

**MEMORANDUM OF AGREEMENT
LEASE OF TOWN-OWNED PROPERTY**

This Memorandum of Agreement ("Agreement") creating a lease of real property is made effective as of _____, 2017, by and between the TOWN OF SILVER CITY ("The Town", or "Landlord") having its principal place of business at P.O. Box 1188, Silver City, New Mexico, and THE GRANT COUNTY COMMUNITY FOUNDATION, a New Mexico non-profit corporation, having its principal place of business at P.O. Box 1767, Silver City, New Mexico ("GCCF", "Lessee", or "Tenant").

RECITALS

WHEREAS, The Town is authorized by its charter, the provisions of Section 3-18-1, N.M.S.A., 1978 Comp., and Municipal Code Chapter 48, Article II, Sections 48-20 et seq. to enter into the lease of municipal real property; and

WHEREAS, The Town owns a portion of a parcel of improved real estate located at 1106 Pope Street, situated in the downtown area of Silver City, commonly referred to as the "Office of Sustainability Building"(hereinafter, "OSB"); and

WHEREAS, GCCF is a New Mexico non-profit corporation which holds itself out as a centralized venue for support of non-profit entities within the Town and Grant County; and

WHEREAS, GCCF has indicated its desire to lease a portion of the OSB for the conduct of its operations, as well as to provide a venue for non-profits to gather for educational purposes, networking, coordination of services, as well as creating a non-profit development center; and

WHEREAS, the Town Council finds that the leasing of said property to GCCF for the aforesaid uses and purposes will be beneficial to the Town and County, and therefore should be executed under the terms and conditions mentioned herein below; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. EFFECT OF RECITALS: The recitals mentioned above are material representations of the parties and are included herein as inducements for the execution of this Memorandum of Agreement.

2. PREMISES: The Town, in consideration of this Memorandum of Agreement and under the terms and conditions described herein, leases to GCCF a portion of the premises referenced as the OSB located at 1106 Pope Street, Silver City, New Mexico, more specifically described in Appendix "A" to this Agreement. (Floor Plan of demised premises)

3. TERM: The Agreement term will begin on August 14, 2017 and will continue for a period of one (1) year, unless otherwise terminated under the provisions of this Agreement. This agreement shall automatically renew for an additional period of one (1) year on the same terms as this Agreement or as it may exist as amended, unless either party gives written notice of the termination no later than one hundred and twenty days prior to the end of the term or renewal term.

4. LEASE PAYMENTS: Lease payments shall be \$540.00 per month for the subject property.

5. UTILITIES: Town shall be responsible for the costs of utilities furnished to the demised premises, including gas, electric, water/sewer/garbage, and telecommunications. GCCF shall reimburse the Town 80% of the actual cost of such utilities as their portion of such obligation.

6. POSSESSION: GCCF shall be entitled to continue in possession of the premises on the first day of the term of this Agreement and shall yield possession to the Town on the last day of the term of this Agreement, unless otherwise agreed by both parties in writing.

7. USE OF THE PREMISES: As a condition of the granting of this lease, GCCF has obligated itself as the primary user of the demised premises for the purposes mentioned herein, and shall not use the demised property for any other purpose, except with the permission of the Town. It is anticipated and the parties agree that GCCF may permit other non-profit entities located within Grant County to

utilize the premises as a non-profit business incubator, wherein activities including education and development of non-profit entities will occur. GCCF shall, however, remain primarily liable for all the obligations created by this lease, as further mentioned in paragraph 9 herein. It shall make rules for use of the premises consistent with the purposes herein, and shall take no actions which may violate local, state or federal law.

8. PROPERTY AND LIABILITY INSURANCE: GCCF will secure and maintain liability insurance upon the demised premises in an amount at least equal to the dollar cap on claims prescribed by the New Mexico Tort Claims Act as it exists now, or may exist in the future. It shall also maintain property insurance in an amount equal to or greater than the replacement cost of the improvements upon the real estate. GCCF shall name the Town as an “also insured” on the policy, and shall provide copies thereof to the Town annually. Any notice of non-payment or lapse in coverage shall constitute a breach of this Lease.

9. INDEMNITY REGARDING USE OF PREMISES: GCCF agrees to indemnify, hold harmless, and defend the Town from and against any losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Town may suffer or incur in conjunction with GCCF’s use of the Premises. GCCF shall notify the Town of any claim made against it, whether real or anticipated within five (5) days of learning of such claim.

10. TERMINATION: If said leased premises is not maintained for the purposes mentioned herein, this Lease may be terminated on thirty (30) day’s notice from the Town at its sole discretion.

11. OWNERSHIP OF IMPROVEMENTS: GCCF shall not make any substantial modifications or improvements upon the demised premises without the written consent of the Town Manager. Improvements made to or upon the demised premises shall become fixtures thereof, and ownership thereof shall pass to the Town at the termination of the lease and any renewals thereof.

12. INCOME, OBLIGATION TO PAY GROSS RECEIPTS: Any revenues derived from the operation of the leased premises shall inure to the benefit of GCCF. Gross Receipts, if generated, shall be remitted according to law.

13. OBLIGATION OF NON-DISCRIMINATION: GCCF shall not cause or permit discrimination against any particular class of individuals which is a protected class under State and Federal law.

14. DESTRUCTION OR CONDEMNATION OF IMPROVEMENTS PREMISES: If the improvements to and upon the Premises are destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner and, if the damage is not repairable within a reasonable time period, the insurance proceeds shall belong to the Tenant, but this Lease shall terminate and possession of the real property shall revert back to the Town, with no further obligations to Tenant.

15. MECHANICS LIENS: Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid.

16. DEFAULTS: Tenant shall be in default of this Lease, if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. If the Tenant fails to fulfill its obligation to the Landlord within thirty day(s) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice, and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses suffered by Landlord by reason of Tenant's defaults. Other occurrences which shall be

considered to be acts of default are:

- a. Any failure by GCCF to pay the rent on the date the payment is due.
- b. The total abandonment or surrender of the Premises by GCCF.

17. ASSIGNABILITY/SUBLETTING: Tenant may not assign or sublease any interest in the Premises without the prior written consent of Town. This prohibition shall not affect the right of GCCF to permit use of the premises to non-profit entities residing in Grant County under rules that it may promulgate.

18. INDEPENDENT CONTRACTOR: No Partnership. This Lease is by and between the Town and GCCF, and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association as between the Town and GCCF.

19. SEVERABILITY: If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

20. WAIVER: The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

21. CUMULATIVE RIGHTS: The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

22. GOVERNING LAW: This Lease shall be construed in accordance with the laws of the state of New Mexico.

23. NOTICE: Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Town Manager

Town of Silver City

P.O. Box 1188

Silver City, New Mexico 88062

TENANT:

Grant County Community Foundation

c/o Chief Executive Officer or General Manager

P.O. Box 1767

Silver City, New Mexico 88062

Such addresses may be changed from time to time by either party by providing advance notice as set forth above.

23. ENTIRE AGREEMENT/AMENDMENT: This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be only be modified or amended if both parties agree to alterations in writing.

24. ADDITIONAL PROVISIONS: The parties agree that minor modifications of this Lease may be necessary to effect the common intent of the parties. Therefor, it is agreed that such modifications may by mutual agreement of the parties, and without the necessity of Town Council approval.

LANDLORD:

Alex C. Brown, Town Manager
For and on behalf of the
Town of Silver City

Dated: _____

