

## **EXPRESSION OF INTENT**

This Expression of Intent (“EOI”) sets forth the terms upon which the City of Tucson (“COT”) and the Rio Nuevo Multipurpose Facilities District (“RN”) desire to resolve various issues and claims that exist between COT and RN (collectively the “Parties”). Upon approval of this EOI by the COT’s Mayor and Council and the RN Board of Directors, the Parties will immediately instruct their respective legal counsel to commence drafting the documents necessary to create and effectuate binding and final agreement(s) on the issues and claims set forth below (“Final Agreement(s)”).

### **General Terms**

1. Completion of Audits:

RN will continue and complete the forensic audits associated with the Depot Garage and the Westside projects (the “Audits”). COT agrees to facilitate and fully cooperate with the completion of the Audits and will in good faith provide all documents, reports and responses as may be needed to complete the Audits.

If the completed Audits include findings of unauthorized or improper expenditures, the Parties agree to meet and discuss the Audits in an effort to resolve those findings. If through such meeting or meetings the Parties cannot mutually agree upon a resolution or disposition of those findings, the Parties agree that they will participate in binding, final, non-appealable alternative dispute resolution to resolve such matters (“Binding ADR”). The Parties agree that the costs of the Binding ADR process shall be shared equally between the Parties.

The Parties further agree that to the extent the completed Audits include findings that, if accurate and proven or if established by the Binding ADR, would warrant the reimbursement or payment by COT to RN for prior RN expenditures, COT would be entitled to a credit against such findings in an amount equal to the current value of the real property described in paragraphs 5 and 6 of this EOI [the Arena Site and 351 S. Brickyard properties], which pursuant to this EOI would be transferred to RN.

The Parties agree that any and all applicable contract and statute of limitations periods as well as any and all statutory notice of claim requirements shall be tolled and suspended immediately upon the execution of this EOI through the conclusion of the Binding ADR.

By agreeing to the above, neither COT nor RN agrees or commits to agree with the findings of the Audits, which at the time of the execution of this EOI are unknown; and subject to the Binding ADR requirement each party reserves the right to object to, contest, or refute any Audit findings.

2. Tucson Convention Center (Primary Component):

From funds that may lawfully be expended for such purpose, RN agrees to expend not less than the contractually available remaining proceeds from RN’s 2008 revenue bonds up to \$6,000,000

for renovations to the Tucson Convention Center (“TCC”); the Primary Component of the RN District. COT and RN shall cooperate and coordinate to prioritize improvements to the TCC, which improvements may include improvements to the grounds of the TCC property and its associated existing improvements, including by example but not limited to the Eckbo Fountains. In connection with the expenditures described in this section, COT acknowledges that a notice to proceed issued by RN for the improvements funded by such expenditures shall constitute a notice to proceed for convention center improvements located on the multipurpose facility site as contemplated under A.R.S. §48-4204(B).

RN and COT shall cooperate and share the cost in researching the feasibility of upgrading, improving and expanding the existing TCC Arena, subject however to a subsequent agreement defining the scope and cost of such feasibility analysis and associated design. COT reaffirms its obligations to comply with the terms and conditions of the existing TCC Lease and Sublease Agreements between the Parties, together with any amendments to those agreements as may have been or may be executed between the Parties.

In consideration of the above, any claims that may exist between the Parties relating to the TCC Lease and Sublease Agreements shall be included within the mutual release of claims described in paragraph 14 of this EOI.

3. RN’s claims for compensation for transfer of Fire Central Property:

In exchange for transfer of the Arena Site as set forth in section 5 below, RN shall release any and all claims that it has or might have to the Fire Central Property (generally APN 11713069E).

4. Depot Garage (the “Garage”):

COT will retain ownership of the Depot Garage and RN agrees to withdraw its objection to the COT’s prior agreements with any third party relating to the leasing or allocation of spaces in the Garage. The COT will be solely responsible for the operation and maintenance of Garage and shall be solely responsible for any issues with all third parties relating to the design, construction and operation of the Garage.

