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**RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT**

**WEST OF INTERSTATE 10 PROJECTS**

**FORENSIC EXAMINATION REPORT  
FINDINGS AND OBSERVATIONS**

**JUNE 11, 2012**

June 15, 2012

Board Members  
Rio Nuevo Multipurpose Facilities District  
Tucson, Arizona

Dear Board Members:

We have prepared the forensic examination report as of June 11, 2012 of findings and observations for the Rio Nuevo Multipurpose Facilities District in connection with the West of Interstate 10 Projects ("Westside Projects"). These projects include the projects identified by Rusing Lopez & Lizardi, P.L.L.C. in their request for information to the City of Tucson as District projects related to the Westside. These projects include the following: Plaza del Centro, Gadsden Development, Barrio Viejo, Barrio Sin Nombre/San Augustin, Mission Site/Origins Park, UA Science Center and Historical Museums, Mercado Avenue, Arizona History Museum, Mission Landfill, Origins Infrastructure, Mission Gardens and Mission Complex Drainage Swale.

Our conclusions could change if additional information is obtained.

Please contact our office if you have any questions regarding this report.



Regier Carr & Monroe, LLP, CPAs

# **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT WEST OF INTERSTATE 10 PROJECTS FORENSIC EXAMINATION REPORT FINDINGS AND OBSERVATIONS**

The 2010 reconstituted Rio Nuevo Multipurpose Facilities District (“District”) engaged Regier Carr & Monroe, LLP, CPAs (“RCM” or “we”) to conduct a forensic examination of the West of Interstate 10 Projects (“Westside Projects”) as specifically described below. We have conducted a forensic examination concerning the possible misuse of funds of the District. This examination was prompted by information resulting from a performance and financial analysis of the District performed by Crowe Horwath, LLP in October 2010.

## **Procedures Performed**

On September 9, 2011, special legal counsel to the District, Rusing Lopez & Lizardi, P.L.L.C., requested all supporting documentation from the City of Tucson (“City”) for numerous City projects related to Rio Nuevo. The request (***Exhibit A***) included the following City project numbers deemed to be related to the West Side Projects: JA01 (Plaza del Centro), JA03 (Gadsden Development), JA05 (Barrio Viejo), JA06 (Barrio Sin Nombre), J004 (Mission Site/Origins Park), J007 (Science Center & Historical Museums), J013 (Mercado Avenue), J021 (Arizona History Museum), J030 (Mission Landfill), J031 (Origins Infrastructure) J050 (Mission Gardens), J051 (Mission Complex Drainage Swale) and any other related projects. In response to this request, Ms. Kelly Gottschalk (“Gottschalk”), Chief Financial Officer/Assistant City Manager to the City provided extensive electronic PDF files for the Westside Projects and their expenditures. The PDF files were provided electronically by e-mail and Gottschalk stated that she had provided all documentation on the Westside Projects contained in the project files (***Exhibit B***). The PDF files included a total of 3,447 pages. The City Finance Department was responsible for all accounting and disbursements related to the Rio Nuevo Multipurpose Facilities District funds throughout the duration of the Westside Projects, including maintenance of supporting documentation for expenditures. After the documents had been reviewed, it was determined that there were significant documents related to these projects that were not received from the City of Tucson. Therefore an additional request for documentation was made by Rusing Lopez & Lizardi, P.L.L.C. on April 24, 2012 (***Exhibit C***). To our knowledge, no additional documentation has been received from the City of Tucson by Rusing Lopez & Lizardi, P.L.L.C. in response to that request.

This forensic examination was conducted in accordance with lawful forensic techniques, which included the examination of supporting documentation of expenditures which were provided by the City. We also obtained and utilized relevant information from the City’s and the District’s public websites. Wells Fargo Bank provided documents related to the 2008 Revenue Bonds, which we also used in our examination. We examined the documentation in order to determine if the District had authorized the expenditures, whether the expenditures were adequately supported, whether they related to the Westside Projects, and to determine if there were any

(continued)

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
WEST OF INTERSTATE 10 PROJECTS  
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indications of misused or misallocated funds and/or fraudulent activity. For the purposes of this examination, all documents received by the City or obtained through websites and other sources are collectively referred to as the “documentation”.

The initial phase of the examination included review of the City provided documents, including contracts. Contracts were reviewed to identify the parties to the contracts, the authorizing agents and the significant terms. The City documents were also reviewed to identify amendments to the contracts. We then examined payment applications for proper authorization, underlying supporting documentation for the expenditures, and appropriateness in relation to the contracts. We reviewed publicly available District Board meeting minutes for motions and resolutions in order to identify District Board approvals related to the Westside Projects. Expenditures were summarized and compared to actual District approvals and the approved Guaranteed Maximum Price (“GMP”) of contracts, if applicable. Finally, we traced the expenditures from the payment application details into the “Inception to Date Flow of Funds Expenditures FY00 through October 31, 2011” (“Flow of Funds”) prepared by and obtained from the City’s public website for the Rio Nuevo Multipurpose Facilities District (<http://cms3.tucsonaz.gov/rionuevo>) (*Exhibit D*).

There were significant gaps in the information provided by the City. The missing documentation limited our ability to test the support of many of the expenditures incurred.

**Summary of Questioned Costs**

Based upon the procedures performed, we identified \$33,849,702.77 of questioned costs. This amount is comprised of \$1,547,564.07 of questioned costs based upon our analysis of documents and \$32,302,138.70 of questioned costs resulting from expenditures for which no supporting documents were located. In the absence of supporting documentation, these costs should be questioned costs. However, if the City had made the support available, it may have resulted in different findings in this report.

For the purpose of this report, a “questioned cost” is defined as a cost not supported by adequate documentation, a cost that is unnecessary or unreasonable, or a cost that is a violation of a law, regulation or contract.

*(continued)*



# **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**

## **WEST OF INTERSTATE 10 PROJECTS**

### **FORENSIC EXAMINATION REPORT**

### **FINDINGS AND OBSERVATIONS (CONTINUED)**

#### **Westside Projects Background**

The Westside Projects consist of approximately twelve projects spanning a period of seven years. These projects include:

- *Plaza del Centro (JA01)* – The Plaza Centro project is located at Broadway and Toole, not west of Interstate 10. Mayor and Council adopted Resolution 21313 on June 9, 2009 approving and authorizing a development agreement between the City of Tucson and OT Kino, LLC for development of the Plaza Centro project on two City owned parcels on either side of Toole between Broadway and 4th/Congress. The agreement requires the City of Tucson to design and construct a public parking garage on the property as a precondition to the developer purchasing the land and starting his mixed-use, high density, pedestrian oriented development. The City garage will be integrated into the overall development, meeting public parking needs in the area, including those of the Plaza Centro development.
- *Gadsden Development (JA03)* – Planned development includes 125 room boutique hotel, 400 residential units and additional development to include office space, market, restaurant, and other commercial uses. The Gadsden Development is located on 14 acres immediately southwest of Congress Street and the Santa Cruz River.
- *Arizona History Museum (J021)* – Design and develop a building program, site plans, and cost estimates for a new Arizona History Museum to be operated by the Arizona Historical Society.
- *Barrio Sin Nombre (JA06)* – Design and construct a concept plan for improvements to the neighborhood (Barrio Sin Nombre, later renamed to Barrio San Augustin) including new curbs, sidewalks, utilities, storm drains, paving, landscape and street lighting.
- *Barrio Viejo (JA05)* – Design and construct a concept plan for improvements to the neighborhood (Barrio Viejo) including new curbs, sidewalks, utilities, storm drains, paving, landscape and street lighting.

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**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
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- *Mission Site/Origins Park (J004)* – Phase I of the Tucson Origins Heritage Park includes west side infrastructure, some landfill remediation, and construction of the Tucson Presidio element of the park. The Heritage Park also includes the Mission Gardens. Together the elements of the Tucson Origins Heritage Park are to provide residents and visitors a fascinating educational experience and exposure to Tucson's 4,000 years of habitation. The Mission Site/Origins Park project is located west of Interstate 10 and South of Congress Street.
- *U of A Science Center & Historical Museum (J007)* – The University of Arizona Science Center was intended to include fourteen major components dramatically positioned along a bridge that spans Interstate 10 and the Santa Cruz River. The District Resolution 2004-001 approved an Intergovernment Agreement between the District, City of Tucson, and Arizona Board of Regents acting on behalf of the University of Arizona authorizing \$20 million of District support.
- *Mercado Avenue (J013)* – Public infrastructure improvements for a mixed-use, pedestrian-friendly, sustainable new neighborhood. The District entered into a Financial Participation Agreement with the City of Tucson on April 20, 2006 which was executed by Ruben Suarez, Chair of the District Board. The District's financial participation was not to exceed \$4 million.
- *Mission Landfill (J030)* – The Mission landfill is located near the Mission Road and Starr Pass Boulevard intersection. This landfill was used for the disposal of Class II trash which includes construction/demolition debris and green waste. The project was for remediation of the landfill.
- *Mission Gardens (J050)* – Phased reconstruction of the Spanish Colonial walled garden that was part of the historic San Augustin Mission. The Mission Gardens are located near the eastern base of A-Mountain at the corner of Mission Road and Mission Lane.

The total expenditures for these projects, as reported by the City of Tucson in the most recent Inception-to-Date Flow of Funds, are \$38,552,031.94 (**Exhibit D**).

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**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
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FINDINGS AND OBSERVATIONS (CONTINUED)**

**Findings**

Shown below are our findings and observations, based on the examination of documents provided by the City of Tucson, Wells Fargo Bank and other publicly available documents. A summary of questioned costs and expenditures lacking support can be found at ***Exhibit E***.

**A. Expenditures on Projects Outside the Boundaries of the District**

We found that the District expended \$357,806.36 on projects that were not located within the boundaries of the District.

Arizona Revised Statute 48-4201 defines “multipurpose facility” as “a primary component that is located in the district on the multipurpose facility site” and “secondary components that are located in the district and that the board determines are necessary or beneficial to the primary component”. ARS 48-4204 adds that the “district may acquire land and construct, finance, furnish, maintain, improve, operate, market and promote the use of multipurpose facilities and other structures, utilities, roads, parking areas or buildings necessary for full use of the multipurpose facilities and do all things necessary or convenient to accomplish those purposes.” In the Mayor & Council Memorandum dated October 17, 2006, and a letter from the District’s legal counsel dated October 13, 2006, it was the opinion of the City Attorney and District’s attorney that the District could expend funds on projects outside the District boundaries and the District Board should “expressly determine that the expenditure is necessary to support the full use of facilities within the District” (***Exhibit F***). Expenditures were made on the following projects that are partially or completely outside the boundaries of the District. Evidence of the Board expressly determining that the expenditures were necessary was not found.

- i. Barrio Viejo (JA05) – Total expenditures on the Barrio Viejo project were \$225,960.58. The Barrio Viejo neighborhood is not within the boundaries of the Rio Nuevo Multipurpose Facilities District. It is unclear how this project was a direct benefit to the District. Therefore, all of those expenditures have been considered questioned costs.

We were also unable to find supporting documentation for \$12,483.19 of the expenditures incurred.

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- ii. Barrio Sin Nombre (JA06) – This neighborhood is not within the boundaries of the District, yet \$131,845.78 of District funds were used for architectural design fees. We were unable to locate supporting documentation for \$14,042.68 of these expenditures. It is unclear how this project was a direct benefit to the Multipurpose Facility and, therefore, all of the expenditures are considered questioned as District expenses.

**B. Gadsden Development (JA03)**

We found that the District expended \$20,422 in connection with a contract between the City and a developer for which the City and District had no financial participation agreement.

The Development and Real Estate Purchase Agreement between the City of Tucson and The Gadsden Company was executed on August 6, 2008. It does not appear that the District is a party to this agreement, yet the District paid the appraisal fees (\$7,500) associated with this sale of property as well as fees related to the Letter of Map Revision – Fill (LOMR-F) to remove a portion of the property from the FEMA Flood Plain Map. Total expenditures on the Gadsden Development project (JA03) were \$20,422. Although the Gadsden Development is within the District boundaries, a financial participation agreement between the City of Tucson and the District was not located to justify the District’s payment of the fees associated with the sale of property in which the City of Tucson benefited from. As such, the total expenditures of \$20,422 related to the Gadsden Development Project are considered questioned costs (*Exhibits G and H*).

**C. University of Arizona Science Center (J007)**

We were unable to locate support for expenditures of \$7,233,630.20. Of that amount, \$7,143,179 paid to the University of Arizona (“U of A”) has been questioned as we were unable to locate an executed amended intergovernmental agreement between the City, the University, and the District.

We were able to locate the Intergovernmental Agreement (“IGA”) dated August 2004, which included \$20 million of District support for the construction of the Science Center. The IGA further states that the District shall pay these funds to the U of A at the time the U of A issues debt for the construction of the Science Center (*Exhibit Q*). Although we were able to locate the City Resolution 20750 approving an amended and restated IGA in

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2007, we were unable to find a District Resolution approving the amended and restated IGA. Also, upon review of the District's minutes for August of 2007, approval of the amended and restated IGA was on the agenda, but the meeting was cancelled due to a lack of quorum. At the next meeting held by the District on July 30, 2008, a motion passed to approve signing the amended IGA. No District resolution or signed IGA was located. With no evidence of an executed Amended and Restated IGA between the District, City, and U of A, all expenditures to the U of A for the Science Center are considered questioned costs. Of the \$7,706,235 in the Flow of Funds for the Science Center project, approximately \$7,143,179 was paid to the U of A.

In addition, we examined a City of Tucson memorandum dated October 21, 2008 from Stacie Bird (finance manager) to Mike Hein (City Manager) which indicated that the U of A charged the District for expenses that were unallowable on other projects based on City of Tucson procurement guidelines (*Exhibit I*). Based on the memo, these included personnel costs, purchase of computers, phone service, food, professional memberships, subscriptions and conferences, and professional ads to hire the Development Director position. Due to the lack of support, we were unable to determine the total amount of expenses that were unallowable, but the memo identified \$186,415 of such costs.

**D. Mission Site/Origins Park (J004)**

Total expenditures for this project listed in the City of Tucson's Flow of Funds are \$18,233,716.69. The City provided supporting documentation for only \$2,417,382.44. As such, we were unable to determine the validity of \$15,816,334.25 in expenditures due to the lack of support.

Utilizing the data that we did obtain, we were able to identify \$1,191,419.15 of questioned costs. Of these questioned costs, \$365,422.90 is due to preconstruction costs included in the Construction Manager at Risk payment applications being charged to the District twice on the flow of funds report. Due to the limited documentation, we were unable to determine if the preconstruction costs were paid twice by the City of Tucson.

We noted approximately \$817,960 in fees were paid to Desert Archaeology. We were not able to locate a contract between Desert Archaeology and the District, as such all expenses for Desert Archaeology have been included in questioned costs.

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**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
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The remaining \$8,036.25 of questioned costs for this project relate to fees paid to TextMarcx. Although we were able to locate a proposal, it was not signed by a District or City representative and no Notice to Proceed was located (*Exhibit J*). Also included in the payments to TextMarcx were \$1,901.25 of expenses for a project unrelated to the District.

**E. Mission Gardens (J050)**

Supporting documents were not provided for \$1,802,667.40 of expenditures related to this project.

An Intergovernmental Agreement between Pima County, the City of Tucson and the District (“IGA”) which was recorded November 14, 2001 provided the City access to Pima County property in order to design and construct improvements in accordance with the Mission Gardens and Mission San Agustin del Tucson Cultural Heritage Park Master Plan. The construction of the Mission Gardens portion was to be completed within 5 years of the effective date of the IGA (November 14, 2006) or the IGA would be void and the City’s license to enter and occupy the Pima County property would be revoked (*Exhibit K*). According to the City of Tucson’s Flow of Funds, expenditures on the Mission Gardens project did not begin until the fiscal year ending June 30, 2009, totaling \$2,052,935.78. We were unable to locate evidence of an extension to the IGA. Only \$250,268.38 of expenditures had supporting documentation, as such \$1,802,667.40 is deemed questioned costs due to the lack of support.

**F. Mercado Avenue (J013)**

We were unable to locate supporting documents for \$5,065,817.34 of expenditures for the Mercado Avenue projects.

There were two invoices referenced to “149 S. Grande Ave”. Based on an address search, this is a residence adjacent to the round-a-bout at Cushing Street and Mission. The description on the invoices indicated “drill out front bolt add hasp” in the amount of \$159.43 and “Asbestos survey” in the amount of \$4,283.00. The total of the two invoices amount to \$4,442.43. These expenditures have been considered questioned costs.

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**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
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The District entered into a Financial Participation Agreement with the City of Tucson and Rio Development for the Menlo Park Subdivision dated May 9, 2006. Approval by the City is contained in the City of Tucson Mayor and Council Resolution No. 20334 and the District approved the Financial Participation Agreement on April 20, 2006. Per the Agreement, the District's financial participation was not to exceed \$4 million. Based on the Flow of Funds, the District was charged \$5,523,863.22 for this project resulting in \$1,523,863.22 in excess of the approved amount. We were unable to locate any amendments to this agreement and, as such, have included this amount in questioned costs.

**G. Wells Fargo Bank Documents**

The District's attorneys, on behalf of the District, sent three letters requesting account information from Wells Fargo Bank (*Exhibit L*). Included in these requests, were requests for all documentation relating to the District's Bonds and Certificates of Participation. In response to this request, Wells Fargo Bank furnished a PDF document consisting of 354 pages (2002 COPs 5 pages, 2005 Bonds 12 pages, 2008 Bonds 71 pages, 2009 COPs 266 pages). Our forensic examination included review of the documents relating to the 2008 Bonds because they were issued to pay for several of the Westside Projects (among other projects). The following are observations based on the examination of the Wells Fargo documents:

- i. From the 2008 Bond proceeds, \$64,027,184.05 was transferred to the City of Tucson to repay the City for moneys previously advanced (\$6.8 million) and "for safekeeping, investment and disbursement from time to time on behalf of the District" per the Bond instructions. The City of Tucson had control of the bond proceeds (*Exhibit M*).
- ii. The 2008 Bond documents identified 14 projects which the bond proceeds were to be expended on totaling \$65,000,000 including the repayment of a loan from the City of Tucson (*Exhibit N*). Based on the documents provided by Wells Fargo, it appears bond proceeds were used for 4 additional projects (*Exhibit P*).
- iii. The 2008 Bond proceeds identified \$6,000,000 for Downtown Infrastructure Improvements. Based on the documentation provided, \$8,653,346.02 was expended for this project, which is \$2,653,346.02 in excess of the stated amount.

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- iv. The Wells Fargo Bank documents included “Requisition for Payment From Rio Nuevo Account” documents in which Wells Fargo Bank was provided a copy by the City of Tucson pursuant to the Disbursement Agency Agreement (*Exhibit O*) included in the 2008 Bond documents. There were 12 of these requisitions sequentially numbered 1 to 13. No requisition numbered “10” was included. It appears a 10<sup>th</sup> requisition was made based on the total dollars changing from requisitions 9 to 11. The total of the disbursement requests, in which were available for review, was \$49,271,772.29 (*Exhibit P*).
- v. The 2008 Bond Transcript included a breakdown of how the bond proceeds would be used. Based on the documents provided by Wells Fargo, RCM prepared a comparison of the intended uses and actual uses of the 2008 bond funds (*Exhibit P*).

We have identified items “ii” and “iii” above as potential issues regarding the use of the bond proceeds; however, we are not qualified to determine the District’s compliance with bond rules and regulations. Legal counsel will need to review these matters.



RUSING & LOPEZ, P.L.L.C.

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FACSIMILE (520) 529-4262

WRITER'S DIRECT LINE

(520) 529-4261

WRITER'S E-MAIL ADDRESS  
sbrearcliffe@rusingandlopez.com

September 9, 2011

\* NOT ADMITTED IN ARIZONA;  
ADMITTED IN MASSACHUSETTS  
NEW YORK, AND WASHINGTON, D.C.  
\*\* ALSO ADMITTED IN CALIFORNIA  
\*\*\* ALSO ADMITTED IN COLORADO  
+ ALSO ADMITTED IN WASHINGTON, D.C.  
• ALSO ADMITTED IN TEXAS

Ms. Kelly Gottschalk  
Finance Director  
City Hall  
P.O. Box 27210  
Tucson, AZ 85726-7210

**RE: JA01, JA03, JA05, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JO50, JO51,  
any related projects and as set forth below (Collectively, the "Westside  
Mission/Origins/Convento Projects").**

Dear Ms. Gottschalk:

We are assisting the Rio Nuevo Multipurpose Facility District ("the District") in a review of costs and expenses being charged to the District for design, construction and other services furnished in connection with the following Projects identified by the City of Tucson as job numbers: JA01, JA03, JA05, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JO50, JO51 and any related projects; as well as the following unnumbered but identified projects, managed and administered by the City: "Congress Landfill," "Archeology and Historical Research," and the "Rio Nuevo Landfill Stabilization Project" (collectively, the "Westside Mission/Origins/Convento Projects" and from time to time below "Projects").

To expedite review we ask that the City furnish:

- a. Electronic copies of all payment applications submitted to (and reviewed and approved) by the City by every contractor, vendor, designer or other entity furnishing services associated with the Projects.
- b. Copies of each request for reimbursement and all supporting data and approvals submitted by the City to Wells Fargo for reimbursement.

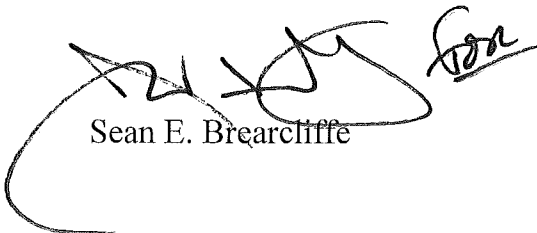
Ms. Kelly Gottschalk  
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- c. Copies of all bank statements for the accounts from which Project reimbursements were requested.
- d. Copies of all contracts and agreements entered into relating to the Projects.
- e.
- f. Copies of all Change Orders and Change Order Requests relating to the Projects.
- g. Copies of each Budget, for each of the Projects, which were approved by the Mayor and Council and the Rio Nuevo Multipurpose Facilities District.
- h. Copies of each adjustment to each such Project Budget that were approved by the City's Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

To expedite our request, we are including a form through which you can identify appropriate staff capable of responding to our request. Either we, or a designee can review the attached form with City and streamline the process. Please respond with the applicable document production in scanned or hardcopy form on or before September 19, 2011.

Thank you very much for assistance and cooperation.

Sincerely,



Sean E. Brearcliffe

SEB\gl

## Contacts & Document List

The Escrow Officer/Relationship Manager at Wells Fargo Bank maintaining the Trust accounts from which the City of Tucson requested reimbursement

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson responsible for reviewing the Projects payment applications and the “backup” to the payment applications and determining that the extent of progress planning, design or construction was consistent with the payment applications submitted and that no overbilling or front loading of project expenses was occurring.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) within any City of Tucson Planning and Engineering Department or Finance Department having responsibility for, or participating in reviewing and approving progress payment requests for the Projects and determining that the work completed was consistent with the extent of progress billing. Please include the contact information any outside architects, engineers or consultants engaged to perform these services as well.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with the worksheets or other files used to roll forward payment applications and otherwise account for budgets or actual expenses incurred under any agreement with any entities for which the City requested payment; including those performing Construction services, Design and Preconstruction services or any other services associated with the Projects.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

*Exhibit A*

The individual(s) at the City of Tucson familiar with the Projects' payment applications, invoices or other billings (and all accompanying documents), submitted to the City by any entity, party or otherwise which are related to the Projects, including but not limited to those for construction services, design and preconstruction services, inspection or testing services, and project planning, platting, legal or other services.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with the contracts and agreements entered into and relating to the Projects.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with Change Orders or Change Order Requests relating to the Projects.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with each Projects' Budget approved by the Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with adjustments to the Projects' Budgets that were approved the City's Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

***Exhibit B***

**From:** [Kelly Gottschalk](#)  
**To:** [Sean Brearcliffe](#)  
**Cc:** [Mike Rankin](#)  
**Subject:** Requested Documents JO25  
**Date:** Sunday, September 18, 2011 2:25:06 PM  
**Attachments:** [j025 sw hazard g2.pdf](#)  
[j025 sw hazard a.pdf](#)  
[j025 sw hazard b1.pdf](#)  
[j025 sw hazard b2.pdf](#)  
[j025 sw hazard c1.pdf](#)  
[j025 sw hazard c2.pdf](#)  
[j025 sw hazard d.pdf](#)  
[j025 sw hazard e1.pdf](#)  
[j025 sw hazard e2.pdf](#)  
[j025 sw hazard f.pdf](#)  
[j025 sw hazard g1.pdf](#)  
[j025 sturgeon electric.pdf](#)  
[j025 summary budget.pdf](#)  
[j025 thomas reprographics.pdf](#)  
[j025 tmcx az dr23687.15.pdf](#)  
[j025 tucson elec power.pdf](#)  
[j025 twenty day lien notice.pdf](#)  
[j025 walker parking.pdf](#)  
[j025 western tech dr23376.7 e.pdf](#)  
[j025 western tech dr23376.7 a.pdf](#)  
[j025 western tech dr23376.7 b.pdf](#)  
[j025 western tech dr23376.7 c.pdf](#)  
[j025 western tech dr23376.7 d.pdf](#)  
[j025 western tech dr32341.1.pdf](#)  
[j025 western tech dr32341.4 b.pdf](#)  
[j025 western tech dr32341.4 a.pdf](#)  
[j025 western tech dr32341.5.pdf](#)

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Mr. Brearcliffe,

The information you requested in your letters dated September 9, 2011 re: projects JA01, JA03, JA05, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JO50, JO51, JO25, JO45 have been attached and split into multiply emails due to the file size.

