

## SPACE USE MEMORANDUM OF AGREEMENT

This Space Use Memorandum of Agreement ("MOU") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Menifee, a California municipal corporation ("City"), and the University Enterprises Corporation at CSUSB for itself and on behalf of Inland Empire Small Business Development Center ("SBDC").

### 1. Right to Use Subject Property.

A. City hereby grants a license to SBDC to use the City of Menifee designated space within the Site, described in Exhibit "A", attached hereto and incorporated herein (hereafter referred to as "Subject Property") attached hereto and incorporated herein, subject to the terms and conditions of this MOU.

City hereby grants a license to SBDC to use a designated space ("Site") within the City Hall of the City of Menifee ("Subject Property"), as described in Exhibit A, attached hereto and incorporated by this reference.]

### 2. Term of License to Use Subject Property and Common Areas.

A. Duration. The term of this MOU shall be twelve (12) months, commencing on July 1, 2021 ending on June 30, 2022, subject to the extension of the term as provided in Subsection C (Notice of Desire to Extend Term) .

B. Right to Terminate MOU. Either party may terminate this MOU for any reason by providing a sixty (60) day prior written notice of termination to the other party at the addresses shown in Section 5 (Notice), below.

C. Notice of Desire to Extend Term. On or before May 1, 2022, SBDC shall give written notice to City at the address shown in Section 5 (Notice), below of SBDC's desire to further extend the Term of this MOU for one (1) additional year through June 30, 2023. The Term shall be extended for one (1) additional year through June 30, 2023 only if such extension is approved by the City Manager in writing. Nothing in this section shall be construed as an obligation of City to extend the Term, nor shall it be construed as granting SBDC any option to extend the Term, regardless of whether or not SBDC provides the notice described herein.

D. Notwithstanding any other provision of this Section 2, the failure of SBDC to comply with the terms of this MOU or any written directions by or on behalf of City issued pursuant hereto shall constitute a material breach hereof, and this MOU may be terminated immediately. City's failure to exercise this right of termination shall not constitute waiver of such right, which may be exercised at any subsequent time.

### 3. Responsibilities of SBDC.

A. SBDC shall have access to the Site, with one cubicle, computer screen, and computer and internet, and the use of conference room space, in accordance with City Hall reservation system for all of City Hall - subject to availability, at the Subject Property from 9:00 a.m. until 5:00 p.m., Monday through Friday contingent on market demand and available funding.

B. SBDC shall provide the following types of assistance to businesses in Southwest Riverside County:

- i. Business planning;
- ii. Loan proposals;
- iii. Business assessments;
- iv. Finance;
- v. Bookkeeping;
- vi. Taxes and licenses;
- vii. Marketing;
- viii. Business management;
- ix. Human resources; and
- x. Governmental procurement procedures

C. SBDC shall be responsible for the following duties, as part of its mentorship program for the benefit of City of Menifee businesses or prospective businesses ("Clients") interested in locating in Menifee:]

- i. Meet with City of Menifee businesses and review business milestones;
- ii. Provide advice to City of Menifee Clients, highlighting areas needing improvement, such as company leadership, business strategy, financing requirements and strategies, communications, company organization, work product;
- iii. Assist City of Menifee Clients in designing a strategic business plan charting growth and milestones in those areas that require improvement; and
- iv. Report monthly progress of City of Menifee businesses and prospective businesses to the Economic Development Department.

D. The SBDC also will also offer 4 seminars locally during the term of this agreement on business-related topics. The topics and fees to be charged for these seminars are to be determined in consultation with the City of Menifee. SBDC shall work with the City of Menifee and the Menifee Chamber of Commerce for marketing resources.

E. SBDC shall identify the City of Menifee as co-sponsors of SBDC's programs.

F. SBDC shall have access to use City of Menifee conferencing spaces through the City's room reservation system, subject to availability as determined by City Hall reservation procedures.

G. SBDC shall not make any modifications to the interior or exterior of the Subject Property, office space, conference room, or City equipment, computer or internet, and must comply with all City required usage agreements

H. SBDC shall repair any and all damages beyond normal wear and tear to City's real and personal property arising out of any SBDC or SBDC's negligence or omissions in performing SBDC activity on the Subject Property.

I. SBDC shall not assign, sell, or transfer its interest under this MOU without the express prior written approval and consent of City. Any attempted assignment, sale, or transfer in violation of this subsection shall be void.

4. Responsibilities of City.

A. City shall be responsible for providing the interior furniture, fixtures, and equipment for the interior of the cubicle, conference space subject to availability, computer equipment and internet in cubicle located on the Site.

B. City shall be responsible for providing and maintaining wireless internet service for use by the SBDC at the Site. City shall not be responsible for intermittent wireless internet outages that occur through no fault of City.

