



**REQUEST FOR STATEMENTS OF QUALIFICATIONS FROM
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT
("DISTRICT") FOR DEVELOPERS TO RE-PURPOSE THE
LA BUHARDILLA/COUNTRY HOME PROPERTIES**

Rio Nuevo Multipurpose Facilities District
1703 E. Broadway Blvd.
Tucson, Arizona 85719

SOLICITATION INFORMATION AND SELECTION SCHEDULE

District Solicitation Number: **RN-2022-11-03**

District Solicitation Title: **Request for Qualifications for Re-Purposing of the La Buhardilla and Country Home Furniture Properties**

Release Date: **November 3, 2022**

Final Date for Inquiries: **November 17, 2022**

SOQ Due Date and Time: **December 5, 2022
4:00 p.m. (local time, Tucson, Arizona)
1703 E. Broadway Blvd.
Tucson, AZ 85719**

Oral Interviews (if necessary): **TBD, proposed December 12-16, 2022**

Target Date for Selection of Finalists: **December 19, 2022**

District Representative: Mark Collins mcollins@gustlaw.com
520-388-4780

RFQ Administrator: Brandi Haga-Blackman brandihb@rionuevo-tucson.org
520-623-7336

* In the event that a Developer cannot be selected based solely on SOQ submitted, oral interviews may be conducted at the District's sole discretion.

** The District reserves the right to amend the solicitation schedule as necessary.

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PART I. RFQ PROCESS; AWARD OF AGREEMENT

1.1 Project; Intent; Context.

The District is issuing this Request for Qualifications ("RFQ") seeking statements of qualifications ("SOQ") from qualified individuals, entities or partnerships ("Developers") interested in acquisition, development and/or repurposing of the real property and improvements located at 2330 to 2360 E Broadway Blvd, Tucson, AZ 85726 (generally the "La Buhardilla and Country Home Furniture Properties"). This RFQ is the first of two phases. In this first phase the District is looking for expressions of interest from Developers with experience in planning and development of true mixed-use projects and the financial capability to effectuate such projects. Firms or entities with actual experience in such development and in identifying specific end uses and users are preferred.

The second phase will involve negotiation of a "Development Agreement" between the District and the Developer(s) whose SOQ is the most consistent with the District's intentions for the development at the site of the La Buhardilla and Country Home Furniture Properties. The District anticipates acquiring title to the subject properties prior to negotiating the Development Agreement. In the event that the District does not acquire title, or is unable to negotiate and execute such a Development Agreement, it may terminate this RFQ or seek to negotiate and execute a Development Agreement with the next most highly ranked Developer.

- a. Project Site Location. The project site consists of approximately 0.83 acres of property with existing structures of approximately 20,385 sq. ft., located at 2330-2360 E. Broadway Blvd., Tucson, Arizona, previously operated as retail stores known as La Buhardilla and Country Home Furniture, and approximately 0.40 acres of vacant land immediately to the south of the improved properties (150 S. Tucson Blvd.), all as described in **Exhibit A** (the "Project Site"). Water, electric, sewer and telecommunication facilities exist on site. Phase I Environmental Site Assessments were last performed for the existing properties in 2018-2019.
- b. Intent. The District seeks Proposals to identify a firm or entity to propose a viable plan for the financing and development of the Project Site to further the District's mission of facilitating and developing a vibrant downtown Tucson, subject to an Intergovernmental Development Agreement between the District and the Regional Transportation Authority for Pima County ("RTA") in the form attached as **Exhibit B** (the "IGDA").
- c. District-Related Benefits. Proposals should contemplate the District's ability to enter into a Government Property Lease ("GPLET") of the Project Site for up to 25 years, subject to the terms of the IGDA, to lease the Project Site on an "AS-IS, WHERE-IS" basis. In the appropriate circumstances, the rent due under the GPLET may be at nominal annual rates, provided that the lessee has invested or committed to invest the funds necessary to remodel and activate the Project Site. The GPLET will include an option to purchase the Project Site at any time during the term of the GPLET, subject to the terms of the IGDA, including a "dollar-for-dollar" credit against the purchase price for the costs incurred or expended by the lessee on improvements to the Project Site. **Proposers should note that the Project Site is not within the City of Tucson's Central Business District, is not eligible for excise tax abatement, and the excise tax rate on the land and**

improvements will be calculated in accordance with ARIZ.REV.STATUTES § 42-6203(C).

d. Content. Each Proposal must be in compliance with the Sunshine Mile Urban Overlay District ("SMUOD"). The approved version of the SMUOD is available on the City of Tucson's website (www.tucsonaz.gov). The District is seeking a firm or entity that can provide the planning and development expertise necessary to plan appropriate uses, which will ultimately be leased and then sold to one or more developers to repurpose, develop and operate. The District's planning goals include restaurant, retail, entertainment and arts facilities, and parking in a quantity appropriate to support the facilities and related activities.

1.2 Preparation/Submission of SOQ. Prospective Developers are invited to participate in the competitive selection process for the Project as outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

a. Irregular or Non-responsive SOQ. The District shall consider as "irregular" or "non-responsive" and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ lacking sufficient information to enable the District to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions shall be cause for rejection. An SOQ may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the District, any of the following are true:

(1) Developer does not meet the minimum required skill, experience or requirements to perform or provide the Service.

(2) Developer has a past record of failing to fully perform or fulfill contractual obligations.

(3) Developer cannot demonstrate financial stability.

(4) Developer's SOQ contains false, inaccurate or misleading statements that, in the opinion of the District's designated Project Manager or authorized designee, are intended to mislead the District in its evaluation of the SOQ.

b. Submittal Quantities. Interested Developers must submit one original of the SOQ. In addition, interested parties must submit one PDF copy of the SOQ on a CD-ROM or similar electronic storage device. Failure to adhere to the submittal quantity criteria shall result in the SOQ being considered non-responsive.

c. Required Submittal. The SOQ shall not exceed 25 pages to address the SOQ criteria (excluding cover letter, resumes and the Developer Information Form, but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed Project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include

additional project-specific information or SOQ criteria responses. The minimum allowable font for the SOQ is 12 pt., Arial or Times New Roman. Failure to adhere to the page limit, size and font criteria shall result in the SOQ being considered non-responsive. Each SOQ shall be submitted with the following documents:

(1) Cover letter with an **original ink signature** by a person authorized to bind the Developer. Proposals submitted without a cover letter with an **original ink signature** by a person authorized to bind the Developer shall be considered non-responsive.

(2) Developer Information Form, with **original ink signature**.

(3) References.

(4) Project Schedule.

(5) Resumes, Licenses and Certifications (if any).

(6) Acknowledgment page, with an **original ink signature**, for any Addendum received.

d. Developer Responsibilities. All Developers shall (1) examine the entire RFQ, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting an SOQ and (4) submit the entire SOQ by the official SOQ Due Date and Time. A late SOQ will not be considered. A Developer submitting a late SOQ shall be so notified. Negligence in preparing an SOQ shall not be good cause for withdrawal after the SOQ Due Date and Time.

e. Sealed Submittals. All SOQ shall be sealed and clearly marked with the SOQ number and title, (RN2022-11-03) Re-Purposing of the La Buhardilla and Country Home Properties, on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed SOQ. The District is not responsible for the pre-opening of, post-opening of, or the failure to open, any SOQ not properly addressed or identified.

f. Address. All SOQ shall be directed to the following address: Rio Nuevo Multipurpose Facilities District, 1703 E. Broadway Blvd., Tucson, Arizona 85719. Proposals must be received in the District's office by the SOQ Due Date and Time indicated on the cover page of this RFQ. Telegraphic (facsimile), electronic (e-mail) or mailgram SOQ will not be considered.

g. Amendment/Withdrawal of SOQ. At any time prior to the specified SOQ Due Date and Time, a Developer (or designated representative) may amend or withdraw its SOQ. Any erasures, interlineations, or other modifications in the SOQ shall be initialed in original ink by the authorized person signing the SOQ. Facsimile, electronic (e-mail) or mailgram SOQ amendments or withdrawals will not be considered. No SOQ shall be altered, amended or withdrawn after the specified SOQ Due Date and Time.

1.3 Cost of SOQ Preparation. The District does not reimburse the cost of developing, presenting or providing any response to this solicitation. An SOQ submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and

concise manner. The Developer is responsible for all costs incurred in responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of the District and will not be returned.

1.4 Inquiries.

A. Written/Verbal Inquiries. Any question related to the RFQ shall be directed to the RFQ Administrator whose name appears on the cover page of this RFQ. Questions shall be submitted in writing or via e-mail by the close of business on the Final Date for Inquiries indicated on the cover page of this RFQ. Any inquiries related to this RFQ shall refer to the number and title, page and paragraph.

B. Inquiries Answered. Verbal or telephone inquiries directed to District staff will not be answered. Within two business days following the Final Date for Inquiries listed on the cover page of this RFQ, **all timely inquiries and responses shall be posted on the District's webpage (www.rionuevo.org).** No **inquiries** submitted in any form after the Final Date for Inquiries will be answered.

