



**REQUEST FOR STATEMENTS OF QUALIFICATIONS FROM
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT (“DISTRICT”) FOR
LEASE OR PURCHASE AND DEVELOPMENT OF PROPERTY LOCATED
AT BROADWAY BLVD. AND 6TH AVENUE**

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

SOLICITATION INFORMATION AND SELECTION SCHEDULE

District Solicitation Number:	RN2023-04-28	
District Solicitation Title:	REQUEST FOR STATEMENTS OF QUALIFICATIONS FROM DEVELOPERS TO LEASE OR PURCHASE AND DEVELOP PROPERTY LOCATED AT BROADWAY BLVD AND 6 TH AVENUE	
Release Date:	April 28, 2023	
Publication Dates:	May 2, 2023 and May 9, 2023	
Pre-Submittal Conference:	May 15, 2023 at Tucson Convention Center	
Final Date for Inquiries:	May 19, 2023	
SOQ Deadline	May 26, 2023	
Shortlist Announced for Oral Interviews (if any):	June 2, 2023	
Oral Interviews (if necessary):	TBD	
Target Award Date:	June 9, 2023 (depending on Interviews)	
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 and/or cancel the solicitation schedule as necessary.

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PART I. RFQ PROCESS; AWARD OF AGREEMENT

1. Purpose; Scope of Work. The Rio Nuevo Multipurpose Facilities District (the "District") is issuing this Request For Statements of Qualifications (this "RFQ") seeking statements of qualifications ("SOQs") from qualified firms ("Proposers") interested in the development of approximately 0.66 acres of District property located at Broadway Boulevard between Scott and 6th Avenues in downtown Tucson the "**Unimproved Parcel**"), together with the alley that abuts the northern boundary of the Unimproved Parcel (the "**Alley**") approximately 0.093 acres in size, as described in **Exhibit A** and depicted in the aerial photo **Exhibit B** hereto (the "Project Site"). The District seeks SOQs for the purchase or lease, and development, of the Project Site to further the District's mission to facilitate and participate in the development of a vibrant downtown Tucson.

1.1. Background.

(a) The District is a multipurpose facilities district formed pursuant to A.R.S. Sections 48-4201 et seq., located in the Tucson Metropolitan Area. The District is governed by a District Board of Directors currently consisting of a Chair and six members. The District's purpose is to own, develop and operate multipurpose facilities for the benefit of the public. While title to the Project Site is currently held by the County, the District has an option to "Ground Lease" the Project Site from the County ("Option Agreement"). The Ground Lease, in turn, includes an option to purchase the Project Site. A copy of the Option Agreement including the form of Ground Lease and Option to Purchase are attached to this RFQ as **Exhibit C**. The District reserves the right, at its absolute discretion, to not exercise its option to lease or purchase the Project Site.

(b) The project will involve negotiation of a "Development Agreement" between the District and the Developer whose SOQ is the most consistent with the District's intentions for the development at Project Site, in a form generally consistent with the Sample Development Agreement attached to this RFQ as **Exhibit D**. In the event that the District 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.

1.2. Purchase or Lease-Purchase Option. SOQs should contemplate the District's ability to enter into a Government Property Lease ("GPLET") of the Project Site for up to 25 years, or to sell the Project Site, on an "AS-IS, WHERE-IS" basis. In the appropriate circumstances, the rent due under any GPLET may be at nominal annual rates, provided that the successful Proposer has invested or committed to invest the funds necessary to develop and activate the Project Site. The GPLET would include an option to purchase the Project Site at any time during the term of the GPLET and a requirement that the lessee purchase the Project Site within twelve months following expiration of the GPLET.

1.3. Development Parameters. The District offers the Project Site for development in order to develop the area to improve the District, enhance the Project Site and the properties around it, and to encourage further development in the area ("Project"). This section details the desired project that will result from a successful Proposal and lists certain development criteria that must be addressed in Proposals. Elements of several District goals and policies are discussed below, and the Proposers should review these requirements carefully. It is the District's desire that the successful, qualified Proposer will develop, finance and construct a Project that:

A. Creates a mixed-use development project in downtown Tucson that capitalizes on its prominent urban location, consistent with the Conditions for Ground Lease as set forth in Exhibit B to the Option Agreement attached as **Exhibit C** to this RFQ. The Project Site is currently zoned OCR-2 under the City of Tucson Zoning Ordinance. Proposer will be responsible for compliance with any and all development-related requirements imposed by the City of Tucson, Arizona.

B. Provides an innovative, high quality design that is aesthetically and functionally compatible with surrounding development. The form and design should create functional and appropriate transitions to buildings and projects adjacent to the site. This includes creative solutions related to the parking requirements contained in the City's Zoning Ordinance. The Proposal may include retail, food and beverage, Class A professional and/or corporate office space, or any combination thereof.

C. Creates enhanced street-level amenities promoting walkability for pedestrians, and if applicable, with direct connections to adjacent bus and transit stops, pedestrian and bicycle paths.

D. Is initiated and completed within a reasonable time period acceptable to the District. It is the District's desire that the Project will be completed in the shortest timeframe possible. Each Proposal shall include a proposed date for commencement of construction, and a proposed date for completion of the Project. Proposals should outline strategies to mitigate any potential adverse impacts to the surrounding properties during the development stage of the Project.

E. Is supported by the community and adjacent neighborhoods. There are several neighborhood and community organizations and stakeholders in downtown Tucson interested in the development of the Project Site. A summary of community and stakeholder input should be provided in the Proposal.

1.1 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, "(RN2023-04-28) Development of 75 E. Broadway Blvd.", 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.

1.2 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.

1.3 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.

1.4 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

1.5 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.

1.6 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.

1.7 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.

1.8 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 D**.

1.9 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).

1.10 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 D.**

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 proposed scope of work.

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]

LEGAL DESCRIPTION
EXHIBIT "ONE"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA AND IS DESCRIBED AS FOLLOWS:

Parcel No. 1:

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the Southwest corner of the property heretofore conveyed by the Corporate Authorities of the City of Tucson, to Kirk L. Hart, by Deed bearing date of December 11, 1903 and recorded in Book 34 of Deeds, Page 822, records of Pima County, Arizona, said point being the present Northeast corner of Broadway and Scott Street;

Thence Easterly along the Southerly line of the property conveyed to Kirt L. Hart, said line being also the present North line of Broadway, a distance of 100.1 feet;

Thence Northerly to a point on the South line of that certain 15 foot strip of ground theretofore conveyed to the said City of Tucson, for alley purposes, by Deed bearing dated May 31, 1992 executed by Kirt L. Hart and recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona, which point is distant 100.5 feet Easterly from the East line of said Scott Street;

Thence Westerly along the South line of said 15 foot alley, a distance of 100.5 feet to the East line of Scott Street;

Thence Southerly along the East line of Scott Street, being along the West line of said Block, to the POINT OF BEGINNING.

Said property commonly known as Lots 3 and 5, Block 248, City of Tucson.

Parcel No. 2:

That portion of that certain unnumbered Block (sometimes referred to as Block 248), of the City of Tucson, Pima County, Arizona, according to the plat thereof, as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said City (then Village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, Page 70, thereof, described as follows:

COMMENCING at the intersection of the West line of 6th Avenue with the North line of Broadway;

Thence North, along the West line of 6th Avenue and the East line of said Block 248, a distance of 114.4 feet, more or less, to a point on the South line of that certain 15 foot alley, conveyed to the City of Tucson by Deed

EXHIBIT "ONE"

(Continued)

recorded in Book 34 of Deeds, Page 15, records of Pima County, Arizona;

Thence Westerly, along the South line of said alley, a distance of 170.7 feet, more or less, to a point thereon distant 100.5 feet from the East line of Scott Street;

Thence South to a point on the North line of Broadway, distant thereon 100.1 feet from the Northeast corner of Scott Street and Broadway;

Thence Easterly, along the South line of Broadway, a distance of 166.63 feet, more or less, to the POINT OF BEGINNING.

Said property commonly known as Lot 4, Block 248, City of Tucson.

Exhibit B

[Aerial Photo of Project Site]

Exhibit A, Cont.
Location of Broadway Property

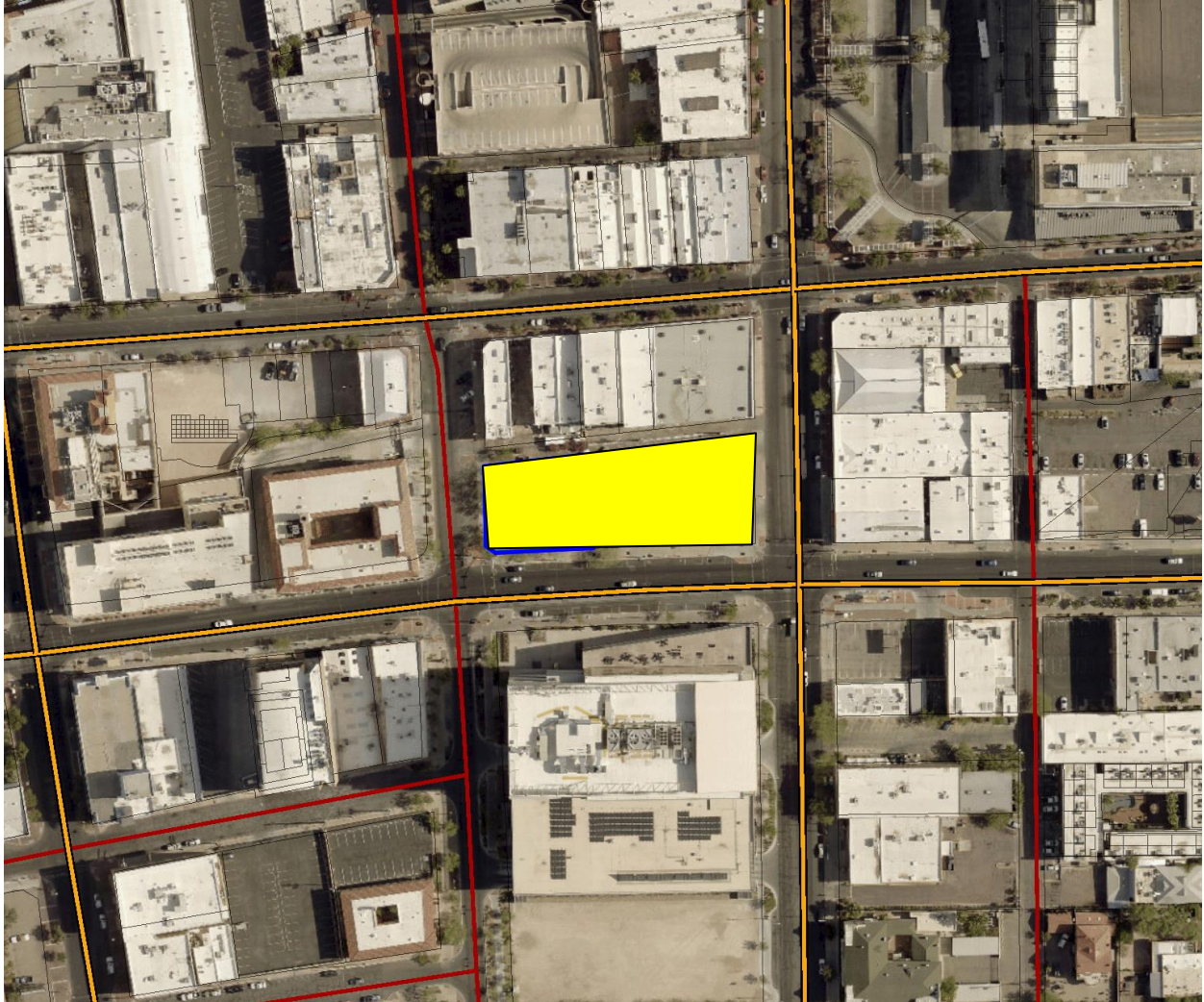


Exhibit C

[Option Agreement]

OPTION AGREEMENT

[Broadway Property]

This Ground Lease Option Agreement (“**Agreement**”) is entered into, effective as of April 4, 2023 (the “**Effective Date**”), by and between Pima County, a political subdivision of the State of Arizona (“**County**”) and **Rio Nuevo Multipurpose Facilities District**, a special taxing district of the State of Arizona (“**Rio Nuevo**”).

1. Background and Purpose.

- 1.1. Rio Nuevo, as a multipurpose facilities district formed under 48-4202(B), has the authority to acquire property and construct, within the Rio Nuevo multipurpose facility site, commercial facilities that its board determines are necessary or beneficial to District (A.R.S. §§ 48-4201(4) and 48-4204(B)), and may issue revenue bonds for that purpose (A.R.S. §§ 48-4203(B)(3) and 48-4251). It may also “[e]nter into agreements with developers, contractors, tenants and other users of all or part of” such a facility. A.R.S. § 48-4203(A)(2).
- 1.2. County owns an unimproved parcel of real property approximately 0.66 acres in size, which is located on the north side of Broadway Boulevard between 6th and Scott Avenue at 75 E. Broadway Boulevard in downtown Tucson, Arizona (“**Unimproved Parcel**”). County also acquired from the City of Tucson the alley that abuts the northern boundary of the Unimproved Parcel (“**Alley**”), approximately .093 acres in size. The Unimproved Parcel and the Alley (collectively the “**Premises**”, “**Leased Property**”, or “**Project Property**”) lie within the Rio Nuevo Multipurpose Facilities boundary. The Premises is legally described and more particularly depicted on **Exhibit A**.
- 1.3. The Pima County Board of Supervisors (the “**Board**”) has authority under A.R.S. § 11-254.04 to engage in any “activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of County,” including specifically the “acquisition, improvement, leasing or conveyance of real or personal property.”
- 1.4. District and County previously executed a Ground Lease Option Agreement dated December 13, 2016 (the “**Previous Option Agreement**”) and a Lease Agreement (the “**Previous Lease Agreement**”) dated January 8, 2019, relating to the Premises. Pursuant to the Previous Lease Agreement, District issued a Request for Proposal seeking proposals for the development of the Premises, but District was not successful in selecting a developer to commence the development process.
- 1.5. The parties are revisiting the terms of both the Previous Option Agreement and the Previous Lease Agreement by entering into this new Agreement. This Agreement is effective as of the date this Agreement is signed by both parties (“**Effective Date**”).
- 1.6. County is interested in leasing the Property to Rio Nuevo for development and sublease to companies whose presence will create economic development opportunities for the community.

2. Definitions.

- 1.1. “**Ground Lease**” means the lease for the Property that County and Rio Nuevo will enter into upon Rio Nuevo’s exercise of the Option, the material terms of which will be as set forth in **Exhibit B**.

The Ground Lease will be in a form substantially consistent with the terms of the attached **Exhibit C**.