C. City shall be responsible for the installation and maintenance of security systems and fire alarm systems. City shall not be responsible for intermittent security systems and fire alarm outages that occur through no fault of City.

D. City shall be responsible for maintaining, by providing custodial services for, the interior of the buildings located at the Site in a neat, clean, and safe condition.

E. City shall provide all landscape maintenance services to the exterior of any buildings located at the Subject Property.

F. City shall be responsible for all maintenance and repairs for the exterior of any buildings located at the Subject Property, including roofing, HVAC, the parking lot, and exterior lighting.

G. City shall be responsible for the costs of utilities, including water, gas, and electricity at the Subject Property.

H. City shall provide **Economic Development Funding** in the amount of \$13,000 which will be allocated to pay for a workshop to be held every other month, consulting services, and provide a hub of services for the community in one convenient location for Fiscal Year 2021/2022.

5. Notice

All notices which shall or may be given under this MOU shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) with prepaid overnight delivery service to the Parties at the addresses provided below; or (iii) via electronic mail to the Parties:

City: City of Menifee  
Attention: Economic Development Department  
29844 Haun Road  
Menifee, CA 92586  
ggonzalez@cityofmenifee.us

SBDC: Paul Nolta  
Inland Empire Small Business Development Center

3780 Market Street  
Riverside CA 92501  
PNolta@iesmallbusiness.com

6. Relationship of the Parties

This MOU is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between City and SBDC. SBDC understands and agrees that all persons furnishing services pursuant to this MOU are, for purposes of Workers Compensation liability, employees solely of SBDC and not of City. SBDC shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of SBDC pursuant to this MOU.

7. Indemnification and Insurance

A. (i). SBDC agrees to indemnify, defend and hold harmless City, its elected and appointed officers, employees, and agents (collectively hereinafter, "City Parties") from and against any and all liability and expense, including defense costs and legal fees, arising from or connected with claims and lawsuits for damages directly relating to SBDC's operations or its services, which result from bodily injury, death, personal injury, or property damage (including property owned by or in the case, custody or control of SBDC).

(ii) City agrees to indemnify, defend and hold harmless University Enterprises Corporation at CSUSB, California State University San Bernardino, SBDC, their officers, employees, and agents (collectively hereinafter, "SBDC Parties") from and against any and all liability and expense, including defense costs and legal fees, arising from or connected with claims and lawsuits for damages caused by CITY or City Parties, which result from bodily injury, death, personal injury, or property damage.

B. Before beginning any work under this Agreement, SBDC, at its own cost and expense, shall procure the types and amounts of insurance checked below and provide Certificates of Insurance, indicating that SBDC has obtained or currently maintains insurance that meets the requirements of this section and which is satisfactory, in all respects, to City. SBDC shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in SBDC's compensation. SBDC shall not allow any subcontractor, consultant or other agent to commence work on any subcontract until SBDC has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement within thirty (30) days of execution..

C. policy must cover inter-insured suits between City and other Insureds.  
Workers' Compensation. SBDC shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by SBDC pursuant to the provisions of the California Labor Code. Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident, ONE MILLION DOLLARS (\$1,000,000.00) disease per employee, and ONE MILLION DOLLARS (\$1,000,000.00) disease per policy. In the alternative, SBDC may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance

complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or SBDC, if a program of self-insurance is provided, shall waive all rights of subrogation against City and its officers, officials, employees, and authorized volunteers for loss arising from the Services performed under this Agreement.

D. Commercial General and Automobile Liability Insurance.

1) General requirements. SBDC, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage, for risks associated with the Services contemplated by this Agreement, TWO MILLION DOLLARS (\$2,000,000.00) general aggregate, and TWO MILLION DOLLARS (\$2,000,000.00) products/completed operations aggregate. If a Commercial General Liability Insurance or an Automobile Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from the Services contemplated under this Agreement, including the use of hired, owned, and non-owned automobiles.

2) Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 2, 8, and 9. No endorsement shall be attached limiting the coverage.

3) Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

b) Any failure of SBDC to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

E. Professional Liability Insurance.

1) General requirements. SBDC, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing the Services pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall be shown on the Certificate. If the deductible or self-insured retention exceeds TWENTY-FIVE THOUSAND DOLLARS (\$25,000), it must be approved by City.

2) Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

a) The retroactive date of the policy must be shown and must be no later than the commencement of the Services.

b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after the expiration or termination of this Agreement or completion of the Services, so long as commercially available at reasonable rates.

c) If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the Effective Date of this Agreement, SBDC must provide extended reporting coverage for a minimum of five (5) years after the expiration or termination of this Agreement or the completion of the Services. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the Services under this Agreement. City shall have the right to exercise, at SBDC's sole cost and expense, any extended reporting provisions of the policy, if SBDC cancels or does not renew the coverage.

d) A copy of the claim reporting requirements must be submitted to City prior to the commencement of the Services under this Agreement.