1.5 Addenda. Any addendum issued as a result of any change in this RFQ shall become part of the RFQ and must be acknowledged in the SOQ submittal. Failure to indicate receipt of the addendum may result in the SOQ being rejected as non-responsive. It shall be the Developer's responsibility to check for addenda issued to this RFQ. Any addendum issued by the District with respect to this RFQ will be available at:

Rio Nuevo Multipurpose Facilities District
1703 E. Broadway Blvd.
Tucson, Arizona 85719
Rio Nuevo website at: www.rionuevo.org

1.6 Public Record. All SOQ shall become the property of the District and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the District's Procurement Code.

1.7 Confidential Information. If a Developer believes that an SOQ or protest contains information that should be withheld from the public record, a statement advising the District Representative of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Developer as confidential shall not be disclosed until the District Representative makes a written determination. The District Representative shall review the statement and information with the District and shall determine in writing whether the information shall be withheld. If the District determines that it is proper to disclose the information, the District Representative shall inform the Developer in writing of such determination.

1.8 Developer Licensing and Registration. Prior to the award of any agreement, the successful Developer shall (A) be registered with the Arizona Corporation Commission and authorized to do business in Arizona and (B) have a completed Request for Vendor Number on file with the District. The Developer shall provide licensure information with the SOQ. Corporations and limited liability companies shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

1.9 Certification. By submitting an SOQ, the Developer certifies:

A. No Collusion. The submission of the SOQ did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a District employee, officer or agent in connection with the submitted SOQ. It (including the Developer's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, District Board members and District staff, unless such person is designated as a District Representative. All contact must be addressed to the District's RFQ Administrator, or the District Representative. Any attempt to influence the selection process by any means shall void the submitted SOQ and any resulting Agreement.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

E. No Signature/False or Misleading Statement. The signature on the cover letter of the SOQ and the Developer Information Form is genuine, and the person signing has the authority to bind the Developer. Failure to sign the cover letter and the Developer Information Form, or signing either with a false or misleading statement, shall void the submitted SOQ and any resulting Agreement.

F. Development Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the sample Development Agreement attached as **Exhibit C**, including the Scope of Work attached as **Exhibit C-1**.

1.10 Selection Criteria.

A. Evaluation; Selection. A Selection Committee composed of representatives from the District will conduct the selection process according to the schedule on the cover page of this RFQ. The Selection Committee will create a final ranking of the Developers based upon its evaluation of (1) the SOQ, (2) information provided by references and (3) criteria outlined in this RFQ. The Selection Committee may select up to five finalists that may be invited for oral interviews with the Selection Committee, if deemed necessary. The District may conduct oral interviews with the selected Developers and upon completion of the final evaluation of identified components, will create a final list of the three most qualified Developers. The District will invite the highest ranked firm or entity to move forward into negotiation of a Development Agreement and GPLET.

B. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the District expressly reserves the right to: (1) waive any immaterial defect or informality in an SOQ, (2) reject any or all SOQ or portions thereof, and (3) cancel and/or reissue this RFQ.

C. Protests. Any Vendor may protest this RFQ, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the District Procurement Code, which may be viewed on the District's website (www.rionuevo.org).

1.11 Offer. An SOQ submittal is an offer to contract with the District based upon the terms, conditions and specifications contained in this RFQ and the Vendor's responsive SOQ, unless and to the extent that any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. **Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the District has approved, a Development Agreement between the District and the Vendor generally in the form attached hereto as Exhibit C.**

PART II. STATEMENT OF QUALIFICATIONS FORMAT; CRITERIA

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the submittal requirements and scored by the Selection Committee. The Selection Committee shall determine if the selection can be made on the basis of the written materials only, or if oral interviews are necessary with up to five of the highest ranked Developers based upon the SOQ submittal scoring.

2.2 Proposal Format and Evaluation. The SOQ shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements may result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate each SOQ based upon the evaluation criteria as outlined in this document.

2.2.1. General Information

2.2.1.1. One page cover letter as described in Subsection 1.2(C) (Required Submittal).

2.2.1.2. Provide Developer identification information. Explain the Developer's legal organization including the legal name, address, identification number and legal form of the firm or entity (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation. Provide the name, address and telephone number of the person to contact concerning the SOQ.

2.2.1.3. Identify the location of the Developer's principal office and the local work office, if different from the principal office. Include any documentation that supports the Developer's authority to provide services in Arizona.

2.2.1.4. Provide a general description of the Developer that is proposing to provide the Services, including years in business.

2.2.1.5. Identify any contract or subcontract held by the Developer or officers of the Developer that has been terminated within the last five years. Briefly describe the circumstances and the outcome.

2.2.1.6. Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.

2.2.1.7. Developer Information Form, with an **original ink signature** (may be attached as separate appendix).

2.2.2. Experience and Qualifications of the Developer

2.2.2.1. Provide a detailed description of the Developer's experience in providing similar services to municipalities or other entities of a similar size to the District; specifically relating experience with respect to the Scope of Work set for in Exhibit C-1 to the attached sample Development Agreement.

2.2.2.2. Developer should demonstrate successful completion of at least three similar projects within the past 60 months. For the purpose of this RFQ, "successful completion" means completion of a project within the established schedule and budget and "similar projects" resemble this project in size, nature and scope. Provide a list of at least three organizations for which you successfully completed a similar project. This list shall include, at a minimum, the following information: (a) Name of company or organization, (b) Contact name(s), (c) contact address(es), telephone number(s) and e-mail address(es), (d) type of services provided, and (e) dates of contract initiation and expiration. *These references will be checked*, and it is Developer's responsibility to ensure that all information is accurate and current. Developer authorizes the District's representative to verify all information from these references and releases all those concerned from any liability in connection with the information they provide. Inability of the District to verify references shall result in the SOQ being considered non-responsive.

2.2.2.3. The District's representative may conduct any investigation deemed necessary to determine the Developer's ability to perform the project. Developers may be requested to submit additional documentation within 72 hours (or as specified) to assist the District in its evaluation.

2.2.3. Key Positions

2.2.3.1. Identify each key personnel member that will render services to the District including title and relevant experience required, including the proposed project manager and project staff.

2.2.3.2. Indicate the roles and responsibilities of each key position. Include senior members of the Developer only from the perspective of what their role will be in providing services to the District.

2.2.3.3. Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this Project. Résumés should be attached together as a single appendix at the end of the SOQ and will not count toward the SOQ page limit. However, each resume shall not exceed two pages in length.

2.2.4. Project Understanding and Approach

2.2.4.1. Describe the Developer's comprehension of the District's goals and objectives for the Project, and the Developer's approach to managing the development planning process for the Project.

2.2.4.2. Describe any alternate approaches if it is believed that such an approach would best suit the needs of the District, including the rationale for alternate approaches, and indicate how the Developer will ensure that all efforts are coordinated with the District's Representatives.

2.2.4.3. Discuss any major issues the Developer may have identified with the Project and planning for development of the Project.

Submittal Criteria

Each submittal will be evaluated based on the above criteria. The relative weight afforded to each of the criteria will be as follows:

Experience and Qualifications of the Developer
Project Understanding and Approach
Key Positions
General Information
Completeness of Firm's Submittal

PART III. ORAL INTERVIEWS (if necessary): CRITERIA

Following evaluation of the SOQ's by the District, up to five Developers may be selected for oral interviews. The selected Developers will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFQ and awarded points based upon the criteria as outlined below. Developers may be given additional information for these oral interviews. These discussions will relate less to the past experience and qualifications already detailed in the SOQ and relate more to identification of the Developer's project approach and to an appraisal of the people who would be directly involved in the Services for this RFQ.

Oral Interview Criteria

During any oral interviews, the relative weight afforded to each of the criteria will be as follows:

Project Understanding and Approach
Key Positions
Experience and Qualifications of the Developer

PART IV. DEVELOPER INFORMATION FORM

By submitting a Statement of Qualifications, the submitting Developer certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

DEVELOPER SUBMITTING SOQ

FEDERAL TAX ID NUMBER

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

DISTRICT STATE ZIP

DATE

WEB SITE: _____

E-MAIL ADDRESS: _____

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- _____ Small Business Enterprise (SBE)
_____ Minority Business Enterprise (MBE)
_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)

Has the Developer been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

If yes, please provide details and documentation of the certification.

Exhibit A

[Legal Description of Properties]



**EXHIBIT A
CITY OF TUCSON
REMNANT PARCEL
BROADWAY BOULEVARD – EUCLID AVE. TO COUNTRY CLUB ROAD
PARCEL 10-M WEST**

A portion of that certain parcel described in Sequence No. 20201880184 at the Pima County Recorder's Office, said portion also lying within the northeast quarter of the northwest quarter of Section 17, Township 14 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona.

