

## AGREEMENT RELATED TO DISTRICT CONTRIBUTION TO THE DEVELOPMENT AND MAINTENANCE OF MISSION GARDEN

This Agreement (the "Agreement") is dated February 24, 2015. The parties to this Agreement are the City of Tucson, an Arizona municipal corporation ("City"), Friends of Tucson Birthplace, Inc., an Arizona non-profit corporation ("FOTB") and Rio Nuevo Multipurpose Facilities District, a special taxing district of the state of Arizona ("District").

### RECITALS

- 1) On or about December of 2011 Pima County, Arizona, City and FOTB executed an Agreement (the "2011 Agreement") for the Development and Maintenance of the Mission Garden (the "Project") in connection with the property described therein either as the "Premises" or "Mission Garden", described and depicted in Exhibit A hereto ("Mission Garden").
- 2) In Paragraph 7(c) of that certain "Settlement Agreement" between City and the District, recorded on February 8, 2013 at Sequence number 20130390504 in the official records of the Pima County Recorder's Office, the District agreed to fund an amount not exceeding \$1,100,000 for and in connection with the Project ("Paragraph 7(c) Obligations").
- 3) Pursuant to a request from FOTB, the District has authorized the expenditure of \$1,100,000 in order to fulfill the Paragraph 7(c) Obligations for Mission Garden ("District Contribution").
- 4) By the terms of this Agreement, the City, FOTB and the District (collectively the "Parties") intend to provide a process for the District's payment of the District Contribution consistent with the obligations of the parties to the 2011 Agreement, the Settlement Agreement and all applicable statutes, rules and codes.

**NOW THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

### TERMS

- 1) **Incorporation and Representation.** The foregoing Recitals are hereby incorporated by this reference as if set forth in full herein and each of the Parties represents that such Recitals are true and accurate to the best of each signatory's knowledge, information and belief.
- 2) **FOTB Obligations:**
  - a) All contracts for work for improvements to Mission Garden to be contributed to by the District under this Agreement shall be procured in compliance with Arizona Revised Statutes, Title 34, and the District procurement code. The existing contracts between the District and Burns & Wald-Hopkins and Lloyd Construction, procured and entered into by the District

#### City Clerk File Note:

This document was signed in counterpart resulting in two signature pages.

RWR:TF:ddl 4/21/15

Exhibit 1 to Resolution No. 22381  
City of Tucson Contract No. 18137

related to the Project were procured pursuant to the applicable requirements and meet the terms of this paragraph.

b) For any and all work for which FOTB seeks payment from the District as part of the District Contribution, FOTB shall provide all applicable documentation as requested by the District providing evidence of compliance with Section 2(a) above.

c) For any FOTB payment request, FOTB shall provide all invoices and documentation to the District financial staff that demonstrates and supports the work for which payment is sought. The documentation required includes all lien waivers and assignment of warranties from any level of contractor doing work on any portion of the Project for which reimbursement is sought, and such other documentation deemed necessary by District staff.

d) The scope of work to be paid for under this Agreement shall be located on the Premises and is more particularly described in Exhibit B hereto. The work is hereby approved by all parties. More detailed elements of the scope of work are subject to District review and approval as the Project moves forward and the District Contribution is expended. Upon final completion all improvements constructed or installed on the Premises shall be owned by and conveyed to the owner of the land upon which the improvements sit.

e) FOTB shall ensure that any and all contractors on the Project shall be in strict compliance with all applicable e-verify requirements under state and federal law.

f) FOTB agrees to indemnify, defend, and hold harmless the District and the City, their governing body members, officers, employees, and agents for, from and against any and all loss, damage, and expense (including, but not limited to, reasonable investigation, legal fees, and expenses) claim or action for injury, liability, or damage to persons or property, and any and all claims, suits, judgments, costs, attorney fees, damages or other relief for loss, injury, or damage to persons or property, including claims of employees or any contractor or subcontractor arising out of, resulting from, existing out of or through, or alleged to arise out of any work on the Project as a direct result of FOTB's acts or omissions. Notice of a claim must be given by the District to FOTB no more than five (5) business days after the District is formally notified of a claim covered by this provision, and FOTB shall be entitled to select counsel for defense of such claim.

g) The FOTB's Project Manager and main point of contact for the Project and this Agreement shall be William O'Malley.

