

**CITY OF YUCAIPA
AGENDA REPORT**

TO: Honorable Mayor and City Council

FROM: Benjamin Matlock, Planning Manager/City Planner *BM*

FOR: City Council Meeting of February 10, 2020

SUBJECT: Amended Yucaipa Business Center Incubator Lease Agreement

RECOMMENDATION:

That the City Council:

1. Review and approve an updated version of the Yucaipa Business Incubator Center Lease Agreement, including Exhibits; and,
2. Authorize the City Manager to execute the amended Yucaipa Business Incubator Center Lease Agreement, including Exhibits.

BACKGROUND:

At their regular meeting of December 14, 2015, the City Council approved the Yucaipa Business Incubator Center (YBIC) Lease Agreement and Program Contract to be used between the City and the individual business participants, and had also authorized the City Manager to execute each Yucaipa Business Incubator Lease Agreement and Program Contract. At that meeting, the Council also approved the YBIC Selection Committee, which is responsible for discussing Incubator issues, reviewing applications for the YBIC, and approving time extension requests for tenants at the YBIC. Under the currently-approved lease terms, an Incubator tenant lease agreement will expire after three years from the initial lease start date, but the YBIC Selection Committee can approve a single additional time extension for a maximum of twelve (12) months. Since the YBIC has been in operation, The YBIC Selection Committee has received several requests from YBIC tenants for additional time extension requests.

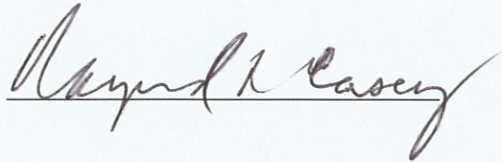
DISCUSSION:

At their December 18, 2019 meeting, the YBIC Selection Committee voted to recommend to the City Council that the standard lease agreement be amended to provide the authority to approve additional lease term extensions. Based upon the evaluations for start-up business ventures, the 3-5 year range can be a vital time for the business growth period to determine if a start-up will be successful, and the additional time in the YBIC may help support that success. The update Lease Agreement would give the Committee the authorization to extend the lease terms at the Committee's discretion based on tenant performance and/or if the Participant needs additional time to achieve the goals in their business plan necessary to sustain the business outside the incubator, for a total of up to a 6 year lease. In addition, an escalator clause has been added to the Agreement to raise the rental rate by the Consumer Price Index (CPI) (for the Riverside-San Bernardino-Ontario area) annually for those who remain in the YBIC for those subsequent years.

It should be noted that as part of the update to the Lease Agreement, exhibit references were also corrected. In addition, since the initial implementation of the YBIC in 2015, no adjustments to the market rates for the lease spaces have been made. Staff will review the current rental rates, and will be providing an updated rental rate for YBIC spaces for the YBIC Committee to review and make a recommendation for future City Council action.

Attachments: Amended Lease Agreement in Track Changes.
Clean Version of Amended Lease Agreement

Approved by:

A handwritten signature in black ink, appearing to read "Raymond Casey", written over a horizontal line.

**YUCAIPA BUSINESS INCUBATOR CENTER
LEASE AGREEMENT**

THIS YUCAIPA BUSINESS INCUBATOR CENTER LEASE AGREEMENT (this "Agreement") is dated as of _____ and is entered into by and between the CITY of YUCAIPA ("City") and _____ ("Participant").

RECITALS:

WHEREAS, Participant has executed a Yucaipa Business Incubator Center Program contract with the City of Yucaipa, and in connection therewith desires to lease certain office space in the building located at 34282 Yucaipa Boulevard in Yucaipa, California ("Building") upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, City and Participant hereby agree as follows:

1. PREMISES

1.1 Premises. The City hereby leases to Participant the premises described on Exhibit "A" ("the Premises"), together with the non-exclusive right to use and enjoy all associated parking areas, driveways, sidewalks, common areas and other appurtenances generally available to the CITY and all other tenants and occupants of the Building.

1.2 Common Area Usage. Participant will have limited use of the common areas within the Premises that are described on Exhibit "B" because those shall remain generally available to the other tenants of the Building. ~~in accordance with the City's Policy and Procedure Manual attached hereto as Exhibit "C" as amended from time to time during the term of this Agreement (and the City shall give Participant copies of all amendments).~~

2. TERM

2.1 The term of this Agreement will commence on _____ and will expire on _____. See Section 9 of Exhibit "D" for lease extensions.

3. DEPOSIT AND RENT

3.1 Security Deposit. Participant will pay to the City a security deposit of One Hundred and No/100 Dollars (\$100.00) upon the City's execution and delivery of this Agreement. The City shall not be obligated to pay interest on the security deposit, and may (but shall not be obligated) to use the security deposit to compensate the City for any damages resulting from any default by Participant, or for cleaning the Premises after the expiration or earlier termination of this Agreement. Use of the security deposit to cure a default of Participant shall not be deemed a waiver of such default.