The attached documentation includes all information contained in the finance project files. The files were not reviewed for completeness. My assumption is that these files, publically available information and other information (bank statements) previously transmitted to your firm and/or accountants, auditors, attorneys and District Board members cover your request.

If you have specific questions, are missing any specific information or if we can assist in your analysis please contact me and I will coordinate the appropriate staff resources.

Please confirm receipt of this email.

Thank you,

Kelly Gottschalk, CPA  
Assistant City Manager/  
Chief Financial Officer

City of Tucson  
255 W. Alameda 5W  
Tucson, AZ 85726-7210  
520-837-4381  
[kelly.gottschalk@tucsonaz.gov](mailto:kelly.gottschalk@tucsonaz.gov)



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SARAH J. STANTON

(520) 529-4261

WRITER'S E-MAIL ADDRESS  
sbrearcliffe@rllaz.com

April 24, 2012

***Via First Class Mail Only***

Ms. Kelly Gottschalk  
Finance Director  
City Hall  
P.O. Box 27210  
Tucson, AZ 85726-7210

**RE: JAO1, JA03, JAOS, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JOSO, JOSI, any related projects and as set forth below (Collectively, the "Westside Mission/Origins/Convento Projects").**

Dear Gottschalk:

This is a courtesy follow-up letter.

On or about September 9, 2011 we requested (in the attached "Request Letter") that the City of Tucson ("City") furnish specific information relating to City of Tucson job numbers: JA01, JA03, JA05, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JO50, JO51 and any related projects; as well as the following unnumbered but identified projects, managed and administered by the City in the name of the City or the Rio Nuevo Multipurpose Facilities District ("Rio Nuevo"): "Congress Landfill," "Archeology and Historical Research," and the "Rio Nuevo Landfill Stabilization Project" (collectively, the "Westside Mission/Origins/Convento Projects" and from time to time below "Projects"). A form was included with the Request Letter through which the City could identify the appropriate staff that were involved with and/or worked on the various Projects. Additionally, the form sought with whom we or our designee could work to obtain the information requested and streamline the process.

\* ALSO ADMITTED IN MASSACHUSETTS, NEW YORK AND WASHINGTON, D.C. \*\* ALSO ADMITTED IN CALIFORNIA AND OREGON \*\*\* ALSO ADMITTED IN COLORADO  
♦ ALSO ADMITTED IN WASHINGTON, D.C. ♦ ALSO ADMITTED IN TEXAS

Rusing Lopez & Lizardi, P.L.L.C.  
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Ms. Kelly Gottschalk  
April 24, 2012  
Page 2

While the City did not complete the form nor advise us with whom we might work, or where documents were located, the City did furnish approximately 3,447 pages of scanned documents upon which it was represented the City relied in processing and making payments associated with the Projects, tracking and charging cost and expense to the City and Rio Nuevo, finalizing and distributing funds pursuant to the City's repayment schedules and reimbursement requests directly for itself and on behalf of Rio Nuevo.

We are writing today to confirm that there are no other records, documents or materials (collectively "Records") the City or its partners on the Projects would like to submit for review regarding the Projects and any projects related to them. Absent receipt of additional Records, the items received to date shall be considered to constitute the City's complete record for the Projects and any projects related to them, including, but not limited to:

- a. All payment applications submitted to (and reviewed and approved) by the City by every contractor, vendor, designer or other entity furnishing services associated with the Projects.
- b. Copies of each request for reimbursement and all supporting data and approvals submitted by the City to Wells Fargo for reimbursement for any and all matters.
- c. Copies of all bank statements and trustee statements for the accounts from which Project was managed and/or reimbursements were received and/or requested.
- d. Copies of all contracts and agreements entered into relating to any and all aspects of the Projects.
- e. Copies of all Change Orders and Change Order Requests relating to the Projects.

Ms. Kelly Gottschalk

April 24, 2012

Page 3

- f. Copies of each Budget, for each of the Projects, which were approved by the Mayor and Council and the Rio Nuevo Multipurpose Facilities District; and
- g. Copies of each adjustment to each such Project Budget that were approved by the City's Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

If there are any Records (other than the 3447 pages of scanned documents that the City has already submitted) that the City believes should be reviewed in order to supplement the examination of the Projects, upon which the City relied in the management, processing and making of payments associated with the above projects, tracking and charging cost and expense to the City and/or Rio Nuevo, finalizing and distributing funds pursuant to the City's reimbursement requests directly for itself and on behalf of Rio Nuevo, and any other related matters, any other Records need to be furnished electronically to our office on or before 5:00 pm, Mountain time on May 2, 2012.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Sean E. Brearcliffe" followed by a stylized flourish.

Sean E. Brearcliffe

SEB\lg  
21G4795



**RUSING & LOPEZ, P.L.L.C.**

ATTORNEYS AT LAW

6262 NORTH SWAN ROAD

SUITE 200

TUCSON, ARIZONA 85718

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sbrearcliffe@rusingandlopez.com

\* NOT ADMITTED IN ARIZONA;  
ADMITTED IN MASSACHUSETTS  
NEW YORK, AND WASHINGTON, D.C.  
\*\* ALSO ADMITTED IN CALIFORNIA  
\*\*\* ALSO ADMITTED IN COLORADO  
+ ALSO ADMITTED IN WASHINGTON, D.C.  
• ALSO ADMITTED IN TEXAS

September 9, 2011

Ms. Kelly Gottschalk  
Finance Director  
City Hall  
P.O. Box 27210  
Tucson, AZ 85726-7210

**RE: JA01, JA03, JA05, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JO50, JO51,  
any related projects and as set forth below (Collectively, the "Westside  
Mission/Origins/Convento Projects").**

Dear Ms. Gottschalk:

We are assisting the Rio Nuevo Multipurpose Facility District ("the District") in a review of costs and expenses being charged to the District for design, construction and other services furnished in connection with the following Projects identified by the City of Tucson as job numbers: JA01, JA03, JA05, JA06, JO04, JO07, JO13, JO21, JO30, JO31, JO50, JO51 and any related projects; as well as the following unnumbered but identified projects, managed and administered by the City: "Congress Landfill," "Archeology and Historical Research," and the "Rio Nuevo Landfill Stabilization Project" (collectively, the "Westside Mission/Origins/Convento Projects" and from time to time below "Projects").

To expedite review we ask that the City furnish:

- a. Electronic copies of all payment applications submitted to (and reviewed and approved) by the City by every contractor, vendor, designer or other entity furnishing services associated with the Projects.
- b. Copies of each request for reimbursement and all supporting data and approvals submitted by the City to Wells Fargo for reimbursement.

Ms. Kelly Gottschalk  
September 9, 2011  
Page 2

- c. Copies of all bank statements for the accounts from which Project reimbursements were requested.
- d. Copies of all contracts and agreements entered into relating to the Projects.
- e.
- f. Copies of all Change Orders and Change Order Requests relating to the Projects.
- g. Copies of each Budget, for each of the Projects, which were approved by the Mayor and Council and the Rio Nuevo Multipurpose Facilities District.
- h. Copies of each adjustment to each such Project Budget that were approved by the City's Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

To expedite our request, we are including a form through which you can identify appropriate staff capable of responding to our request. Either we, or a designee can review the attached form with City and streamline the process. Please respond with the applicable document production in scanned or hardcopy form on or before September 19, 2011.

Thank you very much for assistance and cooperation.

Sincerely,



Sean E. Brearcliffe

SEB\gl

## Contacts & Document List

The Escrow Officer/Relationship Manager at Wells Fargo Bank maintaining the Trust accounts from which the City of Tucson requested reimbursement

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson responsible for reviewing the Projects payment applications and the "backup" to the payment applications and determining that the extent of progress planning, design or construction was consistent with the payment applications submitted and that no overbilling or front loading of project expenses was occurring.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) within any City of Tucson Planning and Engineering Department or Finance Department having responsibility for, or participating in reviewing and approving progress payment requests for the Projects and determining that the work completed was consistent with the extent of progress billing. Please include the contact information any outside architects, engineers or consultants engaged to perform these services as well.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with the worksheets or other files used to roll forward payment applications and otherwise account for budgets or actual expenses incurred under any agreement with any entities for which the City requested payment; including those performing Construction services, Design and Preconstruction services or any other services associated with the Projects.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Exhibit C**

The individual(s) at the City of Tucson familiar with the Projects' payment applications, invoices or other billings (and all accompanying documents), submitted to the City by any entity, party or otherwise which are related to the Projects, including but not limited to those for construction services, design and preconstruction services, inspection or testing services, and project planning, platting, legal or other services.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with the contracts and agreements entered into and relating to the Projects.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with Change Orders or Change Order Requests relating to the Projects.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with each Projects' Budget approved by the Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

The individual(s) at the City of Tucson familiar with adjustments to the Projects' Budgets that were approved the City's Mayor and Council and the Rio Nuevo Multipurpose Facilities District.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Direct Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Exhibit D**

**Rio Nuevo Flow of Funds  
Inception to Date information Unaudited  
Management Report, not GASB**

Expenditures FY 00 through October 31, 2011 - Unaudited

The project expenses do not and are not suppose to match the CIPs and/or capital asset amounts.

\*\*Includes total interest expense but excludes depreciation and amortization

	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	Unaudited FY10	Unaudited 10/31/2010	Inception to Date
Revenues:													
TIF Revenue					6,202,524.44	8,655,985.78	10,526,207.07	16,188,386.18	14,091,610.33	9,791,087.75	9,322,246.44	1,992,032.46	76,770,080.45
Tucson Convention Center Rental Income			3,239,393.75	4,738,775.00	4,737,775.00	3,703,725.00	3,703,675.00	3,708,175.00	3,700,300.00	3,701,500.00	3,703,609.75	1,240,773.39	36,177,701.89
Rialto Theater Rental Income												3,763.80	3,763.80
Depot Garage Rental Income												10,000.00	10,000.00
Other Rental Income		764.38	5,109.71	17,010.39	63,678.07	84,437.54	86,343.66	35,774.34	23,561.05	28,473.78	32,652.15	10,223.48	388,028.55
Sale of Property			27,491.16					492.13	5,803.20				33,786.49
Interest Earnings			367.14	6,195.33	150,866.54	800.75	135,322.12	130,397.09	100,192.46	145,083.47	53,246.27	22,522.31	744,993.48
City of Tucson Contributions:													
Citizen Auto Stage Relocation						400,000.00	146,069.00						546,069.00
Miscellaneous					523.15		150.00			89,729.58			90,402.73
<b>Total Revenues</b>	<b>-</b>	<b>764.38</b>	<b>3,272,361.76</b>	<b>4,761,980.72</b>	<b>11,155,367.20</b>	<b>12,844,949.07</b>	<b>14,597,766.85</b>	<b>20,063,224.74</b>	<b>17,921,467.04</b>	<b>13,755,874.58</b>	<b>13,111,754.61</b>	<b>3,279,315.44</b>	<b>114,764,826.39</b>
Other Financing Sources:													
COPs Series 2002 Convention Center Financing:													
Certificates of Participation			33,575,000.00										33,575,000.00
Premium			908,117.20										908,117.20
Issue Costs			(527,380.61)										(527,380.61)
City of Tucson Cash Contribution			511,359.38										511,359.38
Fox Theater Revenue Bonds:													
Bond Proceeds							5,800,000.00						5,800,000.00
Less Bond Discount							(17,775.35)						(17,775.35)
Less Issuance Costs							(177,690.78)						(177,690.78)
Fox Theater Foundation Reimbursements								1,471,451.79					1,471,451.79
Rio Nuevo Revenue Bonds Series 2008:													
Bond Proceeds										80,000,000.00			80,000,000.00
Less Bond Discount										(1,356,373.75)			(1,356,373.75)
Less Issuance Costs										(1,619,680.48)			(1,619,680.48)
Loan from City of Tucson					14,577,549.00								14,577,549.00
COPs Series 2009 Hotel Projects Financing:													
Certificates of Participation											12,560,000.00		12,560,000.00
Less Issuance Cost & Underwriter Discount											(459,332.93)		(459,332.93)
<b>Total Other Financing Sources</b>	<b>-</b>	<b>-</b>	<b>34,467,095.97</b>	<b>-</b>	<b>14,577,549.00</b>	<b>-</b>	<b>5,604,533.87</b>	<b>1,471,451.79</b>	<b>-</b>	<b>77,023,945.77</b>	<b>12,100,667.07</b>	<b>-</b>	<b>145,245,243.47</b>
<b>Total Revenues and Other Financing Sources</b>	<b>-</b>	<b>764.38</b>	<b>37,739,457.73</b>	<b>4,761,980.72</b>	<b>25,732,916.20</b>	<b>12,844,949.07</b>	<b>20,202,300.72</b>	<b>21,534,676.53</b>	<b>17,921,467.04</b>	<b>90,779,820.35</b>	<b>25,212,421.68</b>	<b>3,279,315.44</b>	<b>260,010,069.86</b>
Operating Expenditures:													
Salaries, Wages & Fringe Benefits	115,236.05	240,731.44	261,021.30	448,912.02	374,766.82	629,739.55	630,832.37	612,052.18					3,313,291.73
Services (legal, rent, utilities, insurance, etc)	14,610.06	1,683,667.19	384,104.24	418,767.87	400,111.57	497,091.84	929,412.73	694,971.56		116,761.55	296,811.24	302,529.07	5,738,838.92
Community Relations			73,948.33	221,432.57	184,286.50	293,067.35	256,759.08	178,337.79					1,207,831.62
South Tucson Agreement						250,000.00		250,000.00	500,000.00				1,000,000.00
Supplies	3,916.84	33,673.45	25,600.59	92,551.07	40,504.83	23,071.30	14,409.14	50,041.83				540.66	284,309.71
Equipment	10,150.00	35,232.38		33,889.60			5,799.64						85,071.62
Fiscal Agent Fees				500.00	3,500.00	2,000.00	3,000.00	6,250.00	10,465.00	6,587.50	11,087.50	1,805.00	45,195.00
Interest Expense		52,398.85	122,534.25	161,266.17	250,253.33	203,900.02	24.84			130,069.16			920,446.62
<b>Total Operating Expenditures</b>	<b>143,912.95</b>	<b>2,045,703.31</b>	<b>867,208.71</b>	<b>1,377,319.30</b>	<b>1,253,423.05</b>	<b>1,898,870.06</b>	<b>1,840,237.80</b>	<b>1,791,653.36</b>	<b>510,465.00</b>	<b>253,418.21</b>	<b>307,898.74</b>	<b>304,874.73</b>	<b>12,594,985.22</b>
Debt Service Payments:													
City of Tucson Loan:													
Principal								501,575.00	524,146.00	6,800,000.00	5,035,334.00		12,861,055.00
Interest								2,623,960.00	633,419.00	456,832.13	152,816.00		3,867,027.13
COPs Series 2002 Convention Center Financing:													
Principal		2,845,000.00	3,275,000.00	3,405,000.00	2,540,000.00	2,665,000.00	2,800,000.00	2,915,000.00	3,045,000.00	3,200,000.00			26,690,000.00
Interest		354,954.37	1,463,775.00	1,332,775.00	1,163,725.00	1,038,675.00	908,175.00	785,300.00	656,500.00	504,250.00		114,750.00	8,322,879.37
Fox Revenue Bonds:													
Principal							580,000.00	510,000.00	535,000.00	565,000.00	600,000.00		2,790,000.00
Interest							218,196.42	301,625.00	274,850.04	246,093.78	214,312.50	59,937.52	1,315,015.26
2008 Revenue Bonds:													
Principal													-
Interest										2,396,765.58	4,793,531.26	1,797,574.26	8,987,871.10
COPs Series 2009 Hotel Projects Financing:													
Principal													-
Interest											343,255.03	173,800.00	517,055.03
<b>Total Debt Service</b>	<b>-</b>	<b>-</b>	<b>3,199,954.37</b>	<b>4,738,775.00</b>	<b>4,737,775.00</b>	<b>3,703,725.00</b>	<b>4,501,871.42</b>	<b>7,645,335.00</b>	<b>5,667,715.04</b>	<b>14,166,191.49</b>	<b>14,843,498.79</b>	<b>2,146,061.78</b>	<b>65,350,902.89</b>

**Exhibit D**

**Rio Nuevo Flow of Funds  
Inception to Date information Unaudited  
Management Report, not GASB**

Expenditures FY 00 through October 31, 2011 - Unaudited

The project expenses do not and are not suppose to match the CIPs and/or capital asset amounts.

\*\*Includes total interest expense but excludes depreciation and amortization

	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	Unaudited FY10	Unaudited 10/31/2010	Inception to Date
Projects:													
Purchase of TCC for Multi-purpose district			34,429,741.53										34,429,741.53
Property purchase 501 S Sentinel Ave.	27,887.51												27,887.51
Property at 332 S Freeway			2,800.00										2,800.00
I-10 Deck Park							199,746.00	10,231.76					209,977.76
South Drill Track Improvement			11,650.00	3,847.00									15,497.00
Westside Project			925.00										925.00
Congress Landfill			15,568.85	112,336.70									127,905.55
Public Infrastructure Improvements			418,454.92	85,264.11	49,112.51								552,831.54
Archaeology and Historical Research			893,995.82		85,186.44								979,182.26
Rio Nuevo Landfill Stabilization Project			175,053.80	68,470.30									243,524.10
Rio Nuevo potholing				3,211.00									3,211.00
Bonita Ave & Congress				77,615.17									77,615.17
Greyhound Bus Relocation							13,951.69						13,951.69
Property 151 N Stone Ave.				800.00		128,001.93							128,801.93
Total Other Projects (in operating units)	27,887.51	-	35,948,189.92	351,544.28	134,298.95	128,001.93	213,697.69	10,231.76	-	-	-	-	36,813,852.04
JA01 Plaza Del Centro									10,556.93				10,556.93
JA02 Roundabout at Grande & Clearwater/Cushing									375,349.08	577,180.30			952,529.38
JA03 Gadsden Development									745.00	19,677.00			20,422.00
JA04 Greenway Multiuse Path										200,000.00			200,000.00
JA05 Barrio Viejo										39,871.56	186,089.02		225,960.58
JA06 Barrio Sin Nombre										89,165.13	33,808.59	8,872.06	131,845.78
JA07 Simpson Street Warehouse Demolition										25,628.04			25,628.04
J001 TCC Box Office				793,716.39									793,716.39
J002 Tucson Regional Visitors Center			1,110.34	98.11									1,208.45
J003 Presidio Stabilization & Heritage Park			184,654.19	619,010.21	707,245.78	22,667.09	1,326,757.50	1,233,836.44	211,860.35	69,338.41			4,375,369.97
J004 Mission Site/Origins Park				781,448.27	767,227.72	311,402.25	363,752.46	3,344,441.05	10,895,609.43	1,734,591.52	21,175.27	14,068.72	18,233,716.69
J005 Property Purchase Citizen Auto Exchange		15,078.37		826,598.99		1,575,209.54	748,116.79	190.36					3,165,194.05
J006 Fox Theatre				1,247,765.04	789,866.77	3,265,601.31	6,050,772.42	165,696.79					11,519,702.33
J007 Science Center & Historical Museums				195,783.00	71,245.65	6,939.52	14,255.55		5,471,813.60	1,946,197.72			7,706,235.04
J013 Mercado Avenue				250.00		121,004.54	72,997.20	4,000,144.23	1,298,336.40	31,130.85			5,523,863.22
J017 Civic Center: Convention Center Hotel										1,727,445.60	8,322,934.61	9,439.27	10,059,819.48
J021 Arizona History Museum										1,425,454.72	41,728.10		1,467,182.82
J023 Thrifty Block			99,785.20	228,912.53	22,062.29	520,289.10	10,781.96	4,251.91	770.00				886,852.99
J024 Southwest Drill Track Improvements					170,060.26	70,526.93	3,158.01	471.82					244,217.02
J025 Depot Plaza: Parking Garage								189,606.84	1,388,196.42	8,891,011.14	3,982,142.80	(627,427.00)	13,823,530.20
J026 Civic Center: New Arena						6,282.09		77,337.82		483,233.38	318,412.48		885,265.77
J027 Northwest Lots: Church - Stone					751,907.03								751,907.03
J030 Mission Landfill					5,139.14	1,564.92	1,318.49	1,565,672.24	732,917.67	333,137.40		157.50	2,639,907.36
J031 Origins Infrastructure									279,358.37	131,812.28	128,235.09		539,405.74
J032 Rialto Theater						1,790,046.68	355,621.56	83,679.77	38,422.00				2,267,770.01
J033 Civic Plaza						257,671.60	164,215.96	335,157.72					757,045.28
J034 Purchase Property New Arena						5,196.51	3,634.40						8,830.91
J035 Cultural Plaza and Parking Garage						58,802.22	16,930.31	12,414.87		339,540.63	2,145.24		429,833.27
J036 Civic Parking Garage						391,742.63	265,312.17	49.12					657,103.92
J038 Congress Streetscape						328,156.92	7,886.89	2,757.88					338,801.69
J042 Presidio Terrace						1,579.57							1,579.57
J044 Cushing Street Bridge													
J045 Depot Plaza: Public Improvements								66,770.66	608,020.53	559,459.76	575,497.93		1,809,748.88
J046 Civic Center: Convention Center Expansion										75,243.56	132,475.38		207,718.94
J047 I-10 Underpass Widening/Clark Street										327,604.46	1,900,742.03		2,228,346.49
J048 Downtown Infrastructure Improvements (DIIP phase 2)									9,000,000.00				9,000,000.00
J049 Civic Center: Convention Center East Entrance									338,476.92	8,125,264.48	564,010.15		9,027,751.55
J050 Mission Gardens										179,194.26	4,428,675.75	(275,750.40)	4,332,119.61
J051 Mission Complex Drainage Swale										1,953,932.42	99,003.36		2,052,935.78
J052 Civic Center: Convention Center Parking Garage										320,159.52	1,295,644.87		1,615,804.39
J053 Civic Center: Central Energy Plant										78,240.31	16,634.69		94,875.00
Total Individual Projects	-	-	300,628.10	4,693,582.54	3,284,754.64	8,734,683.42	9,405,511.67	11,005,141.70	30,727,770.52	29,605,274.14	22,110,960.98	(854,005.16)	119,014,302.55
Total Projects	27,887.51	-	36,248,818.02	5,045,126.82	3,419,053.59	8,862,685.35	9,619,209.36	11,015,373.46	30,727,770.52	29,605,274.14	22,110,960.98	(854,005.16)	155,828,154.59
Total Expenditures	171,800.46	2,045,703.31	40,315,981.10	11,161,221.12	9,410,251.64	14,465,280.41	15,961,318.58	20,452,361.82	36,905,950.56	44,024,883.84	37,262,358.51	1,596,931.35	233,774,042.70

*Exhibit E*

Rio Nuevo Multipurpose Facilities District  
Westside Projects Analysis - Unsupported and Questioned Costs

Project Code	Project Name	A Expenditures per City of Tucson Flow of Funds	B Expenditures for Which the City Provided Support	Questioned Costs	
				A - B Expenditures Lacking Support	Questioned Costs (based on analysis of documents)
JA01	Plaza Del Centro	\$ 10,556.93	\$ -	\$ 10,556.93	\$ -
JA03	Gadsden Development	20,422.00	20,422.00	-	20,422.00
JA05	Barrio Viejo	225,960.58	213,477.39	12,483.19	213,477.39
JA06	Barrio Sin Nombre (aka San Agustin)	131,845.78	117,803.10	14,042.68	117,803.10
J004	Mission Site/Origins Park	18,233,716.69	2,417,382.44	15,816,334.25	1,191,419.15
J007	UA Science Center & Historical Museums	7,706,235.04	472,604.84	7,233,630.20	-
J013	Mercado Avenue	5,523,863.22	458,045.88	5,065,817.34	4,442.43
J021	Arizona History Museum	1,467,182.82	1,467,182.82	-	-
J030	Mission Landfill	2,639,907.36	630,805.83	2,009,101.53	-
J031	Origins Infrastructure	539,405.74	201,900.56	337,505.18	-
J050	Mission Gardens	2,052,935.78	250,268.38	1,802,667.40	-
J051	Mission Complex Drainage Swale	-	-	-	-
		<u>\$ 38,552,031.94</u>	<u>\$ 6,249,893.24</u>	<u>\$ 32,302,138.70</u>	<u>\$ 1,547,564.07</u>