Said portion being more particularly described as follows;

Commencing at the North quarter corner of said Section 17 at the intersection of Tucson Boulevard and Broadway Boulevard, said corner being a set pavement nail with tag "RLS 18211";

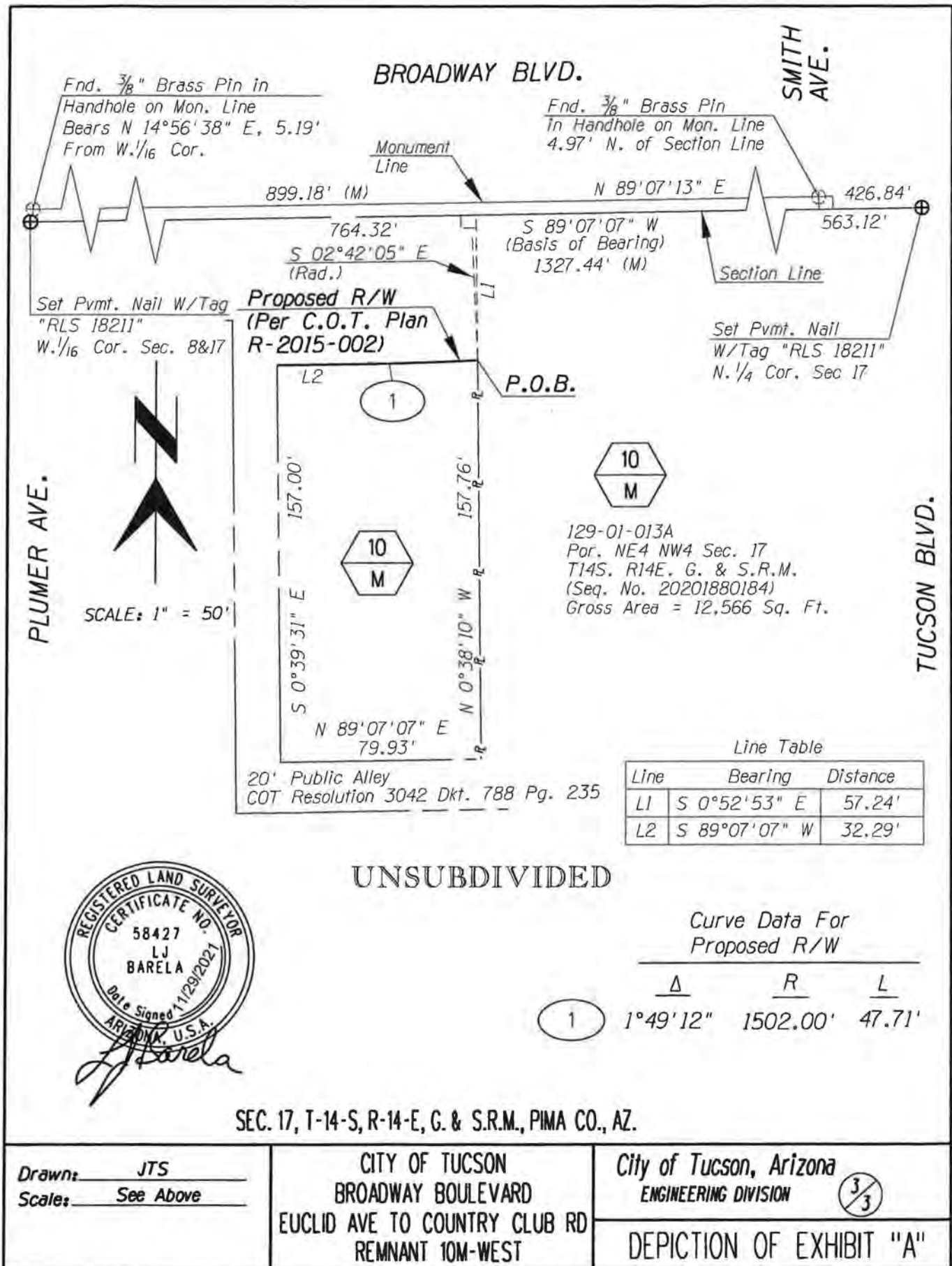
Thence South $89^{\circ}07'07''$ West, 563.12 feet along the North line of northwest quarter of said Section 17, from said point the West sixteenth corner of Sections 8 and 17 bears South $89^{\circ}07'07''$ West, 764.32 feet, said corner being a set pavement nail with tag "RLS 18211" at the intersection of Plumer Avenue and Broadway Boulevard;

Thence South $0^{\circ}52'53''$ East, 57.24 feet to the intersection of the proposed South right-of-way of Broadway Boulevard according to that certain Right-of-Way Plan R-2015-002 at the City of Tucson Engineer's Office with the East line of the subject parcel, said point being a point of curvature on a non-tangent curve concave northerly with a local radial bearing of South $2^{\circ}42'05''$ East, said point also being the Point of Beginning;

Thence westerly along said proposed South right-of-way on the arc of said curve to the right, having a radius of 1502.00 feet, through a central angle of $1^{\circ}49'12''$, for an arc length of 47.71 feet to a point of tangency;

Thence South $89^{\circ}07'07''$ West, 32.29 feet along said proposed South right-of-way to the intersection with the northeasterly right-of-way of that certain public alley according to City of Tucson Resolution 3042 recorded in Docket 788 at Page 235 at the Pima County Recorder's Office;

Thence South $0^{\circ}39'31''$ East, 157.00 feet along said northeasterly right-of-way of public alley;





**EXHIBIT A
CITY OF TUCSON
REMNANT PARCEL
BROADWAY BOULEVARD – EUCLID AVE. TO COUNTRY CLUB ROAD
PARCEL 10-M EAST**

A portion of that certain parcel described in Sequence No. 20201880184 at the Pima County Recorder's Office, said portion also lying within the northeast quarter of the northwest quarter of Section 17, Township 14 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona.

Said portion being more particularly described as follows;

Commencing at the North quarter corner of said Section 17 at the intersection of Tucson Boulevard and Broadway Boulevard, said corner being a set pavement nail with tag "RLS 18211";

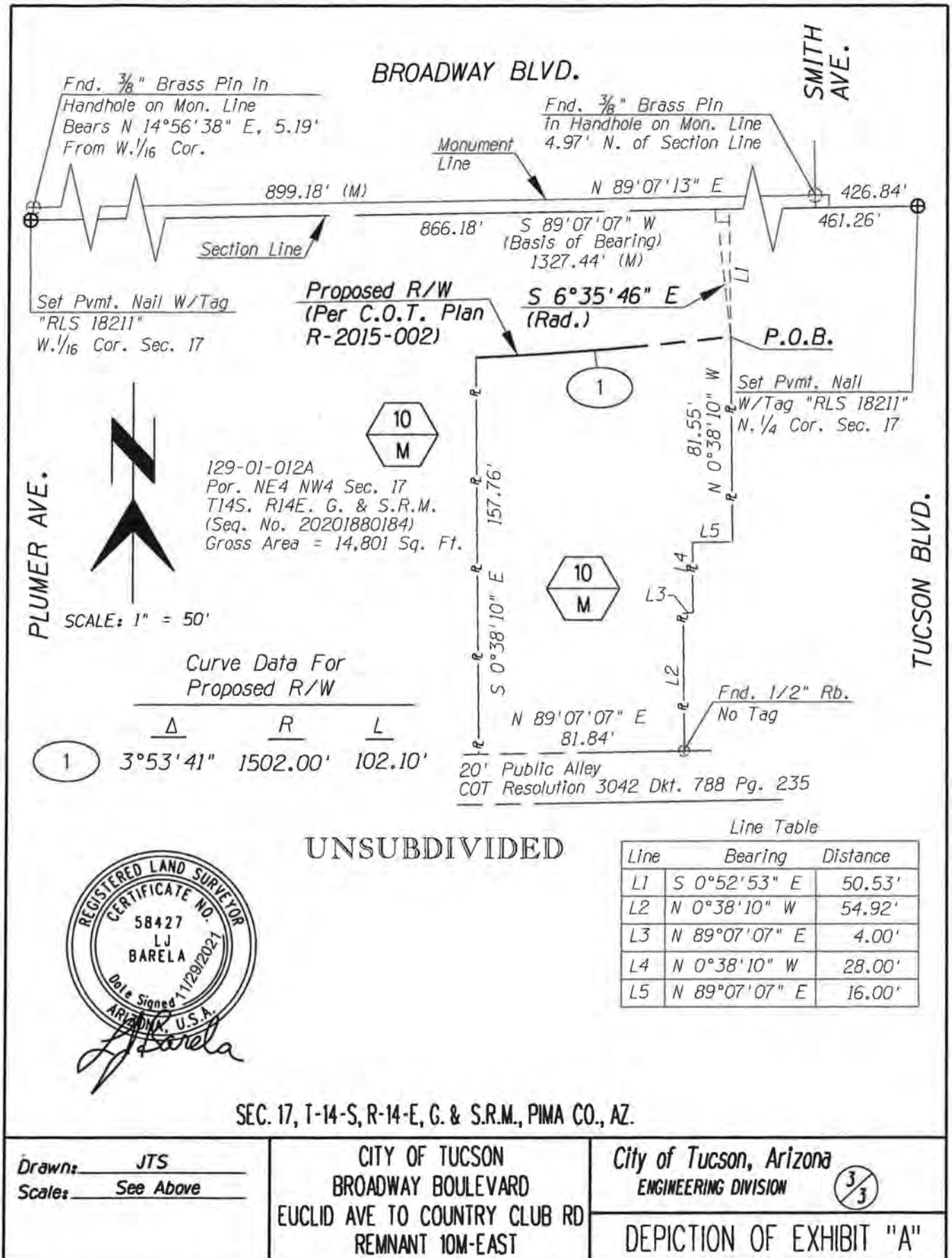
Thence South $89^{\circ}07'07''$ West, 461.26 feet along the North line of northwest quarter of said Section 17, from said point the West sixteenth corner of Sections 8 and 17 bears South $89^{\circ}07'07''$ West, 866.18 feet, said corner being a set pavement nail with tag "RLS 18211" at the intersection of Plumer Avenue and Broadway Boulevard;