3.2 Rent. Participant is required to pay the City rent in the amount of \$ Of NO DOLLARS (\$0.00) per month during the first six months of the Term, the sum of ~~one hundred~~

~~forty eight and fifty cents~~ _____ (~~\$142.50~~ _____) per month during the subsequent twelve (12) months of the Term, and ~~one hundred eighty five dollars and sixty two cents~~ _____ (~~\$178.12~~ _____) per month during the subsequent twelve (12) months of the Term, and ~~two hundred and forty seven dollars and fifty cents~~ _____ (~~\$237.50~~ _____) per month during the subsequent six (6) months of the Term, with subsequent years adjusted annually by the Consumer Price Index (CPI) (for the Riverside-San Bernardino area), in advance, on the first business day of each calendar month, without demand, affect or deduction, to the City at 34272 Yucaipa Boulevard, Yucaipa, CA 92399; however, the first monthly rental payment will be prorated if the term begins or ends during the month. If any rental payment is not paid by the fifth (5th) business day of the month, a late charge of five percent (5%) of the amount of the monthly rental payment shall be paid by Participant. Participant will also be charged an amount equal to any service charge that the City's financial institution imposes upon the City due to a returned check for insufficient funds from Participant and such charge will be due and payable immediately upon request by the City.

3.3 Additional Terms. Participant also agrees to the terms set forth in the Yucaipa Business Incubator Center Program Contract on Exhibit "DC" attached hereto.

4. **POLICY AND PROCEDURES**

In addition to the terms hereof, Participant hereby agrees to comply with and abide by all reasonable and necessary policies, procedures, rules, and request for information, including management data that the City may establish from time to time for all incubator Participants as they reasonably relate to the Premises and Participant's use thereof.

5. **UTILITIES AND OTHER SERVICES**

5.1 Utilities. The City will provide to Participant heating and air conditioning, electricity, and water/sewer, based on a per square footage rate or to the extent deemed necessary and reasonable by the City based on Participant's actual usage. Participant will be responsible for all other utilities furnished or ordered for the Premises. Participant will obtain the City's prior written approval of all providers and the installation of such services. Notwithstanding the City's responsibilities for providing certain utilities pursuant to this Section 5, the City will be under no obligation to furnish any additional utilities to the Premises and will not be liable for any additional utilities to the Premises and will not be liable for any interruption or failure in the supply of any utilities to the Premises.

5.2 Telephone/Internet Service. One (1) basic telephone line and wireless internet connectivity will be provided by a vendor chosen by the City.

5.3 Other Services. The CITY will review Participant's business operations and its strategic and financial development plans pursuant to the Yucaipa Business Incubator Center Program Contract. Participant will provide to the City copies of Participant's financial statements upon request.

6. USE AND MAINTENANCE

6.1 Participant will use the Premises for office purposes in the ordinary course of its business and for no other purposes without the prior written consent of the City. Participant agrees not to use or permit the use of the Premises in any manner which creates a nuisance to the City or any other Participant or occupant of the Building.

6.2 Compliance with Law. Participant covenants at all times during the Term to comply with all laws, ordinances and regulations of any public authority relating to Participant's use of the Premises.

6.3 Repair and Maintenance. Participant covenants at all times during the Term to keep the Premises in as good order and condition as existing on the Commencement Date, reasonable wear and tear excepted. Participant agrees to make all repairs and replacements and to do all other work necessary for the foregoing purposes whether the same may be ordinary or extraordinary, foreseen or unforeseen. In the event Participant fails to make necessary repairs for which it is responsible, the City will have the right to enter the Premises at any time and make such repairs at the expense of Lessee and Participant shall reimburse the City for such expense incurred, as additional rent, within five (5) days after written demand by the City.

7. CONDITIONS OF PREMISES, PERSONAL PROPERTY IMPROVEMENTS

7.1 Conditions; Alterations and Changes in Premises. Participant accepts the Premises in then current "as is" condition, without representation or warranty, express or implied. Lessee may not make any alterations or changes to the Premises without the City's prior written consent in its sole and absolute discretion. Any alterations or changes in the Premises will be made in accordance with all applicable laws, ordinances and regulations. If the City, in its sole discretion, directs Participant to remove any alterations made by Participant upon the expiration or earlier termination of the Term, Participant will at its own expense and cost promptly remove such alterations and repair any damage to the Premises caused by such removal.

7.2 Personal Property at Lessee's Risk. The City will not be liable for damage to any property located on the Premises, nor will the City be liable to Participant or any other person for any injuries sustained by participant or any of its employees, customers, invitees, licensees, guests or persons on the Premises or in the Building.

8. RIGHT OF ENTRY

8.1 The City's Participant will have the right or any business day upon reasonable prior notice to enter the Premises, and Participant will permit the City to enter the Premises and all parts thereof to inspect the Premises, to make such repairs, decorations, additions, or alterations or, within the sixty (60) days prior to expiration hereof, to show the Premises to any prospective tenants.

9. TAXES/INSURANCE

9.1 Possessory Interest Taxes. Participant will pay all taxes, ordinary and extraordinary, general and specific (except for ad valorem taxes on real estate), which may be levied or assessed on Participant's interest under this Agreement, including possessory interest tax.

9.2 Insurance. During the Term at the times, Participant, at its sole cost, will maintain comprehensive general liability insurance for personal injury and property damage coverage of at least \$1,000,000.00 and rental value or similar coverage in sufficient amounts to cover all of Lessee's personal property located on Premises, including all removable trade fixtures and all improvements to the Premises which have been made by Participant or at Participant's request or expense (including those improvements to be made in accordance with Section 7.1 hereof). The City will be an additional insured for liability insurance. Lessee will obtain the agreement of its insurer to notify the City that any such policy required hereunder is to terminate or expire at least ten (10) days prior to such expiration or termination. Participant will deliver to the City an insurance certificate showing it has obtained the insurance required hereunder, on or before the Commencement Date.