- 1.2. **“Option”** means Rio Nuevo’s option to lease the Property from County, as provided below.
- 1.3. **“Option Term”** means a 3-year period commencing on the Effective Date.
2. **“Rent Amount”** means the fair-market annual rent for the Ground Lease as established under Section 4 below.
3. **Grant of Option.** For and in consideration of the sum of Ten Thousand Dollars and no cents (\$10,000.00), the receipt and sufficiency of which are acknowledged and in consideration of the mutual covenants, promises and agreements contained herein, County hereby grants Rio Nuevo an exclusive option to lease the Property from County, as provided in this Agreement.
 - 3.1. **Exercise of Option.** Rio Nuevo may exercise this Option at any time prior to the expiration of the Option Term by providing County written notice (the **“Option Notice”**) of its election to do so. The Option Notice must include information about the improvements that Rio Nuevo plans to build, and the proposed tenant(s) for the improvements.
 - 3.2. **Approval by Board.** County will not be obligated to enter into the Ground Lease unless and until the Board takes formal action at a public meeting approving the Option Notice and the Rent Amount. If any of the information provided in the Option Notice is confidential, Rio Nuevo must so indicate; in that event, the Board will be provided details about the Option Notice in executive session as permitted by A.R.S. § 38-431.03(A)(7). Rio Nuevo acknowledges that County is granting this Option for economic development purposes and that the Board is under no obligation to approve the proposed Ground Lease unless it determines that the Ground Lease will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of County. County will give preference to a proposal that includes a sublease to one or more new or expanding high wage companies whose industry is aligned with the regional economic development efforts of County.
 - 3.3. **Revocation of Option.** Rio Nuevo may withdraw its Option Notice and elect not to enter into the Ground Lease at any time before the Ground Lease is executed by County.
4. **Establishing the Rent Amount.** Base Rent for the first lease year of the Term shall be the fair market value for the Leased Property at the time of exercise, as determined by an appraisal prepared by a third-party appraiser of County’s selection. Base Rent for each subsequent lease year of a Renewal Term shall automatically increase by Two and 50/100ths percent (2.50%) upon the anniversary of the Effective Date.
5. **Final Ground Lease.** After the Rental Amount is established as provided above, and the Board has approved the proposal, the parties will negotiate diligently to agree upon the final form of the Ground Lease.
6. **Use of Property during Option Term.** County will not, during the Option Term, without Rio Nuevo’s prior written consent, make any substantial changes to the physical condition of the Property, and will continue to use the Property in the same way it was being used as of the Effective Date.
7. **Assignment; Successors.** All the terms, provisions, and conditions of this Agreement are binding upon and inure to the benefit of the heirs, successors and assigns of the respective parties.

8. **Notices.** Any notices required or permitted to be given under the terms of this Agreement, or by law, must be in writing and may be given by personal delivery or certified mail (return receipt requested), directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

County: Pima County Administrator
130 W. Congress, 10th Floor
Tucson, AZ 85701

with copies to: Pima County Economic Development Director
201 N. Stone Ave., 2nd Floor
Tucson, Arizona 85701

Pima County Attorney's Office
Attn: Chief Civil Deputy Attorney
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701

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

with a copy to: Mark Collins, Esq.,
Gust Rosenfeld P.L.C.
One South Church Avenue, Suite 1900
Tucson, Arizona 85701

Any notice given will be effective when received, or if given by certified mail, then 72 hours after the deposit of such notice in the United States mail with postage prepaid.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona.
10. **Default.** If either party fails or refuses to carry out any provision hereof, the other party will be entitled to such remedy or remedies for breach of contract as may be available under applicable law, including without limitation the remedy of specific performance, if such other party has fully performed all its obligations hereunder. Time is of the essence hereof.
11. **County's Warranty.** County warrants that it has fee title to the Property as of the Effective Date, and that execution of this Agreement has been duly authorized by the Pima County Board of Supervisors.
12. **Modification.** This Agreement may not be modified except by a written agreement executed by all parties.
13. **Jurisdiction and Venue.** This Agreement must be construed in accordance with Arizona law. Jurisdiction for any dispute or claim raised under this Agreement or proceeding brought to interpret the Agreement will lie solely in the State of Arizona, with venue in Pima County.
14. **Recording.** Upon the execution of this Agreement Buyer and Seller will execute a Memorandum of Option Agreement and record it in the Pima County Recorder's Office.

15. **Further Assurances.** Each party agrees in good faith to take, or cause to be taken, any reasonable actions that are necessary to ensure that both parties' rights and interests in and under this Agreement are valid and enforceable.
16. **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.
17. **Entire Agreement.** This Agreement, together with the Lease and documents related to the Lease, sets forth the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date first set forth above.

RIO NUEVO

By: _____
Fletcher McCusker
Chair of the Board of Directors

Date: _____

By: _____
Edmund Marquez
Secretary of the Board of Directors

Date: _____

PIMA COUNTY


By: _____
Adelita Grijalva
Chair of the Board of Supervisors

Date: _____

ATTEST:

Melissa Manriquez
Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:


Heath Vescovi-Chiordi
Economic Development Director

APPROVED AS TO FORM:



Bobby Yu
Deputy County Attorney

EXHIBIT A
LEGAL DESCRIPTION AND DIAGRAM OF PROPERTY
[Broadway Property]

of Deeds at Page 822, records of said County, said point being the present Northeast corner of Broadway and Scott Street;

THENCE Easterly along the Southerly line of the property so conveyed to Kirt L. Hart, said line being also the present North line of Broadway, a distance of 100.1 feet to a point;

THENCE Northerly to a point on the South line of that certain 15 feet strip of ground theretofore conveyed to the said City of Tucson, for alley purposes, by Deed bearing dated May 31, 1902 executed by Kirt L. Hart and recorded in Book 34 of Deeds at Page 15, records of said County, which point is distant 100.5 feet Easterly from the East line of said Scott Street;

THENCE Westerly along the South line of said 15 foot alley, a distance of 100.5 feet to the East line of Scott Street;

THENCE Southerly along the East line of Scott Street, being along the West line of said Block, to the Point of Beginning.

Said property commonly known as Lot 3 and 5 of Block 248, City of Tucson.

Parcel No. 4:

That portion of that certain unnumbered Block (sometimes referred to as Block 248) of the CITY OF TUCSON, Pima County, Arizona according to the plat thereof, as made and executed by S.W. Forman and approved and adopted by Mayor and Common Council of said City (then village) of Tucson, on June 26, 1872, which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats, at Page 70 thereof, described as follows:

BEGINNING at the intersection of the West line of 6th Avenue with the North line of Broadway;

THENCE North, along the West line of 6th Avenue and the East line of said Block 248 of a distance of 114.4 feet, more or less to a point on the South line of that certain 15 foot alley, conveyed to the City of Tucson by Deed recorded in Book 34 of Deeds at Page 15;

THENCE Westerly, along the South line of said alley, a distance of 170.7 feet, more or less, to a point thereon distant 100.5 feet from the East line of Scott Street;

THENCE South to a point on the North line of Broadway, distant thereon 100.1 feet from the Northeast corner of Scott Street and Broadway;

THENCE Easterly, along the South line of Broadway, a distance of 166.63 feet, more or less, to the Point of Beginning.

Said property is also commonly known as Lot 4 in Block 248 of the City of Tucson.

(jv arb 804)

Exhibit A, Cont.
Location of Broadway Property

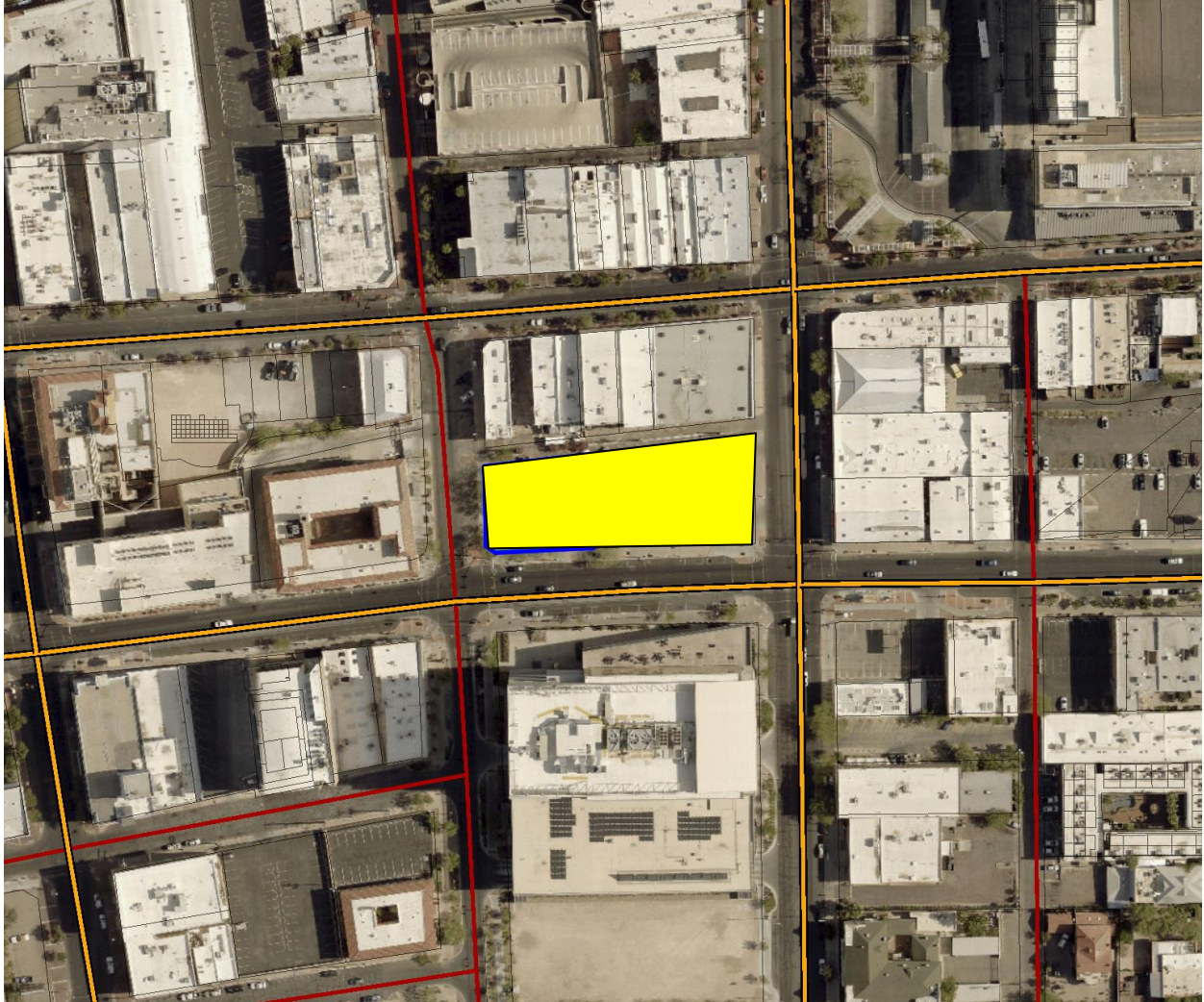


EXHIBIT B
CONDITIONS FOR GROUND LEASE
[BROADWAY PROPERTY]

The Ground Lease between the parties will reflect the following terms and conditions:

1. Upon acceptance of the Option Notice and Rental Amount by the Board, and after Rio Nuevo completes the Request for Proposal (“**RFP**”) process, Rio Nuevo shall be obligated to improve the Property by constructing any appropriate combination of mixed use retail, commercial, hospitality, residential, and/or and Class A office space at least eight stories in height driven by market conditions (the “**Building**”), together with appropriate common elements and landscaping (all together, the “**Project**”). The Project may, but is not required to, include an underground parking garage with 350 parking spots.
2. Site development plans, including exterior architectural design, are subject to review and approval by County. Approval will not be unreasonably withheld by County.
3. Rio Nuevo must contract for the construction of the Project within 18 months of the effective date of the Ground Lease and must complete the Project within 18 months after construction commences.
4. Pima County will provide building permitting and plan review services and inspections.
5. Rio Nuevo will pay rent in the Rental Amount and commence payment of rent upon execution of the Ground Lease.
6. The initial term of the Ground Lease shall be five years, with four successive renewal terms of five years each, conditioned on Rio Nuevo (or its tenant) making improvements to the Building to keep it up-to-date.
7. Rio Nuevo will be responsible for insuring, maintaining, repairing, and operating the Project.
8. Title to the improvements comprising the Building and the Project shall be held by Rio Nuevo throughout the initial term of the Ground Lease, and any subsequent renewal(s). Title to the improvements will become County’s when the Ground Lease ends.
9. The average wages plus benefits paid by tenants of the Building must meet or exceed 175 percent of the median regional wage within Pima County.
10. County will consent to Rio Nuevo’s grant of a security interest in its leasehold interest as part of its financing of the Project.

EXHIBIT C

FORM OF GROUND LEASE AND OPTION AGREEMENT

THIS GROUND LEASE AND OPTION AGREEMENT (this “**Lease**”) is entered into by and between **PIMA COUNTY**, a political subdivision of the State of Arizona (“**County**”), and **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, a special taxing district of the State of Arizona (“**Tenant**” or “**District**”).

RECITALS

A. County owns an unimproved parcel of real property approximately 0.66 acres in size, which is located on the north side of Broadway Boulevard between 6th and Scott Avenue at 75 E. Broadway Boulevard in downtown Tucson, Arizona (“**Unimproved Parcel**”). County also acquired from the City of Tucson the alley that abuts the northern boundary of the Unimproved Parcel (“**Alley**”). The Unimproved Parcel and the Alley (collectively the “**Premises**”, “**Leased Property**”, or “**Project Property**”) lie within the Rio Nuevo Multipurpose Facilities boundary. The Premises is legally described and more particularly depicted on **Exhibit A**.

B. District has the authority to acquire property within the Rio Nuevo Multipurpose Facilities boundary and construct commercial facilities that its board determines are necessary or beneficial to District (A.R.S. §§ 48-4201(4)(b) and 48-4204(B)) and may issue revenue bonds for that purpose (A.R.S. §§ 48-4203(B)(3) and 48-4251). It may also “[e]nter into agreements with developers, contractors, tenants and other users of all or part of” such a facility. A.R.S. § 48-4203(B)(2).

C. The Pima County Board of Supervisors (the “**Board**”) has authority under A.R.S. § 11-254.04 to engage in any “activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of County,” including specifically the “acquisition, improvement, leasing or conveyance of real or personal property,” without following the auction process in A.R.S. § 11-256. The Board has determined that District’s operations, and hence this Lease, will have a significant positive impact on the economic welfare of Pima County, Arizona’s inhabitants in retaining high-paying jobs well above minimum wage within Pima County, based on District’s anticipated employment and salary levels for the Project as stated in Section 14.5.

