

**AGREEMENT TO PROVIDE ECONOMIC BENEFITS**  
**200 South Sixth Avenue**

**This Economic Benefit Agreement** (this “**Agreement**”), effective as of the effective date set forth on the signature page hereof (“**Effective Date**”), is between Tucson Children’s Museum, Inc., an Arizona nonprofit corporation (“**TCM**”), and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the “**District**”). TCM and the District are sometimes referred to in this Agreement, collectively, as the “**Parties**” or, individually, as a “**Party.**”

**RECITALS**

- A.** TCM has a standard Lease Agreement (“**Lease**”) with the City (“**Landlord**”). Landlord owns the real property and building located at 200 South Sixth Avenue, Tucson, Arizona 85701 (such real property and improvements thereon, the “**Premises**”), Pima County Assessor parcel number 117-17-0580, which is legally described and depicted in Exhibit A, attached hereto. The Premises is comprised of land and improvements including, without limit, the approximately 95,326 square feet of rental space leased by TCM pursuant to the Lease (among other improvements).
- B.** TCM will invest at least Nine Million One Thousand One Hundred Thirty-One and No/100 Dollars (\$9,001,131.00) to renovate and remodel the Premises as described and depicted in Exhibit B (the construction proposal, architectural drawings, and renderings—all of which shall be produced and shall be consistent with the presentation made by TCM at the District’s March 28, 2023 board meeting—collectively, the “**Construction Proposal**”) to create a sales tax generating café and gift shop (collectively, the “**Project**”).
- C.** After the Project’s completion, TCM anticipates that the Premises will immediately generate substantial revenue that will produce transaction privilege tax revenues for the District.
- D.** At the District’s public meeting on March 28, 2023, TCM requested the District’s financial assistance to complete construction, remodeling, and repurposing of the above-referenced Project. TCM’s goal is to complete development and commence its expanded operations before May 1, 2027.
- E.** The District’s board members (the “**Board Members**”) have determined that the remodeling, repurposing, and development of the above-referenced Project, and the District’s support of the Project in the Premises, will generate substantial taxable revenue, appreciably increase employment opportunities, and will therefore benefit downtown Tucson, the Convention Center, and the District, in general.
- F.** During the public meeting on March 28, 2023, the District approved a cost-reimbursement grant equal to, **but not to exceed**, Four Hundred Seventeen Thousand Two Hundred Fifty and No/100 Dollars (\$417,250.00) (the “**Economic Incentive**”) (but subject to other language and restrictions herein) to TCM for the purpose of reimbursing TCM for as-completed hard construction draw costs (*i.e.*, costs other than architectural/design work,

legal fees, permits and furniture, fixtures, or equipment) and/or other Improvements to the Project in compliance with the Construction Proposal.

- G. The Parties agree that the purpose of this Agreement is to detail the terms and conditions of the Economic Incentive that the District has agreed to provide TCM for assistance with completing the Project in the Premises, and to generally describe the terms and conditions that the Parties will incorporate into their relationship thereafter with respect to the Project.

## AGREEMENT

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

1. **Recitals.** The Parties hereto acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.
2. **Definitions.** Each term defined in the recitals and preamble of this Agreement has its assigned meanings and each of the following terms, unless a different meaning clearly appears from the context, has the meaning assigned to it below:

“**Affiliate**” as applied to any person, means any person directly or indirectly controlling, controlled by or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition: (i) “control” (including, with correlative meaning, the terms “controlling,” “controlled by,” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract, or otherwise; and (ii) “person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint venture associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

“**Applicable Laws**” means the federal, state, county, and local laws (statutory and common law), ordinances, rules, regulations, permit requirements and other requirements and official policies of the City which apply to the development of the Premises from time to time.

“**Architect**” means the architect engaged by TCM to complete the formal plans and specifications for the Project as detailed in the Construction Proposal.

“**City**” means the City of Tucson, Arizona.

“**Contractor**” means TCM’s general contractor, engaged for completion of the Project, at all times in accordance with the accepted Construction Proposal.

“**Convention Center**” means the Tucson Convention Center, constituting the primary component of the District as that term is defined in A.R.S. § 48-4201.

“**Cure Period**” has the meaning assigned in Section 6 hereof.

