

**AGREEMENT FOR LEASE OF
CITY OF RIO COMMUNITIES' PROPERTY**

LEASE AGREEMENT (“Lease”) between the Valencia County Business Incubator (“User” or “VCIB”), as lessee, and the City of Rio Communities, a New Mexico municipal corporation (“City”), as lessor.

WHEREAS, User is a 501(c)(3) organization which provides a support system of mentorship, consulting, training, and finding lending sources to help clients successfully strengthen and grow their new/existing businesses through sustainable sales, financial knowledge, and job creation through the creation of a business incubator; and

WHEREAS, VCIB provides a valuable service to the residents of the City of Rio Communities; and

WHEREAS, the VCIB, requires the use of a facility from which it can provide a home to potential entrepreneurs within the City of Rio Communities; and

WHEREAS, the City of Rio Communities owns certain real property and a building located at **360 Rio Communities Blvd., New Mexico, 87002** (“Subject Property”) which it desires to lease use of the front entryway on the northwest corner of the Subject Property along with the reception office immediately behind this entrance, the restrooms in the hallway immediately east of the library, and the office in the far northwest corner of the Subject Property (the portion of the Subject Property leased to VCIB shall hereafter be referred to as the “Premises”) for the purpose of providing a business incubator within the City of Rio Communities under the terms and provisions of this Agreement.

WHEREAS, Upon request by VCIB and approval by the City Manager, the City may provide partial use of the cupboards in the hallway immediately between the Premises and the municipal courtroom and may allow VCIB the opportunity to schedule use of available conference room space for meetings to attract incubator businesses into the City; and

WHEREAS, VCIB, desires to utilize the City of Rio Communities’ property and building under the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by and between the parties that:

1. Lease of Premises.

A. The City hereby leases to VCIB the Premise for the uses and purposes and subject to the terms, conditions, and limitations set forth in this Agreement.

B. The leasehold interest granted by this Agreement shall be subject and subordinate to the right of the City and other owners of public utilities to operate, maintain, repair, modify, realign, replace, and reconstruct, all public utilities in, under, across and upon the Premises and to all easements, licenses and restrictions now or hereafter granted by the City to third parties in the Premises.

2. Term. The term of the Agreement shall be for one (1) calendar year, commencing on the date of the final signature located below (“Effective Date”) and ending on June 30, 2023. The term may be extended for additional one (1) year terms upon written approval by the Governing Body and is subject to modifications of this original lease.

3. Rent. As rent for the use of the Premises, VCIB shall pay to the City the sum of One Dollar (\$1.00) for the initial one (1) calendar year period. As additional rent, the City will receive a service in the form of a business incubator for entrepreneurs within the City of Rio Communities. The parties hereto agree that the value of this service exceeds the value of the leased Premises. Both parties acknowledge this is adequately consideration. Both parties further acknowledge that the consideration received is for the provision of care and maintenance for indigent persons, and that no constitutional or statutory requirements prohibit the City from making such provisions.

4. Use of the Premises.

A. The City hereby grants to the User the right to use and occupy the Premises for the lease term solely for the purpose of creating a business incubator within the City of Rio Communities.

B. In addition to the use of the Premises, the City hereby grants to the User the right to use and access the following portions of the Subject Property:

1. Access to the Receptionist Area;
2. Access to the Bathrooms; and
3. Access to the parking Lot.

C. The Premises and Subject Property shall not be used by VCIB for any other purpose without prior written consent of the City. This includes any temporary or other uses, regardless of whether such use is collateral to the intended purpose, provided such purposes are not specifically required or necessary in order to carry out the stated purpose of creating a business incubator within the City of Rio Communities.

D. The User shall maintain the Premises, Subject Property, and all improvements located thereon in a safe and sanitary condition.

E. The User shall observe all governing laws, including any ordinances enacted by the City, or which the City enacts during the term of this Agreement. This includes, but is not limited to, the restriction on the use of tobacco products in or near all property owned by the City, which the User acknowledges is applicable to the Premises.

F. Under no circumstances shall the Premises be used as a residence, dwelling, or for any type of lodging, regardless of duration of such use.

G. The User will not use or permit the Premises to be used for any purposes prohibited by law. The User shall not suffer or permit any nuisance or health hazard in or upon the Premises, nor do or permit anything to be done to cause the cancellation of any insurance policy required under this Agreement, nor shall the User sell, or permit to be kept, used, or sold in or about the Premises any article which may be prohibited by the standard form of fire insurance policies. The User shall comply with

reasonable requirements, pertaining to the Premises and imposed by an insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance.

5. Alterations/Improvements. User will not make any alterations, modifications, and/or improvements to the Premises without the prior written approval of the Mayor of Rio Communities (“Mayor”). If permitted by the Mayor, all construction, whether new or renovation work, shall be done in a professional manner and meet all building requirements and codes as determined by the appropriate official/department of any governmental unit having jurisdiction, as well as any standards required by the City. Any improvements shall become affixed to the property and shall be owned by the City.

6. Maintenance. In addition to the requirements in Paragraph 4 of this Agreement, User shall, at Users sole cost and expense, maintain and replace when necessary, all minor plumbing, wiring, glass, heating, lighting and lighting fixtures located on, in or attached to any portion of the Premises. The City agrees to provide maintenance for major repairs, exceeding a total cost of \$200.00, to the Premises on a reasonably timely basis. If User undertakes the maintenance of major repairs, with the City’s prior written permission, the User will be reimbursed by the City for the reasonable cost of said repairs.