Agenda available on-line at 5:00 p.m., 10/12/06

# MAYOR & COUNCIL MEETING NOTICE & AGENDA

## STUDY SESSION

MAYOR AND COUNCIL CHAMBERS – CITY HALL

255 W. ALAMEDA, TUCSON, AZ

TUESDAY, OCTOBER 17, 2006

\*\*\* 2:30 P.M. \*\*\*

ESTIMATED DURATION	TOPICS	COMMENTS
20 min.	1. Interim Watercourse Preservation Policy (City-Wide) SS/OCT17-06-231 *	REPORT/RECOMMENDATION
10 min.	2. Pima Council on Aging (PCOA) Neighbors Care and Ambassador Programs (City-Wide) SS/OCT17-06-230 *	REPORT/RECOMMENDATION
15 min.	3. Expenditure of Rio Nuevo Multipurpose Facilities District Tax Increment Funds on Facilities Located Outside the District Boundaries (City-Wide) SS/OCT17-06-222	REPORT/RECOMMENDATION
30 min.	4. City Response to West Nile Hot Zone Service Calls (City-Wide) SS/OCT17-06-229	REPORT/RECOMMENDATION
20 min.	5. Mayor and Council Subcommittee Reports (City-Wide) SS/OCT17-06-218	
5 min.	6. Mayor and Council Discussion of Regular Agenda SS/OCT17-06-219	
5 min.	7. Mayor and Council Discussion of Future Agendas SS/OCT17-06-221	

### FOR INFORMATION ONLY

8. Administrative Action Report and Summary SS/OCT17-06-220

\*RELATED ITEM ON REGULAR AGENDA



## **STUDY SESSION**

**MAYOR AND COUNCIL CHAMBERS – CITY HALL**

**255 W. ALAMEDA, TUCSON, AZ**

**TUESDAY, OCTOBER 17, 2006**

**\*\*\* 2:30 P.M. \*\*\***

<b>ESTIMATED DURATION</b>	<b>TOPICS</b>	<b>COMMENTS</b>
20 min.	9. Executive Session - Santander v. City of Tucson (City-Wide) SS/OCT17-06-223	Discussion or consultation for legal advice with the attorneys for the City of Tucson pursuant to A.R.S. 38-431.03(A)(3) and discussion or consultation with the attorneys for the City of Tucson in order to consider its position and instruct its attorneys regarding the City of Tucson's position regarding contracts that are the subject of negotiations in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. 38-431.03(A)(4).
5 min.	10. Mayor and Council Direction Regarding Executive Session - Santander v. City of Tucson (City-Wide) SS/OCT17-06-224	REPORT/RECOMMENDATION
5 min.	11. Executive Session - Equity Residential Subrogation Claim (City-Wide) SS/OCT17-06-225	Discussion or consultation for legal advice with the attorneys for the City of Tucson pursuant to A.R.S. 38-431.03(A)(3) and discussion or consultation with the attorneys for the City of Tucson in order to consider its position and instruct its attorneys regarding the City of Tucson's position regarding contracts that are the subject of negotiations in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. 38-431.03(A)(4).
5 min.	12. Mayor and Council Direction Regarding Executive Session - Equity Residential Subrogation Claim (City-Wide) SS/OCT17-06-226	REPORT/RECOMMENDATION

## **STUDY SESSION**

**MAYOR AND COUNCIL CHAMBERS – CITY HALL**

**255 W. ALAMEDA, TUCSON, AZ**

**TUESDAY, OCTOBER 17, 2006**

**\*\*\* 2:30 P.M. \*\*\***

<b>ESTIMATED DURATION</b>	<b>TOPICS</b>	<b>COMMENTS</b>
5 min.	13. Executive Session - Allstate Insurance Subrogation Claim (City-Wide) SS/OCT17-06-227	Discussion or consultation for legal advice with the attorneys for the City of Tucson pursuant to A.R.S. 38-431.03(A)(3) and discussion or consultation with the attorneys for the City of Tucson in order to consider its position and instruct its attorneys regarding the City of Tucson's position regarding contracts that are the subject of negotiations in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. 38-431.03(A)(4).
5 min.	14. Mayor and Council Direction Regarding Executive Session - Allstate Insurance Subrogation Claim (City-Wide) SS/OCT17-06-228	REPORT/RECOMMENDATION

\*\*\* LATE MATERIAL FOR STUDY SESSION ITEM #3 \*\*\*



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## MAYOR & COUNCIL MEMORANDUM

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October 17, 2006

Subject: Expenditure of Rio Nuevo Multipurpose Facilities  
District tax increment funds on facilities located outside the  
District Boundaries. (City Wide)

Page 1 of 2

Issue – This item has been scheduled at the request of Council Member Ibarra to discuss the expenditure of Rio Nuevo Multipurpose Facilities District (“District”) tax increment funds on facilities located outside the District boundaries.

Recommendation – It is recommended that the Mayor and Council provide direction to staff regarding this issue.

Background and Legal Considerations – Per the City Attorney, the expenditure of District funds is governed by Arizona statute. A.R.S. §48-4204 provides that the District may expend its funds to construct, finance, maintain, improve, operate, market and promote the use of the following:

- (1) “multipurpose facilities;” and
- (2) other structures, utilities, roads, parking areas or buildings necessary for full use of the multipurpose facilities.

“Multipurpose facilities” are defined in A.R.S. § 48-4201 as: (1) a “primary component;” and (2) “secondary components.” The statute defines both the primary and secondary components as facilities that are located within the district.

However, as noted above, in addition to the funding of “multipurpose facilities,” A.R.S. §48-4204 allows for the expenditure of District monies for “other structures, utilities, roads, parking areas or buildings necessary for full use of the multipurpose facilities.” (emphasis added). Accordingly, the statute permits the District to finance the described facilities, even if they might be located outside the District boundaries, if those facilities are “necessary” for the full use of the multipurpose facilities, such as being part of a larger plan or project.

In summary, the District may expend its monies, including tax increment funds, on facilities located outside the District boundaries, but only for structures, utilities, roads, parking areas or buildings that are necessary to enable the full use of the multipurpose facilities located within the District. This means that where a proposal contemplates use of District monies outside the District, the District Board should expressly determine that the expenditure is necessary to support the full use of facilities within the District. A memorandum prepared by legal counsel for the District, which is consistent with the legal considerations described here, is attached to this Memorandum for your review and information.

SS/OCT17-06-222(2)  
{A0014842.DOC/}

MAYOR AND COUNCIL MEMORANDUM

Page 2 of 2

Expenditure of Rio Nuevo Multipurpose Facilities District  
tax increment funds on facilities located outside the District Boundaries. (City Wide)

Finally, it is worth noting that pursuant to the Intergovernmental Agreement between the District and the City, all District expenditures for the construction or financing of facilities (either within or outside the District) are subject to prior approval of the Mayor and Council.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Hein", with a stylized flourish at the end.

Mike Hein  
City Manager

MR/dc  
SS/OCT17-06-222(2)

Attachment: Memorandum from Snell & Wilmer L.L.P. dated October 13<sup>th</sup>, 2006



One Arizona Center  
Phoenix, AZ 85004-2202  
602.382.6000  
602.382.6070 (Fax)  
www.swlaw.com

DENVER  
LAS VEGAS  
ORANGE COUNTY  
PHOENIX  
SALT LAKE CITY  
TUCSON

October 13, 2006

Rio Nuevo Multipurpose Facilities District  
52 West Congress, 2nd Floor  
P.O. Box 27210  
Tucson, AZ 85726-7210

Ladies and Gentlemen:

You have requested our opinion as to whether, and to what extent, the Rio Nuevo Multipurpose Facilities District (the "District") may lawfully finance projects or improvements located outside the geographical boundaries of the District.

Pursuant to A.R.S. §48-4204, "from the monies lawfully available to the district, the district may construct, finance, furnish, maintain, improve, operate, market and promote the use of multipurpose facilities and other structures, utilities, roads, parking areas or buildings necessary for full use of the multipurpose facilities and do all things necessary or convenient to accomplish these purposes." (emphasis added)

As provided in A.R.S. § 48-4201, "a multipurpose facility means any facility or facilities that include:

(a) a primary component that is located in the district on the multipurpose facility site [defined as the geographic area within the district which is depicted in the publicity pamphlet for the election held pursuant to A.R.S. § 48-4237] and on lands that are adjacent to each other or separated by public rights-of-way, that the district owns or leases and that is used to accommodate sporting events and entertainment, cultural, civic, meeting, trade show or convention events or activities, and

(b) secondary components that are located in the district and that the Board of Directors of the District determines are necessary or beneficial to the primary component, limited to on-site infrastructure, artistic components, parking garages and lots and public parks and plazas. In addition, secondary components may include related commercial facilities that are located within the multipurpose facility site." (emphasis added)

Based on the foregoing, the District may finance projects or improvements consisting of (i) the primary component, (ii) secondary components and (iii) "other structures, utilities, roads, parking areas or buildings necessary for full use of the multipurpose facilities".

**Snell & Wilmer**  
LLP

Rio Nuevo Multipurpose Facilities District  
October 13, 2006  
Page 2

While the primary component and the secondary components must be located in the District, the District is also authorized to finance “other structures, utilities, roads, parking areas or buildings [located outside the multipurpose facility site and outside the District] necessary for full use of the multipurpose facilities.”

We trust the foregoing opinion is both responsive to your request and clear. Please feel free to contact us if you have any further questions or would like us to address any related issue.

Respectfully submitted,

SNELL & WILMER LLP.

A handwritten signature in black ink that reads "Snell & Wilmer L.L.P." in a cursive, stylized font.

WAH:na

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: MRB  
DEPUTY RECORDER  
1562 PE2

TCCWE  
CITY OF TUCSON-CITY CLERK  
PICK UP



DOCKET: 13371  
PAGE: 3872  
NO. OF PAGES: 26  
SEQUENCE: 20081591131  
08/15/2008  
AG 18:00

PICKUP  
AMOUNT PAID \$ 17.50

**DEVELOPMENT  
AND  
REAL ESTATE PURCHASE  
AGREEMENT**

**West Congress 14-Acre Parcel**

This Development and Real Estate Purchase Agreement ("Agreement") is entered into by and between The Gadsden Company ("Gadsden") and the City of Tucson, a municipal corporation ("City") as of August 6, 2008.

**RECITALS**

The following Recitals are incorporated by reference into and constitute an integral part of this Agreement.

A. The purpose of this Agreement is to set forth the mutual and respective understandings and agreements of the parties with respect to the purchase and development by Gadsden of a mixed-use and transit oriented project (the "Project") on an approximately 14 acre parcel of real property owned by the City located on West Congress Street adjacent to the west bank of the Santa Cruz River and more particularly described on an ALTA Land Survey to be provided by the City pursuant to Section 6.5.1, below and attached as Exhibit A (the "Property").

B. Gadsden (itself or through related entities) intends to design and construct an integrated mixed-use project to include an approximately 125-room "boutique" hotel, approximately 400 market-rate residential units, workforce and affordable housing and retail, office, market, restaurant and other commercial uses. The unit mix of the Project intended is reflected on the Proposed Master Plan attached hereto as Exhibit B (the "Proposed Master Plan"). It is Gadsden's intent to follow a schedule to develop the Project in a timely manner pursuant to the Proposed Development Schedule and Phasing Diagram (the "Development Schedule"), attached hereto as Exhibit "B2" and incorporated herein by this reference. The City acknowledges that Gadsden's ability to meet the Development Schedule will be dependent, in part, upon factors over which Gadsden has no control such as adverse commercial and residential real estate market conditions, a general downturn in the economy, the availability of labor and materials and agrees that no adverse action will be taken against Gadsden if it is unable to meet the Development Schedule as a result of such factors. At least thirty-five percent (35%) of all residential housing in the Project will consist of "workforce" and/or "affordable" housing. Seventeen and one-half percent (17.5%) of the housing within the Project will be offered to low-income residents whose income does not exceed 80% of the area median income ("AMI") for Tucson and Pima County as published by the U.S. Department of Housing and Urban Development ("Affordable Housing") and Seventeen and One-half percent (17.5%) of the housing within the Project will be offered to residents whose income is at or below 125% of AMI ("Workforce Housing").

C. Gadsden shall be responsible for the construction of all "Infrastructure Improvements" for the Project. For purposes of this Agreement, "Infrastructure Improvements"

**EX. A TO RESOLUTION NO. 21049**

(A0020706.DOC)

shall mean and include all streets, sidewalks, water lines, sewer lines and other improvements that are customarily owned, operated or maintained by a municipal or other governmental body (including a linear promenade and water detention areas along the west bank of the Santa Cruz River) but shall not include street car tracks, catenary poles, cables, transformers or other improvements related to the street car line that will run along Cushing Street to the south and Avenida del Convento to the west of the Property.

D. The Property is located between the Menlo Park Neighborhood and the Santa Cruz River adjacent to and north of the City's proposed Cultural Plaza ("Plaza") as so identified on the Proposed Master Plan. The Plaza is expected to include the University of Arizona Science Museum, Arizona State Museum, the Arizona Historical Museum and other similar attractions that will generate pedestrian traffic and visitors to the area ("Plaza Attractions"). The ultimate success of the Project will depend in part upon the manner and progress of development of the Plaza Attractions.

E. The area encompassing the Plaza and the Project will be linked to and joined with the rest of Downtown Tucson by the Cushing Street Bridge (the "Bridge") and a street car line that will run across the Bridge, proceed along Cushing Street between the Plaza and the Project and then turn north along Avenida del Convento to West Congress Street.

F. The location of the street car line on Cushing Street and Avenida del Convento are material inducements to Gadsden's prospective tenants, property purchasers, consumers and other users of the Project to rent, purchase or use properties, facilities and attractions in the Project.

G. Gadsden will also be responsible for arranging for the financing and making of the "Street Car Track Improvements" subsequent to the Phase II Closing (as defined below) and reimbursing the City for its expenditures relating to the Street Car Track Improvements prior to the Phase II Closing. "Street Car Track Improvements" shall include the engineering and installation of the street car tracks and concrete guideways for that portion of the street car line running from the western terminus of the Bridge, westerly along Cushing Street to Avenida del Convento, northerly on Avenida del Convento, and then back to Cushing Street. The configuration of the street car line is shown on Exhibit C, attached hereto (the "Street Car Route"). The City will design the Street Car Track Improvements in coordination with Gadsden.

H. The Property will be purchased by Gadsden in four separate and sequential transactions (each, a "Transaction") identified as Phase I, Phase II, Phase III and Phase IV on Exhibit B. Phase I will consist of Block A; Phase II will consist of Blocks B, C, D, and E; Phase III will consist of Block F and G; and Phase IV will consist of Block H.

I. As provided in this Agreement, each Transaction will have its own closing ("Phase I Closing", "Phase II Closing", "Phase III Closing" and "Phase IV Closing", respectively and, together, the "Closings" or, individually, a "Closing") but each Transaction will be conditioned upon, among other things, the Closing of the previous Transaction.



J. Each Closing will be conditioned upon the occurrence or satisfaction of certain obligations by Gadsden applicable to such Closing (the "Gadsden Phase I Closing Conditions", the "Gadsden Phase II Closing Conditions", the "Gadsden Phase III Closing Conditions" and the "Gadsden Phase IV Closing Conditions", respectively) and upon the occurrence or satisfaction of certain obligations by the City (the "City Phase I Closing Conditions", the "City Phase II Closing Conditions", the "City Phase III Closing Conditions" and the "City Phase IV Closing Conditions", respectively).

K. Gadsden and the City believe that current marketplace and other factors create a timely opportunity to proceed with the development of the Project. Consequently, time is of the essence with respect to the accomplishment of the goals and objectives of this Agreement and the performance of obligations and duties of the respective parties hereunder.

L. This Agreement is subject to the provisions of ARS §38-511.

M. This Agreement is entered into by authority of Arizona Revised Statutes §9-500.05, which authorizes the City to enter into an agreement with any person or entity having an interest in real property providing for the development of such property, establishing the permitted uses of the property and establishing certain development rights. The Project and the provisions of this Agreement are consistent with the objectives and intent of ARS §9-500.05. The City expressly finds and determines that the consideration and commitments herein outlined from and to Gadsden and the City in this Agreement are justified based on other consideration provided under this Agreement, including without limitation the economic development benefits to the community resulting from this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged and in consideration of the mutual covenants, promises and agreements contained herein, the City and Gadsden agree as follows:

## **ARTICLE 1**

### **Purchase and Sale of Property**

1.1 **Purchase Price; Payment.** The aggregate purchase price for the Property shall be \$3,296,033 (the "Purchase Price") allocated and payable as provided in this Section 1.1. \$250,000 of the Purchase Price ("Phase I Consideration") shall be allocated to Phase I and shall be paid as provided in Section 2.2 below.

As provided in Section 8.1 below, as a condition to the closing of Phase II, Gadsden shall assume responsibility for constructing the Street Car Track Improvements and paying the "Street Car Track Costs". The Street Car Track Costs shall be an amount equal to the agreed-upon aggregate costs of the engineering, financing and installation of the Street Car Track Improvements including interest charges at reasonably commercially-available rates and a 5% management fee for overseeing the construction of the Street Car Track Improvements. In addition, Gadsden shall reimburse the City for its actual costs of constructing the Street Car Track Improvements incurred prior to the Phase II Closing; which amount shall be deemed to be included in the Street Car Track Costs. The Street Car Track Improvements shall be made by

Gadsden pursuant to a Private Improvement Agreement with the City, the terms of which shall be mutually agreeable to Gadsden and the City and which will be executed at the Phase I Closing (as defined below).

1.2 Credit Against Purchase Price. Gadsden shall receive a credit against the payment of the Net Purchase Price in an amount not to exceed the Net Purchase Price or equal to the Street Car Track Costs, whichever is less. The Net Purchase Price is the Purchase Price less the Phase I Consideration. In the event that the Street Car Track Costs are less than the Net Purchase Price, Gadsden shall pay such difference to the City within thirty (30) days following the date ("Reconciliation Date") that each of the following has occurred: (i) the Street Car Track Improvements have been completed and conveyed by Gadsden to the City and (ii) the City and Gadsden have agreed on the amount of the Street Car Track Costs.

## **ARTICLE 2**

### **Phase I**

2.1 Phase I Purchase. The Phase I Closing shall take place upon the occurrence of the Gadsden Phase I Closing Conditions and the City Phase I Closing Conditions (together, the "Phase I Closing Conditions"). At the Phase I Closing, Gadsden shall purchase and the City shall sell Phase I for the Phase I Consideration. Phase I will include retail uses and approximately 125 residential units, as provided for in the Proposed Master Plan and the Development Schedule. Workforce and affordable housing shall be deed restricted to Workforce Housing and/or Affordable Housing in a form to be agreed upon by the parties.

2.2 Phase I Consideration. The consideration for the purchase and sale of Phase I ("Phase I Consideration") will consist of a contribution at the Phase I Closing in the amount of \$250,000 by Gadsden to the City of Tucson Housing Trust Fund to be used for down-payment assistance to eligible persons seeking to purchase a residential unit in Phase I.

2.3 Phase I Closing Date. The Phase I Closing shall occur on the business day ("Phase I Closing Date") that is 10 business days from the date that all of the Phase I Closing Conditions have been satisfied or such other date as the Parties may agree in writing but in no event later than March 31, 2009; subject to extension by either party giving written notice to the other if the Phase I Closing Conditions have not been satisfied by that date through no fault of the party giving notice.

2.4 Phase I Closing Conditions.

2.4.1 City Phase I Closing Conditions.

The obligation of Gadsden to purchase Phase I is subject to the occurrence or satisfaction of the City Phase I Closing Conditions on or before March 15, 2009 ("Phase I Contingency Date") or at the Phase I Closing. The City Phase I Closing Conditions consist of the following:

A. All of the covenants, promises and agreements of the City have been performed and the City is not in default in any of its obligations under this Agreement.

B. The Property has been included within the Rio Nuevo Multipurpose Facilities District, the Rio Nuevo and Downtown Zone, the Downtown Area Infill Incentive District, the Enterprise Zone Bond Program, the Downtown Housing Development Area, and all other then-current areas, zones or programs that provide incentives, waivers, benefits, or impact fee, sales tax, permitting fee or other similar waivers or discounts (e.g., Downtown Core, Pima County Sewer Credits and status as a Community Development Entity), in accordance with the stated program eligibility requirements as adopted by the relevant agency, unless otherwise specified herein. The Project and the Property may also qualify for waivers, discounts, credits, benefits or incentives that become available during the term of the Agreement, provided Gadsden is not in default thereof and all eligibility requirements are met. Incentives, waivers, benefits or discounts that are only available to a 501(c)(3) or other non-profit organization shall also be available to a Community Development Entity ("CDE") that has been certified by the U.S. Internal Revenue Service. For purposes of this Agreement, reference to a "project" shall mean and include the aggregate development of any Block of the Property, Infrastructure Improvements, or Street Car Track Improvements, provided the project plans are reviewed by the City's Development Services Department ("DSD") and not a third party; unless DSD is unable to review such project plans within a time-frame that is comparable to that of a third-party reviewer in which case, such incentives, waivers and benefits will be available to Gadsden.

C. The City has given final approval of all zoning and land-use entitlements necessary in order to develop Phase I in accordance with the Proposed Master Plan.

D. The City has issued building permits for all Phase I Infrastructure Improvements. For purposes of this Agreement, "Phase I Infrastructure Improvements" shall include all Infrastructure Improvements on Phase I including the intersection of Linda Avenue and Paseo de Los Zanjeros and both sides of Paseo de los Zanjeros from Avenida del Convento to Linda Avenue and on Linda Avenue from Paseo de los Zanjeros to Congress Street.

E. The City and Gadsden have agreed on the terms of a \$250,000 performance bond or other form of assurance (the "Performance Bond") that Gadsden will commence and complete the Infrastructure Improvements and the Phase I through Phase IV Improvements in a timely manner in accordance with the terms of this Agreement and the Development Schedule. To the extent that the terms of the Performance Bond conflict with the development requirements of this Agreement, the terms requiring greater performance shall control. The Performance Bond shall be held by the City through the closing of Phase III, at which time it shall be released; except that upon written request of Gadsden, Mayor and Council may, in its discretion, authorize the earlier release of the Performance Bond.

#### 2.4.2 Gadsden Phase I Closing Conditions.

The obligation of the City to sell Phase I is subject to the occurrence or satisfaction of the Gadsden Phase I Closing Conditions on or before the Phase I Contingency

Date or at the Phase I Closing. The Gadsden Phase I Closing Conditions consist of the following:

A. All of the covenants, promises and agreements of Gadsden have been performed and Gadsden is not in default in any of its obligations under this Agreement.

B. Gadsden has obtained building permits for all Phase I Infrastructure Improvements.

C. Gadsden has demonstrated, to the reasonable satisfaction of the City, that it has sufficient financing available for the completion of the Phase I Infrastructure Improvements.

D. Gadsden has provided (or provides at the Phase I Closing) the City with the Performance Bond.

E. The City and Gadsden have agreed on the terms of the Performance Bond.

2.5 Earnest Money. Within five (5) business days from the date of this Agreement, Gadsden shall deposit the sum of \$50,000 in cash or immediately available funds ("Earnest Money") with the Escrow Agent (as defined below) as evidence of Gadsden's good faith intent to perform its obligations herein. Upon the closing of Phase III, the Earnest Money will be released to the City and treated as an additional credit to the Purchase Price in conformance with Section 1.2 herein or paid to Gadsden if the full amount of the Purchase Price has been paid. In the event Phase III fails to close as a result of a default by Gadsden, the Earnest Money will be forfeited to the City.

### **ARTICLE 3**

#### **Phase II**

3.1 Phase II Purchase. The Phase II Closing shall take place upon the occurrence or satisfaction of the Gadsden Phase II Closing Conditions and the City Phase II Closing Conditions (together the "Phase II Closing Conditions") At the Phase II Closing, Gadsden shall purchase and the City shall sell Phase II on the terms set forth in this Article 3. Phase II shall include the improvements described in the Proposed Master Plan.

3.2 Phase II Closing Date. The Phase II Closing shall occur on the business day ("Phase II Closing Date") that is 10 business days from the date that the Phase II Closing Conditions have occurred or been satisfied or such other date as the parties may agree in writing but in no event later than 24 months from the date of the Phase I Closing ("Projected Phase II Closing Date"), subject to extension by either party giving written notice to the other if the Phase II Closing Conditions have not been satisfied by that date through no fault of the party giving notice.

3.3 Phase II Closing Conditions.

3.3.1 City Phase II Closing Conditions. The obligation of Gadsden to purchase Phase II is subject to the occurrence or satisfaction of the City Phase II Closing Conditions on or before the Projected Phase II Closing Date. The City Phase II Closing Conditions consist of the following:

A. All of the covenants, promises and agreements of the City have been performed and the City is not in default in any of its obligations under this Agreement.

B. The City has given final approval of all zoning and land-use entitlements necessary in order to develop Phase II in accordance with the Master Plan.

C. The City has issued building permits for all Infrastructure Improvements on Phase II ("Phase II Infrastructure Improvements"), Phase III ("Phase III Infrastructure Improvements"), Phase IV ("Phase IV Infrastructure Improvements") and the Street Car Track Improvements.

D. The City has brought the grade of Phase II, Phase III and Phase IV to "Closing Grade" plus or minus one-tenth (1/10<sup>th</sup>) of one foot, or as close thereto according to reasonably practical engineering standards for the purposes intended. "Closing Grade" is the natural elevation of the Property. The City has removed all earthen fill currently stored on the Property and the Property has been restored to its natural elevation.

