commencing with the term of the Commercial Lease Agreement, day-to-day management and operations of the Entrepreneur Center and associated programs, including, but not limited to the following:

- i. Membership recruitment and collection of all membership fees;
 - ii. Coordinate, plan, and host events and training for members; and
 - iii. Create a business support hub for tech-based companies and start-ups by offering the knowledge, resources, and support necessary for growth and success.
6. Manager will pay a percentage of operating expenses associated with the Commercial Lease Agreement, as follows:
 - i. Ten percent of all membership fees collected by Manager will be paid quarterly to the City;
 - ii. The first payment to the City will be due sixty days after the opening of the Entrepreneur Center and will be due quarterly thereafter.
7. The remaining ninety percent of membership fees will be utilized by the Manager for daily operations of the Entrepreneurial Center, including but not limited to the following:
 - i. Programming and event expenses.
 - ii. Snacks, supplies, and other amenities and benefits.
 - iii. Marketing and recruitment expenses.
8. Solicit sponsorships, donations, programming, speakers, and all other support as necessary to successfully operate the entrepreneurial space and associated programs.
9. Provide a quarterly financial report to the City that shows a separate accounting of all revenue and expenses associated with the operation of the entrepreneurial space in Denton, and an accounting of all revenue and expenses associated with the Manager's full operations.
10. Establish baseline metrics for: the number of events held in the entrepreneur center and the number of attendees at each event; number of visitors to the entrepreneur center; number of mentor sessions available and number of mentor sessions used; and number of entrepreneurs assisted. Such baseline metrics will be used to set future performance goals for the Manager upon the Effective Date of this Amended Agreement.

C. **Insurance.** Manager shall require that proper Certificates of Insurance evidencing general liability, automobile, bodily injury, property damage, death and workers compensation coverage shall be furnished, with copies to the City, and require that all policies be kept in force during the term of the Amended Agreement by all vendors, concessionaires, subcontractors and service providers in the minimum amounts approved by the City. Such policies shall name the City as an additional insured. The Manager further agrees to maintain at all times during the term of this Amended Agreement and the Development Agreement, with responsible insurance companies, insurance as follows:

1. Such worker's compensation, employer's liability or similar insurance as may be required by law, or such greater amounts which Manager shall deem advisable but not less than \$1,000,000/\$2,000,000;

2. A general liability insurance policy in the amount of at least \$1,000,000 per person or \$2,000,000 per occurrence for bodily injury or death;
3. An umbrella coverage insurance policy of at least \$10,000,000 per occurrence;
4. Such other insurance against such other operation risks as Manager and City deems advisable to insure against, including, without limitation, auto liability insurance, liquor liability insurance and fidelity bonds;
5. Errors & Omissions or Professional Liability Coverage in the amount of at least \$1,000,000; and
6. Fire insurance and insurance against such other hazards ordinarily included by an all-risk form of extended coverage endorsement on the buildings, operating supplies, furniture, furnishings and equipment in an amount equal to at least one hundred percent (100%) of actual replacement cost (without deduction for depreciation) thereof, and all alterations, substitutions and replacements therefore, and bearing a standard noncontributory mortgagee loss payable endorsement in favor of the holders of any Mortgage on the Entrepreneur Center and providing, if reasonably available, for waiver of subrogation against such holder and the debt and security of such Mortgage in the event that the Entrepreneur Center is restored. This insurance shall include business interruption assurance.

The Manager shall add the City as an additional insured on policies required by this Amended Agreement. Moreover, the Manager shall assume all risks in connection with the adequacy of any insurance or self-insurance program and waives any claim against the City for any liability, costs or expenses arising out of any uninsured claim, in part or in full, of any nature whatsoever. Within a reasonable period of time after the effective date of this Amended Agreement, Manager shall provide the City with a Certificate of Insurance showing compliance with this section. Any changes to coverage shall cause Manager to immediately notify the City in writing of such change.

D. **Compliance.** Manager shall make all reasonable efforts to comply with all laws, rules, regulations, requirements, orders, notices, determinations, and ordinances of the City of Denton, including without limitation, the state and local liquor authorities, and the requirements of any insurance companies covering any of the risks against which the Entrepreneur Center is insured. **MANAGER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY LOSS, COST, DAMAGE, OR EXPENSE ASSOCIATED WITH COMPLIANCE HEREUNDER.**

E. **Management Term.** The term of this Agreement shall commence on the date the Agreement is approved by the City Council and shall continue through September 30, 2017. This Agreement may be renewed annually for five years. Provided that Manager has met the performance metrics set forth in this Amended Agreement as approved by the City Council, then the City's approval of such renewal may not be unreasonably withheld, subject to Section (H) of this Amended Agreement and federal, state, or local law.

F. **Termination.** The Amended Agreement may be terminated prior to the expiration of the Amended Agreement upon the occurrence of one or more of the following events:

1. Upon any default of the Commercial Lease Agreement between the City and the Landlord following the expiration of applicable cure periods;
2. Upon at least thirty (30) days prior written notice to the other party, if (i) the Entrepreneur Center is damaged or destroyed by fire or another casualty; or (ii) all or a substantial part of the Entrepreneur Center is taken in a condemnation or eminent domain proceeding;
3. Upon at least thirty (30) days prior written notice if Manager shall apply for or consent to the appointment of a receiver, trustee or liquidator of it or all or a substantial part of its assets; file a voluntary petition for bankruptcy; or, become otherwise insolvent;
4. If Manager permanently ceases operation of the Entrepreneur Center; or
5. If Manager fails to provide or maintain insurance as required under this Amended Agreement.
6. Upon mutual agreement of the parties or not less than 30 days written notice by one party to the other.

