

**Business Incubator Program Grant Administration
Memorandum of Understanding**

This Memorandum of Understanding regarding the administration of grants for the Retail Business Incubator Program (this “**Agreement**” or “**MOU**”) is made as of this 14th day of March 2023 (the “**Effective Date**”) by and between the following entities:

- A. Huerfano County, a political subdivision of the State of Colorado (the “**County**”)
- B. Huerfano County Economic Development Inc., a Colorado Non-Profit Corporation (“**HCED**”)

The above-listed parties may be referred to individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, The County and HCED have been awarded an Economic Development Administration (“EDA”) Grant for the establishment of a Retail Business Incubator; and

WHEREAS, The County has been awarded a Department of Local Affairs (“DOLA”) Rural Economic Development Initiative Grant to support the same Retail Business Incubator and an associated Makerspace; and

WHEREAS, the County serves as the fiscal agent for both grants and is responsible for financial management of the grants; and

WHEREAS, HCED serves as the programmatic partner and is responsible for developing and providing the services and programs included in said grants; and

WHEREAS, the Southern Colorado Economic Development District (“SCEDD”) is also a co-applicant and is responsible for compiling and preparing reports to the EDA; and

WHEREAS, the Parties must adhere to the terms and conditions of these grant awards in order to receive reimbursement from the agencies making those awards; and

WHEREAS, the Parties desire to formalize and reduce to writing the processes by which they will cooperate to ensure grant compliance and a successful project that benefits Huerfano County residents and business owners.

AGREEMENT

In consideration for the promises herein, the recitals, and other good and valuable consideration, the Parties agree as follows.

Section 1. Business Incubator Operation

- A. HCED will operate the Business Incubator for the term of EDA grant and actively seek ways to make the Business Incubator sustainable after the term of said grant.
- B. HCED recognizes that continued financial support for the Business Incubator after the term of this grant is subject to appropriation by the Board of County Commissioners and should not be relied upon.
- C. HCED agrees that the Business Incubator shall be operated in such a manner as to be a credit to the County, and shall be made available to all members of the public regardless of race, color,

gender, sexuality, creed, national origin, religious preference, or any other classification protected by state, local, or federal law.

Section 2. Procurement.

- A. HCED will be responsible for procurement of all goods and services valued below \$25,000 and will seek multiple quotes for all goods and services valued above \$5,000. HCED will provide the County with a statement explaining their process when reimbursement is sought.
- B. The County will be responsible for procurement of all goods and services valued at or above \$25,000. HCED will participate in the drafting of any RFP or RFQ and comprise no less than half of any committee to review responses to any RFP or RFQ.
- C. Services procured by the respective parties will be paid by that party.

Section 3. Staffing.

- A. Funding for salaries and benefits of staff to operate the Business Incubator is included with the EDA Grant and as fiscal agent, the County will reimburse HCED for the expenditure of those salaries and benefits allowed by the grant. The County and HCED have a contractual relationship and staff of HCED are not staff of the County.
- B. The County Economic Development Director provides administrative and programmatic support to HCED, but will not have oversight or any form of supervisory relationship to the staff hired by HCED.
- C. HCED may request the County's assistance in developing their own employment policies or personnel handbook, but may not adopt the County Handbook or utilize County Policies as a reference for employment with HCED.

Section 4. Financial Considerations.

- A. HCED will submit a monthly itemized invoice to the County for reimbursement. Items contained in the invoice must be categorized using the spending categories from the relevant grant. The invoice must be sent to the County Finance Officer and the County Administrator before the 15th of each month and will be paid in the County's next vendor run.
- B. The County will be responsible for coordinating reimbursement requests with SCEDD and filing them with EDA or DOLA.
- C. The County will contribute \$20,000 to HCED on or before April 1, 2023 to serve as working capital and to assist with other non-reimbursable costs related to the operation of the incubator as may from time to time arise.
- D. HCED will seek donations, grants, and other funding to support and sustain the incubator.
- E. HCED may request, no later than August 31st of 2023 and 2024, additional funds from the County to support the incubator and cover non-reimbursable costs or replenish working capital. Requests should be submitted to the County Administrator and the County Finance Officer and will be considered as part of the County's annual budget process.

Section 5. Oversight.

- A. The County, through the Administrator or his designee, will review and monitor the operations and performance of HCED under this agreement and the grant agreements, including but not limited to review of financial records and programmatic documents.
- B. The parties agree to comply with the oversight and compliance guidance from SCEDD.

Section 6. Term and Termination.

- A. Term. This Agreement shall be in full force and effect from the Effective Date, subject to any amendments, until the end of the Day on December 31, 2025.
- B. Extension. Should the EDA grant be extended for any reason this Agreement will also be extended with the agreement of both Parties.

Section 7. General Provisions.

- A. Amendments. Any amendment or addition to this Agreement must be in writing, approved and signed by both Parties to this Agreement.
- B. Further Assurances. Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.
- C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- D. Venue. Venue to any action arising from this Agreement shall lie in the state courts in Huerfano County, Colorado. Each Party submits to the jurisdiction and venue of this court and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue and any right it may have to remove an action to federal court.
- E. Waiver of Right to Jury Trial. Each party waives any right it has or may have to a jury trial in any action, suit, or proceeding arising out of or in connection with this Agreement.
- F. Independent Contractors. The Parties are independent contractors in all matters concerning this Agreement. Nothing in this Agreement creates a joint venture, partnership, or employment relationship between the Parties. No Party will be liable for the debts, liabilities, or obligations of the other Parties. No Party is acting as the agent or partner of the other Parties or any of them and no Party will hold itself out as such. No Party has the authority to bind the other Parties or any of them.
- G. Force Majeure. No Party will be considered in default under this Agreement to the extent that such performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disaster, pandemic or other state or county declared health emergency, riot, war, terrorism, labor disputes, or civil strife.
- H. Entire Agreement. This Agreement states the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements.
- I. Waiver. The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement will not be construed as waiving such provision or any other provision of this Agreement.
- J. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not invalidate the remaining provisions of this Agreement.
- K. Counterparts. This Agreement may be executed and delivered in counterparts (including by means of electronic signature), all of which taken together will constitute one and the same agreement.

The Parties are executing this Agreement to signify their acceptance of all the terms and conditions stated above, to be effective as of the Effective Date, regardless of the date of actual signature.

Huerfano County, Acting by and through its Board of County Commissioners

By: _____

Date Signed: _____

Name: John Galusha

Title: Chairman, Board of County Commissioners

Attest:

By: _____
County Clerk and Recorder

Date Signed: _____

Huerfano County Economic Development Inc.

By: _____

Date Signed: _____

Name: Lola Spradley

Title: President

Attest:

By: _____
Secretary

Date Signed: _____