10. DESTRUCTION

If, during the Term, the Premises are destroyed or materially damaged by fire, the elements, or other casualty, the City will have the option of either repairing the Premises with this Agreement to continue in full force or to terminate this Agreement immediately.

11. INDEMNIFICATION

Participant will indemnify and hold the City harmless from and against any and all claims, liabilities, damages, losses, costs and expenses asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Premises arising out of the use or occupancy of the Premises by Participant or by any person claiming by, through or under Participant (including, without limitation, all patrons, employees, invitees, licensees or customers of Participant), or arising out of any delivery to or service supplied to the Premises, or on account of or based upon anything whatsoever done on the Premises, except if the same was caused by the gross negligence or willful misconduct of the City. In case of any action or proceeding brought against the City, Participant, upon notice from the City and at Participant's expense, will resist or defend such action or proceeding and employ counsel therefore reasonably satisfactory to the City.

12. DEFAULT BY PARTICIPANT

12.1 Default. The occurrence of any one or more of the following events will constitute a default by Participant (a "Default") under this Agreement:

(a) The failure of Participant in the due performance or observance of any term, covenant, obligation or agreement on Participant's part to be performed or observed pursuant to any of the provisions of the Yucaipa Business Incubator Center Program Contract on Exhibit "D" or this Agreement (other than those referred to in clause (b) of this Section 12.1, and such failure to continue for a period of thirty (30) days after written notice thereof from the City to Participant; or

(b) Participant's suspension or discontinuation of its business inability to pay or admission in writing of its inability to pay its debts as they mature, filing of a petition in bankruptcy, insolvency (howsoever such insolvency may be evidenced), or adjudication as insolvent or bankrupt.

Upon the occurrence of any Default by Participant, the City may, in addition to any of its other rights or remedies, terminate this Agreement by written notice to Participant. Upon any such termination (and upon the expiration of this Agreement), Participant shall immediately vacate the premises and cause all occupants to vacate, and shall immediately remove all personal property, and any personal property not removed within five (5) business days may be disposed of in any manner without liability to Participant. Participant may store Participant's effects at the expense and risk of Participant.

12.2 Remedies. Upon a Default, if the City elects to terminate this Agreement, the City shall have the rights to damages under California Civil Code Section 1951.2, but if the City does not terminate this Agreement, the City shall have the rights and remedies under California Civil Code Section 1951.4 and Participant shall have the right to assign this Agreement or sublet the Premises with the City's reasonable consent.

12.3 Remedies Cumulative. Any and all rights and remedies which the City may have under this Agreement, and at law and equity, will be cumulative and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.

12.4 No Waiver, Etc. The failure of the parties hereto to seek redress for violation of any covenant or condition of this Agreement will not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

13. NO ASSIGNMENT OF LESSEE'S INTERESTS

13.1 Participant will not assign, convey, encumber or mortgage its interest in this Agreement, nor sublet the Premises, or any part thereof, or in any manner transfer its leasehold estate or its rights under this Agreement, without the prior written consent of the City, which consent will be given in the City's sole and absolute discretion.

14. SURRENDER OF PREMISES

Upon the expiration or earlier termination of this Agreement, Participant shall surrender the Premises in good condition, reasonable wear and tear and damage by fire or other casualty excepted, and with all personal property removed (as provided in Section 12.1(b) above).

15. NOTICES

15.1 All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be delivered by hand or sent by certified mail or reputable overnight courier service and will be deemed given when so delivered by hand or, if mailed or sent by overnight messenger, (one business day after mailing or delivery to the overnight messenger service), addressed as follows:

<u>If to the City:</u>	<u>If to Participant:</u>
City of Yucaipa	Name:
Attn: City Manager	Address:
34272 Yucaipa Boulevard	
Yucaipa, CA 92399	

or to such other address as the party to whom notice is to be given may have furnished to the other parties in writing in accordance herewith.

16. MISCELLANEOUS

16.1 Governing Law. All of the terms hereof will be construed according to the laws of the State of California.

16.2 No Broker. Each party represents and warrants to the other party that it has not engaged any broker in connection with this Agreement.

16.3 Entire Agreement. This Agreement and exhibits contain the entire agreement between the parties, all previous or contemporaneous agreements being merged herein and waived hereby.

16.4 Amendments; Waivers. No modifications hereof or assent or consent of either party to any waiver or any part of this Agreement will be deemed given or made unless it is done in writing duly signed by the party alleged to have waived.

16.5 Landlord/Tenant Relationship. This Agreement will not be deemed to create any relationship between the parties other than that of a landlord and tenant.

16.6 Attorneys' Fees. In the event either party files any action to enforce the terms of this Agreement, the prevailing party will be entitled, in addition to such damages or other relief as may be granted, to recover reasonable attorney's fees and costs, such attorney's fees to include those incurred on any appeal.

16.7 Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

16.8 Automatic Termination. This Agreement shall automatically terminate upon the termination of that certain Yucaipa Business Incubator Center Program Contract between the City of Yucaipa and Participant.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first above written.