Thence South $0^{\circ}52'53''$ East, 50.53 feet to the intersection of the proposed South right-of-way of Broadway Boulevard according to that certain Right-of-Way Plan R-2015-002 at the City of Tucson Engineer's Office with the easterly boundary of the subject parcel, said point being a point of curvature on a non-tangent curve concave northerly with a local radial bearing of South $6^{\circ}35'46''$ East, said point also being the Point of Beginning;

Thence westerly along said proposed South right-of-way on the arc of said curve to the right, having a radius of 1502.00 feet, through a central angle of $3^{\circ}53'41''$, for an arc length of 102.10 feet to a point of non-tangency on the West line of the subject parcel;

Thence South $0^{\circ}38'10''$ East, 157.76 feet along said West line to the North right-of-way of that certain public alley according to City of Tucson Resolution 3042 recorded in Docket 788 at Page 235 at the Pima County Recorder's Office;

Thence North $89^{\circ}07'07''$ East, 81.84 feet along said North right-of-way of public alley to the easterly boundary of the subject parcel, said point being a found 1/2" rebar with no tag;





**EXHIBIT A
CITY OF TUCSON
REMNANT PARCEL
BROADWAY BOULEVARD – EUCLID AVE. TO COUNTRY CLUB ROAD
PARCEL 10-N**

A portion of that certain parcel described in Sequence Number 20183370097 at the Pima County Recorder's Office, said portion also lying within the northeast quarter of the northwest quarter of Section 17, Township 14 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona.

Said portion being more particularly described as follows;

Commencing at the North quarter corner of said Section 17 at the intersection of Tucson Boulevard and Broadway Boulevard, said corner being a set pavement nail with tag "RLS 18211";

Thence South 89°07'07" West, 424.14 feet along the North line of northwest quarter of said Section 17, from said point the West sixteenth corner of Sections 8 and 17 bears South 89°07'07" West, 903.30 feet, said corner being a set pavement nail with tag "RLS 18211" at the intersection of Plumer Avenue and Broadway Boulevard;

Thence South 0°52'53" East, 46.35 feet to the intersection of the proposed South right-of-way of Broadway Boulevard according to that certain Right-of-Way Plan R-2015-002 at the City of Tucson Engineer's Office with the East line of the subject parcel, said point being a point of curvature on a non-tangent curve concave northerly with a local radial bearing South 8°01'16" East, said point also being the Point of Beginning;

Thence westerly along said proposed South right-of-way on the arc of said curve to the right, having a radius of 1502.00 feet, through a central angle of 1°25'30", for an arc length of 37.35 feet to a point of non-tangency on the westerly boundary of the subject parcel;

Thence South 0°38'10" East, 81.55 feet along said westerly boundary;

Thence South 89°07'07" West, 16.00 feet along said westerly boundary;

Thence South 0°38'10" East, 28.00 feet along said westerly boundary;

Thence South 89°07'07" West, 4.00 feet along said westerly boundary;

BROADWAY BLVD.

SMITH AVE.

Fnd. $\frac{3}{8}$ " Brass Pin in
Handhole on Mon. Line
Bears N $0^{\circ}58'25"$ W, 5.00'
N. of N. $\frac{1}{4}$ Cor.

Fnd. $\frac{3}{8}$ " Brass Pin
in Handhole on Mon. Line
4.97' N. of Section Line

Fnd. $\frac{3}{8}$ " Brass Pin in
Handhole on Mon. Line
Bears N $14^{\circ}56'38"$ E, 5.19'
N. of Set Pvmnt. Nail

Monument
Line

899.18' (M)
N $89^{\circ}07'13"$ E

N $89^{\circ}06'53"$ E 426.83' (M)

903.30' (Basis of Bearing)
1327.44' (M) S $8^{\circ}01'16"$ E
(Rad.)

46.35'
S $0^{\circ}52'53"$ E

Section Line

Set Pvmnt. Nail W/Tag
"RLS 18211", W. $\frac{1}{16}$ Cor.

Proposed R/W
(Per C.O.T. Plan
R-2015-002)

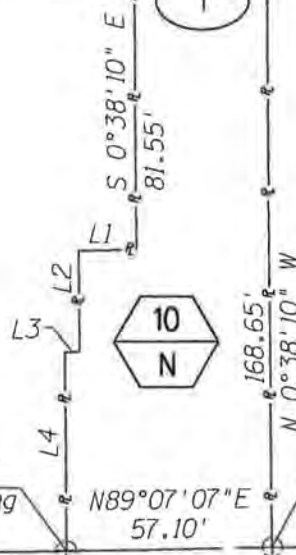
P.O.B.

Set Pvmnt. Nail
W/Tag "RLS 18211"
N. $\frac{1}{4}$ Cor.

PLUMER AVE.

TUCSON BLVD.

129-01-0110
Por. NE4 NW4 Sec. 17
T14S. R14E. G. & S.R.M.
(Seq. No. 20183370097)
Gross Area = 7,722 Sq. Ft.



SCALE: 1" = 50'

Fnd. $\frac{1}{2}$ "
Rb. No Tag

L1

L2

L3

L4

168.65'

N $0^{\circ}38'10"$ W

Fnd. $\frac{1}{2}$ " Rb.
Bent No Tag

N $89^{\circ}07'07"$ E
57.10'

20' Public Alley
COT Resolution 3042 Dkt. 788 Pg. 235

UNSUBDIVIDED

Line Table

Line	Bearing	Distance
L1	S $89^{\circ}07'07"$ W	16.00'
L2	S $0^{\circ}38'10"$ E	28.00'
L3	S $89^{\circ}07'07"$ W	4.00'
L4	S $0^{\circ}38'10"$ E	54.92'

Curve Data For
Proposed R/W

	Δ	R	L
1	$1^{\circ}25'30"$	1502.00'	37.35'

SEC. 17, T-14-S, R-14-E, G. & S.R.M., PIMA CO., AZ.

Drawn: JTS
Scale: See Above

CITY OF TUCSON
BROADWAY BOULEVARD
EUCLID AVE TO COUNTRY CLUB RD
REMNANT 10N

City of Tucson, Arizona
ENGINEERING DIVISION

$\frac{3}{3}$

DEPICTION OF EXHIBIT "A"

1
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129-01-024J

The West 150 feet of the East 660 feet of the South 115 feet of the North 350 feet of the Northeast quarter of the Northwest quarter of Section 17, Township 14 South, Range 14 East of the Gila and Salt River Base and Meridian, Pima County, Arizona.



7121432v1(66954.30)

Exhibit B

[Intergovernmental Development Agreement (District and RTA)]

INTERGOVERNMENTAL DEVELOPMENT AGREEMENT

For reference this Intergovernmental Development Agreement ("Development Agreement") is dated September ~~24~~ 2020. The parties to this Agreement are the Rio Nuevo Multipurpose Facilities District ("District") and the Regional Transportation Authority of Pima County ("RTA").

