



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: January 8, 2019

** = Mandatory, information must be provided*

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Rio Nuevo Multipurpose Facilities District

***Project Title/Description:**

75 East Broadway

***Purpose:**

By leasing the property to the Rio Nuevo Multipurpose District, the District can market this property to specific-sized employers who would occupy new buildings to be constructed by the District on the leased land.

***Procurement Method:**

Exempt per Section 11.04.020

***Program Goals/Predicted Outcomes:**

Primary goal is to redevelop this property to add to the downtown employment base

***Public Benefit:**

By adding a minimum of 150,000 sf of Class A office space and 350 parking places, project will draw employment by firms paying much above the median wage and improved the parking congestion downtown.

***Metrics Available to Measure Performance:**

Successful development of a building and parking matching County requirements of at least 150,000 sf of Class A Office Space, 350 parking spaces and up to 40,000 sf of retail completed within the agreed upon timeline.

***Retroactive:**

No

To COB: 12-31-18 (3)
Vers: 1
Pgs: 45

Contract / Award Information

Document Type: CTN Department Code: CA Contract Number (i.e., 15-123): 19*109

Effective Date: 1/08/2019 Termination Date: 1/07/2024 Prior Contract Number (Synergen/CMS):

☐ Expense Amount: \$* ☒ Revenue Amount: \$ 3,109,500***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ %Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No**If Yes, is the Contract to a vendor or subrecipient?**Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Effective Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

☐ Expense or ☒ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$Is there revenue included? ☒ Yes ☐ No If Yes \$***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ %**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Effective Date: Termination Date: Amendment Number:

☐ Match Amount: \$ ☐ Revenue Amount: \$***All Funding Source(s) required:*****Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ %***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ %***Funding Source:*****If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: John Moffatt

Department: Economic Development Office

Telephone: 724-4444

Department Director Signature/Date:

Deputy County Administrator Signature/Date:

County Administrator Signature/Date:

(Required for Board Agenda/Addendum Items)

GROUND LEASE AND PURCHASE AGREEMENT

This Ground Lease and Purchase Agreement (the “**Agreement**” or “**Lease**”) is entered into as of January 8, 2019, (the “**Agreement Date**”) by and between Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (“**District**”), and Pima County, a political subdivision of the State of Arizona (“**County**”). District and County are sometimes individually referred to as a “**Party**” and jointly referred to as the “**Parties**”.

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 in downtown Tucson, Arizona (“**Unimproved Parcel**”). County anticipates acquiring 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**”) lie within the Rio Nuevo Multipurpose Facilities boundary. The Premises is legally described and depicted on **Exhibit A**.

B. The 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 the District (A.R.S. §§ 48-4201(4)(b) and 48-4204(B)). 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 the county,” including specifically the “acquisition, improvement, leasing or conveyance of real or personal property.”

D. The District and the County executed a Ground Lease Option Agreement dated December 13, 2016 (the “**Option Agreement**”) pursuant to which the County granted to District an exclusive option (the “**Option**”) to lease the Premises in accordance with the terms and conditions of the Option Agreement.

E. In September of 2017 the District issued an RFP seeking proposals for the development of the Premises. The RFP evaluation committee selected the proposal from a team headed by JE Dunn Construction (“**Dunn**”) as the highest ranked proposal. Subsequently Dunn and the District executed a “Development Agreement” pursuant to which the District agreed to perform the archaeological/cultural investigation and mitigation on the Premises required by BOS Policy C 3.17 (“**Archaeology Study**”). The District retained Logan Simpson Design, Inc. (“**Logan Simpson**”) to perform the Archaeology Study. When Logan Simpson’s site work on the Premises has been completed it will file an “End of Fieldwork Report” with Pima County’s Office of Sustainability and Conservation (“**OSC**”).

F. District has exercised the Option, and the Parties, as provided in the Option Agreement, have agreed on the Rent Amount. The Board has determined that entering into this Agreement and leasing the Premises to District for development as provided in this Agreement will assist in

the creation or retention of jobs and will improve and enhance the economic welfare of the inhabitants of the County.