D. District and County previously executed a Ground Lease Option Agreement dated December 13, 2016, and a Lease Agreement dated January 8, 2019 (the “**Previous Lease Agreement**”) relating to the Premises. Pursuant to the Previous Lease Agreement, District issued a Request for Proposal seeking proposals for the development of the Premises, but District was not successful in selecting a developer to commence the development process.

E. District and County executed a newer Ground Lease Option Agreement dated April 4, 2023 (the “**Option Agreement**”) pursuant to which County granted to District an exclusive option (the “**Option**”) to lease the Premises in accordance with the terms and conditions of the Option Agreement. This Lease is intended to replace, in its entirety, the Previous Lease Agreement, as of the date this Lease is signed by both parties (“**Effective Date**”).

F. In _____, District issued a Request for Proposal (“**RFP**”) seeking proposals for the development of the Premises. District’s RFP evaluation committee selected the proposal from a team headed by _____ as the highest ranked proposal. Subsequently _____ and District executed a “Development Agreement” pursuant to which District agreed to perform the archaeological/cultural investigation and

mitigation on the Premises required by BOS Policy C 3.17 (“**Archaeology Study**”). District retained _____ to perform the Archaeology Study. When _____’s site work on the Premises has been completed, District will file an “End of Fieldwork Report” with County’s Office of Sustainability and Conservation (“OSC”).

G. District has exercised the Option, and the Parties, as provided in the Option Agreement, have agreed on the Rent Amount.

H. District intends to improve the Premises by entering into a sublease and related agreements (“**Sublease**”) with _____ or a related entity (“**Developer**”), to construct on the Property any appropriate combination of mixed use retail, commercial, hospitality, residential, and/or Class A office space at least eight stories, and up to 21 floors, in height driven by market conditions together with appropriate common elements and landscaping; and may include an underground parking garage with 350 parking spots (all collectively the “**Project**”).

I. The scope and the details of the Project will be set forth in the Sublease, which will be substantially in the form attached hereto as **Exhibit B**.

J. District has determined that the Project is a related commercial facility located within the Rio Nuevo Multipurpose Facilities boundary, that District’s primary component is near the Project and will benefit from the Project, and that District will benefit from the tax revenues to be generated by the Project.

K. The Parties desire that County: (i) lease the Premises to District and (ii) upon Substantial Completion of the Project (as defined below) sell improved Premises to District all upon the terms and conditions of this Lease. The Board has determined that the Option Notice and this Lease comply with all material requirements of the Option Agreement.

L. Based on the foregoing, among other things, County is willing to lease to District the Leased Property, all upon and subject to the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Tenant covenant and agree as follows:

1. **Basic Lease Information; Certain Definitions.** Each reference in this Lease to the information and definitions contained in this Section 1, including, without limitation, each use of the terms capitalized and defined in this Section 1, shall refer to and have the following meanings:

1.1. **Base Rent:**

Tenant is not obligated to pay rent for the use of the Premises from the Agreement Date through the date of Project Commencement. Tenant, or Tenant through Developer or a sublessee, will pay the following Base Rent after the date of Project Commencement for the Premises during the Primary Term as shown below, which is based on 90% of the fair market rent as determined by the most recent third-party appraisal:

Premises – 75 E. Broadway Boulevard			
Lease Year	Per SF/ Market Rent/	Annual Rent Based on 90% of Market Rent	Rent Payable Monthly

	___% Annual Increases		
1			
2			
3			
4			
5			

The Base Rent for the first year of a Renewal Term, which has the meaning set forth in Section 3.2, for the Premises will be the fair market rent as determined by a third-party appraiser, and such rental rate shall increase by ___% per annum during the remainder of such Renewal Term.

1.2. **Calendar Year:** a successive 12-month period beginning January 1st and ending December 31st.

1.3. **Common Areas:** has the meaning of Premises as defined in Section 1.9 of this Lease.

1.4. **FTE Employees:** full-time equivalent employees determined in accordance with 26 C.F.R. 54.4980H-3.

1.5. **Hazardous Materials:** include, without limitation: (a) Those substances included within the definitions of “hazardous substances”, “hazardous materials,” toxic substances,” or “solid waste” in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended by Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, and the Hazardous Materials Transportation Act, and in the regulations promulgated pursuant to said laws, all as amended; (b) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (of any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (c) any material, waste or substance which is, or contains materials or substances which are, (i) defined as a “hazardous waste” under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyls, (v) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section of the Clean Water Act (33 U.S.C. § 1317); (vi) flammable or explosive, (vii) radioactive materials, or (viii) toxic, corrosive, infectious, carcinogenic or mutagenic; (ix) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), (x) defined as a “regulated substance” pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 et. seq.; (d) the air pollutants regulating under the Clean Air Act (42 U.S.C. § 7401 et seq.) and Arizona Revised Statutes, Title 49, Chapter 3, and (e) such other substances, materials, and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

1.6. **Lease Year:** a period of 12 consecutive months. The first Lease Year commences on the Effective Date and expires on the last day of 12th full calendar month thereafter. Subsequent Lease Years begin on the first day following the end of the previous Lease Year.

1.7. **Permitted Name:** Rio Nuevo Multipurpose Facilities District

1.8. **Permitted Use:** Tenant shall use and operate the Premises under the Permitted Name exclusively for operations directly linked to primary employment focused around residential, retail, commercial, hospitality, and office centered around employment priorities of Pima County____, and any other uses reasonably related thereto, provided that all applicable laws and regulations regarding such uses (including zoning), and the storage and use of such materials, are followed. Tenant shall use and operate the Premises under the Permitted Name exclusively for _____. Subject to County's consent, Tenant and Developer shall have the right to invite customers and suppliers to establish facilities on the Leased Property. Tenant and Developer must obtain and maintain all required permits and certifications for its operations at the Premises.

1.9. **Premises:** The Leased Property and all appurtenances thereto, and all Improvements now or hereafter constructed or located on or about the Leased Property, to include the buildings and certain interior and exterior areas for the common use of all occupants of the buildings, including (but not limited to) streets, sidewalks, canopies, driveways, loading platforms, entryways, lobbies, stairways, elevators, hallways, washrooms, shelters, ramps, landscaped areas and related common areas.

1.10. **Primary Term:** The period commencing on the Effective Date and, unless earlier terminated as provided herein, ends on the Closing Date.

1.11. **Prime Rate:** The prime rate of interest published in the Wall Street Journal or, if the Wall Street Journal no longer publishes a prime rate, then a rate established by a financial institution or financial publication designated by County.

1.12. **Project Commencement.** The date upon which labor is first provided or equipment or materials are first furnished to the Premises after issuance of the first building permit shall be deemed the "Project Commencement" date. The Chair of District, and County Administrator, will execute a short supplement to this Lease establishing the date of Project Commencement.

2. **Demise.** County currently operates the Unimproved Parcel as a parking lot with short term leases for parking. County shall terminate all leases affecting the Unimproved Parcel and deliver possession of the Unimproved Parcel to District no later than _____. Thereafter County acknowledges and agrees that District, by paying the Rent and performing the other terms and conditions of this Agreement, may peaceably hold and enjoy the Premises without any interruption by County or any person lawfully claiming by, through or under County, during the Term, except that County may enter upon and inspect the Premises by providing District with written notice of its intent to do so not less than 24 hours in advance.

3. **Term.** For purposes of this Lease, "**Term**" shall mean and refer to the Primary Term. The Primary Term of this Lease will be for the period specified in Section 1.11. The Primary Term will commence on the Effective Date. All the terms and provisions of this Lease shall apply to Tenant during the Primary Term.

4. **Rent.**

4.1. **Base Rent.** Tenant will pay Rent in advance, in equal monthly installments of 1/12 the annual Rent amount, on or before the Effective Date and the first day of each month thereafter during the Term, except that the first month's Rent will be reduced by any rent that Tenant has already paid for any portion of that month. Rent must be delivered to Pima County Government, Finance-Revenue Management Division, 33 N. Stone Ave., 6th Floor, Mail Stop DT-BAB6-404, Tucson, Arizona 85701. To the extent the Effective Date is other than the first day of a calendar month, Tenant shall also pay to County upon execution of this Lease, a prorated share of Base Rent for the month in which the Effective Date occurs. Commencing on the first day of the month following the Effective Date Tenant shall pay a Base Rent,

which shall be the amount specified as Base Rent in Section 1.1 above, to County in lawful money of the United States, without any prior notice or demand and without any offset or deduction whatsoever, in advance on the first day of each calendar month during the Term of this Lease.

4.2. Additional Rent. Throughout the Term of this Lease, Tenant, or the Developer pursuant to the Sublease, shall pay in advance monthly, without demand, the following costs and expenses incurred in connection with the Leased Property first accruing from and after the Effective Date: (a) Real Estate Taxes as defined in Section 7.1; (b) Property Insurance, and (c) Utilities.

4.3. Amount of Additional Rent.

4.3.1. On the first day of January of each Calendar Year during the Term, or as soon thereafter as practicable, County will furnish Tenant with County's estimate of each cost item of Additional Rent referenced in Section 4.2 for the forthcoming Calendar Year. On the first day of each month during such Calendar Year, Tenant shall pay one-twelfth (1/12th) of each such estimated cost. If for any reason County has not provided Tenant with County's estimate of all such costs on or before the first day of January of any Calendar Year during the Term, then until the first day of the calendar month following the month in which Tenant is given County's estimate of each applicable cost, Tenant shall continue to pay to County on the first day of each calendar month the monthly sum payable by Tenant for the month of December of the preceding Calendar Year. The foregoing notwithstanding, County shall have the right from time to time during any Calendar Year, but not more frequently than once in any Calendar Year, to notify Tenant in writing of any change in County's estimate of each cost for the then current Calendar Year, in which event Tenant's Proportionate Share of each cost, as previously estimated, shall be adjusted to reflect the amount shown in such notice and shall be effective, and due from Tenant, on the first day of each month following County's giving of such notice.

4.3.2. On the first day of March of each Calendar Year during the Term or as soon thereafter as reasonably practical, County will furnish to Tenant a statement of the actual costs for the preceding Calendar Year. Within thirty days after the delivery of that statement, Tenant shall make a lump sum payment equal to the amount, if any, by which each actual cost exceeds the amount, if any, Tenant paid towards each estimated cost. If each actual cost is less than the amount Tenant paid toward each estimate cost, County shall apply such amount to the next accruing installment(s) of Rent due hereunder (or, if the Term has expired, refund the money to Tenant within thirty days). The effect of this Section is that Tenant will pay during each Calendar Year during the Term all actual costs for Real Estate Taxes and Property Insurance (said items are hereinafter sometimes collectively referred to as the "**Tenant's Share of Costs**").

4.4. Additional Rent. In addition to Base Rent, all other sums of any type or kind required to be paid by Tenant to County under this Lease will be deemed to be "**Additional Rent**", whether designated as such. The term "**Rent**" as used in this Lease, unless otherwise specified, shall refer collectively to Base Rent and Additional Rent, except for the taxes described in the immediately following sentence. Tenant shall pay to County, in addition to the Rent as provided in this Lease, all privilege, sales, excise, rental and other taxes (except income taxes) imposed now or hereafter imposed by any governmental authority upon the Rent to be paid by Tenant to County. Said payment shall be in addition to and accompanying each monthly or other payment of Rent made by Tenant to County. Rent for any period during the Term which is for less than one month shall be a pro-rata portion of the monthly installment. Rent shall be paid without deduction, offset, prior notice or demand to County at the address stated in Section 15 below or to such other persons or at such other places as County may designate in writing. All Rent shall be paid in lawful money of the United States of America. County's acceptance of any Rent payment that is for less than the entire amount then due shall be only as an acceptance on account and shall not constitute an accord and

satisfaction or a waiver by County of the balance of the Rent due or a waiver of any of the remedies available to County by reason of Tenant's continuing default under this Lease.

4.5. Net Lease. County and Tenant intend that this Lease be a net lease, that County shall receive Base Rent, Tenant's Share of Costs and Additional Rent as net income, and that County is not intending to provide any services other than those specifically set forth in this Lease. Tenant is solely responsible for all capital, operating, maintenance, and replacement costs, and any other costs and expenses that result from Tenant's development and use of the Premises, including, but not limited to, the construction of the Project.

4.6. Interest and Late Charges; Default Rate. If Tenant fails to pay within three days after the date when due, and such failure continues for more than two business days following written notice from County, any installment of Rent, any and all such unpaid amounts shall bear interest at a rate of interest equal to the greater of (i) ten percent (10%) per annum; or (ii) five percent (5%) over the Prime Rate (the higher rate being referred to as the "**Default Rate**") beginning on the due date, until paid. In addition, Tenant also agrees to immediately pay County Two Hundred Fifty Dollars (\$250) or two percent (2%) of the unpaid portion of Rent installment, whichever is the greater (the "**Late Charge**") on the amount which was not paid within three days after the date when due where such failure continues for more than two business days following written notice from County. Acceptance by County of the Late Charge shall not constitute a waiver of any rights or remedies of County, but merely a reimbursement for a portion of County's administrative fees for Tenant's failure to pay amounts when due hereunder. In no event shall the Default Rate exceed the maximum rate of interest permitted under Arizona law for commercial loans.

5. **Delivery of Property; Construction of Improvements.**

5.1. AS-IS Delivery. County shall deliver the Leased Property to Tenant in "AS-IS", "WHERE-IS" condition on the Effective Date. County makes no representations, warranties, or covenants with respect to the condition of the soil or subsoil or any other condition of the Leased Property. Except for the completion of the Archaeology Study, Tenant has performed its due diligence review of the Premises and accepts possession of the Premises in its "AS IS" condition on the date of Project Commencement (as defined below), and except for those representations and warranties of County contained in this Agreement, without representation or warranty of any kind, express or implied, including, without limitation, any warranty of income potential, future operating expenses or uses or fitness for a particular purpose. District expressly acknowledges and agrees that County has not made and is not making, and District is not relying upon, any warranties or representations regarding the Premises or the Project, except as expressly set forth in this Agreement.

5.2. Archaeology Clearance. Tenant shall require and is responsible for ___ (i) completing its "Fieldwork Portion" of the Archaeology Study and (ii) submitting its End of Fieldwork Report to OSC on or before _____. County's OSC shall complete its processing of the End of Fieldwork Report within 21 business days of its submittal by ___ and notify Tenant and Developer of its acceptance of the report or, if not accepted, what additional items or questions need to be addressed. As of the date that OSC notifies Tenant and Developer that it has accepted the End of Fieldwork Report ("**Archaeological Clearance Date**"). Tenant's due diligence inspection of the Premises shall be complete.

5.3. Modifications. Tenant will make no modifications to the Premises without County's prior written approval, which will not be unreasonably withheld.