E. The "pad" for the Plaza has been pre-developed and is at construction grade.

F. Methane gas mitigation efforts on the area west of the Plaza as shown on Exhibit B have been substantially completed and the process for removing the above ground methane gas mitigation system has begun. However, monitoring wells may be required by State and Local regulatory authorities to remain and, in such event; the City will make every effort reasonably practical to minimize impact on adjacent property.

3.3.2 Gadsden Phase II Closing Conditions. The obligation of the City to sell Phase II is subject to the occurrence of the Gadsden Phase II Closing Conditions on or before the Projected Phase II Closing Date. The Gadsden Phase II Closing Conditions consist of the following:

A. All of the covenants, promises and agreements of Gadsden have been performed and Gadsden is not in default in any of its obligations under this Agreement.

B. Gadsden has completed the Phase I Infrastructure Improvements and conveyed the Infrastructure Improvements located in Phase I to the City.

C. Gadsden has started construction of structural improvements to Phase I having a cost, when completed, of at least \$10 million.

D. Gadsden has closed or, simultaneous to the Phase II Closing, closes a construction loan in an amount sufficient to pay the estimated cost of the Phase II Infrastructure Improvements, Phase III Infrastructure Improvements, Phase IV Infrastructure Improvements and the Street Car Track Improvements.

E. Gadsden has increased the amount of the Performance Bond to \$500,000.

**ARTICLE 4**  
**Phase III**

4.1 Phase III Purchase. Upon the occurrence or satisfaction of the Gadsden Phase III Closing Conditions and the City Phase III Closing Conditions (together, the "Phase III Closing Conditions"), at the Phase III Closing, Gadsden agrees to purchase and the City agrees to sell Phase III.

4.2 Phase III Closing Date. The Phase III Closing shall occur on the business day ("Phase III Closing Date") that is 10 business days from the date that all of the Phase III Closing Conditions have been satisfied or such other date as the parties may agree in writing but in no event later than thirty-six (36) months from the Phase I Closing ("Projected Phase III Closing Date").

4.3 Phase III Closing Conditions.

4.3.1 City Phase III Closing Conditions. The obligation of Gadsden to purchase Phase III is subject to the occurrence or satisfaction of the City Phase III Closing Conditions on or before the Projected Phase III Closing Date. The City Phase III Closing Conditions consist of the following:

(1) All of the covenants, promises and agreements of the City have been performed and the City is not in default in any of its obligations under this Agreement.

(2) A "Letter of Map Revision - Fill" ("LOMR-F") has been issued by Federal Emergency Management Agency ("FEMA") removing Phase III and Phase IV from the FEMA Flood Plain Map.

(3) The remaining infrastructure for the street car line other than the Street Car Track Improvements has been completed, including catenary poles, overhead lines, etc.

4.3.2 Gadsden Phase III Closing Conditions. The obligation of the City to sell Phase III is subject to the occurrence or satisfaction of the Gadsden Phase III Closing



Conditions on or before the Projected Phase III Closing Date. The Gadsden Phase III Closing Conditions consist of the following:

(1) All of the covenants, promises and agreements of Gadsden have been performed and Gadsden is not in default in any of its obligations under this Agreement.

(2) Gadsden has completed the Infrastructure Improvements on Phase II Phase III and Phase IV and the Street Car Track Improvements.

(3) Gadsden has conveyed the Infrastructure Improvements located in Phase II, Phase III and Phase IV and the Street Car Track Improvements to the City.

(4) Gadsden has started construction of structural improvements to Phase II having a cost, when completed of at least \$15 Million.

## **ARTICLE 5**

### **Phase IV**

5.1 Phase IV Purchase. Upon the occurrence or satisfaction of the Gadsden Phase IV Closing Conditions and the City Phase IV Closing Conditions (together, the "Phase IV Closing Conditions"), Gadsden agrees to purchase and the City agrees to sell Phase IV at the Phase IV Closing.

5.2 Phase IV Closing Date. The Phase IV Closing shall occur on the business day ("Phase IV Closing Date") that is 10 business days from the date that all of the Phase IV Closing Conditions have been satisfied or such other date as the parties may agree in writing, but in no event later than 48 months from the date of the Phase I Closing ("Projected Phase IV Closing Date").

5.3 Phase IV Closing Conditions.

5.3.1 City Phase IV Closing Conditions. The obligation of Gadsden to purchase Phase IV is subject to the occurrence or satisfaction of the City Phase IV Closing Conditions on or before the Projected Phase IV Closing Date. The City Phase IV Closing Conditions consist of the following:

1. All of the covenants, promises and agreements of the City have been performed and the City is not in default in any of its obligations under this Agreement.
2. The construction of the Bridge has been completed.
3. The construction of the flood control related improvements contemplated in Section 4.3.1(2) is completed.
4. The Performance Bond has been released.

5.3.2 Gadsden Phase IV Closing Conditions. The obligation of the City to sell Phase IV is subject to the occurrence or satisfaction of the Gadsden Phase IV Closing Conditions on or before the Projected Phase IV Closing Date. The Gadsden Phase IV Closing Conditions consist of the following:

1. All of the covenants, promises and agreements of Gadsden have been performed and Gadsden is not in default in any of its obligations under this Agreement.

## **ARTICLE 6**

### **Terms of Escrow**

6.1 Establishment of Escrow Account. The parties shall establish an escrow account with Kathy Wright, Fidelity National Title ("Escrow Agent") who shall be responsible for managing the Closings. This Agreement shall constitute escrow instructions to the Escrow Agent and a fully executed copy or counterpart copies of this Agreement shall be deposited with the Escrow Agent for this purpose.

6.2. If a Transaction fails to close because of a default by the City, the City shall be liable for all customary escrow cancellation charges with respect to such Transaction. If a Transaction fails to close because of Gadsden's default, Gadsden shall be liable for all customary escrow cancellation charges with respect to such Transaction. If a Transaction fails to close for any other reason, City and Gadsden shall each be liable for one-half (1/2) of all customary escrow cancellation charges.

### **6.3 Closing Costs.**

6.3.1. City's Closing Costs. Upon the closing of a Transaction, the City shall pay all recording costs, one-half (1/2) of the escrow charges and the cost of the title policy relating to such Transaction

6.3.2 Gadsden's Closing Costs. Upon the closing of a Transaction, Gadsden shall pay one-half (1/2) of the escrow charges and that portion of the cost of the owner's title policy which exceeds the cost of a standard coverage title policy in the full amount of the applicable Purchase Price, and the full cost of any additional endorsements that Gadsden may request relating to such transaction.

6.4 Deed. At a Closing, the City shall convey title to the real property included within the applicable Phase to Gadsden by special warranty deed in a form to be agreed upon by the parties.

### **6.5 Survey; Title.**

6.5.1 Survey. Within 30 days following the execution of this Agreement, the City shall provide to Gadsden an ALTA Land Survey of the Property, which shall be conducted



by an Arizona registered land surveyor chosen by the City, shall be certified to Gadsden, its successors and assigns, their lenders and the title insurer, shall be dated no earlier than thirty (30) days prior to the date of delivery. The Survey shall show all matters of record and other existing improvements. Following final determination of the boundaries of the Property, the property lines will be finalized and the updated Survey will serve as the basis for the final legal description of the Property.

6.5.2 Title Report. Within ten (10) days from the date of this Agreement, Escrow Agent shall deliver a current Commitment for Title Insurance or a Preliminary Title Report (the "Title Report") on the entire Property from the Escrow Agent acting as title insurer ("Title Insurer") to Gadsden and the City. The Title Report shall show the status of title to the Property as of the date of the Title Report and shall be accompanied by legible copies of all documents referred to as Title Exceptions in the Title Report.

6.5.3 Title Review Period. Gadsden shall have fifteen (15) days after the receipt of the Title Report ("Title Review Period") to review the Title Report and to give the City and Escrow Agent notice of any title exception which is unacceptable to Gadsden. If Gadsden gives a notice of dissatisfaction as to any exception to title as shown in the Title Report, the City shall have five (5) business days of receipt of Gadsden's notice to notify Gadsden in writing of whether the City shall take reasonable steps to cure such objection on or prior to the Phase I Closing. If the City's intention is to not cure any such objection, Gadsden may, in its sole and absolute discretion, elect to cancel this Agreement and obtain a full refund of the Earnest Money or elect to waive objection to the title exception and proceed with the Phase I Closing. Failure by the City to notify Gadsden of its intention shall be deemed its intention to cure any objection. Gadsden's failure to timely approve or disapprove a title exception shall be deemed an approval of title as described in the Title Report and a waiver of its right to cancel this Agreement according to this Section.

6.5.4 Title Report Update. The Title Company shall update the Title Report after the Title Review Period at least 45 days prior to each Closing (a "Title Report Update") and if such Title Report Update discloses a new material title exception not previously disclosed in the Title Report which was not previously known to or created by Gadsden, Gadsden shall have 15 days after receipt of such Title Report Update to review such Title Report Update and to give the City and Escrow Agent notice of any exception included in the Title Report Update which is unacceptable to Gadsden. If Gadsden gives a notice of dissatisfaction as to any exception to title as shown in the Title Report Update, the City shall have 5 business days of receipt of Gadsden's notice to notify Gadsden in writing of whether the City shall take reasonable steps to cure such objection on or prior to next Closing. If the City's intention is to not cure any such objection, Gadsden may, in its sole and absolute discretion, elect to cancel this Agreement and obtain a full refund of the applicable Earnest Money and a release of the Performance Bond or elect to waive objection to the title exception and proceed with such Closing. Failure by the City to notify Gadsden of its intention shall be deemed its intention to cure any objection. Gadsden's failure to timely approve or disapprove a title exception shall be deemed an approval of title as described in the Title Report Update and a waiver of its right to cancel this Agreement according to this section.

6.5.5 Owner's Title Policies.

1. City shall cause Escrow Agent to provide Gadsden with an Owner's Policy of Title Insurance (the "Phase I Owner's Title Policy") at the Phase I Closing. The Phase I Owner's Title Policy shall be issued by the Escrow Agent in the amount of \$250,000, be effective as of the Phase I Closing Date and shall insure Gadsden that fee simple title to the Phase I Property is vested in Gadsden, subject only to (i) the usual printed exceptions and exclusions contained in such title insurance policies, (ii) the exceptions of title approved (or deemed approved) by Gadsden as provided for in Section 6.4, and (iii) any other matter approved in writing by Gadsden.

2. City shall cause Escrow Agent to provide Gadsden with an Owner's Policy of Title Insurance (the "Phase II Owner's Title Policy") at the Phase II Closing. The Phase II Owner's Title Policy shall be issued by the Escrow Agent in the amount of \$3,296,033, be effective as of the Phase II Closing Date and shall insure Gadsden that fee simple title to the Phase II Property is vested in Gadsden, subject only to (i) the usual printed exceptions and exclusions contained in such title insurance policies, (ii) the exceptions of title approved (or deemed approved) by Gadsden as provided for in Section 6.5.3, and (iii) any other matter approved in writing by Gadsden.

3. City shall cause Escrow Agent to provide Gadsden with an Owner's Policy of Title Insurance (the "Phase III Owner's Title Policy") at the Phase III Closing. The Phase III Owner's Title Policy shall be issued by the Escrow Agent in the amount of \$1,648,016.50, be effective as of the Phase III Closing Date and shall insure Gadsden that fee simple title to the Phase III Property is vested in Gadsden, subject only to (i) the usual printed exceptions and exclusions contained in such title insurance policies, (ii) the exceptions of title approved (or deemed approved) by Gadsden as provided for in Section 6.4, and (iii) any other matter approved in writing by Gadsden. Gadsden may not cause or create any encumbrance upon the Phase III Property prior to closing of Phase IV, other than as a result of securing financing for the construction of Phase III Improvements or Infrastructure Improvements.

4. City shall cause Escrow Agent to provide Gadsden with an Owner's Policy of Title Insurance (the "Phase IV Owner's Title Policy") at the Phase IV Closing. The Phase IV Owner's Title Policy shall be issued by the Escrow Agent in the amount of \$1,648,016.50, be effective as of the Phase IV Closing Date and shall insure Gadsden that fee simple title to the Phase IV Property is vested in Gadsden, subject only to (i) the usual printed exceptions and exclusions contained in such title insurance policies, (ii) the exceptions of title approved (or deemed approved) by Gadsden as provided for in Section 6.4, and (iii) any other matter approved in writing by Gadsden.

6.6 Provisions Relating to Investment and Disbursement of Earnest Money. The Earnest Money shall be invested by the Escrow Agent in a federally-insured interest bearing account. In the event that the Phase I Closing or the Phase II Closing or the Phase III Closing does not occur because of a default by Gadsden, the Earnest Money shall be paid to the City as liquidated damages. In the event that the Phase I Closing or Phase II Closing or Phase III Closing does not occur because of a default of the City, the Earnest Money shall be paid to

Gadsden. If the Phase III Closing occurs, the Earnest Money will be released to the City and a credit given to Gadsden against the Purchase Price in conformance with Section 2.5 herein. All interest earned on the Earnest Money shall accrue to the benefit of the party entitled to receive such Earnest Money.

## **ARTICLE 7**

### **Covenants, Promises and Agreements of City**

7.1 Removal from FEMA Floodplain Map. Immediately upon execution of this Agreement, the City will initiate and actively pursue the process necessary and make the improvements necessary in order to obtain a LOMR-F from FEMA eliminating the "floodplain" designation for Phase III and Phase IV on the FEMA Floodplain Map.

7.2 Inclusion of Property in Incentive Zones. The City staff will take and support all administrative action necessary and appropriate to include the Property within the Rio Nuevo Multipurpose Facilities District, the Central Benefit District, the Rio Nuevo and Downtown overlay zone (already included), the Downtown Infill Incentive District (already included), the Enterprise Zone Bond Program, and all other current and future areas; zones or programs that provide incentives, benefits, or impact fee, sales tax, permitting fee or other similar waivers or discounts. Provided, however, any legislative action to be undertaken by the City in these regards shall not be impaired. Incentives, waivers, benefits or discounts that are only available to a 501(c)(3) or other non-profit organization shall also be available to a CD E that has been certified by the U.S. Internal Revenue Service.

7.3 Restrictive Uses. The City will impose restrictions on the uses of the land owned by the City west of the Plaza to activities that are not directly competitive with the principal uses of the Property. Directly competitive uses may include a hotel, a public market and other uses to be determined by mutual agreement of Gadsden and the City, provided such restrictions do not unreasonably impair the City's ability to market the land for other appropriate development sought by the community.

7.4 Expedited Processing of Applications. The City, in cooperation with Gadsden, will establish processes and procedures to ensure that Gadsden's plans, permits and other applications are reviewed and approved as expeditiously as possible. The City will, to the fullest extent possible, facilitate and expedite the necessary processes in order to obtain rezoning of the Project to allow the uses and purposes described above and to obtain permits and approvals necessary to develop and build the Project and the Infrastructure Improvements.

7.5 Use of Phase III and Phase IV by Gadsden. Prior to the Phase III Closing and the Phase IV Closing and so long as it is not in default of this Agreement, Gadsden shall have a temporary revocable easement to go upon and use Phase III and Phase IV for parking, storage and other temporary uses and for purposes of installing Infrastructure Improvements; provided such uses do not unreasonably interfere with City's conditions to re-grade and obtain a LOMR-F and subject to prior approval by the City; which approval shall not be unreasonably withheld.

7.6 Project Manager. The City shall designate a city employee to serve as the Project Manager for the Project. The Project Manager's duties shall include: (a) coordination of the City's efforts and responsibilities with those of Gadsden; (b) establishment and management of effective communication between and among the parties to this Agreement; (c) ongoing communication with the Mayor and City Council, City Manager and other City officials as required or necessary to consummate the transactions contemplated herein; (d) communication with neighborhood or community interest groups and stakeholders regarding the progress of the project and key decisions related thereto; (e) assistance to Gadsden in its efforts to timely obtain all necessary governmental approvals related to the position of the property under this Agreement; and (f) generally, to serve as an ombudsman for the City in connection with the City's involvement with the Project. The City shall notify Gadsden in writing of the person designated as Project Manager.

7.7 Signs. Prior to the Closing, Gadsden may place signs on the Property with City's prior written consent to design, size and location, said consent to be provided or denied by City within no more than ten (10) business days of request by Gadsden.

7.8 Sewer Credits. Gadsden shall be entitled to the benefit of any sewer credits associated with the Property. The City and Gadsden shall execute such documents as may reasonably be required to evidence and implement the foregoing.

7.9 Right of Entry. Promptly following execution of this Agreement, the City shall grant Gadsden a "Right of Entry" in a form to be mutually agreed by Gadsden and the City that allows Gadsden the right to enter upon the Property at any time during the term of this Agreement and prior to each of the Closings for the purposes of effecting investigation, testing, due diligence, design and planning for construction of the Project in the standard form used by the City for such purposes. The City shall also grant Gadsden such right of entry and other rights as may be necessary in order for Gadsden to plan for, engineer and construct the Phase III Infrastructure Improvements.

7.10 Reimbursement for Infrastructure Improvement Costs. If either the Phase III Closing or the Phase IV does not occur and Gadsden is not in default, the City shall reimburse Gadsden for the cost of the Infrastructure Improvements included within such Phase or Phases ("Infrastructure Costs"). The Infrastructure Costs will include all amounts expended by Gadsden for the construction of the Infrastructure Improvements within such Phase or Phases including interest charges at reasonable commercially-available rates and a 5% management fee applicable to such amount. Gadsden shall convey the Phase III Infrastructure Improvements or Phase IV Infrastructure Improvements, as the case may be, to the City upon tender by the City of the Infrastructure Costs for such Phase.

## **ARTICLE 8**

### **Covenants, Promises and Agreements of Gadsden**

8.1 Construction of Infrastructure Improvements; Street Car Track Improvements.

8.1.1 Subject to the occurrence of the Phase II Closing, Gadsden shall provide for the construction of and pay for all Infrastructure Improvements on the Property (subject to possible reimbursement as provided in Section 7.10) and, to the extent but not to exceed the amount of the Net Purchase Price, provide for the construction of and pay or reimburse the City for the Street Car Track Improvements. Gadsden shall not be required to provide any assurances or post any surety bond (other than the Performance Bond) in connection with the construction of the Infrastructure Improvements and Street Car Track Improvements, except as may be reasonably required and agreed on in the PIA.

8.1.2 Construction of all improvements which are funded or repaid all or in part with public funds, including the Street Car Track Improvements, shall be accomplished in conformance with the requirements of A.R.S. Title 34. These provisions generally require publicly funded construction projects to be put out to bid and awarded to the lowest qualified bidder.

8.2 Standards for Construction of Property.

8.2.1 Gadsden shall use and employ only licensed and qualified contractors.

8.2.2 All improvements shall be constructed in a good and workmanlike manner, and constructed and maintained in compliance with all applicable laws, rules, ordinances and regulations.

8.2.3 Gadsden shall construct all improvements in accordance with the City's zoning requirements and all Federal and State regulations.

8.3 Development Review and Approval. In order to facilitate expeditious City processing of development approvals, Gadsden shall submit thorough and complete plans, permit applications and other applications, including all construction and building permit applications, to City's reasonable satisfaction.

8.4 Government Approvals. Gadsden shall obtain all necessary government approvals, permits or licenses that are necessary to Gadsden's construction, operation, use or improvement of the Property. If any certificate, permit, license or approval issued to Gadsden is cancelled, expires, lapses or is otherwise withdrawn by any such governmental authority, Gadsden shall make every effort to obtain replacement permits for the governmental approval to the satisfaction of City. Failure to do so shall constitute a default under this Agreement.

8.5 Taxes, Fees and Other Gadsden Payables.

8.5.1 After a Closing of a Transaction, Gadsden shall bear, pay and discharge all of the following (which are collectively referred to in this Agreement as "Impositions") as they apply to the Phase involved in such Closing at least fifteen (15) days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage on such Phase after such Closing.



8.5.2 All taxes, assessments, water rates and charges, sewer charges, license and permit fees, and all other governmental impositions and charges of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever and each and every installment thereof, which shall prior to and during the term of this Agreement be charged, laid, levied, assessed, imposed, become due and payable, or arise.

8.5.3 All taxes charged, laid, levied, assessed or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules or regulations of the federal, state, county and municipal governments and of all other governmental authorities whatsoever and in connection with the use, occupancy or possession of or grow due or payable out of or for the applicable Phase or any part of it or any building, appurtenances or equipment on or in the applicable Phase or any part of it or the sidewalks or streets in front of or adjoining the applicable Phase or any rents or additional rents payable under this Agreement.

8.5.4 To the extent permitted by law and by any mortgage, Gadsden shall have the right to apply for the conversion of any special assessment for local improvements to cause the same to be payable in installments and upon such conversion Gadsden shall be obligated to pay and discharge punctually only such of said installments (with interest and charges thereon) as shall become due and payable during the term of this Agreement.

8.6 Point of Sale Contribution for Affordable Housing. Gadsden will through deed restrictions or other means, in forms approved by the City, establish a mechanism that will require that one-percent (1%) of the sales price of residential properties located within the Project, including resales, will be paid to the City of Tucson Housing Trust Fund. Any residential units designated as Affordable Housing in Phase I are exempted from this contribution for the FIRST sale ONLY. The proceeds from this contribution for the FIRST sale ONLY of all Workforce Housing and market rate residential units (unrestricted) in Phase I shall be made available for down payment assistance to households that qualify to purchase affordable housing in the Project.

8.7 Parking Garage. Gadsden shall, at its own expense, construct a 550 space parking garage on the Property as part of Phase III. Gadsden shall, to the extent reasonably practical, reserve an agreed upon number of parking spaces to the City for public use in exchange for credits on a per-space basis to offset the discount in value of Block E conveyed to Gadsden.

8.8 LEED Certification. Gadsden shall design and construct all buildings in the Project to LEED certification.

8.9 Conveyance Infrastructure Improvements. Gadsden shall convey the Infrastructure Improvements to the City pursuant to Section 4.3.2(3), at the Phase III Closing or pursuant to Section 7.10.

**ARTICLE 9**  
**Rezoning; PAD and Other Approvals**

9.1 Plan Review. Gadsden may use third-party review of all plans for the Property at Gadsden's sole cost and the City shall cooperate with Gadsden and the third-party reviewers to ensure that Gadsden realizes the greatest possible reduction of the time required for the review of such plan. Provided however, should Gadsden seek permit fee waivers available to it under Section 2.4.1.B of this Agreement, the plan review shall be conducted by the City's DSD; unless DSD cannot complete such plan review within a time frame that is comparable to the third-party reviewer. The City shall, consistent with its adopted policies, expeditiously review and, if appropriate, approve all Gadsden's plans, permits and other applications, including all construction and building approvals (collectively, the "Development Approval or Approvals").

9.2 Overlapping Development Review. City will cooperate with Gadsden to identify opportunities for "overlapping" development review so as to reduce the overall time required for plan review and Project construction. For example, the City agrees that it may be possible to accelerate the submittal of certain construction plans, and grading/excavation plans, underground site utility plans and foundation plans, before approval of a final plat or development plan. As a further example, Gadsden may expedite development of Block A by electing to proceed under its existing zoning or by exercising its option to include Block A in a Planned Area Development ("PAD") for the Project. Subject to Gadsden's assumption of risk in the event of design changes, the City and Gadsden will cooperate to allow the submittal of such construction plans following the second review of the development plan.

9.3 Rezoning. The City shall, to the fullest extent practicable, facilitate and expedite the process of the rezoning of the Property in accordance with the terms of the LUC and City development guidelines.

9.4 Plan Check Review. City shall, to the fullest extent practicable, expedite all plan check review for the Project in accordance with the terms of the LUC and City development guidelines.

**ARTICLE 10**  
**General Provisions**

10.1 Successors and Assigns. Subject to the provisions of this section, all of the provisions of this Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Agreement pursuant to A.R.S. §9-500.05(D). Gadsden may assign all or a portion of its rights and obligations under this Agreement as follows:

A. The assignment may not be to any person or entity not managed by Gadsden and through which Gadsden does not retain development control of the Project. Gadsden shall provide the City with copies of entity documents that demonstrate that Gadsden will manage the assignee entity and retain control of the development of the Project.

B. The assignment is by written instrument, expressly assigning such rights and obligations.

C. Gadsden has provided prior written notice of the assignment to the City and the City has approved the assignment.

D. The rights and obligations of Gadsden shall be assignable only if expressly stated in writing with the prior approval of the City.

E. The City shall not unreasonably withhold or delay providing consent to any assignment requested by Gadsden as provided in this section.

10.2 Notices. All notices, requests, demands and other communications under this Agreement shall be sufficiently given if personally delivered or mailed, certified mail, return receipt requested, or express delivery service with a delivery receipt to the office of the parties shown as follows; or such other address as the parties may designate in writing from time to time:

City

City of Tucson  
Project Manager \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to:

Mike Rankin  
City Attorney  
255 West Alameda  
P.O. Box 27210  
Tucson, AZ 85726 - 7210

Gadsden:

The Gadsden Company  
Attn: Adam Weinstein  
127 West Franklin Street  
Tucson, AZ 85701

With copies to:

Lawrence M. Hecker  
Hecker & Muehlebach, PLLC  
405 W. Franklin Street  
Tucson, AZ 85701

10.3 Recordation. This Agreement shall be recorded in its entirety in the official records of Pima County, Arizona, not later than ten (10) days after this Agreement is executed by the parties.