G. District intends to improve the Premises by entering into a sublease and related agreements ("**Sublease**") with Dunn or a related entity ("**Developer**"), to construct on the Property a Class-A, mixed use building of at least 8, and up to 21, floors (300 feet) in height (inclusive of parking decks); containing at least 150,000 and up to 250,000 square feet of office space ("**Office Component**"), including up to 40,000 square feet of retail space ("**Retail Component**"); and parking for at least 350 vehicles onsite ("**Parking Component**") (all collectively the "**Project**").

H. 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**.

I. The District has determined that the Project is a related commercial facility located within the Rio Nuevo Multipurpose Facilities boundary, that the District's primary component is in close proximity to the Project and will benefit from the Project, and that District will benefit from the tax revenues to be generated by the Project.

J. 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 the District all upon the terms and conditions of this Agreement. The Board has determined that the Option Notice and this Agreement comply with all material requirements of the Option Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the Parties in this Agreement, the Parties agree as follows:

1. **Accuracy of Recitals.** The Parties hereby acknowledge the accuracy of the Recitals.
2. **Ground Lease.** Effective upon the Agreement Date, County hereby lets the Premises to District, and District hereby leases the Premises from County.
3. **Condition of Premises.**

A. Except for the completion of the Archaeology Study, District 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. 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. District expressly acknowledges and agrees that the 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.

B. The District shall require and is responsible for Logan Simpson (i) completing its "Fieldwork Portion" of the Archaeology Study and (ii) submitting its End of Fieldwork Report to OSC on or before March 1, 2019. County's OSC shall complete its processing of the End of Fieldwork Report within 5 business days of its submittal by Logan Simpson and notify District 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 District and Developer that it has accepted the End of Fieldwork Report ("**Archaeological Clearance Date**") the District's due diligence inspection of the Premises shall be complete.

4. **Term.** The term of this Lease begins on the Agreement Date and, unless earlier terminated as provided herein, ends on the Closing Date.

5. **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 the District, and the County Administrator, will execute a short supplement to this Agreement establishing the date of Project Commencement.

6. **Cancellation.** If Project Commencement does not occur within 12 months of the Archaeological Clearance Date ("**Commencement Deadline**") or if Developer notifies the District at any time prior thereto of its decision not to proceed with the Project, the District or the County may cancel this Agreement 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 Cancellation.

7. **Rent.** The District shall not be obligated to pay rent for the use of the Premises from the Agreement Date through the date of Project Commencement. Rent for the Premises after the date of Project Commencement ("**Net Rent**") will be \$189,000 per year, payable by District to County, in advance, in equal monthly installments.

8. **Possession and Enjoyment.** 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 the District no later than January 1, 2019. 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.

9. **The Project.**

A. **Construction.**

i. The Developer will design and construct the Project in accordance with the Sublease and Section 9 below.

ii. 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.

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

B. Project Commencement. Developer will cause Project Commencement to occur no later than 12 months after the Archaeological Clearance Date. Nevertheless construction will not commence until each of the following has occurred:

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

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

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

iv. 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.

v. 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 the District as obligees, conditioned on the completion of the Project in accordance with the Final Plans and the provisions of this Agreement, free and clear of all mechanics' and other liens.

C. 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 the County's concerns. The County Development Services Department will conduct the review and give approvals and disapprovals on behalf of County.

i. **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 the 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.

ii. **Final Plans.** No later than 3 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.

iii. **Amended Plans.** If, at any time after the submission of the Preliminary Plans the Developer desires to increase the square footage of the Office Component, the Developer shall submit amended plans to the 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.

D. **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 the County harmless and indemnify it from all such costs, expenses, and charges, including attorneys' fees relating thereto, and will require the Developer to provide such indemnity to the County.

E. **County Inspection.** Representatives of County 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.

F. **Substantial Completion.** Construction of the Project must be substantially completed within 26 months after Project Commencement, subject to delays occasioned by "force majeure." If it is not substantially completed in a timely manner, the County may cancel this Agreement by written notice to the District, subject to a period of 30 days during which the 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.