RECITALS

- 1) The District, the RTA and the City of Tucson ("City") are parties to that certain Intergovernmental Agreement among the District, the RTA and the City of Tucson ("City") a copy of which is attached hereto as Exhibit A ("Tri-Party IGA").
- 2) Among the purposes of the Tri-Party IGA is to provide a framework for the City to convey "Surplus Property" to the District so that it and the RTA can repurpose such Surplus Property consistent with the terms of the Tri-Party IGA.
- 3) Section 4 of the Tri-Party IGA contemplates the District and the RTA entering into this Development Agreement to repurpose the Surplus Property.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt of which is hereby acknowledged, the District and the RTA (individually "Party" and collectively "Parties") agree as follows:

AGREEMENTS

- 1) **Incorporation and Representation.** The foregoing Recitals are hereby incorporated into this Agreement's section by this reference as if set forth in full, and each of the Parties represents that each recital is true and accurate to the best of each signatory's knowledge, information and belief after inquiry.
- 2) **Subject Property.** By this Development Agreement the District and the RTA intend to repurpose the real property and improvements generally described as the "Buhardilla/Country Home" properties, which real property and improvements are more specifically set forth on attached Exhibit B (the "Subject Properties").
- 3) **Methodology**
 - a) Title to the Subject Properties shall be held in the District's name, subject to the RTA's interest described in Section 4 below (the "RTA's Interest"). District shall be solely responsible for all of the risks associated with safety, security and maintenance of the Subject Properties to which it holds fee title. Immediately upon District receiving title to any Subject Property and until District sells or otherwise transfers title to such property, District shall cause the properties to be covered under District's property casualty and liability insurance policies, with said policies endorsing RTA as additional insured.

b) The District shall repurpose the Subject Properties, in a commercially reasonable and workmanlike fashion, with a preference for restaurant, bar and/or retail establishments (the "Project").

c) The District shall be responsible for taking all actions necessary to complete the Project including, without limitation, the issuance of the appropriate procurement requests, evaluating the responses and, when appropriate, entering into all necessary or convenient contracts and agreements to effectuate such response(s). The District shall be solely responsible for all costs attendant to this repurposing effort to and through the issuance of a final certificate of occupancy ("CofO") for the Project ("Substantial Completion"). District shall require all contractors performing any portion of the work related to the Project to name the RTA and have it endorsed as additional insured and additional indemnitee with respect to insurance policies for general liability, automobile liability and defects in design in all of the District's contracts for the Project. The District shall also require its contractors to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

d) Upon the Substantial Completion of the Project, and subject to Section 6 below, the District will have the authority to lease all or part of the Project to one or more individuals and/or entities, the terms of which shall be entirely within the District's reasonable discretion. All leases for the Project shall require the tenant to name the RTA and have it endorsed as additional insured and additional indemnitee with respect to all insurance policies for general liability and casualty.

e) District shall provide, or cause to be provided to RTA, certificates of insurance evidencing the insurance endorsements required under this Agreement.

f) If and when the District elects to sell all or any portion of the Project, the sales proceeds shall be first used to pay the costs of such sale, then, in the following order (i) to satisfy any liens necessarily incurred in the improvement of the Subject Property to the point of Substantial Completion of the Project, (ii) to maintain the Project prior to the sale and (iii) to satisfy the RTA's Interest with the remaining balance, if any, being divided equally between District and RTA.

g) The District will take all actions reasonably necessary to keep the RTA advised of the District's Project efforts including, without limitation, providing the RTA with proposed concepts and contracts for the design and construction of the Project, proposed leases and proposed sale agreements. If and when the RTA has any questions or concerns about the District's planned actions, the District and the RTA will meet, confer and work in good faith to resolve such concerns in a timely manner.

4) Security for RTA's Interest(s) in Subject Properties.

a) Upon the District's acquisition of title to one or more Subject Properties, the RTA and the District shall agree upon an appropriate dollar amount to reflect the RTA's Interest which shall be based upon the City's square foot cost for acquiring title to such property, plus a reasonable rate of interest to compensate for anticipated market appreciation of the property.

b) The RTA's Interest in each Subject Property shall be reflected on a "Statement of RTA's Interest" in the format of attached Exhibit C which shall be recorded in the office of the Pima County Recorder.

5) **Responsibilities of the Parties.** In addition to all other terms of this Agreement the Parties each agree:

a) Each of the Parties shall cooperate with each other and the City concerning transfer of title to Subject Properties to the District, determining the appropriate amount of the RTA's Interest therein and the requirements for the satisfaction or release of RTA's Interest.

b) RTA will promptly review and express any comments or concerns regarding documents provided to RTA by the District, pursuant to this Agreement.

6) **Leasing.** Should District choose to lease one or more of the Subject Properties, District will provide the proposed lease agreement to RTA and the Parties shall discuss and reach an agreement on what portion of the rent, if any, shall be applied to reduce the RTA's Interest in the Subject Property(ies).

7) **Term and Termination.** This Development Agreement shall be effective on the first day after both the RTA and the District have approved and executed it ("Effective Date") and shall terminate when the last of the Subject Properties is sold or title is otherwise transferred unless earlier terminated by the mutual agreement of the District and the RTA.

8) **General Provisions.**

a) *Conflict of Interest.* This Agreement may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

b) *Legal Authority.* Neither party warrants to another its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that any party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, shall be null and void, and no recovery may be had by one or more parties against another for lack of performance or otherwise.

c) *Ownership upon Termination.* Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

d) *Indemnification.*

i) Mutual Indemnity. To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other party, its governing boards or bodies, 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, attorneys', consultants' and accountants' fees or costs and expenses of whatsoever

kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees 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.

ii) Environmental Indemnity. To the fullest extent permitted by law, District shall indemnify, defend and hold the RTA, its governing board, officers, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the District's or its contractors' placement of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, on, in or below property which is the subject of this Intergovernmental Agreement.

iii) Indemnification for Design, Construction and Use. To the fullest extent permitted by law, District shall indemnify, defend and hold RTA, its governing board, officers, employees and agents, harmless, as fully set out above, from and against any claims and damages, resulting from or arising out of the design, construction and use of improvements or use of any substance or material in said improvements that has caused damage, harm or injury.

iv) Notice. Each party shall notify the other party to this Agreement in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section (Indemnification). Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.

v) Negligence of Indemnified Party. The obligations under this [Section 8(d)] shall not extend to the negligence of the indemnified party, its agents or employees.

vi) Survival of Termination. This Section 8(d) shall survive the termination, cancellation or revocation, whether in whole or in part, of this Agreement.

e) *Construction of Development Agreement.*

i) Entire Agreement. This Agreement 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.

ii) Amendment. This Agreement shall not be modified, amended, altered or changed except by written agreement approved and executed by all Parties with the same formalities as this Agreement.

iii) Construction and Interpretation. The parties acknowledge that each has had the opportunity to review this Agreement with counsel of its or their choice. This Agreement shall not be construed in favor of a party or against any party but shall be construed to be consistent with the intention of the Parties as expressed in the Recitals herein above.

iv) 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.

v) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found, to any extent, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision hereof will be valid and enforced to the fullest extent permitted by law.

f) No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer- employee relationship between the Parties, or between the Parties' employees. The Parties shall not be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other Parties, including (without limitation) the other Parties' obligation to withhold Social Security and income taxes for itself or any of its employees.

g) Workers' Compensation. An employee of either Party shall be deemed to be an "employee" of the other Party while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. §23- 906 in substantially the following form: All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

h) Compliance with Immigration and Contracting Laws. District hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to District's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). District will further ensure that each contractor who performs any work for District, pursuant to this Agreement, likewise complies with the State and Federal Immigration Laws and, to the extent A.R.S. § 35-393 through § 35-393.03 is applicable, certifies that it is not currently engaged in, and agrees for the duration of its contract with the District to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S. § 35-393.

i) Non Discrimination. Neither Party shall discriminate against any employee of either Party or any other individual in any way because of that person's age, race, creed, color, religion, sex, genetic information, disability, familial status, political affiliation or national origin in the course of carrying out the duties pursuant to this Agreement. Both Parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this Agreement by reference as if set forth in full herein, and 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, as well as the Genetic Information Nondiscrimination Act of 2008.

j) *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 any party to the Agreement by imposing a standard of care with respect to the maintenance of property, streets and highways different from the standard of care imposed by law.

k) *Notification.* All notices or demands upon any party to this Agreement shall be in writing, unless other forms are expressly designated elsewhere, and shall be delivered in person or sent by mail addressed as follows or to such other persons, or addresses as a party may designate in writing to the others:

RTA: Executive Director - Regional Transportation Authority
1 E. Broadway Blvd.
Suite 401
Tucson, AZ 85701

District: Board Chair -- Rio Nuevo District
1703 E. Broadway Blvd.
Tucson, AZ 85701


With a copy to

Gust Rosenfeld, PLC
Attn: Mark Collins
1 S. Church, Suite 1900
Tucson, AZ 85701

In Witness Whereof, the Rio Nuevo Multipurpose Facilities District has caused this Agreement to be executed by the Chairperson and Secretary of its Board of Directors and the Regional Transportation Authority of Pima County has caused this Agreement to be executed by the Chairperson of its Board of Directors.