In recognition of the monies expended by RN for the construction of the Garage and RN’s claim to share in the Garage revenues, the COT shall pay to RN pursuant to the following schedule a flat fee on a monthly basis commencing January 1, 2013 with payments due and payable of the fifth (5<sup>th</sup>) day of the subsequent month. For example the January 2013 payment will be due on or before February 5, 2013.

|                                 |   |
|---------------------------------|---|
| Year 2013:                      | \$58,000.00 per year/\$4,833.33 per month         |
| Year 2014:                      | \$106,000.00 per year/\$8,833.33 per month        |
| Year 2015:                      | \$183,000.00 per year/\$15,250.00 per month       |
| Year 2016:                      | \$285,000.00 per year/\$23,750.00 per month       |
| Every year thereafter shall be: | In the amount of 104% of the prior year’s payment |

These payments shall continue through 2050 or the termination of RN, whichever first occurs.

The COT shall not sell the Garage without the prior written consent of RN; and upon any sale of the Garage, RN shall be entitled to receive the lesser of the following: 1) the total of the sales proceeds; or 2) the amount of \$16,000,000.00 less the total amount of payments received by RN from the COT as of the date of the closing of the sale, pursuant to the payments described above.

5. Arena Site:

RN has asserted a claim against COT for \$894,000 for expenditure reimbursement in connection with the Arena Site (generally APNs 116201350, 116201390 & 11620136A) but with the precise legal description to be determined and set forth in the Final Agreement(s). COT and RN agree that the Arena Site is a location that should be considered for the development of tax-generating uses that benefit both RN and COT, and that will benefit and support RN's Primary Component and associated Secondary Components. Such beneficial uses could include, without limitation, a stadium or arena, a hotel or hotels, and/or mixed-use or multipurpose facility development and associated parking and other amenities. ["Beneficial Uses"].

In order to pursue the development of the Arena Site for Beneficial Uses, and in order to resolve the disputes between the Parties relating to the Arena Site, the Parties agree that upon execution of the Final Agreement(s), COT shall transfer fee title and all of COT's interests in the Arena Site to RN, upon mutually agreeable terms including, without limitation the following conditions:

- 1) As a condition of the transfer of the Arena Site, COT will represent and warrant all known claims, existing and potential, relating to the Arena Site ("Known Claims") and based upon such representations and warranties RN shall indemnify COT, and agrees to defend and hold harmless COT, against all such Known Claims any claims or actions relating to the Arena Site, known or unknown, including but not limited to any claims or actions that might arise relating to prior negotiations with third parties relating to the possible sale or disposition of the Arena Site.
- 2) RN shall actively solicit and pursue the development of the Arena Site for the purpose of securing and establishing Beneficial Uses on the property. COT agrees to cooperate in these efforts in good faith.
- 3) Upon transfer of fee title to the Arena Site, RN shall waive and relinquish the \$894,000 reimbursement claim described above.
- 4) COT shall remain solely responsible for all costs and other obligations to relocate the Greyhound Terminal on the Arena Site.

6. 351 South Brickyard:

COT will transfer ownership of the 351 S. Brickyard property to RN. The property transfer will include the site (generally referenced as HP6 on the COT Tucson Origins Heritage Park depiction on the COT website and in Exhibit A to the Development and Exchange Agreement for Citizens Auto Stage recorded in Docket 12448 commencing at Page 03763) including the eradicated landfill together with sufficient surrounding land necessary for the productive use of

this property (collectively the “Brickyard Property”). In addition, COT shall grant RN the ingress, egress and utility easements necessary and convenient for the use of the Brickyard Property (the “Easements”). The precise legal descriptions of the Brickyard Property and the Easements will be determined by a survey to be obtained by and paid for by COT after both Parties approve this EOI and before the execution of the Final Agreement(s).

The COT agrees that any of the projects identified in Proposition 400 approved by the voters of the City of Tucson and the City of South Tucson in 1999 are acceptable projects for development of the Brickyard Property and for the Sonora Desert Park section subject to compliance with all applicable codes and regulations.

7. Mission Gardens:

RN agrees to cooperate in the completion of the Mission Gardens project.