10. **Force Majeure.** If a Party is delayed, hindered in, or prevented from the performance of any term, covenant, or act required by it under this Agreement by reason of strikes, labor troubles, inability (on commercially reasonable terms) to procure materials or services, power failure, change in government regulation, sabotage, rebellion, war, act of nature, or other like

cause ("**Force Majeure**"), any of which must be beyond the reasonable control of such Party, then the performance of that term, covenant, or act is excused for the period of the delay and any deadlines under this Agreement affected as a result of such Force Majeure will be deemed correspondingly extended.

11. **Title to Project.** Provided that neither the 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 of 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 the 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.

12. **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 as a result of a sale of the Premises to District) will, at the election of County, become the property of County without payment to the District or Developer, or be deemed abandoned and removed by County at Developer's expense.

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)**").

A. Provided the County has received at least 10 days written notice of any intended encumbrance of the Premises, it 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, and 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 and/or Developer defaults, and any reletting of the Premises by a Lender must comply with all the terms and conditions of this Agreement. 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. Developer shall provide County and District at least 30 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. 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.

B. 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. **Sublease and Assignment.**

A. **Assignment.** District will not voluntarily assign or encumber this Lease or any interest in it, except as permitted under Section 13 above, without County's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

B. **Sublease.** County acknowledges that District does not intend to occupy or use the Premises itself, and instead intends to sublet the Premises to Developer.

C. **Salary Requirement.** 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 the District demonstrating that its office employees working at the Premises earn an average annual wage, including benefits, of at least one-hundred fifty percent (150%) of the US Census Bureau's American Community Survey (ACS) 5-year Estimate of Median Household Income for Pima County.

15. **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**.

16. **Payment of Additional Amounts.** The Lease described in this Agreement is a completely net lease. As such, except as specifically provided herein, District is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from District's development and use of the Premises, including, but not limited to, the construction of the Project. District's payment of insurance, taxes, utilities and any other charges, costs or fees charged and prorated to District under the terms of this

Agreement (collectively "**District's Obligations**") will accrue and be payable by District from and after the Agreement Date throughout the Term. County will promptly forward to District any invoices, bills, or other charges representing District's Obligations ("**District Bills**"). District will promptly pay any District Bills on or before the date such payment becomes due or if no due date is provided, then within 10 days of receipt of any such District Bills. District's failure to pay District Bills within 10 business days after notice from County that such payment is past due will constitute a breach of this Agreement.

17. **Utilities.** District will promptly pay when due all charges for sewer, water, gas, electricity, telephone, garbage, and any other utilities or services delivered in connection with District's use and operation of the Premises during the Term, including connection and disconnection charges, if any.

18. **Taxes.** District, or the Developer pursuant to the Sublease, will pay and discharge as and when the same become due, and prior to delinquency, all real and personal property, Government Property Lease Excise Tax ("**GPLET**"), and ad valorem taxes, assessments, levies, and other charges, general and special, which are or may be during the Term levied, assessed, imposed or charged against the Project. This obligation to pay such real and personal property and ad valorem taxes, assessments, levies, and other charges will begin with respect to amounts first accruing from and after the Agreement Date. District, or the Developer pursuant to the Sublease, will also pay any taxes that County, now or hereafter, is required to pay based on the Rent paid or other benefits conferred to County hereunder, including any income, franchise, excise, gross receipts, sales, or transaction privilege taxes.

19. **Insurance.**

A. Types of Insurance Required. District, Developer, and any subtenants will procure, prior to beginning any activities on the Premises, and maintain throughout the Term of this Lease, the following insurance from an insurance company or companies reasonably acceptable to County:

i. Commercial General Liability (CGL): Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.

ii. Business Automobile Liability: Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in connection with the Premises, with minimum limits not less than \$1,000,000 Each Accident.

iii. Workers' Compensation (WC) and Employers' Liability: Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers' Compensation statutory coverage is compulsory for employers of one or more employees.

iv. Property: Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of all improvements on the Premises.