CITY:

By: _____
City Manager

PARTICIPANT:

By: _____

Print Name: _____

Title: _____

EXHIBIT "A"
Description of Premises

(See attached diagram.)

Sample Wording: Suite 108 (190 square feet) on the Lower Level of the building located at 34282 Yucaipa Boulevard.

EXHIBIT "B"
Description of Common Areas Within Premises That May be Used by Others

Conference Rooms

Restrooms

Reception Area

Breakroom

EXHIBIT "C"

CITY's Policy and Procedure Manual Additional Obligations

Keep the breakroom clean and free of trash and debris

Be responsive to Receptionist when notice is posted to remove spoiled food from the refrigerator

Tenant is responsible for the security of their personal belongings

Tenant to ensure doors are locked to the building if tenant is the last person to leave

Please note that the copier machines are for the use of all tenants, free of charge. However, it is the tenant's responsibility to provide the paper.

Exhibit "D"

Yucaipa Business Incubator Center Program Contract~~Additional Obligations~~

This agreement between _____ (hereafter referred to as "Participant") and City of Yucaipa, California (hereafter referred to as the "City") is dated _____ and is entered into for the purpose of admitting the Participant into the Yucaipa Business Incubator Center Program ("Program") and securing the benefits of such admittance for the Participant. The Participant is being offered this admittance to the Incubator Program after being selected by the Small Business Incubator Selection Committee based on the Program selection criteria shown in Appendix "A" to this agreement.

1. **Term of Contract:** This agreement commences on _____ and shall expire on _____ or the termination of that certain Yucaipa Business Incubator Center Lease Agreement between Participant and the City (the "Lease").

In consideration for being allowed to participate in the Program, Participant unconditionally agrees that City shall not be liable for any advice or the depth, extent, quality and/or quantity of services provided under the Incubator Program. Participant unconditionally agrees further that services provided under the Program are merely advisory in nature, without any binding effect on Participant. Participant is free to accept and/or reject such advice offered, shall exercise due diligence and caution in receiving such advice, and will exercise informed and independent judgment in accepting and/or rejecting any such advice.

2. **Indemnification:** In accepting admittance to the Yucaipa Business Incubator Center Program, the Participant understands and agrees to all provisions and stipulations of the Program as set forth in this document and all its appendices. The Participant agrees to duly and faithfully adhere to these said provisions while participating in the Program in order to receive the benefits of the Program. Failure to do so will result in removal from the Program and the requiring of full or partial reimbursement to the City for any grants or special expenditures.
3. **Business Performance:** All Participants are expected to be working on growing and improving their business by actively using the Incubator Center and participating in its Programs. Participants are expected to:
 - a. Attend monthly meetings (at least nine per year) with peers to discuss goals, challenges and accomplishments,
 - b. Attend 4 workshops per year that increase business skills,
 - c. Set 3-6 strategic goals each year and review and rate performance relative to goals each year,

- d. Submit a business plan within three months of entering the Program and keep it current,
 - e. Create annual budget projections by month and track and report budget vs. actuals monthly,
 - f. Submit a Profit and Loss Statement and Balance Sheet at least once annually,
 - g. Present a business overview and status report annually to the Board of Directors.
 - h. Comply with the Lease.
4. **Graduation:** The normal incubator period will be for three (3) years from the opening of the Participant for business. At the end of this period the Participant will be expected to “graduate” from the Incubator Center and move out on his or her own into an unsubsidized facility for their business.
5. **Post-Graduation:** Participants are expected to provide business financials and performance data for a minimum of three years following their graduation which includes but is not limited to the post-incubator monitoring information of income, expense, taxes paid, household income, funding resources, number of employees, salaries & wages, owners draw and satisfaction scores.
6. **Rent:** The City will provide an adjusted rent schedule to the Participant for the incubator period. The schedule will be as follows:
- a. First six (6) months will be rent-free.
 - b. Next succeeding twelve (12) months will be at 60% of the market rate as determined by the City based on past rental experience with the building and surveys of local realtors involved in leasing.
 - c. Next succeeding twelve (12) month’s rent will be at 75% of the above determined rental rate.
 - d. Next succeeding six (6) months will be at the market rate
 - e. Approved extension of time will be at the market rate adjusted annually with the Consumer Price Index (CPI) for the Riverside-San Bernardino area.
7. **Lease Agreement:** On or before _____, the Participant will enter into a lease agreement with the City with a term of three (3) years.
8. **Business Plan:** The Participant has furnished to the City as part of the application process such financial and business plan information, both in corporate capacity, if applicable, and individually, as was required by the City for determination of

eligibility for participation in the Yucaipa Business Incubator Center Program. The Participant, having been determined eligible for participation in this Program based on the good faith accuracy of these declarations hereby represents and warrants that all the information contained therein is complete, true, and correct. Participant understands that City is relying upon the accuracy of the information and good faith estimates contained therein. Should there be found to exist any inaccuracy or lack of good faith in estimates furnished for preparation business plans or in the application, which adversely affects Participant's financial standing, or should Participant's financial circumstances materially change, the City may elect to terminate this agreement and the Lease.