3) **District Obligations:**

a) Subject to the requirements of Section 2 above, District agrees to pay/reimburse FOTB up to \$1,100,000 for improvements being made to the Premises that are a part of the work described under this Agreement. Payments shall be made within fourteen (14) calendar days of District receipt of all required documentation associated with a payment request. In the event the District has questions or objections to any payment request or portion thereof, the time for

District payment shall be extended until fourteen calendar (14) days after District's questions or objections are resolved to the District's satisfaction.

b) For any payment made, District shall provide a copy of the payment request and evidence of payment to City for purposes of tracking the District's ongoing fulfillment of its Paragraph 7(c) Obligations under this Agreement.

c) District agrees to provide whatever reasonable access to District owned property is necessary for the work to be conducted by FOTB and its contractors.

d) The District Board has budgeted and appropriated the funds necessary to fulfill its obligations under this Agreement for the current fiscal year, and anticipates that it will budget and appropriate the funds necessary to meet its commitments under this Agreement for the next fiscal year.

e) The District's Project Manager and main point of contact for the Project and this Agreement shall be as provided to the parties within fifteen (15) days after the effective date of this Agreement.

4) **City Obligations:**

a) City acknowledges and agrees that any District payment made pursuant to this Agreement is and shall be funds meeting the District's Paragraph 7(c) Obligations under the Settlement Agreement. City shall provide such acknowledgement in writing to the District within five (5) calendar days after requested by the District.

b) City agrees to provide whatever reasonable access to City owned property is necessary for the work to be conducted by FOTB and its contractors.

c) The City's Project Manager and main point of contact for the Project and this Agreement shall be as provided to the parties within fifteen (15) days after the effective date of this Agreement.

5) **Approvals and Notices.** Any objection, approval, disapproval, demand, document or other notice, ("Notice") that any Party may desire, or may be obligated to give to any other Party, shall be in writing and may be given by personal delivery, by registered or certified mail, return receipt requested, e-mail transmission (with delivery receipt) or by commercial courier to the party or its successors or assigns to whom the Notice is intended at the address of the party set forth below, or at any other address as the parties may later designate. Change of address by a party shall be given by Notice as follows:

- a) If to City:  
City Manager, City of Tucson  
255 W. Alameda, 10<sup>th</sup> Floor  
P.O. Box 27210  
Tucson, AZ 85726-7210

With a copy to:  
City Attorney, City of Tucson  
255 W. Alameda, 10<sup>th</sup> Floor  
P.O. Box 27210  
Tucson, AZ 85726-7210

b) If to District:

Rio Nuevo Multipurpose Facilities District  
400 West Congress, Suite 152  
Tucson, Arizona 85701

With a copy to:

Mark Collins, Esq.  
Gust Rosenfeld P.L.C.  
One South Church Avenue, Suite 1900  
Tucson, Arizona 85390-4300

c) If to FOTB:

Friends of Tucson's Birthplace  
P.O. Box 1228  
Tucson, Arizona 85702-1228

**6) General Provisions.**

a) *Term.* This Agreement shall remain in full force and effect until the District has expended the \$1,100,000 District Contribution, or the Project is deemed complete, whichever is earlier.

b) *Prior Agreements.* To the extent that the terms of this Agreement are inconsistent or conflict with the terms of any prior agreements between or among the Parties, or any of them, the terms of this Agreement shall control, supersede and replace such prior agreements.

c) *Applicable Law.*

(i) FOTB shall abide by and conform to any and all laws of the United States, and the State of Arizona, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, OSHA and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Pima County, Arizona.

(ii) The District and/or City, pursuant to A.R.S. §38-511, may cancel this Agreement within three years after its execution, without penalty or further obligation, if any

person significantly involved in initiating, securing, drafting or creating the Agreement on behalf of either party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent to any other party of the Agreement with respect to the subject matter of the Agreement. Cancellation under this section by a party shall be effective when all other parties to the Agreement receive written notice from the other party unless the notice specifies a later time. In addition to the right to cancel as provided herein, a party may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the party from any other party to the Agreement arising as the result of this Agreement.

d) *No Assignments.* None of the Parties' rights or obligations may be assigned, transferred, conveyed or otherwise alienated and any attempt to do so is and shall be null and void.