B. Additional Coverage Requirements:

i. Claims Made Coverage: If any part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the date of Project Commencement, and District and Developer must maintain such coverage for a period of not less than three (3) years following expiration or termination of this Agreement.

ii. Insurer Financial Ratings: Coverage must be placed with insurers acceptable to County with A.M. Best rating of not less than A- VII, unless otherwise approved by County.

iii. Additional Insured: The General Liability policies must be endorsed to include County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "**County and its Agents**") as additional insureds with respect to liability arising out of the activities performed by or on behalf of District or Developer. The full policy limits and scope of protection must apply to County and its Agents as an additional insured, even if they exceed the limits required by this Agreement.

iv. Wavier of Subrogation: Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of County and its Agents for losses arising from work performed by or on behalf of District and Developer.

v. Primary Insurance: The required insurance policies, with respect to any claims related to this Agreement or the Premises, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The required insurance policies may not obligate the County to pay any portion of District's or Developer's deductible or Self Insurance Retention.

C. Verification of Coverage:

i. Certificates. District's Insurer or Broker must evidence compliance with the insurance requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include a notation of policy deductibles or SIRs relating to the specific policy, and must specify that the policy is endorsed to include additional insured and subrogation wavier endorsements for the County and its Agents.

ii. Renewal Certificate: A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date, along with actual copies of the additional-insured and wavier-of-subrogation endorsements.

iii. Policies: County reserves the right to, at any time, require complete copies of any or all required insurance policies.

iv. Cancellation Notice: District must notify the County in advance, in writing, if a required insurance policy will expire, be cancelled, be suspended, or be materially changed. The notice must be provided to the County by the earlier of (a) 30 days before the change will take effect, and (b) 2 business days after District receives notice of the change from its insurer. For cancellation for non-payment, Insurer must provide County with written notice ten (10) days prior to cancellation of policy.

D. Approval and Modifications: The Pima County Risk Manager may approve a modification of the above insurance requirements without the necessity of a formal contract amendment, but the approval must be in writing. Neither the County's failure to receive a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from District, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

20. **Repairs and Maintenance.** District will or will cause the Developer to, at its sole cost and expense, keep and maintain, and replace where necessary, the Project, including without limitation, buildings, sidewalks, fencing, paving, landscaping, wiring, heating, air conditioning, ventilating, plumbing, parking areas, ingress and egress, and other installations in good condition and repair in all material respects (normal wear and tear excepted), except if caused by County. District agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Premises.

21. **Permits, Laws and Ordinances.** District will or will cause the 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.

22. **Environmental Compliance.**

A. Hazardous Materials Prohibited; Clean Air Act. District and its sublessees will not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises without the prior written consent of County, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Agreement and actually being carried out by District or its sublessees on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. District's operations on the Premises will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.

B. Hazardous Material. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) 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), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or (vii)

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.

C. Clean-Up. If the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by the District, its sublessee(s) or their agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, the District will promptly notify County in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; 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.

D. Pre-existing Contamination. District 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 the District will not result in liability for the District 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.

E. Notices Regarding Environmental Conditions. The District will, within ten (10) 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 the District, 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 the District 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.

23. Indemnification.

A. District's Indemnity Obligations to County. If and to the extent that the County is not made whole by Developer's Section 19 insurance obligations and Section 23(B) indemnification obligations, then to the fullest extent permitted by law, the 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 the 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 Agreement. 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 the District.

B. 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 Agreement. 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 the Developer.