5.4. Construction of Improvements by Tenant. With prior written approval from County, Tenant may, at its sole cost and expense, provide and cause to be performed all work of whatever nature is necessary on the Premises for business for the Permitted Use (collectively, "**Tenant's Work**"), if necessary.

Tenant's Work, if any, shall be completed pursuant to and in accordance with the terms and conditions of the work letter agreement attached hereto as **Exhibit D** (the "**Work Letter**"). Tenant's construction of any improvements on the Leased Property are to be in strict accordance with plans and specifications and require County's prior written approval. Tenant shall obtain all permits prior to commencing construction. All construction work shall be performed by a licensed and bonded general contractor in good standing with the Arizona Registrar of Contractors, and Tenant shall ensure lien-free completion of all improvements.

5.5. Construction Indemnity. Tenant agrees to indemnify, defend, and hold harmless County for, from and against all loss, costs, damage, expenses, claim or liability, including without limitation, claims from mechanic's liens, arising from the actions or omissions of Tenant, its agents, servants, contractors, and employees on or about the Project Property in connection with construction of any improvements.

6. **The Project.**

6.1. Construction.

6.1.1. Developer will design and construct the Project in accordance with the Sublease and this Section 6.

6.1.2. The Project will be constructed in accordance with the approved Final Plans (as provided below) and all local development and building codes, and in compliance with Title 34 of the Arizona Revised Statutes, to the extent applicable. The Building must be designed and constructed using the U.S. Green Building Council's LEED Silver standard as a design guideline, but District is not required to obtain LEED certification.

6.1.3. County will issue all building permits and conduct all inspections of the Project.

6.2. Project Commencement. Developer will cause Project Commencement to occur no later than 12 months after the Archaeological Clearance Date ("**Commencement Deadline**"). Nevertheless, construction will not commence until each of the following has occurred:

6.2.1. Plan Approvals. County has issued the first building permit for the Project.

6.2.2. Sublease. The Sublease and has been executed and a copy delivered to County.

6.2.3. Insurance. District furnishes County with proof that District or Developer has obtained the liability and worker's compensation insurance required in this Lease.

6.2.4. Builder's Risk Insurance. District furnishes County with proof that District, or Developer, has obtained "all risks" builder's risk insurance including vandalism and malicious mischief, in broad form and with a company reasonably acceptable to County, covering improvements in place and all material and equipment at the job site furnished under the Contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits of at least the full cost of the Project per loss single limit for all work at the job site. District or Developer must maintain this insurance in effect until the Project is complete and a permanent Certificate of Occupancy has been issued for the Project.

6.2.5. Payment and Performance Bonds. District or Developer delivers to County payment

and performance bonds meeting the requirements of Title 34, issued by a surety company licensed to do business in the State of Arizona, running to County and District as obligees, conditioned on the completion of the Project in accordance with the Final Plans and the provisions of this Lease, free and clear of all mechanics' liens and other liens.

- 6.3. Plans and Specifications. Developer must obtain County's approval of plans and specifications for the Project. County will not unreasonably withhold, condition, or delay its approval of plans and specifications, will communicate its approval or disapproval in writing, and will explain the grounds for any disapproval. If County disapproves of submitted plans and specifications, District or Developer will submit revised plans and specifications addressing County's concerns. County's Development Services Department will conduct the review and give approvals and disapprovals on behalf of County.

6.3.1. Preliminary Plans. Developer will submit three full hard-copy sets, and an electronic (Autocad) set of preliminary construction plans and specifications for the Project (the "Preliminary Plans") no later than 4 months after the Archaeological Clearance Date. All plans must be prepared by an architect or engineer licensed to practice in Arizona, and must include preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping. The Preliminary Plans must be sufficiently clear and detailed for County make an informed judgment about the design and quality of the core and shell of the Project, and about the impact of the Project on adjacent and nearby properties.

6.3.2. Final Plans. No later than three months after County's approval of the Preliminary Plans, Developer will prepare and deliver to County three full hard copy sets and one electronic (Autocad) set of final plans and specifications ("Final Plans") substantially conforming to the preliminary plans previously approved by County. Any subsequent modification of the Final Plans must be submitted for County review and approval.

6.3.3. Amended Plans. If, at any time after the submission of the Preliminary Plans Developer desires to increase the square footage of the Office Component, Developer shall submit amended plans to County detailing the changes in the Office Component ("Amended Plans"). Such Amended Plans will address the impact that the additional office space will have on the Parking Component and if additional parking is required, the details of the expanded Parking Component shall be included in the Amended Plans.

- 6.4. Cost of the Project. All costs, expenses and charges incurred in the construction of the Project will be addressed and allocated in the Sublease. District will defend, hold County harmless and indemnify it from all such costs, expenses, and charges, including attorneys' fees relating thereto, and will require Developer to provide such indemnity to County.

- 6.5. County Inspection. Representatives of County's Development Services Department will inspect and approve the Project at appropriate stages as it is being constructed, and District and Developer will provide them reasonable access to the work for that purpose.

- 6.6. Substantial Completion. Construction of the Project must be substantially completed within 26 months after Project Commencement, subject to delays occasioned by an "Excuse for Non-Performance" as defined by Section 20. If it is not substantially completed in a timely manner,

County may cancel this Lease by written notice to District, subject to a period of 30 days during which District may cure the failure to substantially complete the Project. "Substantial Completion" of the Project will be deemed to have occurred upon issuance of a temporary or final Certificate of Occupancy by County for the Project which shall consist of at least the retail portion, the parking garage and no less than five floors of office space consisting of not less than 150,000 square feet.

- 6.7. Title to Project. Provided that neither District nor Developer have breached this Lease, during the Term of the Lease, the Project will be owned by Developer and Developer alone will be entitled to all the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery, and Developer will have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises. At the expiration or earlier termination of this Lease (other than as a result of a sale of the Premises to District), District will cause Developer to peaceably leave, quit and surrender the Premises and Project to County at which time the Project will become the sole property of County at no cost to County, and will be free of all liens and encumbrances and in good condition, subject only to reasonable wear and tear.

7. **Taxes.**

7.1. Real Estate Taxes. As used in this Lease, the term "**Real Estate Taxes**" includes the following: (a) all real estate taxes, including general and special assessments, if any, which are imposed upon County or assessed against the Leased Property, the Premises or the Project; (b) any taxes or assessments that County is required to pay related to this Lease, the Leased Property, the Premises, the Project or the rent paid to County under this Lease, including, but not limited to, any income, franchise, excise, gross receipts, sales, or transaction privilege taxes; (c) all government property lease excise taxes due under Title 42, Chapter 6, Article 5 of the Arizona Revised Statutes ("**ARS**"); and (d) any other present or future taxes or governmental charges that are imposed upon County, or assessed against the Leased Property, the Premises or the Project, including, but not limited to, any tax levied on or measured by the rents payable by tenants of the Project which is in the nature of, or in substitution for, real estate taxes. Tenant must keep and maintain the information required by A.R.S. § 42-6204, and must comply with the GPLET statutes, and pay GPLET, if the Premises is found to be not exempt. Any income or net profits tax which may be assessed against County shall be excluded. Within thirty days after execution of this Lease, the parties will execute and County will record a memorandum of this Lease in compliance with A.R.S. § 42-6202(C)(1), and County will provide the Pima County Treasurer with a copy of this Lease as required by A.R.S. § 42-6202(C)(2).

7.2. Personal Property. Tenant shall pay, before delinquency, all property taxes and assessments on the furniture, fixtures, equipment, inventory, and other property of Tenant at any time situated on or installed in the Premises and on additions and improvements in the Premises. If any of the foregoing is assessed as part of the real property of which the Premises are a part, Tenant shall pay to County upon demand, as Additional Rent, the amount of such additional taxes as may be levied against the real property by reason thereof. To determine such amount of additional taxes, figures supplied by the local assessing authority as to any amounts so assessed shall be conclusive.

8. **Operation of Premises.**

8.1. Permitted Uses. The Premises shall be used only for the Permitted Use and for no other business or purpose whatsoever without the prior written consent of County, which may be granted or withheld in County's sole discretion. No act shall be done in or about the Premises that is unlawful or that will increase the rate of Property Insurance. In the event of a breach of this covenant, Tenant shall pay to

County all increases in Property Insurance premiums resulting from such breach upon demand, and County shall have all additional remedies provided for herein to redress such breach. Tenant shall not commit or allow to be committed any waste upon the Leased Property, the Premises, the Project or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other person or neighboring property owner, tenant, or occupant. Tenant, at its expense, shall comply with all laws relating to its use and occupancy of the Premises. In addition, Tenant shall observe such reasonable rules and regulations as may be adopted by County from time to time for the safety, care and cleanliness of the Premises or the Project and for the preservation of good order therein; provided that such rules and regulations do not materially increase Tenant's obligations, or reduce Tenant's rights, under the express term of this Lease.

8.2. Laws and Regulations. Tenant represents, warrants, and covenants that the operation of its business shall be conducted in strict compliance with all applicable private covenants, conditions and restrictions and all applicable federal, state and local environmental, safety and other pertinent laws, rules, regulations and ordinances (collectively sometimes referred to as "**Applicable Laws**"), including, without limitation, the Americans With Disabilities Act and the Arizonans With Disability Act (collectively the "**ADA**") and Tenant agrees that the construction of the Premises, and any alterations necessary to the Premises, in order to comply with the ADA or such other covenants, conditions, restrictions, laws, rules, regulations and ordinances, shall be at Tenant's sole cost and expense. Tenant represents and warrants to Landlord that there is no risk to Tenant, Tenant's visitors and others using the Premises arising from Tenant's operations. Tenant shall indemnify, defend, and hold harmless Landlord from and against any claim, liability, expense, lawsuit, loss, or other damage, including reasonable attorneys' fees, arising from, or relating to Tenant's use of the Premises or Tenant's activities within the Project or any violations of the ADA by Tenant, its employees, subtenants, agents, guests, contractors, or invitees, except to the extent caused by Landlord's grossly negligent or intentional act.

8.3. Laws and Regulations for Developer, Contractors, Subcontractors, and Subtenants. Tenant will or will cause Developer to, at its sole cost and expense, comply, and cause its contractors and subcontractors and subtenants to comply, in all material respects with all laws of all applicable governmental authorities which may now or hereafter, from time to time, be established and which are or will be applicable to the Premises and any operations on the Premises, and will take all actions necessary to cause the Premises to comply in all material respects with all provisions of the Project Documents and this Agreement.

8.4. Hazardous Materials.

8.4.1. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink, and common household materials, or as may be necessary for the Permitted Use, all of which are used, stored and disposed of in compliance with all applicable federal, state and local laws, rules and regulations and in quantities not in excess of those reasonably necessary to conduct the Permitted Use, Tenant and its sublessees agree not to introduce any Hazardous Materials in, on or adjacent to the Premises or in, on or adjacent to the Leased Property or the Project Property without (a) obtaining County's prior written approval, (b) providing County with sixty days' prior written notice of the exact amount, nature, and manner of intended use of such Hazardous Materials, and (c) complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use, disposal and clean-up of Hazardous Materials, including, but not limited to, the obtaining of all proper permits.

8.4.2. Tenant shall immediately notify County in writing of any inquiry, test, investigation, or enforcement proceeding by, against or directed at Tenant or the Premises concerning Hazardous Materials. Tenant acknowledges that County, as the owner of the Project Property, shall have the right, at its election, in its own name or as Tenant's agent, to negotiate,

defend, approve, and appeal, at Tenant's expense, any action taken or order issued by any applicable governmental authority with regard to Hazardous Materials used, stored, disposed of or released on or from the Premises by Tenant or its agents, employees, contractors or invitees.

8.4.3. If the storage, use, disposal, or release of any Hazardous Materials in, on or adjacent to the Premises or the Project by Tenant and its sublessees results in any contamination of the Leased Property, the Premises, the Project, the Project Property, the soil, surface, or groundwater thereunder or the air above or around the Leased Property, the Premises, the Project or the Project Property (a) requiring remediation under federal, state or local statutes, ordinances, regulations or policies, or (b) at levels which are unacceptable to County, in County's sole but reasonable discretion, Tenant agrees to promptly notify County in writing and clean-up the contamination immediately, at Tenant's sole cost and expense, provided that County's approval of such actions will first be obtained, which approval will not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. Tenant further agrees to indemnify, defend, and hold County harmless from and against any claims, suits, causes of action, costs, damages, loss and fees, including reasonable attorneys' fees and costs, arising out of or in connection with (y) any clean-up work, inquiry or enforcement proceeding relating to Hazardous Materials currently or hereafter used, stored, disposed of or released by Tenant or its agents, employees, contractors or invitees on or about the Leased Property, the Premises, the Project or the Project Property, and (z) the use, storage, disposal or release by Tenant or its agents, employees, contractors or invitees of any Hazardous Materials on or about the Leased Property, the Premises, the Project or the Project Property.

8.4.4. Notwithstanding any other right of entry granted to County under this Lease, County shall have the right to enter the Premises or to have consultants enter the Premises throughout the Term at reasonable times and upon reasonable prior notice for the purpose of determining: (a) whether the Premises are in conformity with federal, state and local statutes, regulations, ordinances and policies, including those pertaining to the environmental condition of the Premises; (b) whether Tenant has complied with this Section 8; and (c) the corrective measures, if any, required of Tenant to ensure the safe use, storage and disposal of Hazardous Materials. Tenant agrees to provide access and reasonable assistance for such inspections. Such inspections may include, but are not limited to, entering the Premises with machinery for the purpose of obtaining laboratory samples. County shall not be limited in the number of such inspections during the Term. If, during such inspections, it is found that Tenant's use, storage, disposal, or release of Hazardous Materials constitutes a violation of this Lease, in addition to any other remedies available to County by reason of such violation, Tenant shall reimburse County for the cost of such inspections within ten days of receipt of a written statement therefor. If such consultants determine that the Premises are contaminated with Hazardous Materials or in violation of any applicable environmental law, Tenant shall, in a timely manner, at its expense, remove such Hazardous Materials or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of County and any applicable governmental agencies. If Tenant fails to do so, County, at its sole discretion, may, in addition to all other remedies available to County under this Lease and at law and in equity, cause the violation and the contamination to be remedied at Tenant's sole cost and expense. The right granted to County herein to inspect the Premises shall not create a duty on County's part to inspect the Premises, or liability of County for Tenant's use, storage, or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

8.4.5. Tenant shall surrender the Premises to County upon the expiration or earlier termination of this Lease free of Hazardous Materials used, stored, disposed of or released on or from the Premises or the Project by Tenant or its agents, employees, contractors, sublessees, or invitees and in a condition which complies with all governmental statutes, ordinances, regulations

and policies, recommendations of consultants hired by County, and such other reasonable requirements as may be imposed by County.