The Remainder of this Page is Intentionally Blank

Rio Nuevo Multipurpose Facilities District

By: 
Chairperson

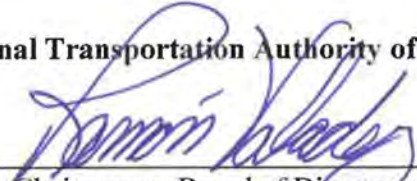
10-15-20
Date

Attest:

By: 
Secretary

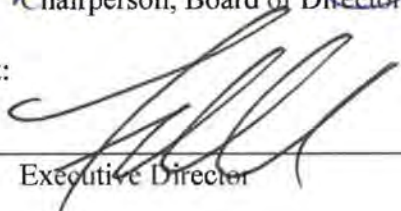
10.2.2020
Date

Regional Transportation Authority of Pima County

By: 
Chairperson, Board of Directors

10/28/2020
Date

Attest:

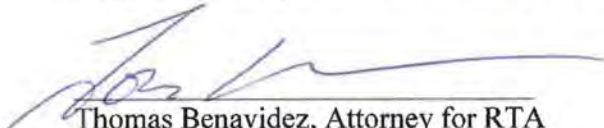

Executive Director

10/28/20
Date

ATTORNEY CERTIFICATION

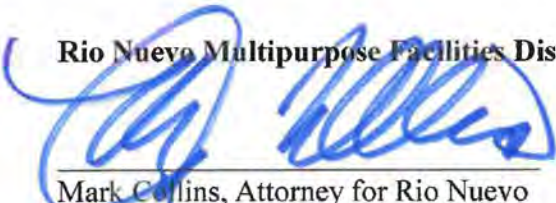
The foregoing Agreement by and between the Regional Transportation Authority of Pima County and Rio Nuevo Multipurpose Facilities District has been reviewed, pursuant to A.R.S. Section 11-952, by the undersigned who have determined that it is in proper form and is within the powers and authority granted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

Regional Transportation Authority of Pima County:


Thomas Benavidez, Attorney for RTA

10-23-20
Date

Rio Nuevo Multipurpose Facilities District:


Mark Collins, Attorney for Rio Nuevo

10/22/20
Date

**Exhibit A
(Tri-Party IGA)**

**Intergovernmental Agreement between
Rio Nuevo Multi-Purpose Facilities District, Regional Transportation Authority of
Pima County and the City of Tucson for
Surplus Real Property Asset Transfer and Redevelopment
Broadway Boulevard: Euclid Avenue to Country Club Road, Tucson, Arizona**

This Intergovernmental Agreement ("Agreement") is entered into by and between Rio Nuevo Multi-Purpose Facilities District ("District"), Regional Transportation Authority of Pima County ("RTA") and the City of Tucson, Arizona ("City") (collectively "Agencies" or "Parties"), pursuant to A.R.S. § 11-952.

Recitals

- A. Agencies may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, *et seq.*
- B. City is authorized by A.R.S. §§ 9-240 (B) (3) and 9-276:
 - 1. To exercise exclusive control over the streets, alleys, avenues and sidewalks of the City and to give and change the names thereof;
 - 2. To prevent and punish for the encumbering thereof, and to abate and remove all encumbrances and obstructions thereon;
 - 3. To widen, extend, straighten, regulate, grade, clean or otherwise improve the same;
 - 4. To open, lay out and improve new streets, avenues and alleys;
 - 5. To vacate or abandon any street, avenue, alley, park, public place or sidewalk, in such City or to abolish, abandon, vacate and sell them; and
 - 6. To protect the same from encroachment and injury.
- C. Pursuant to A.R.S. §48-4203 (A) (3) and A.R.S. §48-5304 (12) & (18), the District and the RTA may enter into Intergovernmental Agreements to further the purpose for which they were established.
- D. City is designing and intends to construct public road improvements to Broadway Boulevard from Euclid Avenue to Country Club Road, Tucson, Arizona ("the Project"), pursuant to the RTA plan approved by Pima County voters on May 16, 2006 (the "RTA Plan").
- E. The RTA is a special taxing district of the state of Arizona, duly formed and existing pursuant A.R.S. § 48-5302. Funding for the Project is being provided by the RTA, Pima County, and the City, all pursuant to the RTA Plan and other Intergovernmental Agreement(s) between the Agencies. Any funding needed to complete the Project that is in excess of the amount committed by the RTA and Pima County is anticipated to be provided by the City.
- F. The District was formed pursuant to A.R.S. § 48-4202 as a special taxing district to assist in the revitalization of Tucson. The District desires to assist the City with District funding and with processes not available to a Local Public Agency (commonly defined as an Agency that receives and uses Federal funds for public projects) designing and building a public improvement project.

- G. City and RTA have entered into an intergovernmental agreement for the Project, recorded in Docket 12994, Page 2503, and subsequent amendments 1 through 5. The Project will be managed by the City, which shall advertise, award, execute, and administer the design, right of way acquisition and construction contracts for its completion.
- H. To the extent practical and feasible taking into account that the primary purpose of the Project is to construct a multimodal public transportation improvement project, by virtue of this Agreement the Agencies desire to preserve existing buildings, commercial uses of property in the vicinity of the Project and enhance commercial use potential of public and privately-owned property throughout the City's property acquisition, management and disposal processes. With these aims in mind, District and RTA desire to provide funding and processes not available to a Local Public Agency designing and building a public improvement project in order to preserve and revitalize properties impacted by the Project.
- I. City is authorized by A.R.S. § 48-5313 to acquire property for the Project through the use of eminent domain, and to lease or sell such property acquired. The District desires to assist in the repurposing of surplus real property acquired by the City for Project needs, and such real property may be managed in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Agencies, in consideration of the terms, conditions, and covenants of this Agreement, including the Recitals above, which are incorporated herein by this reference, do mutually agree as follows:

Agreement

1. **Purpose.** The purpose of this Agreement is, in furtherance of the Recitals above, to set forth the responsibilities of the Agencies for: 1) repurposing of remnant and/or Surplus Property acquired by the City for the Project, and 2) providing a framework for the District to assist the City in addressing Project property issues, including but not limited to the design and improvement of property features, building renovation, parking enhancements and shared access provisions.

2. **Real Property Surplus to the Project's Needs ("Surplus Property").** For the purpose of this Agreement, real property shall be declared Surplus Property if it has been acquired by the City and determined by the City: 1) to be surplus to the needs of the Project, 2) to not be needed to cure impacts caused by the Project to adjacent or other affected properties (e.g., to cure a loss of access on adjacent property), and 3) has not been proposed to be used as a relocation site for a property owner or business being displaced by the Project.

3. **District Assistance to the City During Project Acquisitions.** Per the Recitals herein, City is responsible for all aspects of the Project including the acquisition of all real property and real property rights needed to construct the Project. Due to the various Federal regulations and provisions of the Arizona Revised Statutes, the District shall not interfere or become directly involved with ongoing City negotiations for property being acquired for the Project. However, there may be opportunities for the District to participate in certain activities including but not limited to the design of property features including building renovations, parking enhancements and shared access provisions, provided that the District's efforts do not conflict with, override, or interfere with the City's efforts. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, *et seq.*) (the "Uniform Act") applies to the Project. Notwithstanding the terms and conditions stated above:

- a. The District, RTA and City will collaborate on the identification of Surplus Parcels for transfer to the District for redevelopment. The City and its acquisition consultants will advise the District on the valuation of the Surplus Properties, Uniform Act compliance matters, confidentiality requirements and Project related constraints to redevelopment.
- b. Working with and through the City Real Estate Division and its acquisition consultant, District may participate to the extent practical to address the issue(s) being presented.
- c. Notwithstanding the terms and conditions of the Recitals and Paragraph 1, District shall be responsible for any directly accountable increase in acquisition costs or costs of private improvements incurred by the Project as a result of its involvement in discussions with or representations to affected or adjacent property owners.

4. Transfer of Interests in Surplus Real Property.

- a. Subject to and consistent with the Recitals, after interests in real property acquired for the Project using regional funds have been declared by City as Surplus Property and the District and RTA have agreed to repurpose such property, the District and RTA may enter into a Development Agreement for the Surplus Property. Upon approval of a Development Agreement by the District and RTA, the City shall convey the Surplus Property to the District.
- b. Property acquired by the City for the Project using non-regional funds shall not involve the RTA, but may be designated under this Agreement as Surplus Property. These properties will require a Development Agreement with the District approved by the City's Mayor and Council and the funding agency's approval authority prior to being transferred to the District.

5. Surplus Property not being Repurposed. Surplus Property originally acquired with regional funds and not being repurposed by either the District or the RTA shall remain in title with the City. City shall market and dispose of the Surplus Property in accordance with standard disposition practices.

6. RTA Procedures. The RTA Administrative Code, as Amended, applies to this Agreement.

7. Project Reimbursement for Surplus Property. The need to maintain the viability of the Project through the use of proceeds from the sale or lease of Surplus Property is vital to the success of the Project. The RTA will credit its Broadway Project Fund in the amount of 90% of the appraised or agreed upon value of the Surplus Property acquired with regional funds and transferred from the City to the District. The RTA will amend its budget for the Project to reflect this change.

8. Prior Purchase. Nothing in this Agreement shall be interpreted as preventing the District from a free market purchase of property in and along the Project area. If the District acquires property within the Project area and the property is impacted by the Project, the District hereby agrees to sell the area needed for construction of the Project to the City at appraised value.

9. Ownership, Operation, and Maintenance. Notwithstanding the terms and conditions of any existing agreements, the real property or improvements made to or upon the real property shall be owned, operated and maintained by the title holder of the real property.