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

A. District Default. The occurrence of any one or more of the following events will constitute a default and breach of this Agreement by District for which County may terminate this Agreement:

i. **Operation of Premises.** The vacating or abandonment 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 District.

ii. **Monetary Obligations.** The failure by District to make any payment required to be made by District hereunder, as and when due, where such failure will continue for a period of ten (10) calendar days after notice from County that such payment is due.

iii. **Insurance.** The failure by District or Developer to maintain insurance policies as set forth above for any period of time, in which event District or Developer must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event District will, within ten (10) business days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage.

iv. **Violation of Law.** Violation of any law by District, or the conduct of any unlawful activities on the Premises that are permitted by District, either tacitly or explicitly, or that District 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.

v. **Health and Safety Violation.** Any action or omission by District that, in the County's reasonable judgment, causes a threat to the health or safety of the general public.

vi. **Other Covenants.** The failure by District to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by District, where such failure continues for a period of thirty (30) days after written notice thereof by County to District; provided, however, that if the nature of District's default is such that more than thirty (30) days are reasonably required for its cure, then District will not be deemed to be in default if District commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

B. County Default. County will be in default if it fails to comply with any material obligation under this Agreement, and fails to cure that failure within 30 days after receiving a written default notice from District detailing the nature of the obligation. If, however, the nature of County's default is such that more than 30 days are reasonably required for its cure, then County will not be deemed to be in default if County commences such cure within that period and thereafter diligently prosecutes such cure to completion.

C. Developer Default. As set forth in Section 6, above, the 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 the District at any time prior thereto of its refusal to proceed with the Project.

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

25. **Purchase Agreement.**

A. Purchase and Sale. The County hereby agrees to sell to District, and the District agrees to purchase from County, fee title to the improved Premises together with all easements and other rights appurtenant to or for the benefit of the Premises ("**Title**"). Title to the Premises will be conveyed to District by special warranty deed (the "**Deed**") free and clear of all liens and encumbrances except exceptions permitted under this Section 25.

B. Purchase Price. District will pay to County, in cash at Closing (defined below), the sum total of (i) \$2,700,000, the fair market value of the Unimproved Parcel established by that certain December 5, 2018 appraisal as vacant land by Baker, Peterson, Baker & Associates, Inc. and (ii) if the County has acquired the Alley, the County's cost of acquiring title to the Alley (the "**Purchase Price**").

C. Title Company, Opening and Closing Escrow.

i. Upon or prior to Substantial Completion, the District shall deposit this Agreement with Fidelity National Title Insurance Company, 1745 E. River Rd., Suite 145, Tucson, AZ 85718 ("**Title Company**"), an appropriate officer of which will act as the escrow agent (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 the County and the District that she/he has received a copy of this Agreement and assigned the transaction an "**Escrow**" number.

ii. 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.

iii. 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 9(F). The Parties will work together to ensure that all requirements set forth in this Section 25 are met, and the sale Closes, as soon as reasonably possible after Substantial Completion. The County's obligation to close will be conditioned on development of the Premises in the manner required by this Agreement and the Sublease. Unless the 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.

iv. District has reviewed the Title Commitment issued by the Title Company regarding the Premises, dated April 13, 2018, Order No. 51006548-051-51, Reference No. 117-15-0080 (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 180101641) (the "**Survey**"). Within five (5) 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.

v. District will have 20 days after receipt of the Updated Commitment to object to any Additional Exceptions ("**Title Issues**") by providing written notice thereof to the County. If District has no objection, it may provide notice thereof to County, in which case this 20-day period will cease. In the event of any such objection, County will have 10 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 or not the 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 (3) business days following District's receipt of the Amended Title Commitment (including the best available copies of all new exceptions) to notify the 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 (3) business days after receipt of the new objections as to whether or not it will cure or cause to be removed an objected-to matter. If County timely gives District written notice that the County will not cure or cause to be removed the objected-to matter (or if the County fails to provide any written notice within the applicable response period), then District may terminate this Agreement.

vi. 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.

vii. 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.

viii. 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.

ix. 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.

x. 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.

xi. 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 as a result of the sale of the Premises. District acknowledges that District Board Members Mark Irvin and Chris Sheafe are each licensed real estate brokers in Arizona. Each Party will defend, indemnify and hold the other harmless from and against any and 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.

xii. 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.

xiii. 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 30 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.