8.4.6. County represents and warrants to Tenant that, as of the Effective Date, it has no actual knowledge of the presence of any Hazardous Materials on, under or about the Project Property. County will indemnify, defend (by in-house counsel or by other counsel acceptable to Tenant), and hold Tenant, and each of Tenant's directors, officers, employees, agents, and shareholders, harmless, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorneys' fees, consultant fees, and expert fees), arising from or caused in whole or in part, directly or indirectly, by County's breach of its representation in this Paragraph 8.3.6. County's obligations under this Paragraph 8.3.6 also include all costs of any investigation, repair, remedial planning, cleanup, detoxification, or decontamination of the Project Property (including, without limitation, the soil and ground water on or under the Project Property), that is required by a regulatory authority or court of competent jurisdiction. County may at its own cost, challenge any such order. County's obligations extend only to any condition that existed in, on, under, about or from the Project Property prior to the Effective Date (including aggravation of any such condition), of which County had actual knowledge and that it did not disclose as provided in this Paragraph. County's obligations under this Paragraph 9.4.6 will survive the expiration or termination of this Lease. "Actual knowledge" of County, for purposes of this paragraph, means the actual knowledge of the County Administrator, any Deputy County Administrator, or any County department head, and any fact that is readily ascertainable by review of files related to County's acquisition and use of the Building Parcel, which are accessible to those individuals on the Effective Date of this Lease.

8.4.7. Pre-existing Contamination. Tenant has obtained a Phase I Environmental Site Assessment, and if necessary, has or will have obtained a Phase II Environmental Site Assessment of the Premises. County agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Tenant will not result in liability for Tenant or Developer under this Paragraph, 42 U.S.C. § 9607(b)(3) or A.R.S. § 49-283(D), except to the extent such contamination is aggravated by the action or inaction of District or Developer.

8.4.8. Notices Regarding Environmental Conditions. Tenant will, within ten business days following receipt thereof, provide County with a copy of (i) any notice from any local, state, or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Tenant, its sublessee(s), or the Premises alleging any violation of any local, state, or federal environmental law or regulation or requiring District or County to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Tenant may be liable or responsible for cleanup, remedial, removal, restoration, or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.

8.4.9. Tenant's and County's obligations under this Section 8 and all indemnification obligations of Tenant and County under this Lease shall survive the expiration or earlier termination of this Lease.

8.5. Utilities. Tenant shall make application for and arrange for and pay or cause to be paid all charges for gas, water, electricity, light, heat, power, telephone, data, cable, sewer, and all other utility services used, rendered, or supplied upon or in connection with the Premises; and Tenant shall defend, indemnify, and save County harmless against any liability or charges on account thereof. In case any utility charges are not paid by Tenant when due, County may pay the utility charges to the utility company or

department furnishing the utility service, and any amounts so paid by County shall be paid by Tenant to County immediately upon demand by County, as Additional Rent.

9. **Maintenance, Repairs, and Alterations.** Except as otherwise expressly provided in this Agreement, District has full responsibility for the repair, alteration, maintenance, and replacement of the Premises, and any portion thereof, and any improvements. County has no obligation whatsoever for the repair, alteration, maintenance, and replacement of the Premises, Project, or any portion thereof except as expressly provided in this Agreement. Tenant may from time to time during the Term make changes, alterations, additions, substitutions, or improvements to the Premises, at its sole cost and expense, as set forth below:

9.1. **Maintenance.** Tenant shall or shall cause Developer to, at its expense throughout the Term, maintain, service, replace, and keep in good repair and condition, the Premises, mechanical equipment of the Premises and all other aspects of the Premises, including, without limitation, buildings, floors, ceilings, walls, doors, glass, plumbing, paint, heating, ventilation and air conditioning equipment, partitions, electrical equipment, wires, electrical fixtures, sidewalks, fencing, paving, landscaping, wiring, parking areas, ingress and egress, and other installations. Tenant agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Premises. Tenant shall surrender the Premises, including all mechanical equipment and other aspects, upon the expiration or earlier termination of the Term in good repair and condition and broom clean, ordinary wear and tear excepted. County shall have no obligation to maintain or repair any portion of the Premises unless caused by County. Tenant shall repair any damage to the Premises occasioned by the removal of its trade fixtures, furnishings, and equipment pursuant to Section 9.2, which repair shall include without limitation the patching and filling of holes and repair of structural damage.

9.2. **Alterations.** Tenant shall not make or permit to be made any alterations, improvements, or additions of or to the Premises or any part thereof, unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by a licensed architect and shall have obtained County's written approval thereof, such approval not to be unreasonably withheld, conditioned, or delayed. If such approval is granted, Tenant shall cause the work described in such approved plans and specifications to be performed, at its expense, promptly, and in a first class workmanlike manner by a licensed general contractor and in compliance with all applicable governmental and insurance requirements and the standards set forth in this Lease (including, without limitation, the provisions of Section 5 and the Work Letter), without interference with or disruption to the operations of the Project or the quiet enjoyment of any other person or neighboring property owner, tenant or occupant.

9.3. **Damage from Casualty.**

9.3.1. If any part of the Premises is damaged or destroyed by any cause whatsoever during the Term, Tenant will, promptly repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and Tenant's obligations under this Lease will not terminate. If, however, (a) such damage or destruction is due to County's grossly negligent or willful acts or omissions, Tenant will have no obligation to repair or replace the Premises, Tenant may terminate this Lease upon written notice to County delivered no later than sixty days following the date of such damage or destruction and Tenant will have no obligation to pay any insurance proceeds to County; (b) if Tenant maintained the insurance required by Section 11 of this Lease at the time of such destruction and despite Tenant's commercially reasonable efforts, such insurance proceeds are unavailable or are insufficient to rebuild the Premises in a manner reasonably acceptable to County and Tenant, Tenant may terminate this Lease upon sixty days' written notice to County (but in no event later than one hundred twenty days following the date of such damage or destruction) and Tenant will, at its sole cost and expense, clean and clear

the Leased Property of all debris, repair the site and install landscaping so that the Leased Property blends in reasonably well with the surroundings, and pay all remaining insurance proceeds to County; and (c) if the Premises are substantially destroyed by fire or other casualty at any time during the last twenty-four (24) months of the Term such that Tenant may not reasonably operate the Premises for the Permitted Use, then Tenant may terminate this Lease by written notice given to County within sixty days after the date of such damage or destruction, and Tenant will be discharged from responsibility to repair the damage, but Tenant will, at Tenant's sole cost and expense, clean and clear the Leased Property of all debris, repair the site and install landscaping so that the Leased Property blends in reasonably well with the surroundings, and pay all remaining insurance proceeds to County.

9.3.2. No Base Rent or Additional Rent shall abate because of casualty damage or during the period of any repair or restoration unless this Lease is terminated. Tenant shall continue the operation of its business on the Premises during any period of repair or restoration to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to any compensation or damages from County for loss in the use of the whole or any part of the Premises or any inconvenience or annoyance occasioned by any damage, destruction, repair, or restoration.

9.4. Performance of Work by County. If County shall perform any construction work at the request of Tenant or pursuant to the right of self-help under Section 12.6, or if Tenant is required to pay County for any construction work, then the cost of such work together with a fee to County equal to ten percent (10%) of the cost of such work shall be payable by Tenant to County within thirty days after County's demand, as Additional Rent.

9.5. Miscellaneous. Following a casualty, upon completion of construction and prior to the time when Tenant opens for business in the Premises, both initially and subsequently after any temporary closure after casualty damage or permitted remodeling, Tenant shall not be permitted to, and shall not, open for business until the following requirements shall be satisfied: (a) Tenant has delivered to County all insurance policies and mechanics' lien waivers as required by this Lease; (b) County has inspected the Premises to determine whether all of Tenant's Work in the Premises is complete in accordance with the requirements of this Lease; and (c) Tenant has paid County all Rent which has then accrued under this Lease. No approval by County under this Lease shall make County responsible for the condition of the Premises or constitute a representation by County of compliance with any applicable requirements or constitute a waiver of any rights and remedies that County may have under this Lease or at law or in equity. If Tenant opens the Premises in violation of the requirements of this Section, such action by Tenant shall constitute a material Event of Default under this Lease.

9.6. Fixtures and Furnishings. Developer will retain ownership of all personal property, fixtures, equipment, and furnishings (collectively, "**Fixtures**") from time to time installed in the Premises by Developer or its sublessees. Developer may remove any Fixtures at any time during the Term and will remove all Fixtures prior to the expiration of the Term, except those Fixtures that County agrees, in writing, may be left on the Premises. Any Fixtures not removed when this Ground Lease terminates (other than because of a sale of the Premises to Tenant) will, at the election of County, become the property of County without payment to Tenant or Developer, or be deemed abandoned and removed by County at Developer's expense.

10. **Liens.** Nothing contained in this Lease shall be deemed or construed in any way as constituting the approval, consent or request of County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, materialman, supplier, architect, engineer or other third party for the performance of any labor or the furnishing of any materials or services for or in connection with the Leased Property,

the Premises, the Project or any part thereof. To the fullest extent permitted by applicable law, notice is hereby given that County shall not be liable for any labor or materials or services furnished or to be furnished to Tenant upon credit or otherwise, and that no mechanic's or other lien for any such labor, materials or service shall attach to or affect the fee or reversionary or other estate or interest of County in the Property, the Premises, the Project, or in this Lease. Tenant shall do all things necessary to prevent the filing of any mechanics', suppliers' or other lien against the Leased Property, the Premises, the Project, the Project Property, or any part thereof by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant. If any lien shall at any time be filed against the Leased Property, the Premises, the Project, the Project Property, or any part thereof, Tenant shall cause the lien to be discharged of record within ten business days after the date of filing of the lien. If Tenant shall fail to timely discharge such lien, such event shall constitute an Event of Default under this Lease and County may exercise all rights and remedies under this Lease, including, without limitation, the remedies under Section 12.3 and the right of self-help under Section 12.6 to pay and discharge such lien at Tenant's cost and expense.

11. Insurance and Indemnity.

11.1. District's Indemnity Obligations to County. If and to the extent that County is not made whole by Developer's Section 11.3 insurance obligations and Section 11.2 indemnification obligations, then to the fullest extent permitted by law, District will indemnify, defend, and hold harmless County, its officers, employees and agents ("Indemnified Parties") from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by County as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by District, its agents, employees, invitees, contractors, subtenants, or anyone under its direction or control or acting on its behalf, or anyone permitted by District to conduct any activity on the Premises, or in connection with any use or occupancy of the Premises under the terms of this Lease. District's indemnity obligations under this paragraph shall not extend to any claims for damages arising out of or directly related to any act, omission, fault, or negligence of any of the Indemnified Parties, or any other persons or entities unrelated to District.

11.2. Developer's Indemnity Obligations to County. District, in its sublease to Developer, shall require that Developer will indemnify, defend, and hold harmless County, its officers, employees and agents ("Indemnified Parties") from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by County as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims, or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by Developer, its agents, employees, invitees, contractors, subtenants, or anyone under its direction or control or acting on its behalf, or anyone permitted by Developer to conduct any activity on the Premises, or in connection with any use or occupancy of the Premises under the terms of this Lease. Developer's indemnity obligations under this paragraph shall not extend to any claims for damages arising out of or directly related to any act, omission, fault, or negligence of any of the Indemnified Parties, or any other persons or entities unrelated to Developer.

11.3. Insurance. Tenant, Developer, and any subtenants will maintain at its expense such insurance coverage for the Leased Property and its operations as County may determine from time to time during the term of the lease, including commercial general liability, auto liability, and workers' compensation. Tenant shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect Tenant from liabilities that arise out of the performance of this contract. If necessary, Tenant may obtain commercial umbrella or excess insurance to satisfy County's Insurance Requirements.

- 11.3.1. Commercial General Liability Coverage. Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury and property damage, broad form contractual liability, personal and advertising injury, and products- completed operations.
- 11.3.2. Business Auto Liability. Bodily Injury and Property Damage for any owned, hired, an /or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 each accident.
- 11.3.3. Workers Compensation (WC) and Employers' Liability – Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage - \$1,000,000 each accident and each person – disease.
- 11.3.4. Property Insurance. Tenant will obtain and keep in force during the entire Term a policy of insurance covering loss or damage to the Premises and County-Provided FF&E in the amount of the full replacement value thereof, providing protection against all vandalism, malicious mischief, special extended perils (all risk) and will deliver to County a Certificate of Property insurance, with County named as additional insured. Said Certificate must be satisfactory to County.

11.4. Additional Insurance Requirements.

- 11.4.1. Claims- Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Tenant must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination, or cancellation.
- 11.4.2. These policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:
 - 11.4.2.1. Additional Insured. The General Liability and Business Automobile Liability Policies shall be indorsed to include Pima County, its departments, its districts, boards, commissions, officer, official, agents, and employees as additional insureds with respect to liability arising out of the activities performed by on or behalf of Tenant.
 - 11.4.2.2. Subrogation. The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Tenant.
 - 11.4.2.3. Primary Insurance: Tenant's policies shall stipulate that the insurance afforded Tenant shall be primary, and that any insurance carried by County, its agents, officials, or employees shall be excess and not contributory insurance.
- 11.4.3. Insurance provided by Tenant shall not limit Tenant's liability assumed under the indemnification provisions of the contract. Tenant will provide County with current certificates of insurance annually. All certificates of insurance must provide for

guaranteed thirty days written notice to County of cancellation or non-renewal.

12. **Default/Termination.** Either party may present written notice of default or non-performance to the other party.

12.1. Cancellation. If Project Commencement does not occur by the Commencement Date or if Developer notifies District at any time prior thereto of its decision not to proceed with the Project, District or County may cancel this Lease without further obligation or penalty to the other party ("Cancellation"). In the event of a Cancellation, District and County will execute a Second Option Agreement the terms of which shall be identical to the Option Agreement referenced in Recital D above except that the "Effective Date" of the Second Option Agreement shall be the date that one of the parties provides the other with notice of the Mutual Termination.

12.2. Tenant Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant (each an "**Event of Default**"):

12.2.1. The vacating or abandonment by Tenant of the Premises, or cessation of activities thereon, where such abandonment will continue for a period of thirty (30) calendar days after notice of such default is sent by County to Tenant;

12.2.2. Failure to pay Base Rent, Additional Rent, or other sum required under this Lease within after its due date, where such failure continues for more than ten days following notice written thereof from County;

12.2.3. Failure by Developer to maintain the employment and salary level applicable at that time, as set forth in Section 14.5 ("Employment Requirements"), where such failure continues for more than thirty days following written notice thereof from County;

12.2.4. Failure to furnish any statement required under this Lease within ten business days after its due date;

12.2.5. Failure to maintain any insurance required under this Lease; (iv) abandonment of the Premises for seven (7) or more consecutive days;

12.2.6. The assignment, mortgaging or encumbrance of all or any portion of Tenant's interest in, to or under this Lease or in or to the Premises without County's prior written consent, or the sublease of all or any portion of the Premises in violation of this Lease;

12.2.7. Causing or failure to prevent the recordation of any lien or other encumbrances against the Leased Property, the Premises, the Project Property, or any portion thereof;

12.2.8. Violation of any law by Tenant, or the conduct of any unlawful activities on the Premises that are permitted by Tenant, either tacitly or explicitly, or that Tenant has not taken reasonable means to prevent after it becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.