9. **Extension of Time:** ~~Upon approval of the Incubator Selection Committee, at its discretion, the three-year incubator time period may be extended by one (1) year up to three (3) times based on the Participant's performance, the Participant's need for additional time to achieve the goals in their business plan necessary to sustain the business outside the incubator, or a combination thereof. If the Committee determines that the additional time will not enhance the ability of the Participant's business to operate independent of the Incubator Program, the request will not be granted. In no event shall the term of any lease, inclusive of all extensions, exceed six (6) years. Upon approval of the Incubator Selection Committee, the three-year incubator time period may be extended, one time only, for a maximum of twelve (12) months on the request of the Participant if the lease is concurrently so extended that the Participant needs additional time to achieve the goals in their business plan necessary to sustain the business outside the incubator. If the Committee determines that the additional time will not enhance the ability of the Participant's business to operate independent of the Incubator Program, the request will not be granted.~~
10. **Monitoring:** Participants are expected to provide baseline incubator monitoring information upon entering the Program as well as annual business performance reports which includes but is not limited to income, expenses, taxes paid (and proof of tax filing), household income, funding resources, number of employees, salaries & wages, owners draw, and satisfaction scores. Information and data will be submitted in a timely manner in the form reasonably required. Should the Yucaipa Business Incubator Center Program be required to require or provide additional criteria or data to meet performance obligation for funding or for other purposes, this agreement is subject to change to reflect those requirements.
11. **Chamber of Commerce.** Since the City feels that it is important for new business owners to associate with and receive mentoring from successful business owners and managers, the Participant is required to be a member of the Yucaipa Chamber of Commerce within 12 months from the date of this contract. As such, the Participant will seek to avail themselves of and participate in seminars, information meetings and such activities sponsored by these organizations related to improving their business marketing and management skills. Furthermore, the City has available various local business leaders and operators who have volunteered to provide mentoring to Incubator Participants on their own request. If the City determines that

a Participant is in need of selective mentoring services, the Participant is expected to cooperate with the effort and work with the assigned mentor.

12. **Training.** Participant may be required to attend, from time to time, various training classes or seminars determined by the City and recommended by the Incubator Selection Committee as being advantageous to the Participant in improving their business skills.

13. **Termination.** If business performance measures are not achieved or it is determined that a Participant's continued participation at the Yucaipa Business Incubator Center Program is no longer of benefit to their business or meeting the goals of the Incubator Program, the Yucaipa Business Incubator Center at any time can terminate this Agreement upon 30 days' prior written notice. Likewise, if an individual is disruptive to other occupants or in any way problematic with regard to smooth operations of the Center, the Yucaipa Business Incubator Center Program reserves the right to terminate the contract with 30 days' notice or immediately if the disruption is deemed unacceptable.

14. **Complaints.** Complaints and issues concerning the provisions of this agreement, not otherwise covered under the provisions of the lease, the grant agreement, or related laws and regulations prescribing complaint procedures for matters relevant to this endeavor, shall be submitted to the City Manager for resolution. The City Manager will investigate the fact and circumstances of the matter and advise the complainant of the decision in a timely manner. Said decision will be considered the final position of the City on this matter.

PARTICIPANT:

NAME:

By: _____

Print Name: _____

Title: _____

CITY:

CITY OF YUCAIPA

By: _____

Raymond A. Casey, City Manager

APPENDIX “A”

SELECTION CRITERIA

1. Yucaipa-based business and /or Yucaipa resident business owner
2. Business growth to include additional employees
3. Eligible business types/activities include but not limited to:
 - a. Professional services
 - b. Contracting (construction services)
 - c. Sales
 - d. Product Development
4. Ineligible business types/activities include but not limited to:
 - a. On site retails sales (merchandise and food)

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of the Term, and _____ (_____) per month during the subsequent six (6) months of the Term, with subsequent years adjusted annually by the Consumer Price Index (CPI) (for the Riverside-San Bernardino area), in advance, on the first business day of each calendar month, without demand, affect or deduction, to the City at 34272 Yucaipa Boulevard, Yucaipa, CA 92399; however, the first monthly rental payment will be prorated if the term begins or ends during the month. If any rental payment is not paid by the fifth (5th) business day of the month, a late charge of five percent (5%) of the amount of the monthly rental payment shall be paid by Participant. Participant will also be charged an amount equal to any service charge that the City's financial institution imposes upon the City due to a returned check for insufficient funds from Participant and such charge will be due and payable immediately upon request by the City.

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6.1 Participant will use the Premises for office purposes in the ordinary course of its business and for no other purposes without the prior written consent of the City. Participant agrees

not to use or permit the use of the Premises in any manner which creates a nuisance to the City or any other Participant or occupant of the Building.

6.2 Compliance with Law. Participant covenants at all times during the Term to comply with all laws, ordinances and regulations of any public authority relating to Participant's use of the Premises.

6.3 Repair and Maintenance. Participant covenants at all times during the Term to keep the Premises in as good order and condition as existing on the Commencement Date, reasonable wear and tear excepted. Participant agrees to make all repairs and replacements and to do all other work necessary for the foregoing purposes whether the same may be ordinary or extraordinary, foreseen or unforeseen. In the event Participant fails to make necessary repairs for which it is responsible, the City will have the right to enter the Premises at any time and make such repairs at the expense of Lessee and Participant shall reimburse the City for such expense incurred, as additional rent, within five (5) days after written demand by the City.