“**Default**” means a default by a Party of any term, condition, obligation, warranty, representation, or covenant of this Agreement that: (a) is not reasonably capable of being cured, or (b) otherwise remains uncured after the applicable Cure Period.

“**Draw Notice**” has the meaning assigned in Section 5(d)(i) hereof.

“**Economic Incentive**” has the meaning assigned in the recitals of this Agreement but subject to other language and restrictions herein.

“**Enforced Delay**” has the meaning assigned in Section 8(a) hereof.

“**Improvements**” means the TCM’s planned improvements to the Premises to create a sales tax generating café and gift shop, in compliance with the descriptions, plans, and other information in the Construction Proposal.

“**Minimum Requirements**” means certain continuing obligations and requirements of TCM, applicable at all times during the Term of this Agreement and as specifically set forth in Section 3(a) and Section 3(b) of this Agreement.

“**Notice**” means any objection, approval, disapproval, demand, document, or other notice permitted or required under this Agreement.

“**Order**” means the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body.

“**Permitted Assignee**” has the meaning given in Section 9(m) hereof.

“**Term**” means the term of this Agreement, beginning upon the Effective Date and terminating in accordance with Section 9(n) hereof.

“**Third Party**” means any person or entity other than a Party or an Affiliate of a Party.

**3. Recipient’s Minimum Requirements.** To be entitled to the economic benefits provided by the District herein, TCM shall at all times satisfy the following Minimum Requirements:

**(a) Timing of Improvements.** The Improvements to the Premises and Project contemplated by this Agreement must be completed, and a Certificate of Occupancy issued, no later than August 31, 2027.

**(b) Insurance.** In addition to any insurance required under the Lease, TCM shall maintain the following at its own cost and expense: (i) Causes of Loss-Special Form (formerly “all-risk”) Property Insurance against loss or damage to the existing and new improvements and betterments on the Premises, written at replacement cost value and with a replacement cost endorsement, covering the Premises for the Lease’s term (as provided in the Lease); and (ii) builder’s risk insurance to be maintained during the construction by Contractor as contemplated by this Agreement in the full amount of the cost of the improvements, and TCM shall further cause all its contractors and subcontractors to maintain insurance reasonably required by the District. The above-referenced insurance policies shall include an endorsement to provide

a waiver of subrogation in favor of the District and shall be endorsed to include the District as “an additional insured,” and TCM and Contractor shall maintain such policies with responsible insurance companies with an A.M. Best’s rating of A-VIII or better, authorized to do business in the State of Arizona.

(c) **Conditions Precedent.** For the duration of this Agreement and the Project, the foregoing Minimum Requirements are, and shall at all times remain, express conditions precedent to the District’s obligation to provide (or continue to provide) any amount of the Economic Incentive funding for the construction, renovation, and remodeling of the Premises.

4. **District’s Findings.** The District has determined that TCM’s satisfaction of the Minimum Requirements: (a) will benefit the District, the Convention Center, and the City in numerous ways including, without limitation: (i) increasing transaction privilege tax revenues and other revenues, (ii) increasing the District’s and City’s employment base, (iii) stimulating further economic development in and around the Convention Center and within the District’s district, and (iv) otherwise improving or enhancing the economic welfare of the downtown Tucson area, the Convention Center, and the District, in general; (b) is not likely to occur (or to occur at this time and/or in this manner and/or in the Premises) without the benefits provided in this Agreement; and (c) demonstrates the potential to generate revenues and other benefits (both tangible and intangible) to the District that outweigh, or are not disproportionate to, the costs associated with those benefits.

5. **Economic Incentive for Recipient.**

(a) **Release of Funds.** Based upon the District’s findings in Section 4 and subject to TCM’s continuing satisfaction of the Minimum Requirements and to use the Economic Incentive to construct the Project (i.e., a sales tax generating café and gift shop), the District will pay the Economic Incentive as described in this Section 5.

(b) **Amounts & Limitations.** The Total Economic incentive paid to TCM shall not exceed the lesser of: (i) fifty percent (50%) of the total construction costs actually paid by TCM to complete the Improvements and Project, as described in the Construction Proposal, and (ii) Four Hundred Seventeen Thousand Two Hundred Fifty and No/100 Dollars (\$417,250.00).