12.2.9. Any action or omission by Tenant that, in County's reasonable judgment, causes a threat to the health or safety of the public.

12.2.10. Tenant's making of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a

petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty days;

12.2.11. Any default in any other obligation of Tenant under this Lease, where such default is not remedied within thirty days after written notice of the default by County or its agent; except that, if any non-monetary default shall reasonably require more than thirty days to cure, Tenant shall be allowed such longer period as is necessary to effect such cure, so long as Tenant's efforts to cure are commenced within the initial thirty day period and are diligently pursued to completion within a reasonable amount of time;

12.2.12. Any guarantor or indemnitor of this Lease, dies, dissolves (including, without limitation, administrative dissolution), revokes, or otherwise terminates, or purports to revoke or otherwise terminate (by operation of law or otherwise), any guaranties or indemnities under this Lease.

12.3. County Remedies. At any time following the occurrence of an Event of Default, with or without notice or demand and without limiting County in the exercise of any other right or remedy which County may have by reason of such default or breach, County may:

12.3.1. Terminate this Lease by any lawful means, in which case Tenant shall immediately surrender possession of the Premises to County. In such event, County shall be entitled to recover from Tenant all damages incurred by County by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary completion, renovation and alteration of the Premises, reasonable attorneys' fees, and any real estate commission actually paid; the "worth at the time of award" established by the court having jurisdiction thereof of the amount by which the unpaid Rent and other charges due for the balance of the Term after the time of Tenant's default exceeds the amount of such rental loss for the same period that Tenant proves by clear and convincing evidence could have been reasonably avoided; and that portion of the leasing commission paid by County applicable to the unexpired term of this Lease. For purposes of this Section 12.3.1, "worth at the time of award" of the amount referred to above shall be computed by discounting each amount by a rate equal to the Prime Rate at the time of the award, but in no event more than an annual rate of seven percent (7%).

12.3.2. Re-enter the Premises, without terminating this Lease, and remove any property from the Premises, in which case County shall be entitled to enforce all of County's rights and remedies under this Lease, including the right to recover the Rent and all other amounts due hereunder as they become due. No re-entry or taking possession of the Premises by County pursuant to this Section 12.3.2 or other action on County's part shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. County's election not to terminate this Lease pursuant to this Section 12.3.2 or pursuant to any other provision of this Lease shall not preclude County from subsequently electing to terminate this Lease or pursuing any of its other remedies.

12.3.3. Maintain Tenant's right to possession, in which case this Lease shall continue in effect, whether Tenant shall have abandoned the Leased Property or the Premises. In such event County shall be entitled to enforce all of County's rights and remedies under this Lease, including

the right to recover the Rent and all other amounts due hereunder as they become due.

12.3.4. Pursue any other remedy, at law or in equity, now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provision of this Lease as to matters occurring or accruing during the Term hereof or by reason of Tenant's occupancy of the Premises.

County's remedies set forth in this Lease shall be deemed cumulative and not exclusive.

12.4. County Default. County shall in no event be in default in the performance of any of its obligations in this Lease contained unless and until County shall have failed to perform such obligation within thirty days, unless the failure is of such a character as to require more than thirty days to cure, in which event County will be in default only if it fails to initiate the cure within thirty days, and thereafter diligently pursue the same to completion, and after notice by Tenant to County properly specifying in what manner County has failed to perform any such obligation. In no event shall County be liable for any punitive or consequential damages or for any criminal acts of third parties.

12.5. Developer Default. As set forth in Section 12.1 above, District or County may cancel this Agreement without further obligation or penalty, if Developer either (a) for any reason fails to commence construction by the Commencement Deadline or (b) notifies District at any time prior thereto of its refusal to proceed with the Project.

12.6. Self-Help. If Tenant shall default in the performance of any Lease covenant, County may, at County's option after the expiration of any applicable notice and cure period, perform the covenant for the account of Tenant, and all costs and expenses incurred by County, plus interest thereon at the Default Rate from the date paid by County to the date of payment thereof by Tenant, shall be immediately paid by Tenant to County as Additional Rent. The taking of such action by County shall not be considered as a cure of such Default by Tenant or to prevent County from pursuing any remedy it is otherwise entitled to in connection with such Default.

13. Consent and Subordination to Lenders. The cost of the Project will be funded in part by loans from one or more lenders (the "**Lender(s)**").

13.1. Provided County has received at least ten days written notice of any intended encumbrance of the Premises, County will allow the Lenders to hold a deed of trust or other security interest (a "**Leasehold Deed of Trust**") in District's and Developer's leasehold interests in the Premises, and the improvements thereon, only to the extent necessary to secure repayment of Project loans. County will execute such subordination agreements or similar document(s) as may be required by the Lenders, provided that such documents contain terms and conditions and are in a form reasonably satisfactory to County. A Lender, in the event of any foreclosure or assignment in lieu of foreclosure, must cure all District defaults and Developer defaults, and any reletting of the Premises by a Lender must comply with all the terms and conditions of this Agreement.

13.2. County hereby agrees to execute agreements subordinating its leasehold interest in the Premises to Lender or other document(s) as may be required by the Lender with respect to said financing, provided that such documents contain terms and conditions and are in a form reasonably satisfactory to County. In connection therewith, Developer may provide Lender with a collateral assignment of this Lease, an assignment of leases and rents, and a security interest in any personal property owned by Developer, in order to secure the repayment of such financing for

the Project, including interest thereon, and the performance of all of the terms, covenants and agreements on the Developer's part to be performed or observed under all agreements executed in connection with such financing or refinancing. Developer may have one or more Leasehold Mortgages at any time.

- 13.3. Developer shall provide County and District at least thirty days' prior written notice of any intended encumbrance of the Premises as well as with contact information for notices to the Lender ("**Lender Notice**"). After receipt of a Lender Notice, County shall give such Lender, in the manner provided by the notice provisions of this Lease, a copy of each notice of default given by County to District, at the same time that said notice is provided to Developer; provided, however, that the failure of County to provide notice to a Lender shall not be a default hereunder, but shall serve to stay any enforcement of any default or claimed default by County until proper notice, and the applicable cure periods, have been provided to Lender.
- 13.4. County further agrees to execute, acknowledge and deliver an estoppel certificate on request from Developer or Lender certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent and any other charges have been paid in advance, and such other items reasonably requested, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present.
- 13.5. District and Developer will keep the Premises free and clear of all other liens, claims, and encumbrances, including, but not limited to, mechanics' liens, laborers' liens, and materialmen's liens. County agrees not to place any liens or encumbrances of any kind on the Premises without the prior written consent of District, Developer, and their Lenders.

14. **Assignment and Subletting.**

- 14.1. Except as expressly provided below, Tenant does not have the right to assign its rights or obligations under this Lease, or sublease the Premises in whole or in part, without the prior written consent of County. County will not unreasonably withhold, condition, or delay its consent to a proposed assignment or sublease, but Tenant acknowledges that it is reasonable for County to do so if, in County's reasonable business judgment, the intended Developer has not demonstrated that it has the financial and operational capacity to match the actual (not merely the required) employment and salary levels likely to be achieved by Tenant under Section 14.3 below, and to perform all of Tenant's obligations under this Lease. No consent by County to an assignment or subletting will release Tenant from any of its obligations under this Lease.
- 14.2. Sublease. County acknowledges that District does not intend to occupy or use the Premises itself, and instead intends to sublet the Premises to Developer.
- 14.3. Notwithstanding the foregoing, Tenant may without County's prior consent, but upon not less than fifteen days prior written notice to County, (1) assign this Lease or sublet the Premises to any entity controlling, controlled by or having fifty percent (50%) or more common control with Tenant, or resulting from a merger or consolidation with Tenant or acquiring all of the assets and/or stock of Tenant; provided that any such entity assumes all obligations under this Lease, including, without limitation, the obligation to have Developer meet the Employment Requirements in Section 14.5 (each a "**Permitted Transfer**").

14.4. Except in connection with a Permitted Transfer, if County consents to an assignment or sublet of this Lease or the Premises, Tenant must pay to County any "Transfer Premium" received by Tenant from such assignee or subtenant. "Transfer Premium" means all rent, additional rent or other consideration payable by such assignee or subtenant (but not including consideration for any business services provided by Tenant that are not offered by County) in excess of the rent and any other sums payable by Tenant under this Lease, on a per rentable square foot basis if less than all of the Premises is sublet, after deducting the following costs: (A) any reasonable brokerage commissions in connection with the assignment or sublet; (B) any reasonable advertising and/or marketing costs incurred by Tenant in connection with the assignment or sublet; and (C) any reasonable attorneys' fees paid by Tenant in connection with the assignment or sublet. "Transfer Premium" also includes, but is not limited to, key money and bonus money paid by an assignee or subtenant to Tenant in connection with such assignment or sublet, and any payment more than fair market value for services rendered by Tenant to such assignee or subtenant, or for FF&E transferred by Tenant to such assignee or subtenant in connection with such assignment or sublet.

14.5. Employment Requirements. As set forth in the Form of Sublease attached as Exhibit B, Developer will require each non-retail subtenant of Developer to provide a report each year to District demonstrating that its office employees working at the Premises earn an average annual wage, including benefits, of at least one-hundred seventy-five percent (175%) of the US Census Bureau's American Community Survey (ACS) 5-year Estimate of Median Household Income for Pima County.

15. **Notices.** Except as otherwise specifically provided, all notices, requests, demands and other communications hereunder must be given in writing and either: (i) personally served on the party to whom it is given; (ii) mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) sent by a nationally recognized overnight courier service such as Federal Express; or (iv) sent by email transmission. All notices will be deemed delivered and received upon the earliest of: (a) actual receipt; (b) the third day after the day of mailing; (c) the next business day after the date of deposit with a nationally recognized overnight courier service; or (d) the business day that such notice is sent by email, or if not sent on a business day, the next business day; provided, however, the sender of such email does not receive a response indicating the message was rejected or otherwise undeliverable. Any notices received on a Saturday, Sunday, or on a holiday in the State of Arizona or the United States will be deemed received on the next succeeding business day. The designated address of each party will be:

If to County: Pima County Administrator
115 N. Church Avenue
Tucson, Arizona 85701, Suite 231
Attn: Jan Leshner
Email: Jan.Leshner@pima.gov

With copies to: Pima County Economic Development Director
201 N. Stone Ave., 2nd Floor
Tucson, Arizona 85701
Email: Heath.Vescovi-Chiordi@pima.gov

Pima County Attorney's Office
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701
Attn: Chief Civil Deputy Attorney
Email: Sam.Brown@pcao.pima.gov

If to Tenant: Rio Nuevo Multipurpose Facilities District
1703 E. Broadway Blvd.
Tucson, Arizona 85719
Attn:
Email:

With copies to: Mark Collins, Esq.
Gust Rosenfeld P.L.C.
One South Church Avenue, Suite 1900
Tucson, Arizona 85701

or such other address as that party, from time to time, may specify by notice to the other party given in the manner provided herein. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, will be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

16. **Licensure and Registration.** Tenant will apply for and obtain any license, registration, or permit that is required during the Term of this Lease and will maintain such license, registration, or permit in good standing throughout the Term of this Lease. Tenant will immediately notify County, in writing, if the license, registration, or permit is denied or terminated. In the event of such denial or termination, County may, in its sole discretion, terminate this Lease with no further obligation to Tenant.

17. **Destruction of Premises.** If at any time during the Term of the Lease, the Premises becomes partially or totally destroyed by reason of any damage by fire, flood, hurricane, windstorm or other casualty or act of God and County cannot or does not fully repair the Premises within ninety (90) days through no fault of Tenant then Tenant will be relieved of any further obligation, duty or liability under this Lease. If the Premises can be and are repaired fully in ninety (90) days, then the Lease will continue in full force and effect while the repairs are being made, and Rent will be abated by the percentage of the total space which is unavailable or not reasonably useful to Tenant.

18. **Holding Over.** If Tenant remains in possession of the Leased Property, Premises or any part thereof after the expiration or earlier termination of the Term of this Lease, without the written consent of County, such occupancy shall be a tenancy at sufferance, for which Tenant shall pay a Base Rent equal to 125% of the Base Rent in effect immediately prior to the expiration or termination of the Term, plus all other charges payable hereunder, and upon all the terms hereof applicable to such a tenancy at sufferance. If Tenant fails to surrender the Leased Property, the Premises, or any portion thereof in a timely manner upon the expiration or earlier termination of this Lease, in addition to any other liabilities to County accruing therefrom, Tenant shall indemnify and hold County harmless from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any proposed new tenant related to such failure.

19. **Condemnation.**

19.1. **Complete Taking.** If the whole of the Premises is taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof, or if a substantial portion of the Premises is taken or condemned so that the portion or portions remaining is or are insufficient or unsuitable, in the mutual reasonable judgment of County and Tenant, for the continued operation of the business contemplated by this Lease, so as to effectively render the Premises untenable, then this Lease will cease and terminate as of the date on which Tenant is required to vacate the Premises as a result of the condemning

authority taking possession and all Rent will be paid by Tenant to County up to that date or refunded by County to Tenant if Rent has previously been paid by Tenant beyond that date.

- 19.2. Partial Taking. If a portion of the Premises is taken, and the portion or portions remaining can, in the mutual reasonable judgment of County and Tenant, be adapted and used for the conduct of Tenant's business operation, then County will promptly restore the remaining portion or portions thereof to a condition comparable to their condition at the time of such taking or condemnation, less the portion or portions lost by the taking, and this Lease will continue in full force and effect except that the Rent payable hereunder will, if necessary, be equitably adjusted to take into account the portion or portions of the Premises lost by the taking.

20. **Excuse for Non-Performance**. Each party hereto shall be excused from performing any obligation or undertaking provided in this Lease, except the obligations of Tenant to pay Rent due under the applicable provisions of this Lease, in the event and so long as, the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, order of government or civil or military or naval authorities, or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of such party.