10.4 Amendments. No change or addition may be made to this Agreement except by a written amendment executed by the parties. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the official records of Pima County, Arizona.



10.5 Waiver. Except as otherwise specifically provided herein, no delay in exercising any right to remedy shall constitute a waiver thereof and no waiver by the City or Gadsden of the breach of any covenant of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement.

10.6 No Waiver of Strict Performance. The failure of any party to insist upon a strict performance of any of the agreements, terms, covenants and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

10.7 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. §38-511. This Agreement shall not be construed to require the City to perform any act that is prohibited by said laws, the City's charter, laws and regulations and all other applicable laws nor require Gadsden to perform any act whose performance is reasonably dependant upon the performance of any act by the City that the City cannot be required to perform.

10.8 Cooperation in the Event of Legal Challenge. In the event of any legal action or proceeding instituted by a third party challenging the validity of any provision of this Agreement, the parties shall cooperate in diligently defending such action or proceeding.

10.9 Dispute Resolution. In the event there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a 45-day moratorium on litigation, during which time the parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The matter in dispute shall be submitted to a mediator mutually selected by Gadsden and the City. In the event that the parties cannot agree upon the selection of a mediator within seven days, then within three days thereafter, Gadsden and the City shall request the presiding settlement judge of the Superior Court of Pima County, Arizona, to appoint an independent mediator. The mediator selected shall have at least five years experience in mediating or arbitrating disputes relating to land and property development. The cost of any such mediation shall be divided equally between Gadsden and the City. The conduct and results of the mediation shall be non-binding on the parties, shall not be admissible in any subsequent litigation and shall not limit any party's right to initiate litigation. This Section 10.9 shall not apply to any right of the parties that must be exercised within a certain number of days that is less than 45.

10.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, provided that the overall intent of the parties is not vitiated by such severability.

10.11 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other

arrangement between Gadsden and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party to this Agreement, and no such other person, firm, organization or corporation shall have any right or cause of action under this Agreement.

10.12 Time of Essence. Time is of the essence of this Agreement.

10.13 Force Majeure. Notwithstanding any other term, condition or provision of this Agreement to the contrary, if any party to this Agreement is precluded from timely satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, an order of a court enjoining either party from performing the tasks required under this Agreement, work stoppages due to archeological or environmental findings, or other events beyond the reasonable control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such event.

10.14 Attorney's Fees. If any party brings a civil action against another party to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants or terms of this Agreement, the prevailing party shall be entitled to recover, in addition to any relief to which such prevailing party may be entitled, all costs, expenses and reasonable attorney's fees incurred in connection with the civil action.

10.15 Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

10.16 Effective Date. This Agreement is effective upon execution by all of the parties and shall be referred to as the Effective Date.

10.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. Delivery of original, facsimile or PDF signatures transmitted by email shall be effective to bind the parties hereto.

10.18 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties pertaining to the subject matter of the Agreement and supersedes all offers, negotiations and other agreements of any kind. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

10.19 Anti-Moratorium. No moratorium, as that term is defined in A.R.S. §9-463.06, shall be imposed on the Property unless it is imposed pursuant to an ordinance that complies with A.R.S. §9-463.06, as it may be amended.

10.20 Insurance. Prior to entry upon the Project Site pursuant to a right of entry and continuing until the termination of this Agreement, Gadsden shall (or shall cause its contractors and consultants to) maintain and keep in force insurance, naming City as an additional insured, if applicable, of the following types, said insurance policy to be provided to the City prior to the execution of this Agreement.

10.20.1. "All Risk" insurance against loss or damage by fire, flood, and such other risks and matters including, without limitation, business interruption, rental loss, public liability, and boiler damage and liability. The amount of such insurance will not be less than 100% of the full replacement value of the Project, including the cost of debris removal, without deduction for depreciation.

10.20.2. General liability insurance with a combined single limit of not less than \$5,000,000 for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property insuring against any and all liability of City and Gadsden including, without limitation, coverage for contractual liability and broad form property damage.

10.20.3. Workers' Compensation insurance in accordance with the laws of Arizona.

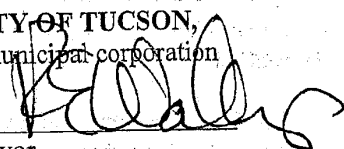
10.21 Modifications to Phases. In order to take advantage of market opportunities with respect to the development of the Property and accommodate the needs and schedule of potential users of the Project that will provide an economic stimulus to downtown Tucson, the City Manager, at his discretion, may alter and vary the composition of the respective Phases and advance the sale of one or more Blocks within a particular Phase.

.....  
.....  
.....


IN WITNESS WHEREOF, the parties have executed this Development and Real Estate Purchase Agreement as of the dates written below.

Dated: August 6, 2008

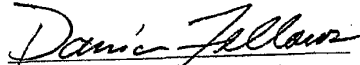
CITY OF TUCSON,  
a municipal corporation

By:   
Mayor

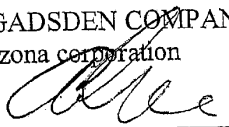
ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
Assistant City Attorney

THE GADSDEN COMPANY,  
an Arizona corporation

By:   
Print name: LOAN REPRESENTATIVE  
Date: 8/6/08

**CITY OF TUCSON  
Partial Delivery And Receiving Report**

**055-550-JA03-216**  
vm

Vendor	<u>Baker, Peterson, Baker &amp; Assoc</u>	Account No.	<u>001-103-1037-216</u>
Department	<u>Rio Nuevo &amp; Real Estate Division</u>	Requisition No.	<u>0715572</u>
Date	<u>8/5/2008</u>	Purchase Order No.	<u>29446</u>

Quantity	Description	Unit Cost	Amount						
	<table><tr><td><u>Invoice #</u></td><td><u>Dated</u></td><td><u>Project</u></td></tr><tr><td>5803</td><td>8/4/2008</td><td>Rio Nuevo-West Congress sale 14.58 acres @ SE Corner Congress/Avenida del Convento</td></tr></table>	<u>Invoice #</u>	<u>Dated</u>	<u>Project</u>	5803	8/4/2008	Rio Nuevo-West Congress sale 14.58 acres @ SE Corner Congress/Avenida del Convento		\$ 7,500.00
<u>Invoice #</u>	<u>Dated</u>	<u>Project</u>							
5803	8/4/2008	Rio Nuevo-West Congress sale 14.58 acres @ SE Corner Congress/Avenida del Convento							
	TOTAL		\$ 7,500.00						

I CERTIFY THAT THE ABOVE GOODS AND  
OR SERVICES WERE RECEIVED IN GOOD ORDER

APPROVED FOR PAYMENT

*K. Newhouse*  
RECEIVED BY

27037  
EMPLOYEE NO.

*[Signature]*  
AUTHORIZED BY

46697  
EMPLOYEE NO.

8-5-08  
DATE

NOTE: FORWARD TO ACCOUNTING FOR PROCESSING

**BAKER, PETERSON, BAKER & ASSOCIATES, INC.**

**REAL ESTATE APPRAISERS - CONSULTANTS**

4547 E. FT. LOWELL ROAD • SUITE 401 • TUCSON, AZ 85712

(520) 881-1700 • 1-800-204-1700

FAX (520) 325-3108

admin@bakerpeterson.com

Federal I.D. No. 86-0286095

**INVOICE**

**INVOICE NO. 5803**

Ms. Karen Newhouse, Review Appraiser  
City of Tucson, Transportation Division, Real Estate Division  
201 North Stone, Sixth Floor  
Tucson, Arizona 85701

Date: August 4, 2008  
Job No.: C085803  
Appraiser: BB

*Please return duplicate with your remittance*

**FOR APPRAISAL SERVICES**

**\$ 7,500.00**

RE: A summary appraisal report of vacant land (14.58 acres) located at the southeast corner of Congress Street and Avenida del Convento, Tucson, Pima County, Arizona

Owner: City of Tucson  
Tax Parcel No.: 116-20-124B, 1250, 1260, 1270, 1280, 129A, 1320, 1330, 1340, and 137A  
Index No.: 09001  
Date of Value: July 23, 2008

*OK to pay  
kn*

**COT INDEX NO : 09001**

**THIS INVOICE IS DUE AND PAYABLE UPON RECEIPT**

*Please Make Checks Payable to Baker, Peterson, Baker & Associates, Inc.*

**PLEASE INCLUDE PINK COPY OF INVOICE OR INVOICE NUMBER WITH REMITTANCE**

Westside Projects COT 002615



## MEMORANDUM

---

DATE: October 21, 2008

TO: Mike Hein  
City Manager

FROM: Stacie Bird  
Downtown Development  
Finance Manager

SUBJECT: University of Arizona Invoices for June and July 2008

Resolution 20750 says the District shall contribute \$130 million out of tax-increment financing (TIF) proceeds, or from bonds or other funding mechanisms authorized under A.R.S. 48-4201 et seq., to the University of Arizona for the construction of the Science Center/Museum. The Intergovernmental Agreement with the UofA says the maximum District contribution is \$130 million and the District will pay one-half of the design cost leading up to construction. I have verbally been informed that all cost related to exhibits, including exhibit design and supplies are allowed as part of the design cost.

I have itemized the University of Arizona Invoices for June and July 2008, these invoices total \$692,239.09. The University has set up two internal accounts and charges the City half of every expenditure that hits each account. I wanted to inform you that they are charging expenditures that the City does not allow on other District projects. They have charged: UA personnel cost of \$161,585.67, the purchase of computers - \$14,373.91, phone service - \$2,779.81, food - \$2,154.89, professional memberships, subscriptions, and conferences - \$3,487.15, and professional ads to hire the Development Director position - \$2,033.81. I have detail of these expenditures if you would like to review them (expenditures are from January to July 2008). I have been informed that previous invoices have had such charges. By your signature, you confirm that these expenditures are allowable expenditures on this project. If you do not agree that these are allowable expenditures, please let me know and I will set up a meeting with the University.

Thank you.

Your concurrence \_\_\_\_\_



TMCx Arizona, LLC.  
325 E. Southern Ave., Suite 109  
Tempe, AZ 85282  
(480) 446-7777



## **PROFESSIONAL ENGINEERING SERVICES PROPOSAL**

### **FOR INDEPENDENT 3<sup>RD</sup> PARTY**

### **BUILDING COMMISSIONING**

**Date:** August 6, 2007

**Project:** Origins Heritage Park

**To:** City of Tucson  
Facilities Design & Construction

**Attn:** Doug Crockett

TestMarc<sub>x</sub> is pleased to present our revised proposal for Professional Engineering services for independent, third party commissioning at the Origins Heritage project, located in Tucson AZ. TestMarc<sub>x</sub> is a professional engineering firm specializing in contracting and consulting for independent third party testing and commissioning of mechanical, electrical, climate control and smoke control systems for the construction industry. TestMarc<sub>x</sub> is a provider member of the Building Commissioning Association in five (5) states.

*Commissioning (ASHRAE Definition): "A process for achieving, verifying, and documenting the performance of each system to meet the operational needs of the building within the capabilities of the documented design and specified equipment capacities, according to the owner's functional criteria"*

#### **BASE SCOPE-OF-WORK:**

TestMarc<sub>x</sub> will systematically test and document the functionality of the included systems to confirm that the performance meets the documented design intent and the owner's operational needs as required to meet the LEED requirements. The following is a listing of the scope of work:

1. **LEED Tasks – 2.2 Energy & Atmosphere Prerequisite 1: Fundamental Building Systems Commissioning**
  - a. Form the Commissioning Team
  - b. Document the Owner's Requirements
  - c. Review the Basis of Design
  - d. Create a Commissioning Plan
  - e. Develop and incorporate commissioning requirements in the bid documents
  - f. Provide installation verifications
  - g. Provide functional performance testing
  - h. Provide a final commissioning report
2. **LEED Tasks – 2.2 Energy & Atmosphere Credit 3: Enhanced Commissioning**
  - a. Provide review of design documentation prior to mid-construction document phase with a back-check of the subsequent submission.
  - b. Attend design coordination meetings (3 meetings)

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**City of Tucson – Origins Heritage Park  
Professional Services – Building Commissioning Proposal**  
Page 2



- c. Review contractor submittals, concurrently with A/E team, applicable to systems to be commissioned.
- d. Provide a systems manual as outlined in the LEED requirements.
- e. Verify training requirements of operating personnel are completed.
- f. Review building operation within 10 months after substantial completion with O&M staff and occupants. As a result, provide plan for resolution of outstanding commissioning-related items.

**3. Commissioning Approach, Means & Methods:**

- a. General Commissioning Tasks:
  - i. Coordinate and manage the commissioning activities.
  - ii. Schedule, agenda and attendees of commissioning process.
  - iii. Coordinate directly with each Sub Contractor with respect to their responsibility and contractual obligations as it relates to commissioning.
  - iv. Obtain, assemble and submit commissioning documentation.
  - v. Attend periodic on-site commissioning activities.
- b. Design and Construction Document Review Tasks:
  - i. Review the controls documentation and interface with other systems.
  - ii. Review the operation and maintenance information and as-built drawings provided by the various sub-contractors and vendors.
  - iii. Note any inconsistencies or deficiencies in the system.
- c. Commissioning Documentation Development Tasks:
  - i. Develop the commissioning plan and schedule.
  - ii. Incorporate detailed pre-functional checklists and functional performance test procedures.
  - iii. Prepare and submit the Commissioning Reports.
  - iv. Assemble and submit the final Commissioning Report.
- d. Commissioning Pre-Functional Testing Tasks:
  - i. Be present during portions of the start-up activities and pre-functional testing to witness the execution of startup.
  - ii. Monitor the performance of the Test, Adjust and Balance (TAB) contractor. Provide random sampling or direct witnessing of 10% of TAB contractor's work.
- e. Commissioning Functional Performance Testing Tasks:
  - i. Direct the functional performance testing. The tests will include the individual components' interaction.
  - ii. Verify system compliance and recommend modifications to the system design that will correct or enhance the system performance.
  - iii. Coordinate the owner witnessing of the tests.
  - iv. Review the accuracy and calibration of any instrumentation utilized for the functional performance testing.
  - v. Track commissioning deficiencies until correction. Within each system, include one re-commissioning for any deficiencies. Additional re-commissioning time beyond this will be tracked and billed at the hourly rates.

**SYSTEMS TO BE COMMISSIONED:**

The following is a list of proposed systems to be commissioned (100% testing unless noted otherwise):

- 1. Mechanical/HVAC Systems:
  - a. Ground Source Loop System:
    - i. Loop Pumps
    - ii. Makeup systems, water treatment, & expansion tanks
    - iii. Miscellaneous piping components
  - b. Terminal Units including:
    - i. Heat Pumps
    - ii. Pkg'd DX and split system A/C units

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**City of Tucson – Origins Heritage Park**  
**Professional Services – Building Commissioning Proposal**  
Page 3



- c. Exhaust and Supply Systems including:
  - i. General
  - ii. Toilet
- d. Facility Control System (Building Automation) including:
  - i. Point to point verification and calibration verification
  - ii. Sequence of operation testing for all modes of operation for all seasons including review of software.
  - iii. Verification of graphics, point display, point command, and alarming.
  - iv. Testing of the FCS shall occur in a timely manner to meet the construction schedule.
- 2. Plumbing Systems:
  - a. Domestic H/C Water (Primary equipment only)
  - b. Booster System (Primary equipment only)
  - c. Landscape Irrigation System
- 3. Electrical Systems:
  - a. Lighting:
    - i. Automatic Lighting – Interior
    - ii. Photovoltaic Distribution System

**CLARIFICATIONS TO SCOPE:**

The following items are clarifications to the scope of work:

- 1. General:
  - a. This proposal is based on the Design Development drawings dated June 28, 2007. TestMarcx reserves the right to modify the proposal if quantities and system configurations change.
  - b. TestMarcx will be provided with a full set of half-sized construction drawings, specifications, addendums, information requests, submittals and any other pertinent construction documentation required to develop the commissioning documentation and execute the commissioning process.
  - c. Excessive delays in the testing of the included systems due to construction issues or non-cooperation in the resolution of deficiencies will result in a request for additional fees plus expenses at the hourly rates subsequent to one allowable deficiency re-commissioning.
  - d. TestMarcx is an engineering firm and as such excludes any bonding and prevailing wage requirements.
  - e. Substantial completion is scheduled for September 2009.
  - f. This proposal includes two paper (2) copies of commissioning deliverables and six (6) electronic CD's with scanned and indexed copies in Adobe Acrobat PDF format.
- 2. Contractor Cooperation:
  - a. Most portions of the commissioning process will require sub-contractor cooperation to avoid warranty issues. In order for TestMarcx to diligently direct the functional testing, any associated sub-contractors will be made available on an as-needed basis to demonstrate complete system operation according to the functional testing plans.
  - b. The Contractor shall provide all technician services requiring tools or the use of tools to test, adjust, or otherwise bring equipment into a full operational state.
- 3. Exclusions:
  - a. Construction means, methods, site safety program, or any Contractor project management functions.
  - b. Division 15 Test and Balance contractor tasks.
  - c. Division 16 Electrical Acceptance Testing contractor tasks.
  - d. This proposal excludes any items not specifically and expressly listed in the scope of work.

**City of Tucson – Origins Heritage Park**  
**Professional Services – Building Commissioning Proposal**  
Page 4



**FEE BASIS BREAKDOWN:**

Our fees for performing the base scope of work shall be:

1. LEED Fundamental Commissioning: ..... \$18,350
2. LEED Enhanced Commissioning: ..... \$8,100
3. **TOTAL BASE SCOPE Cx COSTS**..... \$26,450

**Optional Services** – These systems below are not required by LEED for certification. Per your direction, they are included as additional services. The scope of work associated with these systems corresponds to the LEED Fundamental Commissioning requirements as previously outlined.

1. Emergency Power Systems – Includes the witness of emergency power distribution system testing (emergency generator and automatic transfer switches), verification of emergency lighting, and inspection of panel boards for labeling and torque ..... \$5,800
2. Fire Life Safety System – Includes the functional testing of the fire alarm system, smoke detectors, and fire sprinkler flow and tamper switches ..... \$5,700
3. Specialty Systems – Includes the commissioning of the sound control, data and communications, and building envelope systems ..... \$7,100

**TERMS & CONDITIONS:**

See attached Appendix A.

**CONCLUSION:**

If you have any questions please feel free to contact us. We appreciate this opportunity to present this proposal and look forward to working with you.

Respectfully,

**TESTMARCx**

**Loren Morris, PE**  
Principal

Signed,

\_\_\_\_\_  
City of Tucson

\_\_\_\_\_  
Date



## **APPENDIX A TERMS & CONDITIONS**

### **PAYMENTS:**

All services and reimbursables will be invoiced monthly. Full payment is due 30 days after invoice. In the event that full payment is not received by TestMarcx (the Firm) within 45 days of invoice, then the Firm has the right to suspend services immediately and pursue payment. If payment is not immediately forthcoming, then the Firm has the right to terminate the contract and pursue all remedies. Under no circumstances will the Firm be liable for any delays or damages associated with the suspension or termination of services due to the failure to timely compensate Firm.

### **PROJECT TERMINATION:**

In the event of termination of our services, we will be paid for all work accomplished through the date and time of the termination even though the billing for said work may occur after the date of termination. Said work will be billed at the hourly rates then in effect.

### **OWNERSHIP OF DOCUMENTS:**

All documents produced by the Firm under this agreement shall remain the property of the Firm and may not be used by the Client for any other endeavor without the written consent of the Firm. The Client may make and retain copies for information and reference in connection with this project. Such documents are not intended or represented to be suitable for reuse by you or others on extensions of this project or any other project.

### **INDEMNIFICATION:**

The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Firm, his or her officers, directors, employees, agents and subconsultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Firm.

### **LIMITATION OF LIABILITY:**

In recognition of the relative risk, rewards and benefits of the project to both the Client and the Firm, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Firm's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement from any cause or causes, shall be limited to an amount equal to the refund of the Firm's fees. Such causes include, but are not limited to, the Firm's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

### **DISPUTE RESOLUTION:**

In an effort to resolve any conflicts that may arise during or following the completion of the project, we both agree that all disputes arising out of or relating to this agreement shall be submitted to non-binding mediation under the auspices of a nationally recognized mediation agency.

### **INSURANCE:**

We agree to maintain in force for the duration of the project the following insurance:

- a. Professional Liability: (\$1,000,000 ea. occurrence, \$1,000,000 aggregate)
- b. General Liability Insurance. (\$1,000,000 ea. occurrence, \$2,000,000 aggregate)
- c. Automobile Insurance for company owned vehicles. (\$1,000,000 combined single limit)
- d. Workmen's Compensation Insurance. (Statutory Limits)

### **PROPOSAL ACCEPTANCE:**

This proposal shall become binding, subject to the terms and conditions herein, when accepted by the Client through written acknowledgment. Any commencement of the work, furnishing of any documents, payments for services by Client or acceptance of payment by the Firm prior to the written acknowledgment of the proposal shall be governed by this proposal, regardless when executed.

Per Pima County recorders website  
11675 2809 recorded 11/14/01

CONTRACT	
NO. 01-04-T-129962-1/01	
AMENDMENT NO.	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
PIMA COUNTY, THE  
CITY OF TUCSON, AND THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
FOR THE COOPERATIVE DEVELOPMENT OF THE PROPERTY  
MISSION GARDENS**

This Intergovernmental Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona ( hereinafter "County" ), the City of Tucson, a municipal corporation ( hereinafter "City" ) and the Rio Nuevo Multipurpose Facilities District, (hereinafter "District"), a body politic pursuant to Arizona Revised Statutes (A.R.S.) § 11-952 and §11-931.

**RECITALS**

- A. County, City and District are authorized by A.R.S. § 11-932 to acquire by purchase, lease, gift or grant real property for the purpose of establishing public parks and may improve, maintain and hold such property for that purpose.
- B. County, City and District are authorized by A.R.S. § 11-933 to enter into cooperative agreements with other governing bodies for the purpose of establishing, developing, maintaining and administering public parks.
- C. Among the specified project/program categories authorized by the May 20, 1997 special election was the Sonoran Desert Open Space and Historic Preservation Project No. CH-28 Mission San Agustin, "the Birthplace of Tucson," the purpose of which is to preserve and protect the historic Mission Gardens site for the future benefit of the Tucson community and greater Pima County as part of the Mission San Agustin del Tucson Cultural Heritage Park.
- D. In accordance with the intent of the May 20, 1997 special election, the County purchased the land commonly known as Mission Gardens, said property being specifically described in attached Exhibit "A" ( the "Property" ).
- E. County, City and District wish to provide for the consolidated operation, maintenance and administration of the Property by City as a recreational and cultural park facility for the use of the people of the City of Tucson and Pima County.

Mission Gardens IGA

EX A TO RESOLUTION NO. 19006  
CITY OF TUCSON CONTRACT NO. 0236-02

- F. County, City and District have agreed that, subject to County approval, City shall design, construct, and maintain the Property as part of the Mission San Agustin del Tucson Cultural Heritage Park.
- G. County, City and District understand that the Property is subject to all applicable requirements of Pima County Ordinance No. 1997-35, Sections IV(D) and VIII.

NOW, THEREFORE, the County, City and District, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

**AGREEMENT**

1. Purpose. The purpose of this Intergovernmental Agreement is to facilitate the cooperation between City and County for the establishment, construction, maintenance and administration of the Mission San Agustin del Tucson Cultural Heritage Park, and ~~for County to grant to City a license to enter upon and utilize the Property for that purpose.~~

2. Project. The Mission San Agustin del Tucson Cultural Heritage Park ( hereinafter the "Project", as depicted in Exhibit B) is a community funded project ~~intended to restore the historic Mission Gardens and surrounding area to its original Spanish Colonial era condition (hereinafter the "Improvements").~~ The Property acquired by the County, as authorized by the County's May 20, 1997 special election, is an integral part of the Project.

3. Effective Date; Term. This Agreement shall become effective upon filing the original executed Agreement with the office of the Pima County Recorder, ~~and shall continue in effect for a period of 25 years from the effective date unless earlier terminated pursuant to Paragraph 4(a) or Paragraph 7 of this Agreement.~~ This Agreement may be renewed for additional terms by mutual written consent of the parties.

4. Responsibilities of City: City is hereby authorized to enter upon the Property for the purposes of designing, constructing, maintaining and administering the Project in accordance with the following:

a. The City shall design and construct the Improvements in accordance with the Mission Gardens and Mission San Agustin del Tucson Cultural Heritage Park master plan. The construction of the Mission Gardens portion of the Project shall be completed within 5 years of the effective date of this Agreement or this Agreement shall be void and the City's license to enter and occupy the Property shall be automatically revoked.