(c) **Construction Cost Advance.** Pursuant to that certain Construction Cost Advance Agreement (the “CCAA”) entered into between the Parties on March 29, 2023, the District advanced the sum of Two Hundred Thirty Thousand and No/100 Dollars (\$230,000.00) (the “CCAA Funds”) to TCM as a “pre-payment” for construction costs for the future Improvements to the Project, such amount to be deducted from the Economic Incentive. Therefore, the amount of remaining Economic Incentive funds is One Hundred Eighty-Seven Thousand Two Hundred Fifty and No/100 Dollars (\$187,250.00) (the “**Incentive Remainder**”). To be eligible to apply for any portion of the Incentive Remainder, TCM must first prove that it has already expended the advance of Four Hundred Sixty Thousand and No/100 Dollars (\$460,000.00) (the “**Incentive Threshold**”) in conformity with the CCAA and according to the procedures laid out in Section 5(d), for the purpose of constructing the Improvements in the Project. If and only if TCM has met the Incentive Threshold, then TCM will be eligible to apply via construction draws for installment payments of the Incentive Remainder in accordance with this Section 5.

**(d) Distribution Procedure.** For the avoidance of doubt, the Economic Incentive will be payable in *pro rata* installments, proportional to actual work and construction progress completed on the Project. Accordingly, District will release each installment of funds in an amount consistent with the latest construction draw submitted by TCM's Contractor and only upon completion of the following required conditions:

(i) TCM and/or Contractor shall deliver to District a signed construction draw ("**Draw Notice**") identifying which Improvements have been made in the Premises in compliance with the applicable Draw Notice and Construction Proposal;

(ii) For each Draw Notice submitted by TCM or Contractor, TCM (or its Architect) shall further provide written verification that: (X) certain Improvements and work consistent with the applicable Draw Notice number have been made in the Premises in compliance the Construction Proposal, and (Y) proof of payment to Contractor and each of the applicable subcontractors and/or suppliers for Economic Incentive draws previously paid by the District. For the avoidance of doubt, the requisite proof of payment shall include the lien waivers as elsewhere described in this Section 5;

(iii) Upon completion of the foregoing, the District shall have ten (10) business days from date of receipt of TCM's applicable construction draw to inspect the construction work and confirm such work is in accordance with the Construction Proposal, if applicable, and the submitted construction draw. Within seven (7) business days of such inspection, the District shall notify TCM in writing if the work (or any portion thereof) is not approved, and the District may withhold any Economic Incentive payment to TCM until such time as the work has been corrected or performed in accordance with the District's notice and to its satisfaction. If the District fails to inspect the property or provide notice within the time periods specified, the District will conclusively be deemed to have approved the Draw Notice;

(iv) As a further condition for release of each installment, TCM shall provide applicable lien waivers including, without limit, Conditional Lien waivers from all contractors, subcontractors, and suppliers with each Draw Notice as a condition for release of any money by the District, and Unconditional Lien waivers evidencing such payments for each prior Draw Notice. All such lien waivers shall be in the form prescribed in A.R.S. § 33-1008; and

(v) Although the CCAA Funds of \$230,000 have already been advanced, TCM acknowledges and agrees that it must comply with all conditions in this Section 5(d) with respect to the use of the CCAA Funds including, but not limited to, providing Draw Notices and Conditional and Unconditional Lien Waivers, and complying with all inspection requests. For example, TCM must submit Draw Notices for construction costs for the Project (i.e., the sales tax generating Improvements) up to \$460,000.00. For those initial construction costs up to \$460,000, TCM will not receive any additional reimbursements from the District because TCM already received such reimbursements via the CCAA Funds.

Subject to the other terms and conditions in this Agreement, if TCM satisfies each of the conditions in this Section 5(d) as well as the other applicable terms and conditions in Section 5, District shall release the applicable installment of funds after TCM has incurred more than \$460,000 in construction costs. For any work approved by the District, each such installment (triggered for any Draw Notice above \$460,000) shall be released no later than within fourteen (14) business days following the date on the District inspects and approves the construction work in the Premises and work pursuant to Section 5(d)(iii), above.

(e) **Sole Use** TCM hereby irrevocably covenants and agrees to use the Economic Incentive solely to defray TCM's actual costs for the construction of the Improvements (i.e., the sales tax generating café and gift shop only) as outlined in the Construction Proposal, and in accordance with the terms of the CCAA. If the District determines, in its sole discretion, that TCM has breached anything in this subsection, then TCM will be required to reimburse the District for all Economic Incentive funds heretofore advanced within ten (10) days of any breach of this subsection or receipt of any demand from the District.