8. Presidio:

COT will retain ownership of the Presidio property other than the Restrooms and Museum/Office which are currently owned by RN. COT and RN have previously executed a lease by RN to the COT of the Restrooms and Museum/Office providing that COT shall be responsible for all taxes, insurance and upkeep of the subject buildings. The property at 133 W. Washington which is currently owned by RN shall be leased by RN to COT upon mutually agreeable reasonable terms.

9. Duplex:

The Duplex at 196-200 N. Court Avenue shall remain titled to RN, and COT shall waive and release any and all claims relating to this property.

10. Church and Council Parking Lot:

COT will transfer ownership of the Church and Council parking lot to RN. Lease revenues will continue to go to RN as they have to date. COT shall waive and release any and all claims to this property.

11. Rialto Theatre:

The COT is a party to the Rialto Theatre lease, together with RN and the Rialto Theatre Foundation. In the event that RN negotiates lease terms with the Foundation that are more favorable to the Foundation than those terms that currently apply under the existing Lease, the COT agrees that it shall consent to any amendments to the Lease as may be necessary to effectuate the enactment of those terms, so long as such amendments do not create new obligations for COT.

12. Hotel Development:

Parties agree that the development of a hotel or hotels located within the boundaries of the multipurpose facilities site is critical to the successful development of the COT's downtown area and to RN's Primary Component. In addition, the Parties recognize and acknowledge that A.R.S. §48-4204(B) limits the expenditure of RN tax increment revenues to certain specified purposes until such time that RN shall issue a notice to proceed for a hotel (and convention center – see paragraph (2), above). Accordingly, the Parties agree to cooperate and act in good faith to solicit and consider proposals for the development of a hotel or hotels that will support and benefit the Primary Component. In the event that RN participates financially in the development of a hotel project located in the multipurpose facility site through the execution of an agreement with the COT, the COT agrees that the execution of such agreement shall constitute a notice to proceed for hotel development as contemplated under A.R.S. §48-4204(b).

13. Streetscape Development:

RN will cooperate with COT and downtown developers to improve the streetscape within the downtown core portion of the boundaries of the multipurpose facility site.

14. Agreement to Cooperate:

COT agrees to fully cooperate with the development of any and all parcels within the RN multipurpose facilities site and to ensure that its development authorities provide expeditious determinations of such projects.

15. Pending Lawsuits:

There are three "Existing Lawsuits" in which both COT and RN are named parties; *Kromko v. Rio Nuevo Multipurpose Facilities District, et al.*, Pima County Docket C2011-1105 ("Kromko Lawsuit"), *Rio Nuevo Multipurpose Facilities District v. City of Tucson, et al.*, Pima County Docket C2011-7439 ("Case 7439"), and *Rio Nuevo Multipurpose Facilities District v. City of Tucson, et al.*, Pima County Docket C2011-7440 ("Case 7440").

In these three Existing Lawsuits, RN and COT have asserted claims against each other (generically "Pending Claims"). In addition to, and other than, the Pending Claims there are or may be other claims each has against the other (generically "Remaining Claims").

Upon the execution of the Final Agreement(s), RN and COT shall dismiss the Case 7439 and Case 7440 Pending Claims as well as the Remaining Claims.

Because the Kromko Lawsuit involves active litigants other than COT and RN, the Parties acknowledge that, while they will make every reasonable effort to do so, it may not be possible to resolve all Pending Claims in the Kromko Lawsuit prior to the execution of the Final Agreement(s). If all of the Pending Claims in the Kromko Lawsuit cannot be resolved prior to the execution of the Final Agreement(s), then (a) such Final Agreement(s) shall nevertheless be executed and (b) COT and RN shall continue their good faith efforts to resolve the Pending Claims in the Kromko Lawsuit.

**City of Tucson**

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By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as form by Michael Rankin, City Attorney, City of Tucson:

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By: Michael Rankin, City Attorney

**Rio Nuevo Multipurpose Facilities District**

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By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as form by Gust, Rosenfeld P.L.C. for Rio Nuevo Multipurpose Facilities District:

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By: Mark Collins, Esq.