21. **Tenant Purchase Option.**

21.1. Grant of Purchase Option. In consideration for the payment of the Option Payment by Tenant to County upon execution of this Lease, County hereby conditionally grants to Tenant the right and option to purchase the Project Property, to include fee title to the improved Premises together with all easements and other rights appurtenant to or for the benefit of the Premises ("**Title**"), in accordance with the terms and conditions set forth in this Section 21 (the "**Tenant Purchase Option**"). Accordingly, this Lease also constitutes an option agreement between County and Tenant for the purchase and sale of the Project Property.

21.2. Term of Tenant Purchase Option. The term of the Tenant Purchase Option and Tenant's right to purchase the Project Property pursuant thereto shall commence on the Effective Date and shall automatically expire if not exercised on or before the Option Exercise Deadline, unless sooner terminated pursuant to the terms of Section 21.4.

21.3. Purchase Price; Calculation; Payment. The purchase price for the Project Property and County's cost of acquiring title to the Alley (the "**Purchase Price**") pursuant to the Tenant Purchase Option shall be an amount equal to \$_____ per gross acre of the Project Property as reflected on the Survey (as defined below). The Purchase Price shall be payable by Tenant as follows: (a) the Option Payment shall be credited against the Purchase Price, (b) to the extent not previously applied by County pursuant to the terms of the Lease, the Security Deposit, or such portion thereof then on deposit with County as of the Closing Date, shall be credited against the Purchase Price, and (c) subject to any adjustments provided for in this Section 21, on or before the Closing Date (as defined below), Tenant shall deposit into Escrow by wire transfer or other immediately available federal funds, the balance of the Purchase Price plus Tenant's share of prorations and other Closing costs required in this Section 21 (collectively, the "**Closing Funds**").

21.4. Tenant Purchase Option Conditions. Notwithstanding anything to the contrary set forth in this Section 21, the Tenant Purchase Option shall be expressly subject to and conditioned upon Tenant's Work being Substantially Complete on or before the Construction Completion Date, Developer timely satisfying the Employment Requirements in Section 14.5, and that no Event of Default by Tenant has

occurred under this Lease or event which, with notice, the passage of time or both would constitute an Event of Default under this Lease as of the date of the Exercise Notice (as defined below). In the event the foregoing conditions are not satisfied, the Tenant Purchase Option will automatically terminate and be of no further force or effect, County shall be entitled to retain the Option Payment and neither County nor Tenant will have any further rights or obligations under this Section 21.

21.5. Exercise of Tenant Purchase Option; Survey. Subject to Tenant's satisfaction of the requirements of this Section 21, Tenant may elect to purchase the entire Project Property by delivering written notice of such election (the "**Exercise Notice**") to County. Upon County's receipt of the Exercise Notice, County and Tenant shall cause to be opened an escrow (the "**Escrow**") for the purchase and sale of the Project Property with a title company or escrow agent located in the State of Arizona and mutually agreeable to Tenant and County ("**Escrow Agent**"). As soon as practicable following (but in no event before) Tenant's delivery of the Exercise Notice, Tenant shall cause to be performed, at Tenant's sole cost and expense, an ALTA/NSPS land title survey of the Project Property (the "**Survey**"), which Survey shall be prepared by a registered land surveyor licensed and in good standing with the State of Arizona. The Survey be certified to Tenant. Tenant shall promptly provide a copy of the Survey to County and a copy to Escrow Agent.

21.6. Deposit of Agreement. Upon or prior to Substantial Completion, the District shall deposit this Agreement with ____ ("**Title Company**"), an appropriate officer of which will act as the Escrow Agent for this purchase and sale transaction. The "Opening of Escrow" shall be deemed to have occurred when the Escrow Agent acknowledges to County and the District that she/he has received a copy of this Agreement and assigned the transaction an "Escrow" number.

21.7. By Opening Escrow, the Escrow Agent acknowledges and agrees recordation of the Deed constitutes the Escrow Agent's representation that it is holding the closing documents, closing funds, and closing statement and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statement.

21.8. Closing; Conveyance. The closing of the purchase and sale of the Project Property pursuant to the Tenant Purchase Option (the "**Closing**") shall occur on the date that is sixty days after the date of the Exercise Notice (the "**Closing Date**"), or such other date as Tenant and County may agree in writing. At the Closing, County will convey to Tenant title to the Project Property by a duly executed and acknowledged Special Warranty Deed in the form attached hereto as Exhibit E (the "**Deed**") and incorporated herein by reference, subject to all matters of record, including, without limitation the Project Property Restriction, all conditions reflected on the Survey and all conditions a physical inspection the Project Property would reveal.

21.9. The date upon which the Escrow Agent disburses the Purchase Price to County and Title Company records the Deed, will be referred to as the "Closing Date". The Closing Date shall not be prior to Substantial Completion as defined in Section 6.6. The Parties will work together to ensure that all requirements set forth in this Section 21 are met, and the sale Closes, as soon as reasonably possible after Substantial Completion. County's obligation to close will be conditioned on development of the Premises in the manner required by this Agreement and the Sublease. Unless County agrees otherwise, the District must pay cash at closing; County is not obligated to accept a promissory note for any portion of the purchase price.

21.10. District has reviewed the Title Commitment issued by the Title Company regarding the Premises, dated ___, Order No. ___, Reference No. ___ (the "**Existing Title Commitment**"). District has reviewed and has no objection to any of the exceptions to title shown on the

Existing Title Commitment nor anything shown on the ALTA/NSPS Land Title Survey of the Premises prepared for District by Stantec, (Project ____) (the “**Survey**”). Within five business days after the Opening of Escrow, the Title Company will issue and deliver to District and County an updated commitment (the “**Updated Commitment**”), together with copies of all instruments referred to therein, that are not on the Existing Title Commitment (the “**Additional Exceptions**”). The Updated Commitment will be an irrevocable commitment by the Title Company to issue the Title Policy (defined below) subject to the satisfaction of the requirements contained in the Updated Commitment.

- 21.11. District will have twenty days after receipt of the Updated Commitment to object to any Additional Exceptions (“**Title Issues**”) by providing written notice thereof to County. If District has no objection, it may provide notice thereof to County, in which case this twenty-day period will cease. In the event of any such objection, County will have ten days after receipt of District’s notice of the Title Issues to review and evaluate the Title Issues and give written notice to District whether County will cure or cause to be removed the Title Issues (“**Title Review Period**”). If the Updated Commitment or Survey is updated and/or amended by any new exception(s) or requirement(s) (by endorsement, amendment, or otherwise) that District deems to be adverse to its anticipated title (“**Amended Title Commitment**”), the Title Review Period will be extended by three business days following District’s receipt of the Amended Title Commitment (including the best available copies of all new exceptions) to notify County in writing of District’s objections to any new exceptions (“**Extended Title Review Period**”). If District timely objects to any matter disclosed in an Amended Title Commitment, County may give written notice to District within three business days after receipt of the new objections as to whether it will cure or cause to be removed an objected-to matter. If County timely gives District written notice that County will not cure or cause to be removed the objected-to matter (or if County fails to provide any written notice within the applicable response period), then District may terminate this Agreement.
- 21.12. County and District hereby agree and acknowledge that electronic delivery of the Updated Commitment and any Amended Title Commitments by the Title Company (whether in the form of an attachment to electronic mail or in the form of a link to a website where the Updated Commitment or Amended Title Commitment can be downloaded) is an acceptable form of delivery, and the Updated Commitment or Amended Title Commitment will be deemed delivered on the day it is electronically transmitted to and received by County and District.
- 21.13. Notwithstanding anything mentioned herein to the contrary, on or before the Closing Date, County will satisfy and remove all voluntary monetary liens placed on the Premises by County, without the need of any objection from District.
- 21.14. As used in this Agreement, the term "Permitted Exceptions" will collectively mean the exceptions to title shown by the Survey, the Existing Title Commitment, and any additional exceptions shown by the Updated Commitment or any amendment thereto that are approved (or deemed approved) by District pursuant to this section.
- 21.15. At the Closing, the Title Company will deliver to District either an ALTA extended form of title insurance (the “**Title Policy**”) with respect to the Premises in the full amount of the Purchase Price, which will insure that fee simple title to the Premises is vested in District, subject only to: (i) the usual printed exceptions and exclusions contained in the Title Policy; and (ii) the Permitted Exceptions or an endorsement to its existing Owner’s Policy in connection with the Project. If a new policy is issued, the cost of a basic premium policy will

be paid for by County with any extended coverage paid for by District.

- 21.16. The escrow agent's fee will be evenly divided and paid by the Parties. Each Party will pay its own attorneys' fees. All other fees and costs relating to the Closing will be paid by the parties as is customary in similar real estate transactions in Pima County, Arizona.
- 21.17. The Parties understand, acknowledge, and agree that no real estate broker is involved in this transaction and that no real estate brokerage commission will be paid because of the sale of the Premises. District acknowledges that District Board Member Chris Sheafe is a licensed real estate broker in Arizona. Each Party will defend, indemnify, and hold the other harmless from and against all claims, costs, liabilities or damages for any real estate brokerage commissions or fees, including any attorneys' fees incurred in connection therewith, which may result from the conduct of the party from whom indemnification is sought.
- 21.18. The terms and provisions of this Agreement shall constitute escrow instructions to the Escrow Agent for the purpose of serving in such capacity for the transaction described herein. In the event of a conflict between the terms and conditions of this Agreement and any other escrow instructions executed by the parties in connection with this transaction, the terms and conditions of this Agreement shall control.
- 21.19. The Parties acknowledge and agree that TIME SHALL BE OF THE ESSENCE with respect to the performance by the Parties of their obligations under this Agreement and to consummate the transactions contemplated in this Agreement on the Closing Date. For the purposes of this Agreement, any date to which the Parties agree to adjourn the Closing pursuant to the terms of this Agreement shall be deemed the Closing Date hereunder. District's obligation to pay rent will cease no later than thirty days after Substantial Completion, regardless of whether the Closing Date has yet occurred, except that the obligation to pay rent will continue if County has indicated to District, in writing, that County is ready and willing to Close and has satisfied all its closing conditions.
- 21.20. Seller Closing Deliveries. On or before the Closing Date, County shall deliver or cause to be delivered into Escrow the following:
- 21.20.1. An original executed and acknowledged Deed transferring the Project Property;
 - 21.20.2. County's original executed agreement terminating this Lease (the "**Lease Termination Agreement**"), which Lease Termination Agreement shall be in such form as County may reasonably determine.
 - 21.20.3. A non-foreign affidavit in the form required by Escrow Agent;
 - 21.20.4. Such proof of County's authority or authorization to convey the Project Property as may be required by Escrow Agent, including, without limitation, proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of County to act for and bind County; and
 - 21.20.5. Such other documents and instruments, signed and properly acknowledged (if appropriate) by County, as may be reasonably required by Escrow Agent or otherwise to effectuate the provisions of this Section 21 and the Closing of the transaction contemplated herein.
- 21.21. Buyer Closing Deliveries. On or before the Closing Date, Tenant shall deliver the or cause

to be delivered into Escrow the following:

21.21.1.Immediately available U.S. funds in the amount of the Closing Funds;

21.21.2.An original executed and acknowledged County Option Agreement;

21.21.3.An original executed and acknowledged Memorandum of County Option;

21.21.4.Tenant's original executed Lease Termination Agreement

21.21.5.Such proof of Tenant's authority or authorization to acquire the Project Property as may be required by Escrow Agent, including, without limitation, proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of Tenant to act for and bind Tenant; and

21.21.6.Such other documents and instruments, signed and properly acknowledged (if appropriate) by Tenant, as may be reasonably required by Escrow Agent or otherwise to effectuate the provisions of this Section 21 and the Closing of the transaction contemplated herein.

21.22. Closing Costs. Property taxes will not be prorated as the Project Property is not taxed under the ownership of County. At the Closing, Tenant shall pay the cost of any title insurance policy Tenant elects to obtain and the cost of all endorsements or additional coverage related thereto. County and Tenant shall each bear the costs of its own legal counsel. All escrow fees and costs, and all recording costs, shall be divided equally between Tenant and County. Any other costs associated with the Closing will be borne by the parties in accordance with custom in Pima County, Arizona, as determined by Escrow Agent, unless otherwise specified in this Section 21.

21.23. County Permitting. Despite the transfer of title at Closing, County, rather than the City of Tucson, will continue to provide permitting and plan review services for the buildout of the Project.

22. Representations and Warranties.

22.1. District Representations and Warranties. As of the Effective Date and on the Closing Date, if any, District hereby represents and warrants to County as follows:

22.1.1. District is organized and lawfully existing as a special taxing district of the State of Arizona.

22.1.2. District has the full right, power, and authority to make, execute, deliver, and perform this Agreement.

22.1.3. District's execution and delivery of this Agreement has been authorized by all requisite action on the part of District, and the execution and delivery of this Agreement by District and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which District is a party or by which it is bound.

22.1.4. There is no action, suit, litigation or proceeding pending or, to District's knowledge, threatened against District that could prevent or impair District's entry into this Agreement and/or performance of its obligations hereunder.

22.1.5. The persons signing this Agreement on behalf of District are duly and validly authorized to do so.

22.2. County's Representations and Warranties. As of the Effective Date (but as of _____ as to the representations in paragraph iii below) and on the Closing Date, County hereby represents and warrants to District that, to the best of County Administrator's and the Manager of Real Property Services' knowledge:

22.2.1. County owns fee simple title to the Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies, or agreements and other matters affecting title, except for those matters previously approved by District in writing, or created by District or by County with District's approval. The Premises is in compliance with all easements, restrictions, and other matters of record affecting title as of the date hereof.

22.2.2. The entry by County into this Agreement with District and the performance of all the terms, provisions and conditions contained herein does not and will not violate or cause a breach of or default under any agreement or obligation to which County is a party or by which it is bound.

22.2.3. There are no tenants, lessees or other occupants of the Premises having any right or claim to possession or use of the Premises or a claimed preference for occupancy in the Premises.

22.2.4. County is not obligated under any other option, contract, lease, or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale, or financing of the Premises except as previously disclosed to District.

22.2.5. No representation, statement or warranty by County contained in this Agreement or in any exhibit attached hereto contains any untrue statement or omits a material fact necessary to make the statement of fact therein recited not misleading.

22.2.6. There is no action, suit, litigation or proceeding pending or, to County's knowledge, threatened against County and/or the Premises which could prevent or impair County's entry into the Premises and/or performance of its or any of District's obligations hereunder or materially and adversely impact District's rights hereunder.

22.2.7. The person signing this Agreement on behalf of County is duly and validly authorized to do so.

22.2.8. There are no pending condemnation proceedings relating to any portion of the Premises, and County has received no notices of the institution or the proposed institution of condemnation proceedings relating to any portion of the Premises or of any other proceedings against or any taking of all or any part of the Premises.

22.2.9. There is no pending or threatened litigation, governmental proceeding, notice of action required to be taken, judgment or cause of action against or related to the Premises, or any portion thereof, or against County or County's agents with respect to the Premises or any portion thereof.