7. CONDITIONS OF PREMISES, PERSONAL PROPERTY IMPROVEMENTS

7.1 Conditions; Alterations and Changes in Premises. Participant accepts the Premises in then current "as is" condition, without representation or warranty, express or implied. Lessee may not make any alterations or changes to the Premises without the City's prior written consent in its sole and absolute discretion. Any alterations or changes in the Premises will be made in accordance with all applicable laws, ordinances and regulations. If the City, in its sole discretion, directs Participant to remove any alterations made by Participant upon the expiration or earlier termination of the Term, Participant will at its own expense and cost promptly remove such alterations and repair any damage to the Premises caused by such removal.

7.2 Personal Property at Lessee's Risk. The City will not be liable for damage to any property located on the Premises, nor will the City be liable to Participant or any other person for any injuries sustained by participant or any of its employees, customers, invitees, licensees, guests or persons on the Premises or in the Building.

8. RIGHT OF ENTRY

8.1 The City's Participant will have the right or any business day upon reasonable prior notice to enter the Premises, and Participant will permit the City to enter the Premises and all parts thereof to inspect the Premises, to make such repairs, decorations, additions, or alterations or, within the sixty (60) days prior to expiration hereof, to show the Premises to any prospective tenants.

9. TAXES/INSURANCE

9.1 Possessory Interest Taxes. Participant will pay all taxes, ordinary and extraordinary, general and specific (except for ad valorem taxes on real estate), which may be levied or assessed on Participant's interest under this Agreement, including possessory interest tax.

9.2 Insurance. During the Term at the times, Participant, at its sole cost, will maintain comprehensive general liability insurance for personal injury and property damage coverage of at

least \$1,000,000.00 and rental value or similar coverage in sufficient amounts to cover all of Lessee's personal property located on Premises, including all removable trade fixtures and all improvements to the Premises which have been made by Participant or at Participant's request or expense (including those improvements to be made in accordance with Section 7.1 hereof). The City will be an additional insured for liability insurance. Lessee will obtain the agreement of its insurer to notify the City that any such policy required hereunder is to terminate or expire at least ten (10) days prior to such expiration or termination. Participant will deliver to the City an insurance certificate showing it has obtained the insurance required hereunder, on or before the Commencement Date.

10. DESTRUCTION

If, during the Term, the Premises are destroyed or materially damaged by fire, the elements, or other casualty, the City will have the option of either repairing the Premises with this Agreement to continue in full force or to terminate this Agreement immediately.

11. INDEMNIFICATION

Participant will indemnify and hold the City harmless from and against any and all claims, liabilities, damages, losses, costs and expenses asserted by or on behalf of any person, firm, corporation or public authority on account of injury, death, damage or loss to person or property in or upon the Premises arising out of the use or occupancy of the Premises by Participant or by any person claiming by, through or under Participant (including, without limitation, all patrons, employees, invitees, licensees or customers of Participant), or arising out of any delivery to or service supplied to the Premises, or on account of or based upon anything whatsoever done on the Premises, except if the same was caused by the gross negligence or willful misconduct of the City. In case of any action or proceeding brought against the City, Participant, upon notice from the City and at Participant's expense, will resist or defend such action or proceeding and employ counsel therefore reasonably satisfactory to the City.

12. DEFAULT BY PARTICIPANT

12.1 Default. The occurrence of any one or more of the following events will constitute a default by Participant (a "Default") under this Agreement:

(a) The failure of Participant in the due performance or observance of any term, covenant, obligation or agreement on Participant's part to be performed or observed pursuant to any of the provisions of the Yucaipa Business Incubator Center Program Contract on Exhibit "D" or this Agreement (other than those referred to in clause (b) of this Section 12.1, and such failure to continue for a period of thirty (30) days after written notice thereof from the City to Participant; or

(b) Participant's suspension or discontinuation of its business inability to pay or admission in writing of its inability to pay its debts as they mature, filing of a petition in

bankruptcy, insolvency (howsoever such insolvency may be evidenced), or adjudication as insolvent or bankrupt.

Upon the occurrence of any Default by Participant, the City may, in addition to any of its other rights or remedies, terminate this Agreement by written notice to Participant. Upon any such termination (and upon the expiration of this Agreement), Participant shall immediately vacate the premises and cause all occupants to vacate, and shall immediately remove all personal property, and any personal property not removed within five (5) business days may be disposed of in any manner without liability to Participant. Participant may store Participant's effects at the expense and risk of Participant.

12.2 Remedies. Upon a Default, if the City elects to terminate this Agreement, the City shall have the rights to damages under California Civil Code Section 1951.2, but if the City does not terminate this Agreement, the City shall have the rights and remedies under California Civil Code Section 1951.4 and Participant shall have the right to assign this Agreement or sublet the Premises with the City's reasonable consent.

12.3 Remedies Cumulative. Any and all rights and remedies which the City may have under this Agreement, and at law and equity, will be cumulative and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law.

12.4 No Waiver, Etc. The failure of the parties hereto to seek redress for violation of any covenant or condition of this Agreement will not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

13. NO ASSIGNMENT OF LESSEE'S INTERESTS

13.1 Participant will not assign, convey, encumber or mortgage its interest in this Agreement, nor sublet the Premises, or any part thereof, or in any manner transfer its leasehold estate or its rights under this Agreement, without the prior written consent of the City, which consent will be given in the City's sole and absolute discretion.