10. Term and Termination of Agreement.

a. *Term.* This Agreement shall be effective on the date it is approved by the last Agency to execute this Agreement ("Effective Date") and shall terminate upon the earlier of (i) all Surplus Property is disposed, (ii) eight (8) years from the Effective Date, or (iii) as earlier terminated by the mutual agreement of the Agencies or as provided herein.

b. *Termination.* This Agreement may be earlier terminated under the following circumstances:

i. For Cause. A party may terminate this Agreement for material breach of the Agreement by another 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 (45) days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement; provided, however, that if the nature of such default is such that more than forty-five (45) days are reasonably required for its cure, then such party shall not be deemed in default if it commences such cure within the forty-five (45) day period and thereafter diligently prosecutes such cure to completion, provided such cure is completed within one hundred and twenty (120) days of the notice of default. Any such termination shall not relieve any party from liabilities or costs already incurred under this Agreement; ii. Conflict of Interest. This Agreement may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

c. *Legal Authority.* Neither party warrants to another its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that any party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, shall be null and void, and no recovery may be had by one or more parties against another for lack of performance or otherwise.

d. *Ownership upon Termination.* Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

11. Indemnification.

a. *Mutual Indemnity.* To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other parties, their governing boards or bodies, 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, attorneys', consultants' and accountants' fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees 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.

b. *Preexisting conditions* To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other parties, their governing boards or bodies, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste,

regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by the indemnifying party prior to the execution of this Intergovernmental Agreement.

c. *Indemnification for Design.* To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other parties, their governing boards or bodies, officers, departments, employees and agents, harmless, as fully set out above, from and against any claims and damages, resulting from or arising out of the design of improvements or use of any substance or material in said improvements that has caused damage, harm or injury.

d. *Notice.* Each party shall notify the other parties to this Agreement in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section (Indemnification). Each party shall keep the other parties informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section.

e. *Negligence of Indemnified Party.* The obligations under this Section shall not extend to the negligence of the indemnified party, its agents or employees.

f. *Survival of Termination.* This Article shall survive the termination, cancellation or revocation, whether in whole or in part, of this Agreement.

12. Insurance. When requested by the other party, each party shall provide proof to the other of their workers' compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

13. Books and Records. Each party shall keep and maintain proper and complete books, records and accounts, which shall be open for inspection and audit by duly authorized representatives of any other party at all reasonable times. All design and construction drawings, records, documentation and correspondence shall be the property of City at the completion of the Project, except copies maintained by the other parties for their records.

14. Construction of Agreement.

a. *Entire Agreement.* This Agreement 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 approved and executed by all Parties with the same formalities as this Agreement.

c. *Construction and Interpretation.* The parties acknowledge that each has had the opportunity to review this Agreement with counsel of its or their choice. This Agreement shall not be construed in favor of a party or against any party but shall be construed to be consistent with the intention of the Parties as expressed in the Recitals herein above.

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.* If any term or provision of this Agreement or the application thereof to any person or circumstance is found, to any extent, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision hereof will be valid and enforced to the fullest extent permitted by law.

f. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute only one Agreement.

15. **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the parties.

16. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer- employee relationship between the Parties, or between the Parties' employees. The Parties shall not be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other Parties, including (without limitation) the other Parties' obligation to withhold Social Security and income taxes for itself or any of its employees.

17. **Workers' Compensation.** An employee of any party shall be deemed to be an "employee" of the other Parties while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23- 906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

18. **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 any party to the Agreement by imposing a standard of care with respect to the maintenance of property, streets and highways different from the standard of care imposed by law.

19. **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 75-5, as amended by Executive Order 2009-09, issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement as if set forth in full herein.

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. §1201-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, as well as the Genetic Information Nondiscrimination Act of 2008.

c. *Compliance with County Laws.* City agrees to comply with Pima County Code § 3.06.080, as amended, concerning Implementation of County Bond Projects in Other Jurisdictions, and Pima County Ordinance No. 1997-80, Section VIII, "Implementation of Transportation Projects in Other Jurisdictions," as amended.

20. **Waiver.** Waiver by any 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.

21. **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. Any party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

22. **Notification.** All notices or demands upon any party to this Agreement shall be in writing, unless other forms are expressly designated elsewhere, and shall be delivered in person or sent by mail addressed as follows or to such other persons, or addresses as a party may designate in writing to the others:

City: Director, Department of Transportation
Publics Works Building, 6th Floor North
201 N. Stone Ave, Tucson, AZ 85701
P.O. Box 27210, Tucson, AZ 85726

Copy to City: City Manager
City Hall, 10th Floor
255 W. Alameda, Tucson, AZ 85701
P.O. Box 27210, Tucson, AZ 85726

RTA: Regional Transportation Authority
1 E. Broadway Blvd
Suite 401
Tucson, AZ 85701

District: Board Chair -- Rio Nuevo District
400 West Congress, Suite 152
Tucson, AZ 85701

23. **Remedies.** Any party may pursue any and all legal remedies available 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.

24. **Arbitration.** Notwithstanding the foregoing, the Parties agree that any dispute arising under this Agreement involving the sum of FIFTY THOUSAND DOLLARS (\$50,000) or less in money damages only shall be resolved first by non-binding mediation and in the event mediation is unsuccessful, by arbitration pursuant to the Revised Uniform Arbitration Act, A.R.S. Section 12-3001 *et seq.* (the "Act"), whose rules shall govern the interpretation, enforcement, and proceedings pursuant to this Section. The decision of the arbitrator(s) shall be final.

25. **Governing Law and Venue.** This Agreement is made under and shall be interpreted according to Arizona law. In the event litigation is commenced by any party, venue shall be in the Pima County Superior Court.

26. **Appropriation of Funds/Financing.** The Parties recognize that the performance by all or any of them may be dependent upon the appropriation of funds by the City Council, the RTA Board or District Board, or the availability of funding from other sources. Should the relevant governing body fail to appropriate the necessary funds, if any party's appropriation is reduced during the fiscal year, or if funding becomes otherwise legally unavailable to a party hereunder, that party may reduce the scope of this Agreement if appropriate or cancel the Agreement without further duty or obligation. All Parties agree to notify the others as soon as reasonably possible after the unavailability of funds comes to its respective Chief Executive's attention.

In Witness Whereof, the Rio Nuevo Multipurpose Facilities District has caused this Agreement to be executed by the Chairperson and Secretary of its Board of Directors, the Regional Transportation Authority of Pima County has caused this Agreement to be executed by the Chairperson of its Board of Directors, and the City of Tucson has caused this Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

Rio Nuevo Multipurpose Facilities District


By: _____
Chairperson

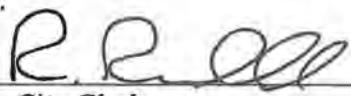
Attest: _____
By: _____
Secretary

Regional Transportation Authority of Pima County

By: 
Chairperson, Board of Directors **Dr. Satish I. Hiremath**
Attest: 
Executive Director **RTA Board Chair**

City of Tucson

By: 
Mayor

Attest: 
City Clerk

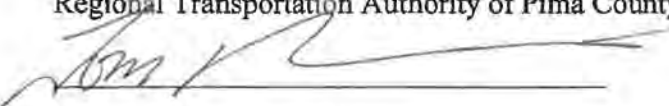
Date: February 6, 2018

ATTORNEYS' DETERMINATION

The foregoing Agreement between the Rio Nuevo Multi-Purpose Facilities District, the Regional Transportation Authority of Pima County, and the City of Tucson, has been reviewed pursuant to A.R.S. § 11-952 (D) by the undersigned, who have determined that it is in the proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties represented by the undersigned.


Rio Nuevo Multipurpose Facilities District

Regional Transportation Authority of Pima County


City of Tucson


City Attorney

Exhibit B
(Subject Properties)

- 1) APN 129-01-0110 (2360 E. Broadway)
- 2) APN 129-01-012A (2354-2358 E. Broadway)
- 3) APN 129-01-013A (2330 E. Broadway)
- 4) APN 129-01-024J (150 S. Tucson Blvd.)

Exhibit C
(Statement of RTA's Interest)

STATEMENT OF REGIONAL TRANSPORTATION AUTHORITY'S INTEREST

On or about SEPT. 24, 2020, the Regional Transportation Authority of Pima County ("RTA") and the Rio Nuevo Multipurpose Facilities District ("District") entered into an Intergovernmental Agreement ("IGA") dealing with their respective rights in the real property described in attached Exhibit A ("Subject Property"). The sale or lease of all or a portion of the Subject Property by the District is subject to the terms of the IGA, as amended.

Rio Nuevo Multipurpose Facilities District

By: _____
Chairperson

11.3.20
Date

By: _____
Secretary

11.5.2020
Date

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On 11/3 & 11/5, 2020, before me personally appeared Fletcher McCusker and Mark Irvin whose identities were proven to me on the basis of satisfactory evidence to be the persons who each claimed to be, and acknowledged that each signed the above document, on behalf of the District.