~~b. City shall manage, operate and maintain the Property in accordance with this Agreement and shall be responsible, financially and otherwise, for obtaining all applicable Federal, State and local permits associated with the Project.~~



c. City shall only be permitted to use the Property for the stated purposes. No other purposes or activities shall be permitted without prior written approval of the County.

d. Improvements to the Property shall, upon termination of this Agreement, be left in place except for such improvements as County requests City to remove, or as mutually agreed upon at the time of termination.

e. City is self-insured and shall maintain its self-insured status throughout the term of this Agreement.

f. City shall abide by all applicable local, state and federal ordinances, statutes, and regulations regarding the Project and the Property.

~~g. City shall obtain County's approval of the concept plans prior to the award of any construction contracts.~~

h. In the event that future road or street alignments change, City guarantees County the right of sufficient legal access to the Property.

i. All parties acknowledge the Property is within the 100 year floodplain and erosion hazard zone of the Santa Cruz River. County makes no warranties as to condition of the Property at any time during the term of this Agreement. The risk of loss from any flood and erosion damage to the Property shall be borne solely by City; however, City shall not be required to rebuild the Improvements in the event of major flood damage.

5. Responsibilities of County. County shall be responsible for the following:

a. County hereby grants to City a license to enter upon and remain in possession of the Property for the purposes of designing, constructing, maintaining, and administering the Project during the term of this Agreement, on and subject to the terms and conditions set forth herein.

b. County shall have continued right to access and inspect the Project any time during the term of this Agreement.

c. This Agreement grants to City the right to perform all acts as specified herein but does not convey to City any fee title interest in the Property. On termination of this Agreement, City's right to enter the Property for the purposes stated herein shall cease and title to the Property shall remain vested in County.

6. Responsibilities of District

- a. ~~District shall be responsible, financially and~~  
Otherwise, for all costs of the project.

7. Indemnification. To the fullest extent permitted by law, City and District shall indemnify, defend and hold County, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of City, its governing board or body, officers, departments, employees and agents or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.

8. Termination.

a. *For Cause*. A party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

b. *Conflict of Interest*. This Agreement is subject to the provisions of A.R.S. 38-511 which provides in pertinent part:

The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

9. Non-assignment. Neither party to this Agreement shall assign its rights under this Agreement to any other party without the prior written consent of the other parties, which shall not be unreasonably withheld.

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10. Construction of Agreement.

a. *Entire Agreement.* This instrument constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

b. *Amendment.* This Agreement shall not be modified, amended, altered or changed except by written agreement signed by both parties.

c. *Construction and interpretation.* All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

d. *Captions and headings.* The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

e. *Severability.* In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

11. Legal Jurisdiction. Nothing in this Intergovernmental Agreement shall be construed as either limiting or extending the legal jurisdiction of County or City, or District.

12. No Joint Venture. It is not intended by this Intergovernmental Agreement to, and nothing contained in this Intergovernmental Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any City employees, or between City and any County employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

13. No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

14. Compliance with Laws. The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.

b. *Americans with Disabilities Act.* This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

15. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

16. Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

17. Notification. All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

COUNTY:	Cultural Resources 201 N. Stone, 7 <sup>th</sup> Floor Tucson, AZ 85701	COPY TO:	Real Property Division 201 N. Stone, 6 <sup>th</sup> Floor Tucson, AZ 85701
CITY:	Historic Program Administrator 320 N. Commerce Park Loop Road Tucson, AZ	COPY TO:	City Clerk's Office 255 W. Alameda, 9 <sup>th</sup> Floor Tucson, AZ 85701
DISTRICT:	Rio Nuevo Office 255 W. Alameda, 9 <sup>th</sup> Floor Tucson, AZ 85701		

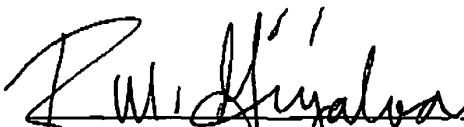
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18. Remedies. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

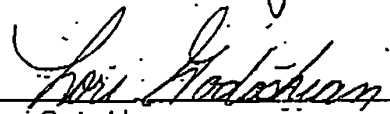
*In Witness Whereof*, County has caused this Intergovernmental Agreement to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and the City has caused this Intergovernmental Agreement to be executed by its Mayor and attested to by its City Clerk and the District has caused this IGA to be executed by its chair and attested to by its secretary.

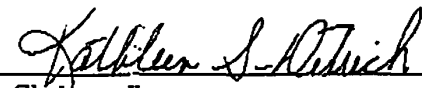
PIMA COUNTY BOARD OF SUPERVISORS:

CITY OF TUCSON:

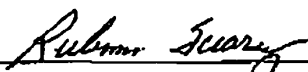
  
Raul M. Grijalva, Chairman  
ATTEST:

  
Robert Walkup, Mayor  
ATTEST:

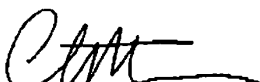
  
Lori Godashian  
Clerk of the Board

  
Kathleen S. Detrich  
City Clerk

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

  
Chair

ATTEST:

  
Secretary

Attachments:

Exhibit A - the Property  
Exhibit B - the Park

ATTORNEY CERTIFICATION

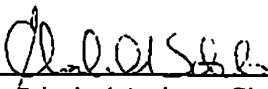
The foregoing Intergovernmental Agreement by and between the Pima County Board of Supervisors and the City of Tucson and the Rio Nuevo Multipurpose Facilities District has been reviewed pursuant to A.R.S. Section 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

Pima County:

By:   
Deputy County Attorney

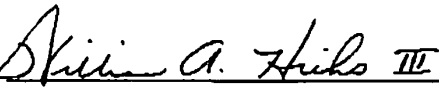
8/08/01  
Date

City:

By:   
Principal Assistant City Attorney

8-27-01  
Date

District:

By:   
Counsel to the District

9-27-01  
Date

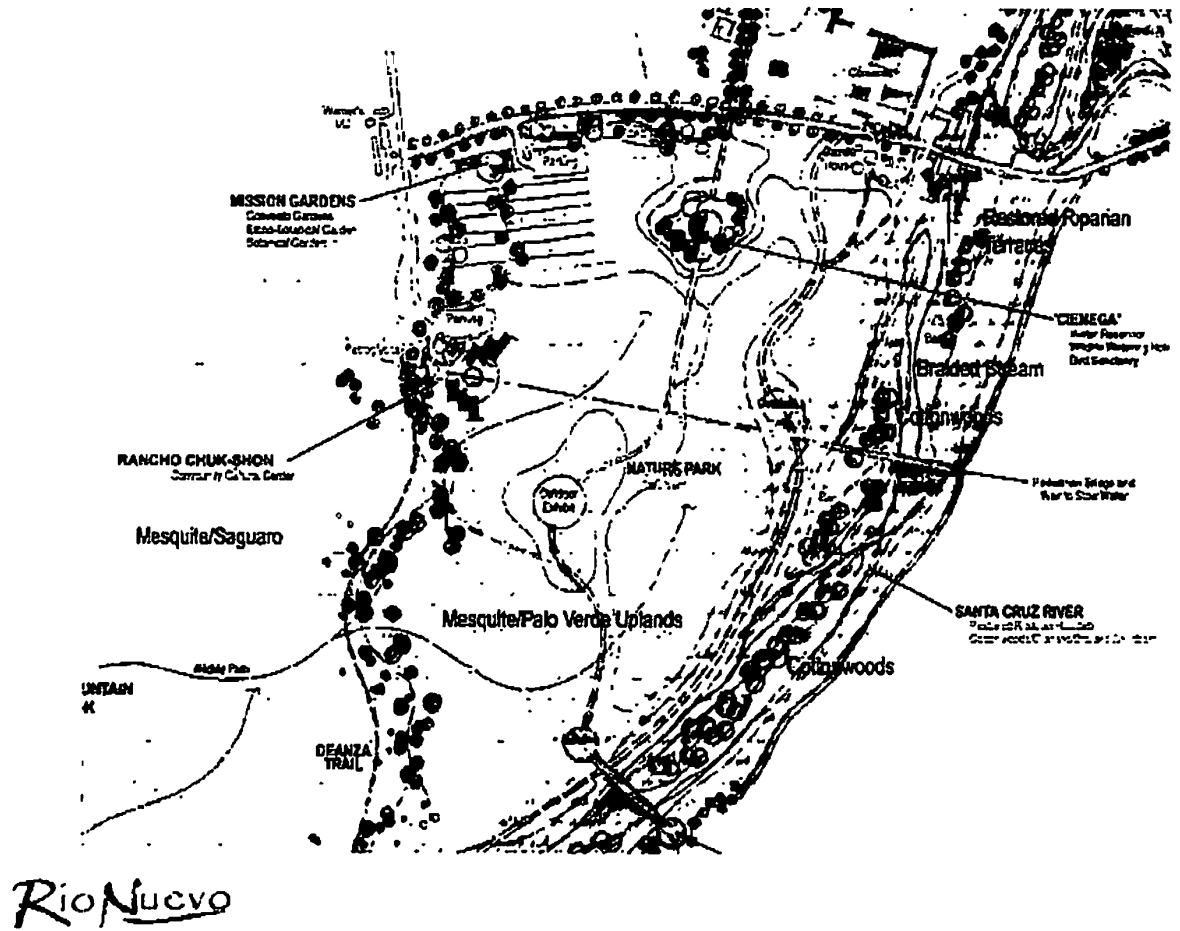
**EXHIBIT A**

**LEGAL DESCRIPTION**

**MISSION GARDENS**

All of Lot 24 in Section 14, Township 14 South, Range 13 East, of the Gila and Salt River Base and Meridian, Pima County, Arizona, according to the office survey made by Theo E. White under Act of Congress, approved February 5, 1875.

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RUSING & LOPEZ, P.L.L.C.

ATTORNEYS AT LAW

6262 NORTH SWAN ROAD

SUITE 200

TUCSON, ARIZONA 85718

JEFFREY G. BAXTER  
SEAN E. BREARCLIFFE  
TAMARA R. CROCKETT\*  
BRIAN M. GOLDBERG  
TODD M. HARDY \*\*  
OSCAR S. LIZARDI  
PAT P. LOPEZ III  
REBECCA K. O'BRIEN  
DANIEL J. QUIGLEY \*\*\*  
TIMOTHY J. RECKART+  
TESSA C. RILEY  
MICHAEL J. RUSING  
JOHN H. SUNDT•  
CATHERINE M. WOODS

TELEPHONE (520) 792-4800

FACSIMILE (520) 529-4262

WRITER'S DIRECT LINE

(520) 529-4261

WRITER'S E-MAIL ADDRESS  
sbrearcliffe@rusingandlopez.com

October 3, 2011

\* NOT ADMITTED IN ARIZONA;  
ADMITTED IN MASSACHUSETTS  
NEW YORK, AND WASHINGTON, D.C.  
\*\* ALSO ADMITTED IN CALIFORNIA  
\*\*\* ALSO ADMITTED IN COLORADO  
+ ALSO ADMITTED IN WASHINGTON, D.C.  
• ALSO ADMITTED IN TEXAS

*Via Electronic and First Class Mail*

Nancy L. Eatros, CCTS  
Vice President, Corporate Trust Services - CMES  
MAC S4101-22E  
100 W Washington St., 22nd Floor  
Phoenix, AZ 85003

*Re: Rio Nuevo Multi Purpose Facilities District; Wells Fargo Bank accounts*

Dear Ms. Eatros,

This law firm represents the reconstituted Rio Nuevo Multipurpose Facilities District ("District"), a political subdivision of the State of Arizona. A disagreement has apparently arisen between the District and Wells Fargo Bank regarding access to and control of its proprietary accounts.

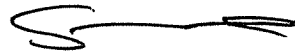
The District has requested copies of its bank statements, or access to electronic versions of bank statements, and access to its account and other reporting matters for all accounts held by the District or which hold funds held for the benefit of the District at Wells Fargo Bank as trustee, dating back to the inception of its accounts. In correspondence with the District, you have most recently excused the refusal provide such by claiming the need to perform a "review" of the accounts. Wells Fargo's performing a "review" of the accounts does not limit the ability or right of the District to have ready access to its accounts, account information or statements.

Nancy L. Eatros, CCTS  
October 3, 2011  
Page 2

The District has repeatedly reached out to Wells Fargo -- via email, telephone calls, and even by providing Governing Board resolutions on Wells Fargo's request -- to obtain that access to and control of the accounts. The District is committed to working together to build on the relationship between the new District Board and Wells Fargo but has been unable to effectuate this for many months.

Please work with the District representatives as set out in the Resolution provided to you on August 15, 2011. Due the upcoming meetings in which the District will be engaged, it needs the statements and other pertinent reports on or before October 7, 2011.

Sincerely,



Sean E. Brearcliffe

SEB\cmr

cc: Mike Jette, AAG



# RUSING & LOPEZ, P.L.L.C.

ATTORNEYS AT LAW

JEFFREY G. BAXTER  
SEAN E. BREARCLIFFE  
TAMARA R. CROCKETT \*  
BRIAN M. GOLDBERG  
TODD M. HARDY \*\*  
OSCAR S. LIZARDI  
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MICHAEL J. RUSING  
SARAH J. STANTON  
JOHN H. SUNDT ♦

6262 NORTH SWAN RD.  
SUITE 200  
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TELEPHONE (520) 792-4800  
FACSIMILE (520) 529-4262

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WRITER'S E-MAIL ADDRESS  
sbearcliffe@rusingandlopez.com

\* NOT ADMITTED IN ARIZONA;  
ADMITTED IN MASSACHUSETTS  
NEW YORK, AND WASHINGTON, D.C.  
\*\* ALSO ADMITTED IN CALIFORNIA  
\*\*\* ALSO ADMITTED IN COLORADO  
+ ALSO ADMITTED IN WASHINGTON, D.C.  
♦ ALSO ADMITTED IN TEXAS

November 14, 2011

*Via First Class Mail and Electronic Mail*  
*akleindienst@polsinelli.com*

Anne Kleindienst  
Polsinelli Shugart  
One East Washington Street, Ste. 1200  
Phoenix, Arizona 85004-2568

Re: Rio Nuevo Multipurpose Facilities District and Wells Fargo Bank Account  
Receipts Dispute

Dear Anne:

The Rio Nuevo Multipurpose Facilities District (the District) and its Board have been working to establish a reliable baseline accounting of District funds with the City of Tucson (the City). The District's accountants have advised that in order to better reconcile the cash position, as well as, prepare potentially unqualified audited financial statements they should have access to and need to secure copies of original "source documents" relating to each of the District's accounts from Wells Fargo.

By source documents, the District's accountants mean the documents prepared by Wells Fargo itself. Not summaries or reports prepared by the City relating to District's accounts (not "asset reports, transaction reports, or account summaries," etc.).

The District's accountants advise they have been furnished with what they believe are "account summaries, reports and a select few internal work papers," not copies of actual source documents. The District's accountants have also advised that more detailed source documents relating to the District's Certificates of Participation (COPs) and Bonds should be obtainable from Wells Fargo.

Ann Kleindeinst  
November 10, 2011  
Page 2

The District has requested and still requires that Wells Fargo furnish information and documents for all accounts relating to the District.

By "all accounts" the District means all accounts "held for its benefit," "held for the benefit of those holding District bonds or COPs" or held in the District's own name, including all construction and acquisition accounts, reserve accounts, escrow accounts, disbursement accounts, primary accounts, main accounts and sub accounts (District Accounts) within Wells Fargo or known to Wells Fargo to exist elsewhere. The District has requested and still requires that Wells Fargo furnish:

- a. a complete list of all District Accounts since inception on each issuance of COPS, Bonds or other matters of which Wells Fargo has knowledge.
- b. complete copies of the transaction history for each District Account, from the date the account was opened to the present day
- c. complete copies of all records relating to the disbursement of funds from each District Account, including any invoices, disbursement requests, back up materials or other information or documents submitted by the City, District representatives and/or the City or the District vendors supporting the requested disbursement or other release of funds.
- d. complete copies of the Trustee's or the Trustee's accountant's work papers relating to the District Accounts.
- e. complete copies of the actual monthly bank statement for each District Account (not "asset reports, transaction reports, or account summaries," etc.).

To date the District has not been provided the above in full.

The District again requests these items. If Wells Fargo would like to meet with the District and its counsel to address these matters please let us know of Wells Fargo's availability during the first week of December.

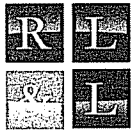
We continue to believe the documents are securable without unnecessary legal expense and cost.

Sincerely,



Sean E. Brearcliffe

SEB\gl



**RUSING LOPEZ  
& LIZARDI**  
ATTORNEYS AT LAW

JEFFREY G. BAXTER      REBECCA K. O'BRIEN  
SEAN E. BREARCLIFFE    DANIEL J. QUIGLEY\*\*\*  
TAMARA R. CROCKETT\*   TIMOTHY J. RECKART  
BRIAN M. GOLDBERG      TESSA C. RILEY  
TODD M. HARDY\*\*        MICHAEL J. RUSING  
OSCAR S. LIZARDI        JOHN H. SUNDT♦  
PAT P. LOPEZ III         SARAH J. STANTON

**WRITER'S DIRECT LINE**  
(520) 529-4261

**WRITER'S E-MAIL ADDRESS**  
sbrearcliffe@rllaz.com

January 4, 2012

***Via Electronic and First Class Mail***

Anne Kleindienst  
Polsinelli Shugart  
One East Washington Street, Ste. 1200  
Phoenix, Arizona 85004-2568

Re: *Rio Nuevo Multipurpose Facilities District; Wells Fargo Bank*

Anne,

I thank you for your time, and the time of the Wells Fargo Bank officials, spent in our meeting on December 8, 2011. I understand that Ms. Eatros has put together disbursement request documentation relating to the payments from the Trust accounts for us, and forwarded to us certain documents. We expected to receive bankers boxes full based on our discussions, but only received a single file of documents. Please let me know via email at sbrearcliffe@rllaz.com if we should expect more documents by January 5, 2012.

Please also confirm via the above email if Wells Fargo will forward to us copies of any other such documents as you, the Trustee and Wells Fargo, may receive relating to these accounts going forward.

Finally, unless I hear from you otherwise by e-mail or otherwise that we cannot, and we are given clear reason not to, make them public, on or after January 6, 2012 the documents we have received relating to these accounts may be made public, both in response to Public Records Requests and as part of our general disclosure obligations.

Sincerely,

Sean E. Brearcliffe

SEB:lg

\* ALSO ADMITTED IN MASSACHUSETTS, NEW YORK AND WASHINGTON, D.C. \*\* ALSO ADMITTED IN CALIFORNIA AND OREGON \*\*\* ALSO ADMITTED IN COLORADO  
♦ ALSO ADMITTED IN WASHINGTON, D.C. ♦ ALSO ADMITTED IN TEXAS

Rusing Lopez & Lizardi, P.L.L.C.  
6363 North Swan Road, Suite 151  
Tucson, Arizona 85718

Telephone: 520.792.4800  
Facsimile: 520.529.4262  
www.rllaz.com



**\*\* FINAL \*\***

**SETTLEMENT, DELIVERY & CLOSING PROCEDURES**

**Issue:** \$80,000,000  
Rio Nuevo Multipurpose Facilities District  
(City of Tucson, Arizona)  
Subordinate Lien Excise Tax Revenue Bonds  
Series 2008

**Bonds Dated:** Date of Delivery (December 30, 2008)

**Interest Payment Dates:** January 15 and July 15 of each year, commencing July 15, 2009.

**Maturity Dates,**  
**Principal Amounts,**  
**Interest Rates:** See Exhibit A

**Mandatory Sinking**  
**Fund Redemption:** See Exhibit A

**Pre-Closing:** Monday, December 29, 2008  
3:00 P.M. (Arizona Time)  
Ballard Spahr Andrews & Ingersoll, LLP  
3300 North Central Avenue, Suite 1800  
Phoenix, Arizona 85012  
Bill Hicks and Zach Sakas  
Phone: (602) 798-5423  
Fax: (602) 997-3180

**Closing:** Tuesday, December 30, 2008  
8:00 A.M. (Arizona Time)  
Ballard Spahr Andrews & Ingersoll, LLP  
3300 North Central Avenue, Suite 1800  
Phoenix, Arizona 85012  
Bill Hicks and Zach Sakas  
Phone: (602) 798-5423  
Fax: (602) 997-3180

**Participants:** See Exhibit B

**Registration and**  
**Authentication:** After the Series 2008 Bonds have been registered and authenticated, Wells Fargo Bank, N.A. will confirm arrangements for a F.A.S.T. closing with The Depository Trust Company (DTC), 55 Water Street, 1st Floor, New York, New York 10041.

**Exhibit M**

\$80,000,000  
Rio Nuevo Multipurpose Facilities District  
(City of Tucson, Arizona)  
Subordinate Lien Excise Tax Revenue Bonds, Series 2008  
Page 2

**SETTLEMENT**

**INSTRUCTIONS:**

- (1) Purchase Price of the Series 2008 Bonds:
- |                                   |                               |
|-----------------------------------|-------------------------------|
| Par Value of Bonds                | \$80,000,000.00               |
| Less: Net Original Issue Discount | (1,356,373.75)                |
| Less: Underwriter's Discount      | <u>(491,776.76)</u>           |
| Amount due at Closing             | <b><u>\$78,151,849.49</u></b> |
- (2) On the day of closing, Piper Jaffary & Co. will initiate the following wire transfers:
- (a) **\$748,653.72** representing the Financial Guaranty Insurance Premium will be wire transferred on the day of closing in federal or immediately available funds to: JP Morgan Chase New York; Account Name: Assured Guaranty Corp.; Account #: 323-355919; ABA #: 021-000-021 Ref: Rio Nuevo Multipurpose Facilities District Subordinate Lien Excise Tax Revenue Bonds, Series 2008; Policy #: D-2008-1110; Attention: Nicole DiMarco (212) 261-5593
- (b) **\$77,403,195.77** representing the balance of the purchase price will be wire transferred on the day of closing in federal or immediately available funds to: Wells Fargo Bank N.A.; ABA #: 121000248; BNFA #: 0001038377; BNF: Corporate Trust Wire Clearing; Account #: 23318800; Ref: Rio Nuevo Multipurpose Facilities District; Attention: Melissa Newton (602) 678-6445
- (3) The funds received by Wells Fargo Bank (in 2b above) will be distributed as follows:
- **\$64,027,184.05** will be deposited to the Acquisition and Construction Subaccount of the 2008 Projects Account in the Acquisition and Construction Fund to pay for the costs of acquisition and construction of the 2008 Projects. Pursuant to the directions of the District and the Disbursement Agency Agreement, the Trustee will then:
    - transfer \$6,800,000 from the District to the City of Tucson, Arizona (Investment Pool Account) for moneys previously advanced by the City to acquire and construct certain of the 2008 Projects.
    - transfer the balance of the Acquisition and Construction Subaccount within the 2008 Projects Account in the Acquisition and Construction Fund to the City of Tucson, Arizona (Rio Nuevo District Fund #: 155) for safekeeping, investment and disbursement from time to time on behalf of the District.
  - **\$4,993,261.72** will be deposited in the Capitalized Interest Subaccount of the 2008 Projects Account in the Acquisition and Construction Fund.
  - **\$8,000,000.00** will be deposited in the 2008 Bonds Subaccount in the Subordinate Lien Reserve Account.
  - **\$382,750.00** representing the balance will be deposited in the 2008 Bonds Costs of Issuance Subaccount of the Bond Proceeds Account and applied to pay Bond Related Costs with respect to the Series 2008 Bonds from time to time upon written request of the Authorized District Representative.



\$80,000,000  
Rio Nuevo Multipurpose Facilities District  
(City of Tucson, Arizona)  
Subordinate Lien Excise Tax Revenue Bonds, Series 2008  
Page 3

**DELIVERY**  
**INSTRUCTIONS:**

When all parties are satisfied that all monies have been transferred and that all documentation is in order, Bond Counsel will direct Wells Fargo Bank, N.A. to authorize The Depository Trust Company at (212) 227-4200 to release the Series 2008 Bonds to Piper Jaffary & Co. through Anthony Scheuring (612) 303-7002.

Upon successful closing of the Series 2008 Bonds, \$75,000 representing the Underwriter's Counsel fee will be wired by Piper Jaffary & Co. to Greenberg Traurig, LLP: Wachovia Bank N.A., ABA #: 063000021, Account Name: Greenberg Traurig Depository Account; Account #: 2000014648663; Ref: Brigitte Finley Green/109150.010100.