(f) **Documentation.** TCM shall promptly provide the District with any and all documentation and/or evidence that the District requests to establish that the Economic Incentive granted herein, and each installment of funds made to TCM hereunder, is used consistently with the District's stated purpose and goals, this Agreement, the CCAA, and the Construction Proposal documents.

(g) **No Material Change in Scope.** TCM agrees that it shall not materially change the scope of this Project without first notifying the District in writing and negotiating with the District before any material changes are made to the Project.

(h) **Termination of Right to Economic Incentive.** In addition to such other restrictions and conditions expressly in this Agreement, TCM's eligibility to apply for and potentially receive any Economic Incentive funds will terminate at the earlier of: (i) the completion date of the Project Improvements and payment by the District of the Economic Incentive pursuant to Section 5(b), and (ii) May 1, 2027. Notwithstanding the foregoing, if none of the work anticipated under this Agreement has commenced by August 31, 2026, then this Agreement, without further act or notice required, shall automatically expire and terminate, and the Parties shall have no rights or obligations hereunder.

## **6. Default, Cure & Remedies.**

(a) **Party Default.** If either Party fails to perform its obligations under this Agreement and such failure continues for a period of thirty (30) days after written notice thereof from the other Party (the "**Cure Period**"), such failure shall constitute a Default under this Agreement; *provided*, however, that, if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform its obligations so long as such Party commences performance or compliance within said Cure Period and diligently proceeds to complete such performance. Any notice of a Default shall specify the nature of said Default and the manner in which said Default may be satisfactorily cured, where possible. If said Default is not cured within the Cure Period, or by its nature cannot be cured, the non-defaulting Party shall

have the remedies available to them in Section 6(b) or Section 6(c) of this Agreement, as applicable.

**(b) District Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by TCM in accordance with this Agreement, the District's remedies shall include, without limit, the following:

(i) Upon any Default which continues for thirty (30) days or more after the Cure Period (unless additional time is required to cure such Default as provided elsewhere in this Section), the District shall — without incurring any penalty or liability whatsoever — be entitled to: (X) in all cases, recover from TCM any and all Economic Incentive payments made during the period of any properly noticed and uncured Default; (Y) if such Default involves misuse or misappropriation by TCM of any Economic Incentive funds received hereunder, claw back from TCM all Economic Incentive payments previously received thereby, irrespective of when during the term such misuse or misappropriation occurred; and (Z) in all cases, immediately cease all future Economic Incentive payments to TCM.

(ii) Upon any Default, the District shall be entitled to any other remedies as may be available at law or in equity. All remedies of District shall be cumulative and not exclusive of one another, and the District's exercise of any remedy (or remedies) shall not constitute a waiver or election with respect to any other available remedy (or remedies). For the avoidance of doubt, the foregoing rights and remedies of District shall be available after the Term for any Default unless otherwise expressly agreed in a separate writing, signed by District.

**(c) TCM's Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the District in accordance with the requisite notice and Cure Period provisions of this Agreement, the District expressly acknowledges and agrees that TCM may seek specific performance, an injunction, special action, declaratory relief, or other similar relief requiring the District to undertake and fully and timely perform its obligations under this Agreement and/or TCM may seek damages from the District, limited to the amount of any undisbursed funds that a court determines should properly be disbursed to TCM and not for any other damages of any kind or nature.

**(d) Limitation on Damages.** Except as limited herein, claims for damages (when and if permitted) shall be limited to actual damages as of the time of entry of judgment. The Parties each hereby waive any and all rights to seek or receive punitive, multiple, exemplary, consequential, or other damages.

**(e) Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision

will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by the doctrine of waiver.

**7. Representations and Warranties and Covenants.**

(a) **TCM.** TCM represents, warrants, and covenants to the District that:

(i) Organization. TCM is a nonprofit corporation, duly organized, validly existing, and in good standing under the laws of the State of Arizona, and TCM has the power, right, and authority to enter into this Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Agreement shall constitute a legal, valid, and binding obligation of TCM, enforceable against it in accordance with the terms and conditions herein.