Jacquelyn G. Clark
Notary Public

(Affix notary seal here)



Regional Transportation Authority of Pima County



Executive Director

Date 11/16/20

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On Nov. 16, 2020, before me personally appeared Farhad Moghimi, Executive Director of RTA, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claimed to be, and acknowledged that he signed the above document, on behalf of the RTA.



Notary Public

(Affix notary seal here)

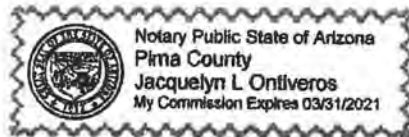


Exhibit C

[Sample Development Agreement]

**RIO NUEVO AND [DEVELOPER - TBD]
DEVELOPMENT AGREEMENT**

For reference, this Development Agreement (“Agreement”) is dated _____, 2023 (the “Effective Date”). The parties to this Agreement are _____, an Arizona _____ (“Developer”) and **Rio Nuevo Multipurpose Facilities District**, a tax levying public improvement district (the “District”).

RECITALS

A. The District is a special taxing district of the State of Arizona (the “State”) that was formed by the City of Tucson, Arizona (the “City”) and the City of South Tucson, Arizona under the Stadium District Statutes that commence at A.R.S. §48-4201 *et seq.* A “District” formed under these statutes is defined as “... any county stadium district established pursuant to § 48-4202, subsection A, B or C.” §48-4201(3). The voters who authorized formation of the District authorized the District to receive an incremental portion of State-shared funds derived from transaction privilege taxes (i.e. sales tax called “TPT Funds”) collected from within the District’s boundaries all of which lie within the City.

B. Developer intends to build a mixed use project located at 2330-2360 E. Broadway Blvd., Tucson, Arizona, (the “Project”) as more particularly described in Section 2 below (the “Premises”). The Project and thus the Premises will also include an adjacent, vacant parcel that is currently or may later be owned by District, located at 150 S. Tucson Blvd.

C. The District desires that Developer cause the Project to be constructed and developed on the Premises to further the District’s purposes of enhancing Downtown Tucson and the District’s Primary Component (as defined in A.R.S. § 48-4201(4)(B)), the Tucson Convention Center. The Project on the Premises (as defined in Section 2 below) will: (i) provide a significant investment within the District; (ii) create new opportunities for employment in the District; (iii) enhance retail transaction (sales) tax collections in the District; and (iv) provide greater ability for the District to promote new development within the District boundaries. The value of constructing and operating the Project on the Premises will be analyzed through an economic and fiscal impact analysis to be ordered by the District and paid for by the Developer (the “Economic Analysis”).

D. The purpose of this Agreement is to set forth each party’s benefits and obligations pertaining to the construction and operation of the Project. This Agreement shall be binding upon its execution by authorized representatives of the District and Developer.

AGREEMENT

1. Incorporation and Representation. The foregoing Recitals are hereby incorporated into this Agreement by this reference as if set forth in full, and each of the parties represents that such Recitals are true and accurate to the best of each signatory's knowledge, information and belief.

2. The Premises. The legal description of the Premises is shown on Exhibit A attached hereto. The exact location of the Premises is shown in an ALTA/NSPS Survey the ("Survey") dated [_____].

3. Contingencies. This Agreement and the Project will be contingent upon: (i) the Developer committing to develop the Premises in substantial compliance with the "Sunshine Mile" Urban Overlay District ("SMD") as approved by the City of Tucson on September 14, 2021; (ii) the Developer committing to develop the Premises in a manner generally consistent with the Placemaking Vision for Solot Plaza prepared by Project for Public Spaces; (iii) the District receiving an Economic Analysis showing that the benefit to the public from the Project exceeds the value of any incentives given to the Developer by the District; (iv) the District approving the construction costs for the Project; (v) Developer complying with A.R.S. Title 34 procurement requirements to the extent necessary; (vi) Developer and District agreeing to a mutually satisfactory form of GP Lease (defined in Section 4 below).

4. Ownership and Lease of Premises.

a. Ownership. The District holds, or will hold, fee title to the Premises prior to Developer commencing any construction.

b. GP Lease. Within six months from the Effective Date, the parties will enter into a Triple Net Government Premises Lease Excise Tax (the "GP Lease") for a term of up to 25 years from the date specified in the GP Lease, or such other term as allowed by statute, to lease the Premises "AS-IS, WHERE-IS." Because of the governmental nature of the District, certain aspects of the GP Lease and this Agreement will be governed by A.R.S. §42-6201 *et seq.* and A.R.S. §48-4201 *et seq.* Pursuant to the GP Lease, Developer will be responsible to operate and manage the Project and to pay all expenses relating to the same. The GP Lease will contain an option in favor of Developer to purchase the Premises during the term of the GP Lease at a price to be determined as set forth in the GP Lease. If the option to purchase is not exercised during the term of the GP Lease, Developer will have an obligation to acquire title to the Premises the end of the GP Lease.

5. Obligations of Developer. Developer shall have the obligation to complete the following during the timelines set forth herein:

a. Governmental Approvals and Construction Contracts. Developer shall obtain all necessary governmental approvals to construct the Project, including but not limited to any zoning interpretations or rezoning the Premises if necessary, obtaining design approval of the Project, and obtaining all necessary permits for the construction of the Project within [twelve months] from the Effective Date. Developer shall also be responsible to obtain bids for the design and construction of the Project and shall enter into all necessary contracts for the same within one year from the Effective Date.

b. Due Diligence. Developer shall obtain an extended coverage commitment for title insurance in a form reasonably satisfactory to Developer and the District insuring each party's respective interests, as such interests may change from time to time. The Survey shall be updated to comply with the requirements of the title company. Developer shall also obtain a Phase I Environmental Assessment (and a Phase II if deemed necessary by the Phase I) for the portions of the Premises west of the eastern boundary of the Cherry Avenue right-of-way, certified to the District and to Developer in a form satisfactory to the District. Finally, Developer shall obtain any other studies or due diligence required by the City or reasonably requested by the District. All due diligence must be completed prior to Developer finalizing any construction financing.

c. Financing of the Project. Developer will obtain both construction and permanent financing for the Project. During the construction period, the financing may be secured by the Developer's leasehold interest in the Premises, subject to the District's approval which shall not be unreasonably withheld. Upon the Developer's exercise of its option to purchase the Premises from the District, such fee title shall be free and clear of all liens or encumbrances other than those set forth in the District's SWD as provided in Section 4 and the effective date of the GP Lease.

d. Construction of the Project. Developer shall present all stages of the plans and specifications for the Project to the District for the District's (or its agent's) reasonable review, input and approval. The District shall be responsible for the cost of such review. Upon receipt of the building permits required for the construction of the Project, Developer shall construct the Project in substantial conformance with the plans and specifications approved by the City and the District, and shall, subject to *force majeure* events, obtain a Certificate of Occupancy no later than [??] years from the Effective Date. During construction of the Project, if required by the lender, Developer shall employ a third-party inspector, at Developer's sole cost and expense, for the benefit of such lender and the District, whose role shall be to confirm that the Project is constructed in substantial conformance with the approved plans and specifications.

e. Successor or Assigns. Developer shall have the sole discretion and ability to transfer all rights and responsibilities associated with this Agreement to any entity for which it is at least a 50% owner. If any transfer of rights and/or responsibilities occurs pursuant to the first sentence of this paragraph, Developer shall notify the District within thirty (30) days prior to the transfer being effectuated. Any other transfer of rights and/or responsibilities to successor interests or assigns of Developer shall be subject to the prior written approval of the District, which shall not be unreasonably withheld.

f. Excise Tax Abatement. Developer acknowledges that the Premises are not eligible for an abatement of the excise tax due under the GP Lease, and that the excise tax rate on the land and improvements will be calculated in accordance with ARIZ.REV.STATUTES § 42-6203(C).

g. TPT Tax Rebate. Developer agrees that it will not seek a rebate of any portion of the TPT Funds collected by the District from Developer's operations on the Premises.

SIGNATURES ON FOLLOWING PAGE

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

[DEVELOPER]

By
[Name], [Title]

“Rio Nuevo”

Rio Nuevo Multipurpose Facilities District,
a tax levying public improvement district

By _____
Fletcher McCusker
Chairman of the Board

By _____
Edmund Marquez
Secretary of the Board

EXHIBIT A
[Legal Description]

Exhibit C-1

[Scope of Work]

Propose a viable plan for the financing and development of the Project Site to further the District's mission of facilitating and developing a vibrant downtown Tucson. The proposal must be subject to, and not conflict with the Intergovernmental Development Agreement between the District and the Regional Transportation Authority for Pima County ("RTA") attached as **Exhibit B**, and in compliance with the Sunshine Mile Urban Overlay District ("SMUOD"), the approved version of which is available on the City of Tucson's website, www.tucsonaz.gov.