**EXHIBIT B**

**\$80,000,000  
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
SUBORDINATE LIEN EXCISE TAX REVENUE BONDS  
SERIES 2008**

**2008 PROJECTS LIST**

---



**Exhibit N**

Project Name	Detail Description of Project	Total Estimated Cost upon Completion	Amounts Already Spent - ITD through November 30, 2009	Amount of Total Cost to be Paid from 2008 Bond Proceeds	Amounts Already Spent To be Reimbursed by Bonds	Comments	Operation
ARIZONA HISTORY MUSEUM	Design and develop a building program, site plans, and cost estimates for a new Arizona History Museum.	45,000,000.00	-	3,000,000.00	-		Improvements to be owned by the City and operated by Arizona Historic Society (AHS). AHS envisions building a 140,000 square foot facility to house its research, education and administration offices and its collections. The facility will also include a much needed neighborhood library through a lease with Pima County. No plans for any other use in the facility.
BARRIO SIN NOMBRE	Design and construct a concept plan for improvements to the neighborhood (Barrio Sin Nombre), including new curbs, sidewalks, utilities, storm drains, paving, landscape and street lighting.	2,000,000.00	-	2,000,000.00	1,146.80		Neighborhood infrastructure improvements.
BARRIO VIEJO	Design and construct a concept plan for improvements to the neighborhood (Barrio Viejo), including new curbs, sidewalks, utilities, storm drains, paving, landscape and street lighting.	2,000,000.00	-	2,000,000.00	-		Neighborhood infrastructure improvements.
CIVIC CENTER: NEW ARENA	Design and develop a building program, site plans, and cost estimates for a new multipurpose arena. This includes the land acquisition, master planning, and associated infrastructure.	130,000,000.00	84,103.43	10,000,000.00	483.52		The improvement will be owned by the District and operated by an outside contractor through a Qualified Management Agreement. Under IRS regulations, these QMAs are designed to maintain the tax exempt status of the debt.
CLARK STREET UNDERPASS	Design and construct the widening of the underpass at Clark Street. In conjunction with the I-10 widening project, the District paid the Arizona Department of Transportation to widen this underpass to enhance the east-west connectivity in the downtown area for bicyclists, pedestrians and vehicles, in addition to accommodating new trolley tracks.	9,000,000.00	9,000,000.00	9,000,000.00	9,000,000.00	ADOT invoiced the City on 5/13/08, pd in July, accrued in FY08	In conjunction with the I-10 widening project, the District paid the Arizona Department of Transportation to widen this underpass to enhance the east-west connectivity in the downtown area for bicyclists, pedestrians and vehicles, in addition to accommodating new trolley tracks.
CUSHING STREET BRIDGE AND ROADWAY	Design and construct a bridge over the Santa Cruz River, linking the east and west sides of downtown. Key features include vehicular, bicycle, pedestrian and streetcar modality: public art; and indigenous landscape.	12,000,000.00	735,278.13	1,600,000.00	172,365.90	City pd these expenditures in FY08 and CY	City owned infrastructure.
DEPOT PLAZA: PARKING GARAGE	Design and construct a public parking garage and related public improvements to serve a major three phase development project. The project entails the renovation of an existing high rise apartment building and the construction of two new mid-rise mixed use buildings, one privately owned building to be built on the parking garage.	13,178,000.00	1,784,999.80	11,600,000.00	2,249,268.83	City pd these expenditures CY	Operated by City parking enterprise. A public garage with 300 spaces. Intended to accommodate residents and area businesses. Additional structural work to support privately owned building increased the cost less than 5% of the total.
DEPOT PLAZA: PUBLIC IMPROVEMENTS	Same as Depot Plaza: Parking Garage	1,400,000.00	32,234.99	1,400,000.00	-		City owned infrastructure improvements.
DOWNTOWN INFRASTRUCTURE IMPROVEMENT PROJECT	Upgrade the streetscape environment in the downtown and mitigate current utility and parking capacity inadequacies to meet future development demands.	40,000,000.00	1,096,140.12	6,000,000.00	-		City owned infrastructure improvements.



**Exhibit N**

Project Name	Detail Description of Project	Total Estimated Cost upon Completion	Amounts Already Spent - ITD through November 30, 2009	Amount of Total Cost to be Paid from 2008 Bond Proceeds	Amounts Already Spent To be Reimbursed by Bonds	Comments	Operation
TOHP: MISSION LANDFILL & OTHER PROJECTS	Reconstruct the Mission San Agustin, Mission Gardens, the Carrillo House, and S-cuk Son (Native American archeological area). This phase includes the archaeology work and flood and landfill mitigation must be done before the projects can be started.	8,900,000.00	2,515,722.47	5,400,000.00	2,396,083.48	City pd these expenditures in FY08 and CY	Tucson Origins Heritage Park will be owned by the District. This includes construction of a mission, convento, historic structures, gardens, archaeological features, riverfront improvements and grand public spaces. Visitation is expected to be 238,000 in a stabilized year. Long-term management alternatives are being evaluated. It is likely that a separate non-profit will be created, or that a partnership with an existing non-profit will be formed to support the operation of the heritage park through fundraising, providing volunteers, developing and delivering education programs, etc.
TOHP: MISSION GARDENS	Reconsturct the Mission San Agustin Gardens, this includes Mission Complex, Desert Garden,/Native American, Agricultural Area and Festival Area.	3,000,000.00	-	3,000,000.00	903.82		Same as TOHP: Mission Landfill and Other Projects.
TUCSON CHILDREN'S MUSEUM	Design and develop a building program, site plans, and cost estimates for a new Tucson Children's Museum. Preliminary TIF commitment \$10 million.	20,000,000.00	-	1,200,000.00	-		Improvements to be owned by the City and operated by the Tucson Children's Museum, an non-profit agency.
UA SCIENCE CENTER/STATE MUSEUM	Design element for the University of Arizona Science Center and the Arizona State Museum. The City of Tucson entered into an IGA for the combined amount of \$130 million that would fund in part the design of these cultural attractions and take part in the financing and construction of them. The annual local impact of the museums is estimated to be \$70 million, including 893 full and part-time jobs.	130,000,000.00	5,760,037.32	2,000,000.00	-		Improvements to be owned and operated by the UofA per IGA. The Facility will be devoted to the interpretation of science, technology, anthropology and natural history content, and is presently anticipated to include, in addition to exhibition space, the following components: 1) one or more astronomical observatories for the primary purpose of public education, 2) A "large format" theater, 3) retail and food sales for the convenience of visitors to the Science Center/Museum, 4) Science Center and Museum stores for merchandise sales, 5) A butterfly Vivarium or similar attraction, 6) a resource center for teachers and educators, 7) Unispherium constructed and operated as a state-of-the-art, digital planetarium, 8) a mineral museum, 9) and Native American and other collections from the Arizona State Museum.
		416,478,000.00	21,008,516.26	58,200,000.00	13,820,252.35		
				Repayment of City Loan	6,800,000.00	6,800,000.00	
					65,000,000.00	20,620,252.35	

## DISBURSEMENT AGENCY AGREEMENT

THIS DISBURSEMENT AGENCY AGREEMENT, together with all addenda, riders and attachments hereto, as the same may from time to time be amended, modified or supplemented (this "*Agreement*") is made and entered as of December 1, 2008, by and among the CITY OF TUCSON, ARIZONA (the "*City*"), RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT (the "*District*") and WELLS FARGO BANK, N.A., as trustee (together with any successors in trust, the "*Trustee*") pursuant to a Master Trust Indenture, dated as of December 1, 2008 (the "*Master Indenture*"), between the District and the Trustee, as supplemented by the First Supplemental Trust Indenture, dated as of December 1, 2008 (the "*Supplemental Indenture*" and, together with the Master Indenture, the "*Indenture*").

### RECITALS:

WHEREAS, the District is, concurrently with the execution and delivery hereof, issuing \$80,000,000 aggregate original principal amount of its Subordinate Lien Excise Tax Revenue Bonds, Series 2008 (the "*2008 Bonds*") pursuant to the Indenture; and

WHEREAS, pursuant to the Indenture, a portion of the proceeds of the 2008 Bonds (the "*Bond Proceeds*") are being deposited into the Acquisition and Construction Subaccount (the "*A & C Account*") of the 2008 Projects Account of the Acquisition and Construction Fund held by the Trustee for disbursement upon order of the District to pay or reimburse the District for the costs of the 2008 Projects (as defined in the Indenture); and

WHEREAS, the District and the City now desire the Trustee to transfer \$57,227,184.05 deposited in the A & C Account to the City for safekeeping, investment and disbursement to pay the costs of the 2008 Projects in accordance with the provisions of the Indenture and this Agreement,

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

**Section 1. Definitions.** All capitalized terms used herein and not defined shall have the meanings assigned to such terms in the Indenture, an executed counterpart of which has been received and reviewed by the City.

**Section 2. Establishment of Rio Nuevo Account; Investment; Disbursements.**

(a) There is hereby established with the City a "Rio Nuevo Bond Proceeds Account" (the "*Rio Nuevo Account*"). Moneys received by the City from the Trustee, representing amounts credited to the A & C Account, shall be deposited to the Rio Nuevo Account. Notwithstanding anything to the contrary in the Indenture or any other agreement relating to the Rio Nuevo Account, the Rio Nuevo Account is and will be segregated from other moneys of the City and will be maintained by the City solely for the benefit of the District.

(b) Moneys in the Rio Nuevo Account shall be invested by the City at the written direction of the District (which shall provide a copy thereof to the Trustee) in Investment Securities (as defined in the Indenture). Income and gain from investment of moneys in the Rio Nuevo Account shall be credited to, and retained in, the Rio Nuevo Account. The City will prepare and maintain proper records of all investments made pursuant hereto, including the nature of each investment, the date of the investment, the amount of the investment and any income, gains or losses therefrom. Such accounting and the related records will be made available to the Trustee or the District, or their designated representatives, promptly upon demand. The City shall not be responsible or liable for any loss suffered in connection with any investments in Investment Securities in accordance with the directions of the District.

(c) Disbursements from the Rio Nuevo Account shall be made by the City upon the written request of an authorized officer of the District (which shall provide a copy thereof to the Trustee). Each such written request shall be substantially in the form attached as Schedule A hereto and shall be consecutively numbered. The City will maintain records of such disbursements, including reports of the dates, amount and purposes of each such disbursement. Such records will be made available by the City promptly upon receipt of a written demand therefor by the District or the Trustee.

(d) The City shall not be responsible for, and does not warrant, the sufficiency of the moneys credited to the Rio Nuevo Account to pay the costs of the Projects.

**Section 3. Completion of 2008 Projects.** The District hereby represents, and the City and the Trustee hereby acknowledge, that the portions of the 2008 Projects to be funded from the Rio Nuevo Account should be completed and all funds disbursed from the Rio Nuevo Account no later than December 30, 2011. The District agrees to give prompt written notice to the Trustee and the City upon the completion of the 2008 Projects. Any moneys remaining in the Rio Nuevo Account on the earlier of (i) the completion of the 2008 Projects or (ii) November 30, 2011 will be transferred to the Trustee for deposit in the Excise Tax Subaccount of the Subordinate Lien Debt Service Account of the Revenue Fund.

**Section 4. Suspension of Disbursements Upon Event of Default.** The District hereby agrees to give the Trustee and the City prompt written notice upon the occurrence of an Event of Default described in the Indenture, in which event no further advances shall be made from the Rio Nuevo Account until the Trustee advises the City that such Event of Default has been cured or waived.

**Section 5. Control of Rio Nuevo Account.** In order to perfect the Trustee's security interest by means of control in (i) the Rio Nuevo Account established pursuant hereto, (ii) all moneys and Securities Investments now or hereafter credited to the Rio Nuevo Account, (iii) all of the District's rights with respect to the Rio Nuevo Account, and with respect to such moneys and Securities Investments, and (iv) all products, proceeds and revenues of and from any of the foregoing (collectively, the "*Collateral*"), the District, the Trustee and the City further agree as follows:

(a) All terms used in this Section 5 which are defined in the Uniform Commercial Code of the State of Arizona ("*Commercial Code*"), and not otherwise defined

herein, shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date hereof.

(b) The City hereby represents and warrants (a) that the records of the City will at all times reflect the fact that the Trustee, as trustee for the District, is the sole owner of the Collateral, (b) that the City has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than the Trustee's claim pursuant to the Indenture and this Agreement, and (c) that the City is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders of the District and the Trustee pursuant to the Indenture and this Agreement.

(c) The City will promptly transfer to the Trustee all moneys and Investment Securities in the Rio Nuevo Account upon receipt of written demand therefor from the District or the Trustee.

**Section 6. Compliance With Tax Certificate.** Notwithstanding anything to the contrary, expressed or implied, in this Agreement, the District and the Trustee agree that they shall at all times faithfully and promptly comply with all of the terms and conditions of the Tax Certificate and Agreement, dated December 30, 2008 (the "*Tax Certificate*"), relating to the 2008 Bonds executed and delivered by the District and the Trustee, and further that the District and the Trustee will direct the City to comply, and the City will comply, with the applicable provisions of the Tax Certificate including, without limitation, provisions relating to investments in Investment Securities and applicable rebate calculations.

**Section 7. Administrative Provisions.**

(a) All written notices to be given pursuant to this Agreement shall be given by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties hereto in writing from time to time. Any such notice shall be deemed to have been received (i) upon receipt if delivered personally, (ii) one (1) day following delivery to an express delivery service for next-day delivery or (iii) three (3) days after deposit in the United States of America mail, with postage fully prepaid to the following address:

If to the District:      Rio Nuevo Multipurpose Facilities District  
P.O. Box 27210  
Tucson, Arizona 85701  
Attention: District Director

or if by hand delivery:  
255 West Alameda Street  
Tucson, Arizona 85701  
Attention District Director

*Exhibit O*

If to the City:           City of Tucson  
255 West Alameda Street  
Tucson, Arizona 85701  
Attention: Finance Director

If to the Trustee:       Wells Fargo Bank, N.A.  
100 West Washington  
Phoenix, Arizona 85003  
Attention: Corporate and Trust Department

Any party may request that notices pursuant hereto be sent to other or additional addresses by giving written notice thereof in accordance with the foregoing procedure.

(b) This Agreement shall be construed and governed in accordance with the laws of the State of Arizona. The venue for any proceedings with respect to any controversy arising from the terms of this Agreement will be Pima County, Arizona.

(c) Any provision of this Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Agreement, , which shall remain in full force and effect.

(d) This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided that no rights or obligations of any party hereto may be assigned or delegated without the prior written consent of the other parties..

(e) This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement. All signatures of the parties to this Agreement may be transmitted by facsimile, and such facsimile will, for all purposes, be deemed to be the original signature of, and will be binding upon, such party.

(f) This Agreement is not intended to alter or change in any way the rights and obligations of the District, the City or the Trustee pursuant to the Indenture or the documents executed and delivered in connection with the 2008 Bonds, including the IGA Amendment, but is entirely supplemental thereto.

(g) This Agreement will terminate upon disbursement by the City of all moneys and Investment Securities therein or may be terminated at any time at the written direction of the District, the City, or the Trustee.

(h) No amendment to this Agreement will be effective unless in writing and signed by the District, the City and the Trustee.

(i) The District agrees, to the maximum extent permitted by law, to indemnify and hold harmless the Trustee, the City, and their respective officials, directors, officers, agents and employees, individually and collectively, from and against any loss, liability and expense, including reasonable attorneys' fees, incurred by any of them as a consequence of any actions or directions given by the District pursuant to this Agreement. Similarly, the City will, to the maximum extent permitted by law, indemnify and hold harmless the District, the Trustee, and their respective officials, directors, officers, agents and employees, individually and collectively, from and against any loss, liability and expense, including reasonable attorneys' fees, incurred by any of them as a consequence of the City's negligence or misconduct in the performance of any of its agreements pursuant to this Agreement.

(j) In accordance with the provisions of Section 38-511 of the Arizona Revised Statutes, notice is hereby given that the laws of the State of Arizona ("State") require that every contract to which the State, its political subdivisions or any of the departments or agencies of the State or its political subdivisions is a party include notice that such contract is subject to cancellation, within three (3) years after its execution, by the State, political subdivision, department or agency that is a party to such contract if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, political subdivision, department or agency is, at any time while the contract is in effect, an employee of any other party to the contract or an agent or consultant of any other party to the contract with respect to the subject matter of the contract. The City, the District and the Trustee represent that, to the best of their knowledge, as of the date hereof, no basis exists for the City or the District to cancel this Agreement pursuant to Section 38-511 of the Arizona Revised Statutes.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT

By: \_\_\_\_\_  
Title: CHAIR RNMPFD Board

WELLS FARGO BANK, N.A.

By: Melissa K. Newton  
Title: Assistant Vice President

CITY OF TUCSON, ARIZONA

By: Frank Abbott  
Title: FINANCE DIRECTOR

APPROVED AS TO FORM:

[Signature]  
City Attorney

Kevin A. Hicks III  
District Counsel



**EXHIBIT A  
TO DISBURSEMENT AGENCY AGREEMENT  
DATED AS OF DECEMBER 1, 2008**

REQUISITION FOR PAYMENT FROM RIO NUEVO ACCOUNT

NO. \_\_\_\_\_

TO: The City of Tucson, Arizona (the "City"), pursuant to that certain Disbursement Agency Agreement, dated as of December 1, 2008 (the "Agreement"), among the Rio Nuevo Multipurpose Facilities District (the "District"), Wells Fargo Bank, N.A. (the "Trustee") and the City.

This requisition is made pursuant to Section 2 of the Agreement. Terms used in this Requisition have the meanings specified in the Agreement. The undersigned authorized officer of the District hereby authorizes and directs the City to make payment(s) from the Rio Nuevo Account in the amount(s), to the payee(s) and for the purpose(s) specified in Schedule I attached hereto.

The undersigned authorized officer of the District hereby certifies to the Trustee and the City in connection with each such payment requested by this Requisition as follows:

(a) Each amount for which disbursement is requested pursuant hereto is properly payable out of the Rio Nuevo Account and none of those items has formed the basis for any disbursement heretofore made from said Rio Nuevo Account.

(b) Each item is or was necessary for the acquisition or construction of the 2008 Projects.

(c) This statement and all exhibits hereto, including Schedule I, shall be conclusive evidence of the facts and statements set forth herein.

(d) The representations and warranties of the District contained in the Indenture are true and accurate on the date hereof.

Dated: \_\_\_\_\_, 20\_\_\_\_

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

\_\_\_\_\_  
Authorized Officer

cc: Wells Fargo Bank, N.A., as Trustee

***Exhibit O***

**Schedule "I" Annexed to Requisition No. \_\_\_\_**

<u>AMOUNT</u>	<u>PAYEE</u>	<u>PURPOSE</u>	<u>SPECIAL INSTRUCTIONS</u>
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Exhibit P

Requisition for Payment From Rio Nuevo Account For Expenditures

Requisition Number	1	2	3	4	5	6	7	8	9	10	11	12	13		2008 Bond Transcript Tax Certificate Ex B-1 *Amount of Total Cost to be Paid from 2008 Bond Proceeds*
Date	1/9/2009	1/9/2009	2/19/2009	3/25/2009	4/15/2009	4/21/2009	9/28/2009	9/28/2009	9/28/2009	none	1/10/2010	4/28/2010	5/18/2010		
BateStamp #	Wells 000023	Wells 000028	Wells 000032	Wells 000036	Wells 000040	Wells 000044	Wells 000056	Wells 000061	Wells 000065		Wells 000074	Wells 000079	Wells 000085		
Authorization	Frank Abeyta	Frank Abeyta	Silvia Amparano	Silvia Amparano	Silvia Amparano	Silvia Amparano	Silvia Amparano	Silvia Amparano	Silvia Amparano		Silvia Amparano	Richard Miranda	Richard Miranda	Total	
Projects:															
J004 Mission Site/Origins Park	2,598,151.30				178,421.88	169,011.82	221,443.26		11,021.60					3,178,049.86	5,400,000.00
J007 Science Center & Historical Museums			13,479.87	4,082.25	1,931.25				1,924,406.95					1,943,900.32	2,000,000.00
J017 Civic Center: Convention Center Hotel								400,000.00	1,096,586.31		476,411.72	(48,851.93)	49,416.84	1,973,562.94	-
J021 AZ History Museum					453,312.49			972,142.23						1,425,454.72	3,000,000.00
J025 Depot Plaza Parking Garage	1,992,494.88		523,491.41	698,508.74	1,050,970.89	1,985,278.96	17,676.86	21,520.55	3,350,361.45		482,930.57	380,507.39	4,252.47	10,507,994.17	11,600,000.00
J026 Civic Center New Arena	55.66						10,745.00	371,519.43	82,604.11					464,924.20	10,000,000.00
J030 Mission Landfill			64,109.29	17,359.10	8,114.45	209,623.80	22,888.55		11,042.21					333,137.40	-
J031 Origins Infrastructure				50,891.24	8,320.00	25,562.00	9,790.00		37,249.04				(29,998.41)	101,813.87	-
J035 Cultural Plaza and Parking Garage					282,578.80		979.55	51,361.00	4,621.28					339,540.63	-
J044 Cushing Street Bridge	353,688.98		22,713.72	23,964.47	122,862.34		40,868.50	10,012.50	87,325.49		177,804.94	97,649.14	164,279.01	1,101,169.09	1,600,000.00
J045 Depot Plaza: Public Improvements						32,234.99			43,008.57		3,193.00	38,995.96	7,163.80	124,596.32	1,400,000.00
J046 Civic Center: Convention Center Expansion									327,604.46		44,243.58	8,711.50	1,496.00	382,055.54	-
J047 I-10 Underpass Widening/Clark Street	9,000,000.00													9,000,000.00	9,000,000.00
J048 Downtown Infrastructure Improvements	810,625.23		515,944.85	801,481.17	167,443.11		2,737,025.27	3,015,596.97	57,385.39		95,336.04	256,667.18	195,840.81	8,653,346.02	6,000,000.00
J049 Civic Center: Convention Center East Entrance									179,194.26		(192,701.71)	62,021.78	9,296.00	57,810.33	-
J050 Mission Gardens	903.82		274.57	517,981.70	433,721.60		422,649.50	512.00	577,889.23			2,079.59	(1,929.59)	1,954,082.42	3,000,000.00
J052 Civic Center: Convention Center Parking Garage									320,159.52		138,545.04	86,100.20		544,804.76	-
JA04 Greenway Multi-use Path						200,000.00								200,000.00	-
JA05 Barrio Viejo				10,692.59	5,729.43	6,383.66	3,552.84	1,648.00	11,865.04		19,308.99	10,525.27		69,705.82	2,000,000.00
JA06 Barrio Sin Nombre			6,332.08	38,948.27	12,895.88	1,146.80	15,080.63	10,496.57	4,264.90			11,204.52	15,454.23	115,823.88	2,000,000.00
Tucson Children's Museum														-	1,200,000.00
CoT Loan Payback		6,800,000.00												6,800,000.00	6,800,000.00
	14,755,919.87	6,800,000.00	1,146,345.79	2,163,909.53	2,726,302.12	2,629,242.03	3,502,699.96	4,854,809.25	8,126,589.81	-	1,245,072.17	905,610.60	415,271.16	49,271,772.29	65,000,000.00

**Adopted by the  
Rio Nuevo Multipurpose Facilities District  
Board of Directors August 11, 2004**

**Resolution No. 2004-01**

**RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF TUCSON, RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT, AND BOARD OF REGENTS OF THE UNIVERSITY  
OF ARIZONA FOR THE FUNDING AND DEVELOPMENT OF A SCIENCE  
CENTER.**

WHEREAS, on November 5, 2003 the Rio Nuevo Board approved the University of Arizona's application for \$20 million to support development of a \$100 million multipurpose facility; and

WHEREAS, on November 10, 2003 the Mayor and Council approved the University's application for funding and directed staff to return for consideration an acceptable development agreement setting forth the specific performance obligations of each of the parties; and

WHEREAS, the parties have successfully negotiated an intergovernmental agreement, a copy of which is attached hereto; and


WHEREAS, on August 2, 2004 the Mayor and Council approved said agreement and Rio Nuevo staff recommends its Board's approval of same; now therefore, be it

RESOLVED, by the Board of Directors of the Rio Nuevo Multipurpose Facilities District, that the hereinabove described intergovernmental agreement be and hereby is approved for execution by the proper District officials.

**Passed, adopted and approved by the Board of Directors of the Rio Nuevo Multipurpose Facilities District this 11<sup>th</sup> day of August, 2004 by**

  
\_\_\_\_\_  
Ruben Suarez, Chairman

Approved as to form by:

  
\_\_\_\_\_  
District Counsel

ADOPTED BY THE  
MAYOR AND COUNCIL

August 2, 2004

RESOLUTION NO. 19914

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF TUCSON, RÍO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT AND THE UNIVERSITY OF ARIZONA FOR FUNDING AND  
DEVELOPMENT OF THE UNIVERSITY OF ARIZONA SCIENCE  
CENTER; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF  
TUCSON ARIZONA, AS FOLLOWS:

SECTION 1. The Intergovernmental Agreement between the City of  
Tucson, Río Nuevo Multipurpose Facilities District and the University of Arizona  
for the funding and development of the University of Arizona Science Center,  
which is attached as Exhibit A, is hereby authorized and approved.

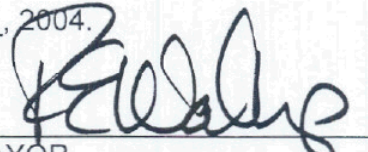
SECTION 2. The Mayor is hereby authorized and directed to execute the  
Intergovernmental Agreement attached as Exhibit A for and on behalf of the City  
of Tucson, and the City Clerk is authorized and directed to attest to the same.

SECTION 3. The various City officers and employees are directed to  
perform all acts necessary or desirable to give effect to this resolution.