23. **Cancellation for Conflict of Interest.** This Lease may be cancelled for conflict of interest pursuant

to A.R.S. § 38-511, the provisions of which are incorporated in this Lease by this reference.

24. **Non-Discrimination.** Tenant will comply with applicable local, state, and federal laws, rules and regulations concerning equal employment opportunity and non-discrimination; and with all provisions and requirements of Arizona Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Lease by this reference.

25. **Non-Appropriation.** County's performance of its obligations under this Lease may be dependent upon the appropriation of funds by the Board or the availability of funding from other sources. Should the Board fail to appropriate the necessary funds, or if funding is otherwise not available to County for the purpose of fulfilling County's obligations under this Lease, County will be relieved of that obligation and County or Tenant may terminate this Lease, in which case neither County nor Tenant shall have any further rights or obligations hereunder other than those which specifically survive the termination of this Lease. County agrees to notify Tenant as soon as reasonably possible after the unavailability of said funds comes to the Board's attention.

26. **Arbitration.** The parties agree that any dispute arising under this Lease involving the sum of fifty thousand dollars (\$50,000) or less in money damages only will be resolved by arbitration pursuant to the Arizona Uniform Rules of Procedure for Arbitration. The decision of the arbitrator(s) will be final.

27. **Miscellaneous.**

27.1. Estoppel Certificate; Financial Statements. Upon ten business days' prior written request by County, Tenant shall deliver to County the following:

27.1.1. A balance sheet, income statement, statement of changes in equity, statement of consolidated cash flows and such other financial information as may be reasonably request requested. Non-audited financial statements shall be certified to County and County's lender, if applicable, as being accurate and complete in all material respects (the "**Certified Statements**"); provided, however, that such Certified Statements shall not be required more than once per calendar year, unless Tenant is in default under this Lease, or if County needs such Certified Statements in connection with a sale or financing of the Project Property. The Certified Statements shall be signed by an officer, authorized agent, partner, manager or managing member of Tenant.

27.1.2. A statement certifying (a) that this Lease is unmodified and in full force and effect, or if there has been any modification thereof that this Lease is in full force and effect as modified and stating the nature of the modification; (b) that County is not in default under this Lease and no event has occurred which, after notice or expiration of time or both, would constitute a default (or if any such default or event exists, the specific nature and extent thereof); (c) the dates to which the Base Rent, Additional Rent and other charges have been paid in advance, if any; and (d) any other information concerning this Lease or the Premises which County may reasonably request (the "**Estoppel Certificate**").

27.1.3. Any financial information and Estoppel Certificate delivered pursuant to this Section 26.1 may be provided to any prospective purchaser, holder or prospective holder of any encumbrance and relied upon by County, any prospective purchaser, holder or prospective holder of any encumbrance. If Tenant fails to deliver the Estoppel Certificate required by this Section within ten days after County has requested such statements, such failure shall constitute an Event of Default and, in addition to County's remedies hereunder, Tenant shall be deemed to have certified that this Lease is in full force and effect, that County is not in default under this Lease and all other matters described in the Estoppel Certificate.

27.2. County's Liability. The term "County" as used herein shall mean only the owner or owners at the time in question of the fee title of the Leased Property. In the event of any transfer of such title or interest, County herein named (and in case of any subsequent transfers the then grantor) shall be released from and after the date of such transfer of all liability as respects County's obligations thereafter to be performed, so long as any funds in the possession of County or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by County shall, subject to the foregoing, be binding on County's successors and assigns, only during their respective periods of ownership.

27.3. Further Assurances and Documentation. Each Party agrees in good faith to take such further actions and execute such further documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

27.4. Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

27.5. Interest on Past-Due Obligations. Except as expressly herein provided, any amount due to County not paid when due shall bear interest at the Default Rate from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

27.6. Time Periods. If the time for the performance of any obligation under this Lease expires on a Saturday, Sunday or legal holiday, the time for performance will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

27.7. Time of Essence. Except as specifically otherwise set forth in this Lease, time is of the essence with respect to every obligation of Tenant hereunder.

27.8. Captions. Section and paragraph captions are not a part hereof.

27.9. Memorandum of Ground Lease and Purchase Agreement. Upon the execution of this Agreement, the Parties will also execute a Memorandum of Ground Lease and Purchase Agreement to be recorded in the official records of the Pima County, Arizona Recorder (the "**Official Records**") in substantially the form attached hereto as **Exhibit C**.

27.10. Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein and expressly supersedes and renders null and void any letter of intent that may have been previously executed between the parties relating to the Leased Property or the Premises. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

27.11. Persons. The word "person" and the word "persons", wherever used in this Lease, shall both include individuals, partnerships, firms, trusts, corporations, limited liability companies and/or any other form of business entity.

27.12. Remedies Not Exclusive. The various rights, options, elections, powers, and remedies of County contained in this Lease shall be construed as cumulative and no one of them shall be exclusive of any of the others, or of any other legal and equitable remedy which County might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by County shall not impair its rights to any other right or remedy until all obligations imposed upon the other party have been fully performed.

27.13. No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between County and Tenant, and neither the method of computation of Rent nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between County and Tenant other than the relationship of County and tenant.

27.14. No Waiver. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. The acceptance by County of Rent or other payments with knowledge of the breach of any of the covenants of this Lease by Tenant shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant term or condition. The consent or approval by County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent or approval to or of any subsequent similar acts by Tenant. To be effective, any express waiver must be in writing.

27.15. Lease Contains All Agreements. This Lease, together with its exhibits, contain all conditions, covenants and agreements between County and Tenant relating in any manner to the Project and to the rental, use and occupancy of the Premises and the other matters set forth in this Lease. No prior or contemporaneous agreement or understanding pertaining to the Project or the Premises shall be valid or of any force or effect, and the conditions, covenants and agreements of this Lease cannot be altered, changed, modified, or added to, except in writing signed by County and Tenant. County and Tenant intend that this Lease supersedes all such prior or contemporaneous agreements and that this Lease constitutes the final, exclusive, and complete embodiment of their agreement. No representation, inducement, understanding or anything of any nature whatsoever, made, stated, or represented on County's behalf, either orally or in writing (except this Lease), has induced Tenant to enter into this Lease.

27.16. Brokers. County and Tenant each represent and warrant to the other that neither of them has employed or dealt with any broker, agent or finder in carrying on the negotiations relating to this Lease. In the event of a breach of the foregoing representation and warranty by a party (the "**Defaulting Party**"), the Defaulting Party shall indemnify and hold the other party harmless from and against any claim or claims, damages, or expenses (including any claims for brokerage or other commissions asserted by any broker, agent, or finder fees) which may arise as a result of such breach.

27.17. Partial Invalidity. Any provision or provisions of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

27.18. Other Agreements. Any default by Tenant under any instrument, undertaking or agreement executed by Tenant in favor of or with County relating to this Lease or in the tenancy created hereby shall constitute a breach of this Lease and entitle County to pursue each of all its rights and remedies hereunder and at law.

27.19. Waiver of Trial by Jury. To the extent permitted by law, County and Tenant mutually waive trial by jury with respect to any action brought by either party under or in connection with this Lease, the Leased Property, the Premises and/or the Project.

27.20. Authority. If Tenant signs as a corporation, each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant is a duly organized and existing corporation, that Tenant has been and is qualified to do business in the State of Arizona, that the corporation has full right

and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by appropriate corporate actions. If Tenant signs as a partnership, limited liability company, trust, or other legal entity, each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has complied with all applicable laws, rules, and governmental regulations relative to its right to do business in the State of Arizona, that such entity has the full right and authority to enter into this Lease, and that all persons signing on behalf of the Tenant were authorized to do so by any and all necessary or appropriate partnership, limited liability company, trust, or other actions. Tenant agrees to provide to County evidence of the foregoing items upon the execution of this Lease.

27.21. Attorneys' Fees and Legal Expenses. In any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, and other reasonable legal expenses and court costs incurred by such party in such action or proceeding as the court may find to be reasonable.

27.22. Exhibits. Each reference in this Lease or in any Exhibit to this Lease shall mean the Exhibits attached to this Lease, all of which are incorporated in this Lease by reference.

27.23. Choice of Law. This Lease shall be governed and construed in accordance with the laws of the State of Arizona, without regard to its principles of conflicts of laws. County and Tenant hereby agree that the proper venue for any legal proceedings arising out of this Lease shall be Pima County, Arizona, and each party hereto consents to the jurisdiction of the state or federal courts located in Pima County, Arizona.

27.24. Construction. This Lease will not be construed more strictly against one party hereto than against any other party hereto merely because it may have been prepared by counsel for one of the parties. Each party represents that it has had the opportunity to have its own legal counsel review and participate in the completion of this Lease.

27.25. Anti-Terrorism. Tenant represents, warrants and covenants that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by an Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not executing this Lease, directly or indirectly on behalf of, or instigating or facilitating this Lease, directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant hereby agrees to defend, indemnify, and hold harmless County from and against all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants.

27.26. Counterparts. This Lease may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.

27.27. Exhibits. The Exhibits referenced below are attached hereto and incorporated in this Lease by reference:

Exhibit A	Legal Description to the Premises
Exhibit B	Form of Sublease
Exhibit C	Form of Memorandum of Ground Lease
Exhibit D	Work Letter Agreement
Exhibit E	Form of Deed

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, County and Tenant have executed this Lease Agreement as of the Effective Date.

TENANT:
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____
Its: Chairman

By: _____
Its: Secretary

COUNTY:

PIMA COUNTY,
a political subdivision of the State of Arizona

By: _____
Name: Adelita Grijalva
Its: Chair of the Board of Supervisors

Date: _____

ATTEST:

Melissa Manriquez, Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

Heath Vescovi-Chiordi, Director of Economic Development

APPROVED AS TO FORM:

Bobby Yu, Deputy County Attorney

The City of Tucson hereby consents to County's continued provision of permitting and plan review services under Section 9 of the Ground Lease between PIMA COUNTY and RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT.

CITY OF TUCSON

EXHIBIT A

(TO GROUND LEASE AND OPTION AGREEMENT)

(LEGAL DESCRIPTION OF THE PREMISES)

EXHIBIT B
(TO GROUND LEASE AND OPTION AGREEMENT)
FORM OF SUBLEASE

EXHIBIT C

(TO GROUND LEASE AND OPTION AGREEMENT)

(FORM OF MEMORANDUM OF GROUND LEASE)

When recorded, return to:
Mark Collins, Esq.,
Gust Rosenfeld P.L.C.
One South Church Avenue, Suite 1900
Tucson, Arizona 85701

MEMORANDUM OF GROUND LEASE AND PURCHASE AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AND PURCHASE AGREEMENT is entered into this ___ day of _____, 202_, by and between Pima County, a political subdivision of the State of Arizona (“**County**”), and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (“**District**”).

County and District have entered into an unrecorded Ground Lease and Purchase Agreement dated _____, 202_ (the “**Lease**”) whereby County has leased to District all of the tract of land located in Tucson, Arizona, which is more fully described on **Exhibit A** attached hereto, and all rights, alleys, ways, privileges, appurtenances and advantages appurtenances and advantages, to the same belonging or in any way appertaining (“**Property**”). The Lease may be terminated at various times pursuant to the terms of the Lease, but in no event later than [one month] after the issuance of a Certificate of Occupancy for a structure on the Premises.

A copy of the Lease and Option Agreement is available for person having a legitimate interest in the Property at the following address:

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

This Memorandum of Ground Lease and Option Agreement is dated as of the date first above written.

\SIGNATURES APPEARS ON THE FOLLOWING PAGES

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____
Its: Chairman

By: _____
Its: Secretary

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I HEREBY CERTIFY that on this __ day of _____, 202_, before me, a Notary Public for the state aforesaid, personally appeared Fletcher McClusker, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Ground Lease and Purchase Agreement, who acknowledged that he is the Chairman of the Board of Directors for Rio Nuevo Multipurpose Facilities District and that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth.

Notary Public

My commission expires on _____

COUNTY:

PIMA COUNTY, ARIZONA

By: _____
Adelita Grijalva, Chair of the Board of Supervisors

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I HEREBY CERTIFY that on this __ day of _____, 202_, before me, a Notary Public for the state aforesaid, personally appeared Adelita Grijalva, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Memorandum of Ground Lease and Purchase Agreement, who acknowledged that she is the Chair of the Pima County Board of Supervisors and that she has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth.

Notary Public

My commission expires on _____

EXHIBIT D

(TO GROUND LEASE AND OPTION AGREEMENT)

WORK LETTER AGREEMENT

EXHIBIT E
FORM OF DEED

WHEN RECORDED, RETURN TO:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, _____ (“**Grantor**”), does hereby convey to _____ (“**Grantee**”), that certain real property described in Exhibit “A” attached hereto and incorporated herein by reference, situated in Pima County, Arizona (the “**Real Property**”), together with (a) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, water rights, well rights, and air rights appurtenant to the Real Property, (b) any rights of Grantor in and to any adjoining strips or gores of property and any land lying within the bed of any adjoining street, (c) any other rights or privileges appurtenant to such Real Property or used in connection therewith, and (d) any improvements, fixtures, buildings or structures thereon (such property, together with the Real Property, to be collectively referred to herein as the “**Property**”);

SUBJECT TO: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record; and conditions which a physical inspection or accurate survey of the Property would reveal.

Grantor hereby binds itself and its successors to warrant and defend the title to the Property, as against all acts of Grantor herein and no other, subject to the matters above set forth.

SIGNATURE PAGE FOLLOWS

[SIGNATURE BLOCK, NOTARY BLOCK AND LEGAL DESCRIPTION TO BE INCLUDED]

Exhibit D

[Sample Development Agreement]

RIO NUEVO AND [_____]
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 75 E. Broadway Blvd., Tucson, Arizona, and alley immediately adjacent to the northern boundary of 75 E. Broadway (the “Project”) as more particularly described in Section 2 below (the “Premises”). The Project is currently or may later be owned by District.

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; and (iii) 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 approximate location of the Project (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 [REDACTED].

3. Contingencies. This Agreement and the Project will be contingent upon: (i) the Developer committing to develop the Premises in substantial compliance with any previously submitted plans or other plans of similar quality that are approved by the District in the District’s reasonable discretion; (ii) 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; (iii) the District approving the construction costs for the Project; (iv) Developer complying with A.R.S. Title 34 procurement requirements to the extent necessary; (v) 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 Property 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. 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 the Purchase Price of \$[REDACTED]. 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 18 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 Premises, 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, without pledging or otherwise relying upon any other incentive from the District as a revenue stream for repayment of such financing. 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 title insurance policy as set forth in Section 5(b) above on 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 36 months 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.

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 _____
_____, Member

By _____
_____, Member

"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
Approximate Location of Premises