e) *Authority.* Each of the signatories to this Agreement represents and warrants to each of the Parties that such signatory is fully authorized to execute this Agreement without the necessity of obtaining consent or authority from any other entity or individual. To the extent that any signatory is signing on behalf of another entity or individual, that signatory represents and warrants to each of the Parties that such signatory is fully authorized to execute this Agreement on behalf of its principal without the necessity of obtaining consent or authority from any other entity or individual and that by such execution, the principal is bound by the terms of this Agreement.

f) *Section Headings.* The section headings of this Agreement are inserted as a matter of convenience and reference only and in no way define, limit, or describe the scope or intent of either this Agreement or its terms or provisions.

g) *Supplemental Instruments.* The Parties shall execute any and all additional documents reasonably necessary to effectuate the terms of this Agreement.

h) *Representation by Counsel.* Each of the Parties represents and acknowledges that he, she or it has had the benefit and advice of independent legal counsel in connection with the preparation and execution of this Agreement or has been advised to seek such counsel and has voluntarily and knowingly chosen not to do so.

i) *Voluntary and Knowing Execution.* The terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings and the Parties waive the application of that rule of law dictating that ambiguous or conflicting terms in an agreement shall be interpreted or construed against the party who prepared the executed draft or earlier drafts of such agreement.

j) *Entire Agreement.* Except as otherwise specifically provided herein, this Agreement represents the entire understanding among the Parties with respect to its subject matter. No representations, warranties, inducements or oral agreements have been made by, between or among any of the Parties except as expressly set forth herein or in other contemporaneous written agreements. This Agreement may not be changed, modified or



rescinded, except in writing, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no force and effect.

k) *Execution in Counterpart.* This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. This Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages and all such counterpart signature pages shall be read as though part of a single document, and they shall have the same force and effect as though all the signers had signed a single signature page.

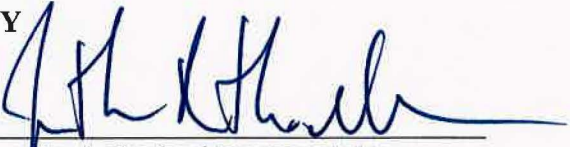
Date April 7, 2015

Attest:   
Roger W. Randolph, City Clerk

Date: April 7, 2015

Date \_\_\_\_\_

CITY

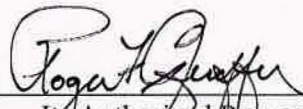
By:   
Its Authorized Representative  
Jonathan Rothschild, Mayor

DISTRICT

By: \_\_\_\_\_  
Its Authorized Representative

FOTB

Date April 4, 2015

By:   
Its Authorized Representative

Pursuant to A.R.S. § 11-952 (D), the attorneys for the City and District hereto have determined that the foregoing is in proper form and is within the powers and authority granted under the laws of this State to the City and District.

RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT:

\_\_\_\_\_  
District Attorney

CITY:

  
City Attorney

rescinded, except in writing, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no force and effect.

k) *Execution in Counterpart.* This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. This Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages and all such counterpart signature pages shall be read as though part of a single document, and they shall have the same force and effect as though all the signers had signed a single signature page.

**CITY**

Date \_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Representative

**DISTRICT**

Date 4-16-15

By: \_\_\_\_\_ Chair Person  
Its Authorized Representative Fletcher McCusker

Date 4/16/15

By: \_\_\_\_\_ SECRETARY  
Its Authorized Representative MARK IRWIN

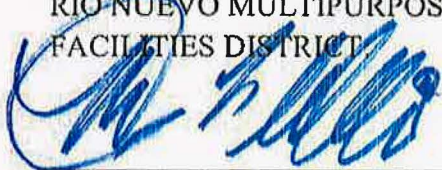
**FOTB**

Date \_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Representative

Pursuant to A.R.S. § 11-952 (D), the attorneys for the City and District hereto have determined that the foregoing is in proper form and is within the powers and authority granted under the laws of this State to the City and District.

RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT



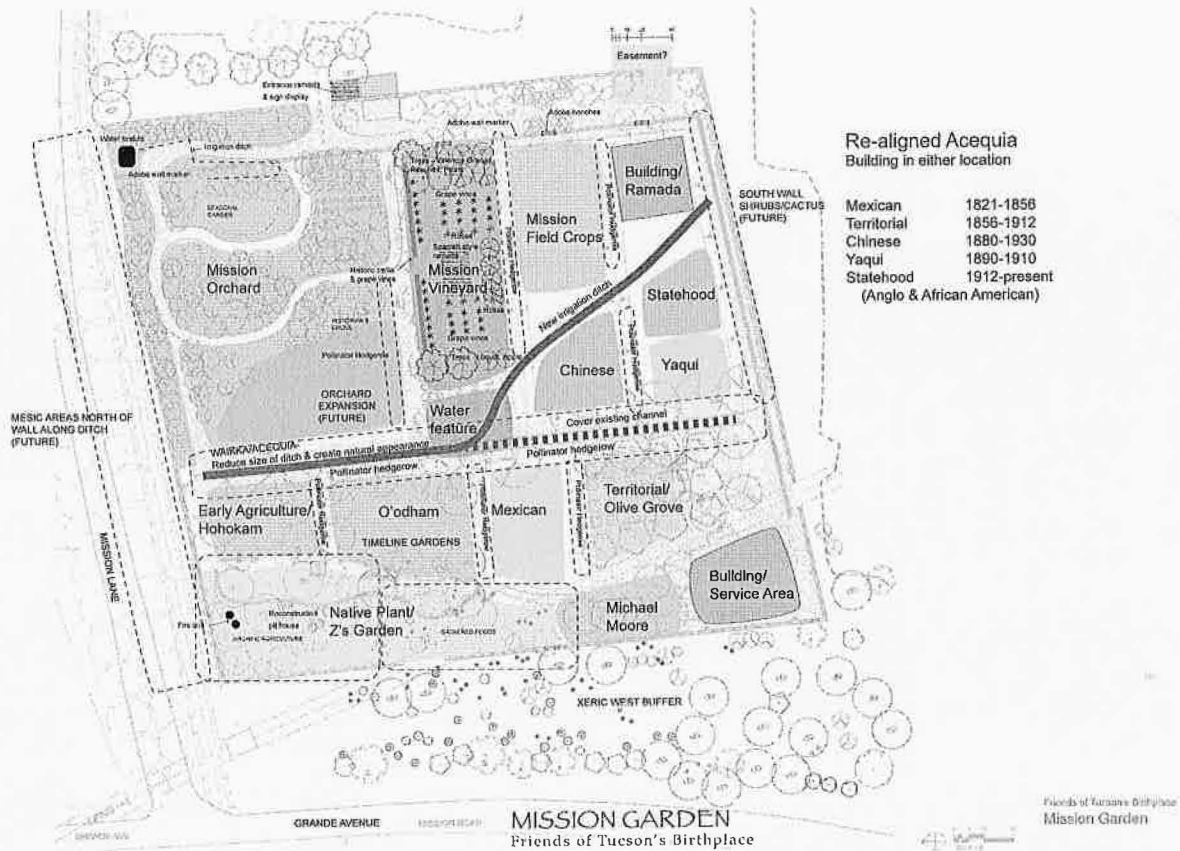
District Attorney

CITY:



City Attorney

### Description and Depiction of Mission Garden





**EXHIBIT B** to Exhibit 1 to Resolution No. 22381

## Scope of Work

MISSION GARDEN				
<b>ESTIMATED COST TO COMPLETE</b>				February 7, 2015
<b>PHASE 1</b>				
<b>A.</b>				
ARCHITECTURAL & ENGINEERING			\$100,000	
SITE UTILITIES			\$57,000	
EAST STORAGE BUILDING ELECTRICAL SERVICE			\$34,000	
MESQUITE RAMADA ELECTRICAL			\$5,000	
RAMADAS 31 & 32 ELECTRICAL			\$5,000	
PLANT TIMELINE GARDENS, VINEYARD,			\$57,000	
CROP FIELDS, & REBUILD ACEQUIA				
LANDSCAPE EAST ENTRANCE			\$20,000	
PROJECT MANAGEMENT			\$22,000	
<b>SUBTOTAL</b>			<b>\$300,000</b>	<b>\$300,000</b>
<b>B.</b>				
INTERPRETIVE STRUCTURE & TOILETS			\$600,000	
LANDSCAPE MISSION LANE			\$15,000	
WATER HARVESTING SYSTEM			\$70,000	
ADDITIONAL TEMPORARY PARKING			\$25,000	
FF&E & EXHIBITS			\$32,000	
GARDEN EQUIPMENT			\$28,000	
PROJECT MANAGEMENT			\$30,000	
<b>SUBTOTAL</b>			<b>\$800,000</b>	<b>\$800,000</b>
<b>TOTAL PROJECT COSTS TO COMPLETE</b>				<b>\$1,100,000</b>