(ii) Performance. TCM shall execute and acknowledge, when appropriate, all documents and instruments and take all actions necessary to implement and evidence this Agreement and shall timely perform all of its obligations under the Lease and this Agreement.

(iii) Litigation. As of the date of this Agreement, TCM knows of no litigation, proceeding, or official investigation contesting the powers of TCM or its officers with respect to this Agreement, including TCM's execution, delivery, and performance hereof, that has not been disclosed in writing to the District.

(iv) Contracts. Except as provided in this Agreement, neither this Agreement nor anything required to be done hereunder violates or shall violate any contract or agreement to which TCM is a party.

(v) Indemnification. Upon the filing by any Third Party of any action at law or in equity or the assertion of any claim, cause of action, or judicial or non-judicial proceeding relating or pertaining to TCM's performance or failure to perform its obligations under this Agreement, whether or not TCM is a party to such claim, action, or proceeding, and whether or not negligence or gross negligence by the District is alleged, TCM shall cause such action or proceeding (including all claims against the District, its directors, officers, agents, or employees) to be timely defended by counsel selected by TCM and acceptable to the District in its reasonable discretion. The District shall fully cooperate in the defense of such action or proceeding in coordination with TCM's counsel, at TCM's sole cost and expense. The District may, in its sole discretion and at its own cost and expense, select its own counsel to defend the District. In addition to the foregoing, TCM shall indemnify, defend, and hold the District, its Board Members, representatives, agents, and employees, harmless for, from, and against any liability, loss, claim, action, or demand, including attorneys' fees and costs that may arise out of or is connected with TCM's breach of any covenant, representation, warranty, or term in this Agreement. Notwithstanding anything in this Agreement to the contrary, TCM's obligations in this Section 7(a)(v) shall survive termination and/or the expiration of this Agreement.

(vi) No Consideration to Third Parties. TCM has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this



Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, and attorneys.

**(b) The District.**

(i) Organization. The District is a special taxing district of the State of Arizona, duly organized, validly existing, in good standing under the laws of the State of Arizona, and has the power, right, and authority to enter into this Agreement and to consummate the transaction contemplated hereby, without the consent or joinder of any other party, or order or approval of any court, and this Agreement shall constitute a legal, valid, and binding obligation of the District, enforceable against the District in accordance with the terms and conditions herein.

(ii) Performance. The District will execute and acknowledge, when appropriate, all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(iii) Litigation. As of the date of this Agreement, the District knows of no litigation, proceeding, initiative, referendum, or official investigation contesting the powers of the District or its officials with respect to this Agreement, including the District's execution, delivery, and performance hereof, that has not been disclosed in writing to TCM.

(iv) Other Contracts. Except as provided in this Agreement, neither this Agreement nor anything required to be done hereunder violates or shall violate any contract or agreement to which the District is a party.

(v) Indemnification. The District shall indemnify and defend TCM, its managers, members, representatives, agents, and employees from and against any liability, loss, claim, action, or demand, including reasonable attorneys' fees and costs, which arise out of or is connected with the District's breach of any covenant, representation, warranty, or term in this Agreement. The District's indemnification obligation above shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period.

**(c) Limitation on Representations.** Except as expressly stated herein, no Party has made any representation regarding the validity, enforceability, tax effect, or any other aspect of this Agreement.

**8. Enforced Delay.**

**(a) Events Constituting Enforced Delay.** Whether stated or not, all periods of time in this Agreement are subject to this Section. Neither Party, as the case may be, shall be considered to have caused a Default, nor shall TCM be deemed to have failed to satisfy TCM Minimum Requirements with respect to its obligations under this Agreement, in the event of a delay (an "**Enforced Delay**") due to causes beyond its control and without its fault, negligence or failure to comply with the Applicable Laws including, but not restricted to:

(i) acts of God; acts of the Federal or State government; acts of a Third Party; litigation or other action authorized by law concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby; fires, floods, pandemics, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather, or the delays of subcontractors or materialmen due to such causes; act of a public enemy; war, terrorism or act of terror (including, but not limited to, bio-terrorism or eco-terrorism); nuclear radiation; declaration of national emergency or national alert; blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence; any exercise of the power of eminent domain by any governmental body on behalf of any public, quasi-public, or private entity; or declaration of moratorium or similar hiatus directly affecting the Premises and property by any governmental entity; or

(ii) any Order which delays the completion of the work or other obligation of the Party claiming the delay, unless it is shown that such Order is the result of the failure to comply with Applicable Laws by the Party claiming the delay; *provided*, however, that the contesting in good faith of any such Order shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay. In no event will Enforced Delay include any delay resulting from general economic or market conditions, from the unavailability of financing or financing on terms acceptable to TCM, from labor shortages, nor from the unavailability for any reason of particular materials or other supplies, contractors, subcontractors, vendors, investors, or lenders desired by TCM. It is understood and agreed that TCM will bear all risks of delay which is not Enforced Delay.