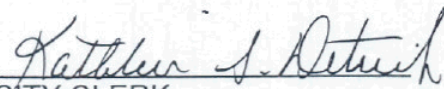
SECTION 4. WHEREAS, it is necessary for the preservation of the  
peace, health, and safety of the City of Tucson that this resolution become

immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL  
OF THE CITY OF TUCSON, ARIZONA, August 2, 2004.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

REVIEWED BY:

  
CITY MANAGER

MR:dp  
07/21/2004



UA Science Center IGA

INTERGOVERNMENTAL AGREEMENT FOR FUNDING AND  
DEVELOPMENT OF SCIENCE CENTER AT RÍO NUEVO

This intergovernmental agreement ("**this IGA**") is entered into by and between the City of Tucson ("**City**"), Río Nuevo Multipurpose Facilities District ("**District**"), and the Arizona Board of Regents acting on behalf of the University of Arizona ("**UA**"). City, District and UA are sometimes referred to collectively as the "**Parties**."

Recitals

A. This IGA is entered into by authority of Arizona Revised Statutes section (A.R.S. §) 11-952, which authorizes two or more public entities to execute intergovernmental agreements; and A.R.S. § 48-4203(A)(3), which authorizes the District to execute intergovernmental agreements.

B. City is a municipal corporation of the State of Arizona.

C. District is a multipurpose facilities district established pursuant to A.R.S. § 48-4201 *et seq.*

D. The Arizona Board of Regents is a body corporate with perpetual succession created by the constitution and statutes of the State of Arizona to govern and maintain the state universities, including the University of Arizona.

E. District was created in 1999 to revitalize Río Nuevo, the heart of downtown Tucson, into a network of unique experience areas linked by shaded plazas connecting cultural, civic, entertainment, and business activities interwoven in a historically considerate and aesthetically pleasing manner.

F. In November 1999, the voters of the City of Tucson and the City of South Tucson approved Proposition 400, authorizing the creation of a tax-increment funding ("**TIF**") multipurpose facilities district in accordance with A.R.S. § 42-5031 and § 48-4201 *et seq.*

G. TIF funding of the District from the Arizona Department of Revenue began July 1, 2003, and will continue until June 30, 2013. During this 10-year period, District anticipates receipt of approximately \$120 million in TIF funds from ADOR.

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EX A TO RESOLUTION NO. 19914  
CITY OF TUCSON CONTRACT NO. 0197-05



UA Science Center IGA

H. In July 2003, a feasibility study of the proposed UA Science Center commissioned by the Parties was completed. The findings of the study included the determinations that the proposed facility will attract a wide audience, will generate significant tax and wage revenue for the City and its residents, and will stimulate new attractions and economic development in the downtown. The study also found that the UA has sufficient capacity to raise necessary funds, capitalize the endowment fund, and issue the debt anticipated for the project.

I. On November 5, 2003, the District Board unanimously approved UA's application for District funding of \$20 million for the UA Science Center and lease rights to City-owned land valued at approximately \$6 million. The application described the UA's participation as including a commitment of more than \$70 million total project cost (including the \$20 million from the District).

J. On November 10, 2003, the City's Mayor and Council unanimously approved UA's application for District funding of \$20 million for the UA Science Center and lease rights to City-owned land valued at approximately \$6 million.

K. On January 23, 2004, the Arizona Board of Regents approved adding the UA Science Center to the UA's capital development plan, thereby allowing UA to begin the design phase of the project.

L. City either owns or is pursuing acquisition of the property that is the subject of this IGA, located within the jurisdictional boundaries of the District, spanning Interstate 10 and the Santa Cruz River south of Congress Street, as generally shown on Exhibit A ("**the Property**"). The exact location is subject to adjustment for design or technical reasons, and the precise boundaries of the Property will be more specifically defined as design and infrastructure plans are developed in the course of carrying out this IGA, and shall be set forth in detail in the lease described in section 1.2 below.

M. This IGA is entered into for the purpose of facilitating the construction and operation on the Property of a science center to be owned and operated by UA. The science center is referred to in this IGA as the "**UA Science Center.**"

**Agreement**

NOW, THEREFORE, based on the foregoing recitals, which are incorporated here as the Parties' intent in entering into this IGA, the Parties agree as follows:

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City of Tucson/Rio Nuevo Multipurpose Facilities District/University of Arizona  
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UA Science Center IGA

1. *Ownership of Property; Lease to UA.*

1.1. *Acquisition of Property.* At the time of the execution of this IGA, City owns most but not all of the Property. From the time of the execution of this IGA until the anticipated commencement of construction of the UA Science Center, City shall obtain fee ownership of the entirety of the Property. City understands that University will be expending substantial amounts for money for project planning and design in reliance upon the expectation that City will be able to obtain title.

1.2 *Transfer to District; Lease to UA.* At or before the time the UA gives notice that it is ready to begin construction of the UA Science Center, City shall transfer ownership of the Property to District, subject to automatic reversion of title to City upon termination of this IGA as provided in paragraph 25, or upon dissolution of the District as described in paragraph 32. Upon transfer of ownership of the Property to District, District shall lease the Property to UA under the terms set forth in paragraph 3 and elsewhere in this IGA. The lease shall remain in effect if the Property reverts to the City.

2. *Right to acquire reports and surveys; Right of entry.* Prior to execution of this IGA, City shall provide UA with copies of all environmental, historical, archeological, geological, hydrological, and other surveys, reports, studies and information relating to the Property. Upon execution of this IGA, UA (directly or through consultants) shall have the right to enter upon the Property to perform such tests, studies or analyses as it deems desirable or appropriate, provided that it shall promptly repair any disturbance caused by such tests, studies or analyses and shall be solely responsible for the cost thereof, and shall provide the City with copies of any such tests, studies or analyses.

3. *Lease Terms.* District agrees to lease the Property to UA for a period of fifty years beginning on the day (referred to in this Agreement as the "**Lease Commencement**") that the UA gives notice that it is ready to begin construction of the UA Science Center. The fifty-year period of time from Lease Commencement to the end of the lease, is referred to in this Agreement as the "**Lease Term**". The lease shall renew automatically, without notice or formal action by any Party, for successive renewal terms of five years each, as long as the Property is operated as a Science Center.

4. *Rent.* UA shall make the following payments, all of which shall be collectively referred to in this Agreement as "**Rent**":

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UA Science Center IGA

4.1 *Base rent.* Base rent, payable to District, of ten dollars for the term of the Lease, due and payable at Lease Commencement. Base rent for each five year renewal term shall be five dollars, payable upon demand at or after the commencement of each such renewal term.

4.2 *Taxes.* Any and all property taxes or payments in lieu of taxes including any possessory interest taxes (for example, government property lease excise taxes, or "GPLET") required or contributed to as a result of the lease entered into by this Agreement. As a governmental entity UA is currently exempt from property taxes and GPLET. However, the parties recognize that UA's assignment of its interests could affect the property tax or GPLET exemption. UA may, in its business discretion, elect to participate in a special improvement district as authorized in A.R.S. § 15-1634.

5. *Evidence of Payment.* Upon District's or City's request, UA shall promptly furnish satisfactory evidence that any payment required under paragraph 4 has been timely made.

6. *Development and Construction of the UA Science Center.* UA shall develop and construct the UA Science Center on the Property in accordance with a development plan and building design developed in accordance with this IGA, and in conformance with the following minimum requirements:

6.1 Total project cost of at least \$72 million.

6.2 Design in reasonable conformance with the Río Nuevo and Downtown Zone Development Standards (Development Standard No. 9-05.0, Río Nuevo and Downtown (RND) Zone, subject to the unique functions of the UA Science Center and special features such as the major freeway and river bridges. City and District acknowledge that University's Planning and Development Review Advisory Committee (PADRAC) has expertise in the development of University facilities, including museums, and that as a University capital project the UA Science Center will be subject to review by PADRAC. Design and construction shall be in accordance with the relevant procurement, building, mechanical, fire, safety, and similar codes adopted by UA, the Arizona Board of Regents or the State of Arizona, and all inspections and approvals shall be carried out by UA in the same manner as UA-owned facilities constructed on the UA Main Campus;

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UA Science Center IGA

6.3 All improvements shall be constructed in a good, workmanlike and first-class manner, and constructed and maintained in compliance with all applicable laws, rules, ordinances, and regulations.

6.4 UA shall provide the City, in advance of construction, with copies of all plans for courtesy review and comment. Although UA is exempt from traditional municipal regulation associated with development, the Parties acknowledge and agree that development of the UA Science Center impacts the surrounding City neighborhoods, infrastructure, and businesses to such a degree that appropriate planning on the part of UA is necessary to avoid or to mitigate negative impact to surrounding areas. Accordingly, UA shall include representatives of the City on the following bodies relating to the UA Science Center project: Project Management Team, Architect Selection Committee, and UA/COT Interface Committee. Similarly, because appropriate planning by City is necessary to avoid negative impact on the UA Science Center project, City shall include UA representatives in the Rio Nuevo and Civic Plaza planning and design processes.

6.5 To the extent economically feasible, construction and operation in conformance with the Tucson/Pima County Sustainable Energy Standard and UA design standards.

6.6 Irrigation of landscaping on the Property using water harvesting and/or reclaimed water; provided that the City shall make reclaimed water available to UA at the same price charged for reclaimed water on the UA Main Campus.

6.7 Heating and cooling shall be designed to connect to the central heating and cooling plant at the Tucson Convention Center. City and District shall provide connectivity to the Property boundary and that such heating and cooling shall be made available at commercially competitive rates and as provided in paragraph 16 of this IGA.

6.8 Start of construction not later than October 2006. The Parties recognize and acknowledge that the construction schedule will be affected by the need to achieve fund-raising targets as well as by ADOT's schedule for I-10 improvements.

6.9 Opening to the public not later than December 31, 2008, subject to unforeseen construction delays outside the control of UA, delays due to freeway construction work, delays in receiving required approvals, and City parking development. It is specifically understood and agreed that the UA Science Center will

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UA Science Center IGA

not be able to operate successfully during the anticipated period of freeway construction, and that UA is under no obligation to complete the UA Science Center before the freeway construction is completed.

7. *Parking.* City shall design and construct parking facilities sufficient to accommodate the public and employee parking demand for the UA Science Center. For the purposes of this IGA, the availability of six hundred (600) spaces in reasonable proximity to the eastern and western components of the Property [indicated in Exhibit A as the "Parking Structure Wrapped w/ Commercial/Office/Residential on the west side and as the "Civic Plaza" (where parking will be underground) on the east side], is deemed to be sufficient parking for the Property.

8. *Business Plan.* UA has previously provided City and District with a business plan demonstrating a likelihood that the UA Science Center will generate sufficient visitor traffic to be financially feasible and to accomplish the goals of the UA, City, and District as stated in the Recitals of this IGA.

9. *No Light Cone.* Within six months after the effective date of this IGA, UA shall provide City with a three-dimensional map and description of the no light cone needed for the observatories to be constructed at the UA Science Center. To the extent compatible with overall project design, UA shall locate the observatories toward the west end of the project, away from downtown and I-10 light and vibration. Within six months after receipt of this information, City shall establish a no light cone for the described area through the adoption of regulations or by acquisition. The City shall adopt and install observatory-friendly lighting in the area surrounding the Project, and shall join with UA in seeking to have Arizona Department of Transportation use high pressure sodium or other observatory-friendly lighting on Interstate 10 in the vicinity of the Property.

10. *District Improvements.* District shall provide civil improvements sufficient to assure that the Property is out of the 100-year flood plain, shall design drainage and other improvements in a manner that does not adversely affect the Property, and shall provide vehicular access and water, electric, and sewer service to the boundary of the Property. City shall assure public, service, and handicap vehicular access to each segment of the Property (i.e., east of I-10, by frontage road between I-10 and the Santa Cruz River, and west of the Santa Cruz).

11. *Adjacent or Nearby Attraction.* District and City shall use their best efforts to cause another anchor attraction to be located adjacent to or in close proximity to the Property.

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UA Science Center IGA

UA shall not be obligated to begin construction of the UA Science Center until UA is satisfied that there will be a favorable environment for the success of the facility.

12. *UA Science Center Components.* The UA Science Center shall be a facility devoted to the interpretation of science and technology content, and is presently anticipated to include, in addition to exhibition space, the following minimum components, which may be constructed in phases:

12.1 One or more astronomical observatories for the primary purpose of public education.

12.2 A "large format" theater (e.g., Imax, Omnimax or other vendor to be determined).

12.3 Retail and food sales for the convenience of visitors to the UA Science Center.

12.4 Museum science store.

12.5 A butterfly vivarium or similar attraction.

12.6 A resource center for teachers and educators.

12.7 A Unispherium constructed and operated as a state-of-the-art, digital planetarium that will both present traditional star shows and create interactive virtual experiences.

12.8 A mineral museum.

12.9 A bridge that will connect the east and west components of the facility, and will function not only for pedestrian transit but also as an architectural attraction and exhibition place.

The foregoing enumeration shall not be construed to limit the components that may be included in the UA Science Center. The parties recognize that, once the UA Science Center is completed, operating experience may dictate the addition or deletion of various items throughout the lifetime of the facility, and such future changes shall not affect the rights or obligations of the parties under this IGA or the anticipated Lease.

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UA Science Center IGA

13. *Sales Tax.* UA consents and agrees that, notwithstanding any other provision of law, UA shall collect City sales taxes on all retail food, drink and merchandise sales, as well as on admissions to the large format theater or any other for-profit components, to the same extent as if it were a private party, and shall remit the same to City.

14. *Operational Provisions.* In the operation of the UA Science Center, UA agrees to:

14.1 Participate in joint promotional and advertising efforts directed toward attracting conventions and visitors to downtown Tucson, subject to satisfactory cost-sharing arrangements and demonstrable economic feasibility.

14.2 Not use or occupy, nor permit or suffer, the Property or any part thereof to be used or occupied for any unlawful, illegal, or immoral business use or purpose, nor for any disreputable or hazardous business use or purpose, nor in such a manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future governmental laws, ordinances, requirement, orders, directions, rules or regulations. UA shall immediately, upon the discovery of any such unlawful, illegal, immoral, disreputable or hazardous use, take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants, or other persons of such unlawful, illegal, immoral, disreputable or hazardous use. Tucson Police Department, Tucson Fire Department and any security service employed for general security of the Rio Nuevo project shall provide law enforcement and security assistance in termination of unlawful, illegal or hazardous activities on the same basis that such assistance is provided generally in the Rio Nuevo district.

15. *District TIF Contribution.* District shall contribute \$20 million out of tax-increment financing (TIF) proceeds, or from bonds or other funding mechanisms authorized under A.R.S. §§48-4201 et seq. (the "MFD statutes"), to the UA for the construction of the UA Science Center. The funds provided pursuant to this section shall be used only for those purposes authorized under the MFD statutes. District shall pay these funds to UA at the time that UA issues debt for the construction of the UA Science Center, currently projected to occur in April 2006.

16. *Heating, Cooling and Electricity.* The City is a party to a contract with Tucson District Energy LC (TDE) relating to the provision of heating and cooling and electricity to certain City-owned facilities. The City purchases the heating and cooling and electricity pursuant to this contract from a plant owned by the City but managed by TDE. In the event that the UA requests that TDE provide heating and cooling and

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electricity to the UA Science Center and TDE consents to this, and in the event that it is legally permitted to supply electricity to the UA Science Center, the City shall request extension of such services from TDE to the Center, pursuant to the City's contract with TDE. The City shall be responsible for the costs of extending the facilities necessary for the provision of heating and cooling from the plant to the boundary of the Property. For the purposes of this IGA, "heating and cooling" means chilled water and hot water, in capacities to be determined during the design phase.

17. *UA Funding Commitment.* UA shall obtain funding for all costs of the UA Science Center not otherwise identified in this IGA.

18. *Santa Cruz River/Interstate-10 Bridge.* The UA and the City shall cooperate in seeking funding from the Arizona Department of Transportation, Corps of Engineers, Federal Highway Administration, and other state and federal agencies for design and construction of the proposed bridge over the Santa Cruz River and Interstate-10 ("Bridge"). UA shall be responsible for operation and maintenance costs for all portions of the bridge, including the spans over the Santa Cruz River and Interstate-10. City agrees to pay the costs of the installation of utilities that may be incorporated into the construction of the Bridge, to the extent that those utilities are installed for the purpose of serving properties other than the UA Science Center. City also agrees, as provided in paragraph 14.2 above, to provide law enforcement and security for the bridge on the same basis that such assistance is provided generally in the Rio Nuevo district.

19. *Civic Amenities.* City shall fund or secure the funding for all costs associated with the design, construction and maintenance of public plazas (the Civic and Cultural Plazas) to the east and west of the UA Science Center, and improvements to the Santa Cruz River Linear Park to the west of the Santa Cruz River. All such improvements shall be and remain owned by the City. City anticipates constructing improvements that will allow the downtown trolley to travel to the east and west plazas of the Rio Nuevo District.

20. *City cooperation in seeking funds.* City will cooperate with UA to seek available funding for the project, including funding from federal, state (including ADOT, as referenced in paragraph 19.1), county or local authorities as may be available and as might be required to meet the needs of the project.

21. *Proportionate share of construction cost savings.* Under the terms of this IGA, the District will contribute \$20 million dollars, or 20.2% of the Total Project Cost. UA will contribute \$72,821,360, or 73.7% of the Total Project Cost. The Total Project Cost

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includes an estimated Building Construction Cost of \$23.9 million. UA agrees that in the event that cost savings of twenty percent (20%) (i.e., \$4.78 million) or greater accrue or are realized within this Building Construction Cost Amount, UA will share the benefit of those savings with District by reimbursing District in a proportion equal to the District's contribution toward the Total Project Cost as described in this paragraph; i.e., UA shall pay to District 20.2% of the Construction Cost savings.

22. *Apportionment of New Market Tax Credits and other funds secured by City or District.* To the extent that City or District secures grants or funds for the construction of the UA Science Center not otherwise identified in this IGA, including New Market Tax Credits and/or Heritage Funds, the District shall receive 1/3 (33.3%) of those funds, and the UA shall receive 2/3 (66.7%) of those funds. This allocation shall not apply, and UA shall received 100% of funding obtained from, funding sources identified, solicited or procured by University, even if City or District plays a nominal or ministerial role in facilitating such funding.

23. *Labor Provisions.* UA employees (both regular staff and student employees) at the UA Science Center shall be paid in accordance with established UA policies and practices on the same basis as though they were employed at the UA Main Campus. If UA uses outside contractors for services at the UA Science Center, it shall require those contractors to comply with the City's "living wage" requirements for City contractors.

24. *Effective Date.* This IGA shall be effective on the date it has been executed on behalf of City, District, and UA, and shall remain in effect until its termination in accordance with paragraph 25.

25. *Termination.* This IGA shall terminate on the earlier of the following dates:

25.1 The date UA identifies in writing as when the operation of the UA Science Center will permanently cease.

25.2 The six month anniversary of the permanent closure of the UA Science Center (other than temporary closure due to construction, remodeling, renovation, expansion, or circumstances beyond UA control).

25.3 The date UA determines in writing that it is unable to proceed with the development of the UA Science Center.

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UA Science Center IGA

26. *Ownership upon Termination.* Upon termination of this IGA in accordance with paragraph 25, legal title to the Property and all improvements located on the Property shall automatically transfer to City; provided, however:

26.1 If the Parties agree otherwise in writing before this IGA terminates, legal title shall transfer as provided in that written agreement.

26.2 If City chooses not to take legal title to the Property and all improvements, located on the Property, City may, at its sole option, record at the office of the Pima County Recorder a document giving notice of City's decision not to take legal title. This document must be recorded prior to the date of termination of this IGA in accordance with paragraph 25. In that event, legal title to the Property and all improvements located on the Property shall remain in UA, and the reversion referenced in paragraph 25 shall be inoperative, null and void.

26.3 Prior to such transfer, City shall reimburse UA for the difference between (a) the fair market value of the UA Science Center building and other improvements (exclusive of the real property contributed by the City) and (b) the District TIF Contribution under paragraph 15 above plus interest on such Contribution at the same rate as the TIF bonds issued pursuant to A.R.S. § 48-4201 et seq. For the purposes of this paragraph, "fair market value" shall mean the value determined through the reconciliation of two appraisals performed by MAI appraisers, with one prepared by the City and one by UA, as reconciled by a third MAI appraiser jointly selected by the City and UA, and which shall use as a fair market value definition the "most probable price."

27. *UA Science Center Liabilities.* UA shall retain all liabilities incurred by UA during its lease of the Property and ownership of the UA Science Center improvements. Nothing in this IGA shall be interpreted to cause or allow liabilities incurred by UA during its lease of the Property and/or its ownership of the UA Science Center improvements, to be transferred to City either while this IGA is in force or after this IGA terminates.

28. *Recording.* After its execution on behalf of City, District and UA, this IGA shall be recorded at the office of the Pima County Recorder.

29. *Assignment.* UA shall have the right to transfer ownership and/or operation of the UA Science Center, or portions thereof, subject to all of the terms and conditions of this Agreement, to a non-profit corporation qualified to do business in Arizona; provided that:

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UA Science Center IGA

29.1 The assignment is by written instrument, expressly assigning such rights and obligations, recorded in the official records of Pima County, Arizona; and

29.2 UA has provided prior written notice of the assignment to the City and District and they have approved the assignment.

29.3 The rights and obligations of UA shall be assignable only if expressly stated in writing with the prior approval of the City and District.

29.4 The City Manager or the Manager's designee is hereby authorized to provide consent to an assignment on behalf of the City. If the City fails to object in writing to the assignment within fifteen (15) days of the date of the notice, the City shall be deemed to have consented to the assignment.

29.5 Neither the City nor the District shall unreasonably withhold or delay providing consent to any assignment requested by UA.

29.6 In the event of a complete assignment by UA of all of its rights and obligations under this IGA, and upon notice to and approval by the City and District, the UA's liability under this IGA shall terminate effective upon the assumption of the UA's rights and obligations hereunder by the UA's assignee(s). Upon any such transfer, the transferee shall be liable for all obligations of UA hereunder, and UA shall have no further responsibility hereunder except as to acts or omissions occurring prior to the effective date of such transfer.

30. *Miscellaneous.*

30.1 *Nondiscrimination.* The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity and Non-Discrimination.

30.2 *Arbitration.* Any dispute arising under this Agreement, involving the sum of \$30,000 or less in money damages only, shall be resolved by arbitration pursuant to the Arizona Uniform Arbitration Act. The decision of the arbitrator(s) shall be final.

30.3. *State Obligation.* The parties recognize that the performance by the Arizona Board of Regents for and on behalf of The University of Arizona may be dependent upon the appropriation of funds by the State Legislature of Arizona. Should the Legislature fail to appropriate the necessary funds or if the University's appropriation is reduced during the fiscal year, the UA may reduce the scope of this

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UA Science Center IGA

IGA if appropriate, or cancel the IGA without further duty or obligation. The UA agrees to notify the other Parties as soon as reasonably possible after the unavailability of said funds comes to the UA's attention. In the event that UA reduces the scope of its participation under this IGA pursuant to this paragraph, the City and District may elect to terminate this IGA, or in the alternative to negotiate a new IGA to reflect the reduced scope of the agreement.

30.4 *Conflict of Interest.* This Contract is subject to the provisions of Arizona Revised Statute § 38-511.

30.5 *Attorney Fees.* Pursuant to Arizona Revised Statute § 12-341.01, the prevailing party in any dispute arising from this agreement may be entitled to reasonable attorneys' fees to be awarded by the judge or arbitrator.

30.6 *No Joint Venture.* It is expressly understood and acknowledged that the parties are entering into this Agreement as independent contractors and that this Agreement is not intended to create, nor shall it be construed as creating, any type of partnership, joint venture, or franchise relationship between the Parties.

31. *Agreement to Meet, Confer and Provide Reports.* The Parties agree to meet and confer as needed to discuss and resolve matters related to this IGA and the development of the UA Science Center. The Parties further agree to provide each other with reports and updates sufficient to inform the other as to progress made concerning their obligations and responsibilities under this IGA.

32. *Effect of District Dissolution.* If District is dissolved, District's rights and obligations under this IGA and under the Lease contemplated herein shall automatically transfer to City, and UA and City shall thereafter be "the Parties" for purposes of this IGA.

33. *Signage.* UA shall not erect exterior signage for the UA Science Center without first obtaining the written consent of City. City agrees that it will not unreasonably withhold such consent.

IN WITNESS WHEREOF, the Parties have executed this IGA on the last signature date set forth below.

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UA Science Center IGA

"City":

"District":

CITY OF TUCSON

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

Mayor

August 2, 2004

Chairman

ATTEST:

ATTEST:

City Clerk

Date: August 2, 2004

District Clerk

Date: 8-11-04

"UA":

ARIZONA BOARD OF REGENTS

Name:

Title:

ATTEST:

Name:

Title:

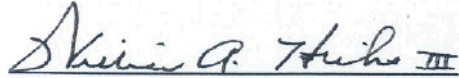
Date:

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**Exhibit Q**

This agreement has been submitted to the undersigned attorney for the Río Nuevo Multipurpose Facilities District, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the District.



Attorney

Date: 8-11-04

This agreement has been submitted to the undersigned attorney for the Arizona Board of Regents, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board of Regents.



Attorney

Date:

8/20/04

Exhibit A: General location of the Property (see Recital L)

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