D. 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.

26. Representations and Warranties.

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

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

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

iii. District's execution and delivery of this Agreement has been authorized by all requisite action on the part of the 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.

iv. 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.

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

B. County's Representations and Warranties. As of the Agreement Date (but as of January 1, 2019 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 the County Administrator's and the Manager of Real Property Services' knowledge:

i. 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.

ii. The entry by County into this Agreement with District and the performance of all of 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.

iii. 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.

iv. 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.

v. 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.

vi. 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.

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

viii. 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.

ix. 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.

x. Except as may be referenced in any environmental assessment, neither the Premises nor any part thereof has been used by County for the disposal of refuse or waste, or for the generation, processing, manufacture, storage, handling, treatment, transportation, or disposal of any Hazardous Materials, as defined in will have the meaning ascribed in, and will include those substances listed in Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. and the regulations promulgated thereunder (as amended from time to time) and the Clean Air Act, 42 U.S.C. 7401, et seq. and the regulations promulgated thereunder (as amended from time to time).

27. **General Provisions.**

A. **Waivers.** No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. Unless expressly provided for in this Agreement, no waiver will 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 will 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 will be interpreted according to Arizona law, and will 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, will 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. **Attorneys' Fees.** If any action is brought by any Party in respect to its rights under this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs as determined by the court, including attorneys' fees incurred prior to any court or enforcement action that relate to the enforcement hereof.

E. **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

F. **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.

G. **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 will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

H. **Headings.** The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement.

I. **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by the Parties.

J. **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.

K. **Approvals and Notices.** Any objection, approval, disapproval, demand, document or other notice ("Notice") that any Party may desire or may be obligated to give to any other Party will 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. Change of address by a party will be given by Notice as follows:

If to the District: Rio Nuevo Multipurpose Facilities District
400 West Congress, Suite 152
Tucson, Arizona 85701

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

If to the County: Director, Pima County Facilities Management Department
150 W. Congress Street, 5th Floor
Tucson, Arizona 85701

L. **Conflict of Interest.** This Agreement is subject to and may be cancelled in accordance with the provisions of A.R.S. § 38-511.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

This Agreement is dated as of the date first above written.

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____
Its: Chairman

By: _____
Its: Secretary

COUNTY:

PIMA COUNTY, ARIZONA

By: _____
Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: 
Director, Facilities Management Department

APPROVED AS TO FORM:

By: 
Deputy County Attorney
REGINA NASSEN

The City of Tucson hereby consents to the 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)

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.

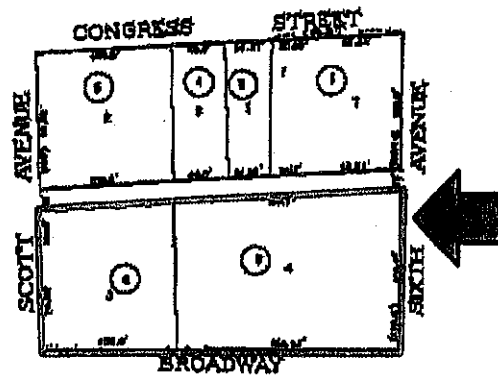
Said property commonly known as Lot 4, Block 248, City of Tucson.

SITE MAP

ASSESSOR'S RECORD MAP

117-18
VI

BLOCK 248, CITY OF TUCSON



SCALE - 1" = 50'

SEE BOOK 5, PAGE 70, M & P.

EXHIBIT B TO GROUND LEASE & PURCHASE AGREEMENT

FORM OF SUBLEASE

SUBLEASE

This "**Sublease**" is entered into as of December __, 2018 (the "**Sublease Date**") by and between Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona ("**District**"), and 929 Holdings, LLC, a Delaware limited liability company, or its assignee ("**Developer**"). District and Developer are sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**."

RECITALS

A. The District was formed by the City of Tucson, Arizona (the "**City**") and the City of South Tucson, Arizona pursuant to 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 **TPT Funds** collected from within the District's multipurpose facilities site, which lies entirely within the City. The District's right to receive TPT Funds currently ceases on July 1, 2035 ("**Sunset Date**").