**(b) Notice of Enforced Delay.** In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period equal to the duration of the Enforced Delay. The Party seeking the benefit of this Section shall, within thirty (30) days after such Party knows or reasonably should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

## **9. General Provisions.**

**(a) Waivers.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Unless expressly provided for in this Agreement, no waiver shall be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

**(b) Construction, Governing Law, and Venue.** This Agreement shall be interpreted according to Arizona law and shall be construed as a whole and in accordance with its fair meaning and without regard to, or taking into account, any presumption or other rule of law requiring construction against the Party preparing this Agreement or any part hereof. Any dispute or controversy relating to this Agreement, including the breach and enforcement thereof, shall take place in the Superior Court of Pima County, Arizona.

- (c) **Time.** Time is strictly of the essence of each and every provision of this Agreement.
- (d) **No Commission.** Both Parties represent that no unpaid commission is outstanding with respect to this Agreement, and each Party indemnifies the other against brokerage or commission claims arising out of the indemnifying Party's actions.
- (e) **Attorneys' Fees.** If any action is brought by any Party in respect to its rights under this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs as determined by the court, including reasonable attorneys' fees incurred before any court or enforcement action that relate to the enforcement hereof.
- (f) **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and shall inure to the benefit of the Parties (as applicable) and their respective permitted successors and assigns.
- (g) **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 purposes of this Agreement and to effectuate the provisions of this Agreement and the rights of each Party.
- (h) **Time Periods.** If the time for the performance of any obligation under this Agreement expires on a Saturday, Sunday, or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday, or legal holiday.
- (i) **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.
- (j) **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitutes the entire agreement between the Parties pertaining to the subject matter in this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties.
- (k) **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.
- (l) **Approvals and Notices.** Any Notice that any Party may desire or may be obligated to give to any other Party shall be in writing and may be given by personal delivery; registered or certified mail (return receipt requested); email transmission (with delivery receipt); or by commercial courier to the Party, or its successors or assigns, to whom the Notice is intended at the address of the Party set forth below or at any other address as the Parties may later designate in writing. Change of address by a Party shall be given by Notice as provided in this Section:

**If to District:** Rio Nuevo Multipurpose Facilities District  
Attn: Edmund Marquez  
1703 East Broadway Boulevard  
Tucson, Arizona 85719  
Email: [brandihb@rionuevo-tucson.org](mailto:brandihb@rionuevo-tucson.org)

**With a copy to:** Farhang & Medcoff, PLLC  
Attn: Timothy Medcoff, Esq.  
100 South Church Avenue, Suite 100  
Tucson, Arizona 85701  
Email: [tmedcoff@farhangmedcoff.com](mailto:tmedcoff@farhangmedcoff.com)

**If to TCM:** The Tucson Children's Museum  
Attn: Hilary Van Alsborg  
200 S 6th Ave  
Tucson, Arizona 85701  
Email: [hilary@childrensmuseumtucson.org](mailto:hilary@childrensmuseumtucson.org)

**(m) Successors and Assigns.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties; *provided*, however, that TCM's rights and obligations hereunder may be assigned or transferred only at any time the assignor is not in Default under any provision of this Agreement to a single person or entity that has acquired the entirety of such rights and obligations as a successor in interest to TCM; and *provided further*, that the successor has expressly and in writing for the benefit of the District assumed all of the obligations of the assignor under this Agreement. An assignee pursuant to an assignment or transfer made in compliance with all of the terms and provisions of this Agreement may be referred to as a "**Permitted Assignee.**" Any assignment or transfer not made in compliance with all of the terms and provisions of the Agreement shall be void *ab initio*, and not voidable, and shall vest no rights in the purported assignee or transferee.