7. Liability, Hold Harmless, Defense and Indemnification. The City and User acknowledge that each will be solely responsible for claims or damages arising from personal injury or damage to persons or property to the extent such injury or damage is caused by the negligence of such party’s employees or agents. The City will not be liable to the User or to the User’s employees, agents, contractors, or invitees or to any other person whomsoever, for any injury to persons or damage to property on or about the Premises caused by the negligence or misconduct of the User, its employees, customers, contractors and invitees or of any other person entering the Premises under the express or implied invitation of the User or arising out of the use of the Premises by the User and the conduct of their business therein or arising out of any breach or default by the User in the performance of its obligations hereunder. The User agrees to defend, indemnify and hold harmless the City and its elected officials, officers and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including but not limited to consultants’ fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against the City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of the User, its agents, contractors, and employees arising out of the use and operation of the Premises by the User’s performance, purported performance, or non-performance of this Agreement.

8. Insurance Requirements

A. General Requirements.

i. The User will procure and maintain in full force and effect such insurance as is required by this Paragraph. Policies of insurance will be written by companies authorized to write such insurance in New Mexico, and policies of insurance will be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico.

ii. The User shall not violate the terms or prohibitions of insurance policies required to be furnished by the User. The User shall promptly notify the City of any claim or loss exceeding the

amount of the deductible under the insurance policies and certify that proper notice has been given the appropriate insurance carrier.

iii. The User shall furnish certificates of insurance to the City and shall deliver the certificates to the Municipal Clerk, 360 Rio Communities Blvd., Rio Communities, New Mexico, 87002.

iv. All insurance certificates will provide that thirty (30) days written notice be given to the City before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate of policy which states that failure to give City notice imposes no liability or obligation on the insurer is not in compliance with this Paragraph. For instance, certificates or policies stating that the insurance company will endeavor to notify and that failure to give such notice imposes no obligation on the insurance company are unacceptable to the City. The insurance policies will not be written on a claims made form.

B. Approval of Insurance. The User shall not begin any activities on the Premises pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the City Administrator. Neither approval nor failure by the City to disapprove insurance or certificates of insurance will relieve the User of full responsibility to maintain the required insurance in full force and effect.

C. Liability Insurance. The User will obtain the following insurance policies prior to the commencement of any activities on the Premises:

i. Commercial General Liability. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows (requirements are shown as listed on a standard form certificate of insurance):

| | |
|-------------|---|
| \$1,000,000 | Per Occurrence |
| \$1,000,000 | Policy Aggregate |
| \$1,000,000 | Products Liability/Completed Operations |
| \$1,000,000 | Personal and Advertising Injury |
| \$ 50,000 | Fire Legal |
| \$ 5,000 | Medical Payments |

The policy of insurance must include coverage for all activities performed by the User on the Premises, and contractual liability coverage will specifically insure the hold harmless provisions of this Agreement. THE CITY SHALL BE NAMED AN ADDITIONAL INSURED and the coverage afforded will be primary with respect to activities provided. Showing the City as a certificate holder is not the same as naming the City as an additional insured and is not an acceptable substitute. If equivalent coverage's are provided and the form is approved by the City, the User may provide a general liability policy in a form different from that described above.

ii. Workers' Compensation Insurance. The User will comply with the applicable provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The User covenants and agrees that the City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by its failure

to comply with the provisions of this Paragraph and that the indemnification provision of this Lease will apply to this Paragraph. It is expressly agreed that the employees of the User are not City employees for any purpose.

iii. Increased Limits. During the term of this Agreement, the City may require User to increase the maximum limits of any insurance required herein.

9. Inspection. The City reserves the right to enter the Premises for the purpose of inspection, maintenance, or for other reasonable grounds. The City will attempt, where reasonably feasible, to advise User at least twenty-four (24) hours prior to entry.

10. Termination. Either party, with or without cause may terminate the Agreement by providing written notice to the other party at least thirty (30) calendar days prior to the effective date of termination. Termination shall be by written notice that shall be delivered or mailed (certified mail, return receipt) to the other party. If notice by mail, notice (i.e., the effective date of termination) will be deemed to be effective three (3) days from the date of the postmark. If notice is hand delivered, termination is effective as of the time of delivery to User.

11. Judicial Enforcement. This Contract is governed by and construed and enforced in accordance with the laws of the State of New Mexico. Any legal proceeding, arising out of this Agreement shall be brought before the Thirteenth Judicial District Court, Valencia County, New Mexico.

12. Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

13. Amendment. The City and the User may, from time to time, agree to changes in this Agreement which will be incorporated into written amendments to this Agreement. No oral agreements will be binding unless reduced to written form and approved by authorized agents for the respective parties.

14. Discrimination. The User will not illegally discriminate against any person.

15. Attorney's Fees. Should either party to this Agreement be obligated to seek enforcement of the terms of this contract through a court of law, the breaching party as determined by any judge, mediator, arbitrator, or special master shall be responsible for all reasonable attorney's fees and costs incurred by the non-breaching party as a result of the breach of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

SIGNATURES ON FOLLOWING PAGE

VALENCIA COUNTY BUSINESS INCUBATOR

By: _____
Ben Romero

Date: _____, 2022

CITY OF RIO COMMUNITIES

By: _____
Joshua Ramsell, Mayor Pro Tem

Date: _____, 2022

Martin Moore, City Manager

Date: _____, 2022

ATTEST:

Elizabeth F. Adair, Municipal Clerk