B. District and Pima County, a political subdivision of the State of Arizona ("**County**") executed a Ground Lease Option Agreement dated December 13, 2016 (the "**Option Agreement**") the subject of which is 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 in downtown Tucson, Arizona ("**Unimproved Parcel**"), which is within the District's boundaries and more particularly described and depicted on Exhibit A (the "**Premises**"). The Premises may include the "Alley" that abuts the northern boundary of the Unimproved Parcel if and when the Alley is acquired by the County from the City prior to the Completion Deadline (defined below).

C. The form of ground lease contemplated by the Option Agreement included the District having the option to purchase the Premises ("**Purchase Option**") from the County.

D. District has the authority to acquire title to property within the District's boundaries 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)). 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).

E. In September of 2017 District issued a Request for Proposal ("**RFP**") seeking proposals for the development of the Premises. The RFP evaluation committee selected the proposal from a team headed by Developer as the highest ranked proposal. The District and Developer's assignor, J.E. Dunn Construction Company, a Missouri corporation ("**Dunn**") entered into a Development Agreement dated March 20, 2018 (the "**Development Agreement**"). The Phase I Environmental Site Assessment contemplated by Section 7(b) of the Development Agreement

and a Phase II have been completed and provided to the Developer. The District retained Logan Simpson Design, Inc. ("**Logan Simpson**") to perform the archaeological/cultural investigation and mitigation on the Premises contemplated by Section 7(b) of the Development Agreement, which is required by BOS Policy C 3.17 ("**Archaeology Study**"). When Logan Simpson's site work has been completed, Logan Simpson will submit an "End of Fieldwork Report" to Pima County's Office of Sustainability and Conservation ("**OSC**"). The End of Fieldwork Report will detail the results of Logan Simpson's excavations and describe how the fieldwork fulfilled the OSC's plan of work. When the OSC accepts the End of Fieldwork Report and Developer has been notified of such acceptance ("**Archaeological Clearance Date**") construction of the Project (defined below) may be commenced.

F. The District exercised its "**Lease Option**" under the Option Agreement and District and County, as of [DATE] (the "**Ground Lease Date**"), entered into the "**Ground Lease**," a true and accurate copy of which is attached as Exhibit [].

G. As part of the Ground Lease, District has agreed to purchase from County, and County has agreed to sell to District, the Premises. District and County have agreed to open escrow for that sale as of the date the Project is Substantially Complete (as those terms are defined below) and proceed diligently to close the transaction as soon as reasonably possible thereafter. The date of closing will be referred to in this Agreement as the "**Purchase Option Closing Date**."

H. Developer intends to improve the Premises by constructing thereon a Class-A, mixed use building of at least 8, and up to 21, floors (300 feet) in height (inclusive of parking decks); containing at least 150,000 and up to 250,000 square feet of office space ("**Office Component**"), including up to 40,000 square feet of retail space ("**Retail Component**"); and parking for at least 350 vehicles onsite ("**Parking Component**") (all collectively the "**Project**").

I. Developer's current estimates indicate that it will cost in excess of \$70,000,000 to complete the Project.

J. 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**"). The District has determined that the Project would not be constructed in the absence of this Agreement. Accordingly, the District's Board of Directors ("**Board**") has determined that, subject to the Economic Analysis, it is in the best interests of the public to rebate a portion of the state transaction privilege taxes (also called sales taxes) ("**TPT Funds**") generated and collected from Developer's construction of and retail sales taxes from the Project as an economic incentive for Developer to construct the Project on the Premises at Developer's expense as set for more specifically below.