II. MISCELLANEOUS

A. Indemnification. MANAGER AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS (ADMINISTRATIVE OR JUDICIAL) OR SUITS FOR INJURIES, DAMAGE, LOSSES AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES FOR PRE-TRIAL, TRIAL AND APPELLATE PROCEEDINGS, ACCOUNTING FEES, APPRAISAL FEES AND CONSULTING AND EXPERT WITNESS FEES), OR LIABILITY OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY THE CITY OF THOSE SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED, IN WHOLE OR IN PART, UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES, AND INVITEES, OR OF MANAGER, OR CLAIMS OF ANY PAST OR FUTURE LIFE/SAFETY CODE VIOLATIONS, OR ANY REQUIREMENT OR AWARD RELATING TO COURSE OF EMPLOYMENT, WORKING CONDITIONS, WAGES AND/OR COMPENSATION OF EMPLOYEES OR FORMER EMPLOYEES AT THE ENTREPRENEUR CENTER INCLUDING VIOLATIONS OF ANY STATE, LOCAL, OR FEDERAL EMPLOYMENT LAW WHETHER COMMON LAW OR STATUTORY, AND INJURY TO PERSON(S) AND DAMAGE TO PROPERTY OR BUSINESS BY REASON OF ANY CAUSE WHATSOEVER IN AND ABOUT THE ENTREPRENEUR CENTER OR ELSEWHERE, UNLESS SUCH INJURY OR DAMAGE IS CAUSED BY THE CITY'S GROSS NEGLIGENCE AS DETERMINED BY A FINAL NON-APPEALABLE JUDGMENT ISSUED BY A COURT OF COMPETENT JURISDICTION, WILLFUL MISCONDUCT, FRAUD, OR BREACH OF THIS AGREEMENT. ANY INDEMNIFICATION SHALL APPLY REGARDLESS OF WHETHER OR NOT SAID CLAIM, DAMAGE, LOSS, OR EXPENSE IS COVERED BY INSURANCE AS HEREIN PROVIDED. IN THE EVENT THAT A CLAIM IS

ASSERTED AGAINST EITHER PARTY OR BOTH, MANAGER SHALL PROVIDE CITY WITH A COPY OF SUCH CLAIM WITHIN A REASONABLE TIME FROM RECEIPT

B. **Notice.** Any notice required to be given under this Agreement or any statute, ordinance, or regulation, shall be effective when given in writing and deposited in the United States mail, certified mail, return receipt requested, or by hand-delivery, addressed to the respective parties as follows:

CITY

City Manager
City of Denton
215 E. McKinney
Denton, TX 76201
311 Market Street

DALLAS ENTREPRENEUR CENTER

Trey Bowles
President
311 Market Street
Dallas, Texas 75202

C. **Inurement.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of the City and MANAGER and their respective successors and assigns.

D. **Application of Laws.** All terms, conditions, and provisions of this Agreement are subject to the Charter of the City of Denton, all ordinances passed pursuant thereto, and all judicial determinations relative thereto. This Agreement shall be governed by the laws of the State of Texas and venue shall lie in Denton County, Texas.

E. **Exclusive Agreement.** This Agreement contains the entire understanding and constitutes the entire agreement between the parties hereto concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, express or implied, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. The terms and conditions of the Agreement shall prevail notwithstanding any variance in this Agreement from the terms and conditions of any other document relating this transaction or these transactions. This Agreement may not be modified, amended, surrendered or changed, except by a written instrument executed by both parties.

F. **Severability.** If any section, subsection, paragraph, sentence, clause, phrase, or word in this Agreement, or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement, and the parties hereby declare they would have enacted such remaining portions despite any such invalidity.

G. **No Representation.** In entering into this Agreement, the parties acknowledge that the City has made no representation to the Manager regarding Manager's potential earnings, the possibility of future success or any other similar matter respecting the Entrepreneur Center and the City's assistance hereunder, and that the City expressly makes no guarantee as to the success of its assistance as provided hereby.

H. **Non-Appropriation.** Other provisions of this agreement notwithstanding, the Parties hereby agree that all funds paid by the City pursuant to this Agreement shall be paid from current City funds and shall be dependent upon appropriation of same by the Denton City Council.

This Agreement is effective as of the ____ day of _____, 2017.

CITY OF DENTON, TEXAS

BY: _____
TODD HILEMAN
CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

By: _____

DALLAS ENTREPRENEUR CENTER
A Texas Nonprofit Company

By: _____

Its: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS }
COUNTY OF DENTON }

The forgoing Management Agreement was executed before me on the ____ day of _____, 2017 by Todd Hileman, City Manager of the City of Denton, Texas, a Texas municipal corporation, on behalf of said Municipal Corporation.

Notary Public
in and for the State of Texas

STATE OF TEXAS }
COUNTY OF DENTON }

The forgoing Management Agreement was executed before me on the _____ day of _____, 2017 by _____, of Dallas Entrepreneur Center, on behalf of said corporation.

Notary Public
in and for the State of Texas