F. All Policies Requirements.

1) Acceptability of insurers. All insurance required by this Section is to be placed with insurers with a Bests' rating of no less than A:VII and admitted in California.

2) Verification of coverage. Prior to beginning the Services under this Agreement, SBDC shall furnish City with Certificates of Insurance, additional insured endorsement or policy language granting additional insured status complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. The Certificate of Insurance must include the following reference: **SPACE USE MEMORANDUM (MOU)**. The name and address for Additional Insured endorsements, Certificates of Insurance and Notice of Cancellation is: City of Menifee, 29844 Haun Road, Menifee, CA 92586. City must be endorsed as an additional insured for liability arising out of ongoing and completed operations by or on behalf of Consultant.

3) Notice of Reduction in or Cancellation of Coverage. SBDC shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self insured retention is increased.

4) Additional insured; primary insurance. City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of the Services performed by or on behalf of SBDC, including the insured's general supervision of SBDC; products and completed operations of SBDC, as applicable; premises owned, occupied, or used by SBDC; and automobiles owned, leased, or used by SBDC in the course of providing the Services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers. The insurance provided to City as an additional

insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City. Additional insured status shall continue for one (1) year after the expiration or termination of this Agreement or completion of the Services.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees, and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

5) Deductibles and Self-insured Retentions. SBDC shall obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the Services.

During the term of this Agreement, only upon the prior express written authorization of the Contract Administrator, SBDC may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that SBDC procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

6) Subcontractors. SBDC shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7) Variation. The Contract Administrator may, but is not required to, approve in writing a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that City's interests are otherwise fully protected.

G. Remedies. In addition to any other remedies at law or equity City may have if SBDC fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for SBDC's breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement;
- b. Order SBDC to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

## 8. Additional Terms

A. This MOU contains the entire agreement between the parties with respect to the subject matter hereof. No addition to or alteration of the terms of this MOU, whether by written

or verbal understanding of the parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this MOU and formally approved and executed by both parties.

B. SBDC shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this MOU are hereby incorporated herein by reference.

C. No waiver of a breach of any provision of this MOU by City will constitute a waiver of any other breach of said provision or of any other provision of this MOU. Failure of either party to enforce at any time, or from time to time, any provision of this MOU, shall not be construed as a waiver thereof. No waiver shall be enforced unless said waiver is set forth in writing.

D. The persons executing this MOU on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this MOU on behalf of said party, (iii) by so executing this MOU, such party is formally bound to the provisions of this MOU, and (iv) that entering into this MOU does not violate any provision of any other agreement to which said party is bound.

E. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to SBDC, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to SBDC or to its successor, or for breach of any obligation of City of the terms of this MOU.

F. Nothing in this MOU shall be deemed or otherwise construed as granting any rights, benefits, or interests to any individual, entity, or body that is not a party to this MOU.

G. SBDC covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this MOU there shall be no unlawful discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

H. The parties agree to make a diligent, good-faith attempt to resolve any claim, controversy, or dispute arising out of this MOU.

I. This MOU shall be governed by the internal laws of the State of California without regard to principles of conflicts of law. The Municipal and Superior Court of the County of Riverside shall have exclusive jurisdiction over any litigation between the parties hereto concerning this MOU.

J. This MOU may be executed in counterparts, each of which, when this MOU has been signed by all the parties hereto, shall constitute an original.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers and representatives as of the date written at the beginning of this MOU.

"City"  
CITY OF MENIFEE, a California municipal  
corporation

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

Dated: \_\_\_\_\_, 2021

APPROVED AS TO FORM  
RUTAN & TUCKER, LLP

ATTEST:

By: \_\_\_\_\_  
Sarah Manwaring, City Clerk

\_\_\_\_\_  
Attorneys for the City of Meniffee

"SBDC"  
University Enterprises Corporation at CSUSB

Dated: May 19th, 2021

By: *Diane Trujillo*  
Diane Trujillo  
Director, Sponsored Programs Administration

Dated: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
Paul Nolta  
Director, Inland Empire SBDC

## **EXHIBIT "A"**

### **DESCRIPTION OF SUBJECT PROPERTY AND SITE**

The City of Menifee City Hall is the subject of this Memorandum of Understanding and referenced in Section 1 (Right to Use Subject Property) of this MOU consists of a cubicle and desk area, on the second floor within the Economic Development Department, of the real property leased by the City of Menifee located at 29844 Haun Road Menifee, CA 92586.

The Subject Property referenced in Section 1 (Right to Use Subject Property) of this MOU is the City Hall of the City of Menifee, located at 29844 Haun Road, Menifee, CA 92586. Within the Subject Property, the Site is located on the second floor within the Economic Development Department, and includes a cubicle and desk area.