14. SURRENDER OF PREMISES

Upon the expiration or earlier termination of this Agreement, Participant shall surrender the Premises in good condition, reasonable wear and tear and damage by fire or other casualty excepted, and with all personal property removed (as provided in Section 12.1(b) above).

15. NOTICES

15.1 All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be delivered by hand or sent by certified mail or reputable overnight courier service and will be deemed given when so delivered by hand or, if mailed or sent by overnight messenger, (one business day after mailing or delivery to the overnight messenger service), addressed as follows:

If to the City:
City of Yucaipa
Attn: City Manager
34272 Yucaipa Boulevard
Yucaipa, CA 92399

If to Participant:
Name:
Address:

or to such other address as the party to whom notice is to be given may have furnished to the other parties in writing in accordance herewith.

16. MISCELLANEOUS

16.1 Governing Law. All of the terms hereof will be construed according to the laws of the State of California.

16.2 No Broker. Each party represents and warrants to the other party that it has not engaged any broker in connection with this Agreement.

16.3 Entire Agreement. This Agreement and exhibits contain the entire agreement between the parties, all previous or contemporaneous agreements being merged herein and waived hereby.

16.4 Amendments; Waivers. No modifications hereof or assent or consent of either party to any waiver or any part of this Agreement will be deemed given or made unless it is done in writing duly signed by the party alleged to have waived.

16.5 Landlord/Tenant Relationship. This Agreement will not be deemed to create any relationship between the parties other than that of a landlord and tenant.

16.6 Attorneys' Fees. In the event either party files any action to enforce the terms of this Agreement, the prevailing party will be entitled, in addition to such damages or other relief as may be granted, to recover reasonable attorney's fees and costs, such attorney's fees to include those incurred on any appeal.

16.7 Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

16.8 Automatic Termination. This Agreement shall automatically terminate upon the termination of that certain Yucaipa Business Incubator Center Program Contract between the City of Yucaipa and Participant.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first above written.

CITY:

By: _____
City Manager

PARTICIPANT:

By: _____

Print Name: _____

Title: _____

EXHIBIT "A"
Description of Premises

(See attached diagram.)

Sample Wording: Suite 108 (190 square feet) on the Lower Level of the building located at 34282 Yucaipa Boulevard.

EXHIBIT "B"
Description of Common Areas Within Premises That May be Used by Others

Conference Rooms

Restrooms

Reception Area

Breakroom

**EXHIBIT “C”
Additional Obligations**

Keep the breakroom clean and free of trash and debris

Be responsive to Receptionist when notice is posted to remove spoiled food from the refrigerator

Tenant is responsible for the security of their personal belongings

Tenant to ensure doors are locked to the building if tenant is the last person to leave

Please note that the copier machines are for the use of all tenants, free of charge. However, it is the tenant’s responsibility to provide the paper.

Exhibit "D"

Yucaipa Business Incubator Center Program Contract

This agreement between _____ (hereafter referred to as "Participant") and City of Yucaipa, California (hereafter referred to as the "City") is dated _____ and is entered into for the purpose of admitting the Participant into the Yucaipa Business Incubator Center Program ("Program") and securing the benefits of such admittance for the Participant. The Participant is being offered this admittance to the Incubator Program after being selected by the Small Business Incubator Selection Committee based on the Program selection criteria shown in Appendix "A" to this agreement.

1. **Term of Contract:** This agreement commences on _____ and shall expire on _____ or the termination of that certain Yucaipa Business Incubator Center Lease Agreement between Participant and the City (the "Lease").

In consideration for being allowed to participate in the Program, Participant unconditionally agrees that City shall not be liable for any advice or the depth, extent, quality and/or quantity of services provided under the Incubator Program. Participant unconditionally agrees further that services provided under the Program are merely advisory in nature, without any binding effect on Participant. Participant is free to accept and/or reject such advice offered, shall exercise due diligence and caution in receiving such advice, and will exercise informed and independent judgment in accepting and/or rejecting any such advice.

2. **Indemnification:** In accepting admittance to the Yucaipa Business Incubator Center Program, the Participant understands and agrees to all provisions and stipulations of the Program as set forth in this document and all its appendices. The Participant agrees to duly and faithfully adhere to these said provisions while participating in the Program in order to receive the benefits of the Program. Failure to do so will result in removal from the Program and the requiring of full or partial reimbursement to the City for any grants or special expenditures.
3. **Business Performance:** All Participants are expected to be working on growing and improving their business by actively using the Incubator Center and participating in its Programs. Participants are expected to:
 - a. Attend monthly meetings (at least nine per year) with peers to discuss goals, challenges and accomplishments,
 - b. Attend 4 workshops per year that increase business skills,
 - c. Set 3-6 strategic goals each year and review and rate performance relative to goals each year,