**(n) Term.** Subject to the any express provision to the contrary, the Term shall automatically expire and terminate, without further act or notice required, upon the occurrence of the events contemplated in Section 5(h). Following the Term, the Parties shall have no rights or obligations hereunder; *except* that, notwithstanding anything in this Section or Agreement to the contrary, the Parties' indemnification obligations set forth in Section 7 shall survive along with any other rights and obligations of the Parties as may be otherwise expressly provided in this Agreement.

**(o) No Partnership; Third Parties.** Nothing in this Agreement shall create, or be deemed to create, any partnership, joint venture, or other similar arrangement between the Parties. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization, or corporation not a Party hereto, and no such other person, firm, organization, or corporation shall have any right or standing to any cause of action hereunder; *except* that the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Board Members, officers, and employees of the District acting in the course and scope of their employment or engagement and all such persons shall be, and are intended to be, third party beneficiaries of such indemnification provisions.

**(p) Limited Severability.** The Parties agree that in the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the District to do any act in violation of any Applicable Law), such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect; *provided*, that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further shall perform all acts and execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this Section 9(p).

**(q) No Liability of District Officials.** No director, officer, official, representative, agent, attorney, or employee of the District shall be personally liable to TCM, or to any successor in interest to TCM, in the event of any Default by the District, or for any amount which may become due to TCM or its successors, or with respect to any obligation of the District pursuant to this Agreement.

**(r) District Expenditures.** Notwithstanding anything to the contrary herein, District's cumulative financial responsibility and liability for payments, expenses, and costs of any nature incurred under, or arising out of, this Agreement shall in all cases be the lesser of: (i) the Economic Incentive paid to TCM; and/or (ii) the expenditure thresholds set forth in A.R.S. §§ 48 4203(E) and 48-4204(C).

**(s) Conflict of Interest.** This Agreement is subject to and may be terminated by the District in accordance with the provisions of A.R.S. § 38-511.

**(t) Israel Boycott.** If and to the extent that A.R.S. §§ 35-393 *et seq.* is applicable, TCM certifies that it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel as that term is defined in A.R.S. § 35-393.

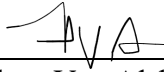
[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the dates set forth with their respective signatures, effective as of the Effective Date below.

**Effective Date:** \_\_\_\_\_

**THE TUCSON CHILDREN’S MUSEUM, AN  
ARIZONA NONPROFIT CORPORATION**

**RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT**

**By:**   
**Name:** Hilary Van Alsborg  
**Title:** Executive Director  
**Date:** 05 / 18 / 2023

**By:** \_\_\_\_\_  
**Name:** Fletcher McCusker  
**Title:** Chairman  
**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** Edmund Marquez  
**Title:** Secretary  
**Date:** \_\_\_\_\_

**APPROVED AND CONSENTED TO BY LANDLORD:**

**THE CITY OF TUCSON**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_  
**Date:** \_\_\_\_\_


IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth with their respective signatures, effective as of the Effective Date below.

Effective Date: \_\_\_\_\_

THE TUCSON CHILDREN’S MUSEUM, AN  
ARIZONA NONPROFIT CORPORATION


RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT

By: \_\_\_\_\_  
Name: Hilary Van Alsburg  
Title: Executive Director

By:  \_\_\_\_\_  
Name: Fletcher McCusker  
Title: Chairman

Date: \_\_\_\_\_

Date: 05 / 19 / 2023

By:  \_\_\_\_\_  
Name: Edmund Marquez  
Title: Secretary

Date: 05 / 18 / 2023

APPROVED AND CONSENTED TO BY LANDLORD:

THE CITY OF TUCSON

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

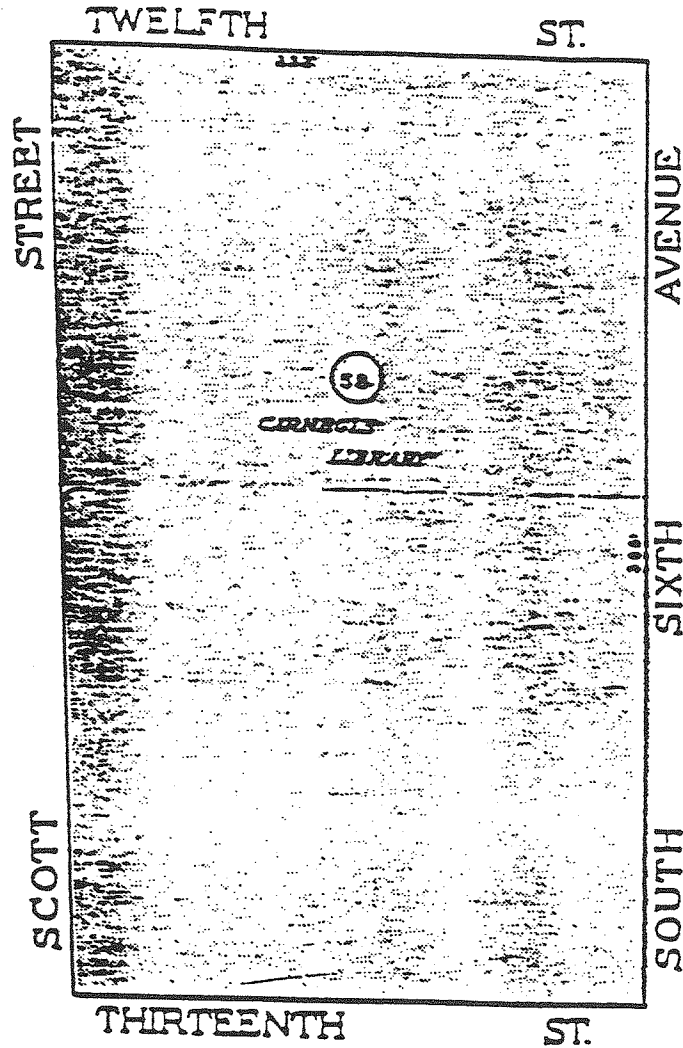
Date: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION**

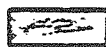
[Attached]



# Block 260. City of Tucson



## LEGEND



AREA TO BE LEASED



ASSESSOR'S TAX CODE NO. 117-17

**EXHIBIT B**  
**CONSTRUCTION PROPOSAL PLANS AND DOCUMENTS**

[Attached]

| 200 S. 6th Avenue Renovation Timeline - CMT        |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
|--|-------------------|-------------------|------------------|-----------------|-------------------|------------------|-----------------|-------------------|-------------------|-----------------|-------------------|-------------------|----------------|
|  | April -Sept. 2023 | Sept. - Dec. 2023 | Jan - April 2024 | May - Aug. 2024 | Sept. - Dec. 2024 | Jan - April 2025 | May - Aug. 2025 | Sept. - Dec. 2025 | Jan. - April 2026 | May - Aug. 2026 | Sept. - Dec. 2026 | Jan. - April 2027 | May - Aug 2027 |
| Building inspections                               |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| City and stakeholder engagement                    |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Finalize project concept                           |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Budget estimates                                   |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Secure funding for renovations                     |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Community focus groups, Design Review              |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Contract with architecture firm for renovations    |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Contract with building contractor for renovations  |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Contract with exhibits design firm                 |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Finalize renovation plans                          |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Approve final budget                               |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Permitting   |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Construction                                       |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Installation of FFE for café, gift shop, reception |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Exhibits installation                              |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |
| Grand opening                                      |                   |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |                |

| North Lawn Renovation Timeline                 |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
|--|--------------------|-------------------|------------------|-----------------|-------------------|------------------|-----------------|-------------------|-------------------|-----------------|-------------------|-------------------|
|  | April - Sept. 2023 | Sept. - Dec. 2023 | Jan - April 2024 | May - Aug. 2024 | Sept. - Dec. 2024 | Jan - April 2025 | May - Aug. 2025 | Sept. - Dec. 2025 | Jan. - April 2026 | May - Aug. 2026 | Sept. - Dec. 2026 | Jan. - April 2027 |
| Collaborate with City of Tucson and City Parks |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Landscape architect concept development        |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Budget estimates                               |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Finalize project concept                       |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Secure funding for renovations                 |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Community focus groups                         |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Contract with Exhibits Design firm             |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Finalize renovation plans                      |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Approve final budget                           |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Permitting                                     |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Construction                                   |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| Exhibits installation                          |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |
| STEM Garden Grand Opening                      |                    |                   |                  |                 |                   |                  |                 |                   |                   |                 |                   |                   |