- d. Submit a business plan within three months of entering the Program and keep it current,
 - e. Create annual budget projections by month and track and report budget vs. actuals monthly,
 - f. Submit a Profit and Loss Statement and Balance Sheet at least once annually,
 - g. Present a business overview and status report annually to the Board of Directors.
 - h. Comply with the Lease.
4. **Graduation:** The normal incubator period will be for three (3) years from the opening of the Participant for business. At the end of this period the Participant will be expected to “graduate” from the Incubator Center and move out on his or her own into an unsubsidized facility for their business.
5. **Post-Graduation:** Participants are expected to provide business financials and performance data for a minimum of three years following their graduation which includes but is not limited to the post-incubator monitoring information of income, expense, taxes paid, household income, funding resources, number of employees, salaries & wages, owners draw and satisfaction scores.
6. **Rent:** The City will provide an adjusted rent schedule to the Participant for the incubator period. The schedule will be as follows:
- a. First six (6) months will be rent-free.
 - b. Next succeeding twelve (12) months will be at 60% of the market rate as determined by the City based on past rental experience with the building and surveys of local realtors involved in leasing.
 - c. Next succeeding twelve (12) month’s rent will be at 75% of the above determined rental rate.
 - d. Next succeeding six (6) months will be at the market rate
 - e. Approved extension of time will be at the market rate adjusted annually with the Consumer Price Index (CPI) for the Riverside-San Bernardino area.
7. **Lease Agreement:** On or before _____, the Participant will enter into a lease agreement with the City with a term of three (3) years.
8. **Business Plan:** The Participant has furnished to the City as part of the application process such financial and business plan information, both in corporate capacity, if applicable, and individually, as was required by the City for determination of

eligibility for participation in the Yucaipa Business Incubator Center Program. The Participant, having been determined eligible for participation in this Program based on the good faith accuracy of these declarations hereby represents and warrants that all the information contained therein is complete, true, and correct. Participant understands that City is relying upon the accuracy of the information and good faith estimates contained therein. Should there be found to exist any inaccuracy or lack of good faith in estimates furnished for preparation business plans or in the application, which adversely affects Participant's financial standing, or should Participant's financial circumstances materially change, the City may elect to terminate this agreement and the Lease.

9. **Extension of Time:** Upon approval of the Incubator Selection Committee, at its discretion, the three-year incubator time period may be extended by one (1) year up to three (3) times based on the Participant's performance, the Participant's need for additional time to achieve the goals in their business plan necessary to sustain the business outside the incubator, or a combination thereof. If the Committee determines that the additional time will not enhance the ability of the Participant's business to operate independent of the Incubator Program, the request will not be granted. In no event shall the term of any lease, inclusive of all extensions, exceed six (6) years.
10. **Monitoring:** Participants are expected to provide baseline incubator monitoring information upon entering the Program as well as annual business performance reports which includes but is not limited to income, expenses, taxes paid (and proof of tax filing), household income, funding resources, number of employees, salaries & wages, owners draw, and satisfaction scores. Information and data will be submitted in a timely manner in the form reasonably required. Should the Yucaipa Business Incubator Center Program be required to require or provide additional criteria or data to meet performance obligation for funding or for other purposes, this agreement is subject to change to reflect those requirements.
11. **Chamber of Commerce.** Since the City feels that it is important for new business owners to associate with and receive mentoring from successful business owners and managers, the Participant is required to be a member of the Yucaipa Chamber of Commerce within 12 months from the date of this contract. As such, the Participant will seek to avail themselves of and participate in seminars, information meetings and such activities sponsored by these organizations related to improving their business marketing and management skills. Furthermore, the City has available various local business leaders and operators who have volunteered to provide mentoring to Incubator Participants on their own request. If the City determines that a Participant is in need of selective mentoring services, the Participant is expected to cooperate with the effort and work with the assigned mentor.
12. **Training.** Participant may be required to attend, from time to time, various training classes or seminars determined by the City and recommended by the Incubator Selection Committee as being advantageous to the Participant in improving their business skills.

13. **Termination.** If business performance measures are not achieved or it is determined that a Participant’s continued participation at the Yucaipa Business Incubator Center Program is no longer of benefit to their business or meeting the goals of the Incubator Program, the Yucaipa Business Incubator Center at any time can terminate this Agreement upon 30 days’ prior written notice. Likewise, if an individual is disruptive to other occupants or in any way problematic with regard to smooth operations of the Center, the Yucaipa Business Incubator Center Program reserves the right to terminate the contract with 30 days’ notice or immediately if the disruption is deemed unacceptable.

14. **Complaints.** Complaints and issues concerning the provisions of this agreement, not otherwise covered under the provisions of the lease, the grant agreement, or related laws and regulations prescribing complaint procedures for matters relevant to this endeavor, shall be submitted to the City Manager for resolution. The City Manager will investigate the fact and circumstances of the matter and advise the complainant of the decision in a timely manner. Said decision will be considered the final position of the City on this matter.

PARTICIPANT:

NAME:

By: _____

Print Name: _____

Title: _____

CITY:

CITY OF YUCAIPA

By: _____

Raymond A. Casey, City Manager

APPENDIX “A”

SELECTION CRITERIA

1. Yucaipa-based business and /or Yucaipa resident business owner
2. Business growth to include additional employees
3. Eligible business types/activities include but not limited to:
 - a. Professional services
 - b. Contracting (construction services)
 - c. Sales
 - d. Product Development
4. Ineligible business types/activities include but not limited to:
 - a. On site retails sales (merchandise and food)