K. The Board has determined that the Project is a related commercial facility located within the District's boundaries, that District's primary component is in close proximity to the Project and will benefit from the Project, and that District and the City will benefit from the tax revenues to be generated by the Project.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the Parties in this Agreement, the Parties agree as follows:

1. **Accuracy of Recitals.** The Parties hereby acknowledge the accuracy of the Recitals.
2. **Sublease.** Effective upon the Sublease Date, District hereby subleases the Premises to Developer, and Developer hereby subleases the Premises from District. This Sublease, and the Parties' rights and obligations under this Sublease, are subordinate and subject to all the terms and conditions of the District's Ground Lease with the County.
3. **Condition of Premises.** Except for completion of the Archaeology Study Developer 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 District 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. Except as otherwise expressly provided in this Agreement, Developer has full responsibility for the repair, alteration, maintenance, and replacement of the Premises, and any portion thereof, and any improvements. District has no obligation whatsoever for the repair, alteration, maintenance and replacement of the Premises, the Project or any portion thereof except as expressly provided in this Agreement. Developer expressly acknowledges and agrees that District has not made and is not making, and Developer is not relying upon, any warranties or representations regarding the Premises or the Project, except as expressly set forth in this Agreement.
4. **Term.**
 - A. **Term.** Unless earlier terminated, the term of this Sublease shall commence on the Sublease Date and terminate on the Purchase Option Closing Date.
 - B. **Termination of Sublease.**
 - i. **"Project Commencement"** shall be deemed to have occurred when labor is first provided, or equipment or materials are first furnished, to the Premises after issuance of the first building permit. If Project Commencement does not for any reason occur on or before the date that is 12 months after the Archaeological Clearance Date (the **"Commencement Deadline"**), the District may terminate this Sublease without further obligation to Developer.
 - ii. Developer may terminate this Sublease, without further obligation to the District, at any time prior to the Commencement Deadline, by notifying the District that it has decided not to proceed with the Project.
 - iii. Upon the Purchase Option Closing Date, (i) this Sublease shall terminate and (ii) District and Developer shall enter into one or more Government Property Lease(s) (**"GP Lease(s)"**) substantially in the form attached hereto as Exhibit []. Developer will include a provision in each non-retail sublease of any part of the office building constructed as part of the

Project, that requires the subtenant to annually provide to the District a report demonstrating that the subtenant's office employees working at the Premises earn an average annual wage, including benefits, of at least 150% of the US Census Bureau's American Community Survey (ACS) 5-year Estimate of Median Household Income for Pima County.

5. **Rent.** Rent for the Premises for the Term will be \$1,000.00, payable by Developer to District, upon the execution hereof ("**Net Rent**").

6. **Possession and Enjoyment.** Unless otherwise specifically provided herein, from the Commencement Deadline until the Purchase Option Closing Date Developer shall be entitled to peacefully hold and enjoy the Premises without any interruption by the District or any person lawfully claiming by, through or under the District during the Term, except that District may enter upon and inspect the Premises by providing Developer with written notice of its intent to do so not less than 24 hours in advance.

7. **The Project.**

A. **Construction.** In accordance with this Sublease, Developer will design and construct the Project, the nature and scope of which shall be determined within four months of the Archaeological Clearance Date. The Project will be constructed in accordance with the approved Final Plans (as provided below) and all local development and building codes and, if and to the extent applicable, Title 34. The Project must be designed and constructed using the Green Building Council's LEED Silver standard as a design guideline, but Developer is not required to obtain LEED certification.

B. **Project Commencement.**

i. Project Commencement may not occur until each of the following has occurred:

1. Plan Approvals. The County has approved the Final Plans (as provided below).

2. Insurance. The Developer furnishes County and District with proof that Developer has obtained the liability and worker's compensation insurance required by this Sublease.

3. Builder's Risk Insurance. Developer furnishes County and District with proof that 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 and District, covering improvements in place and all material and equipment at the job site furnished under the construction 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. Developer must maintain this insurance in effect until the Project is complete and a permanent CofO has been issued for the Project.

4. Payment and Performance Bonds. Developer delivers to County and to District payment and performance bonds issued by a surety company licensed to do business in the State of Arizona (the "**State**"), 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 Sublease, free and clear of all mechanics' and other liens.

ii. Developer will cause Project Commencement to occur no later than the Commencement Deadline and will cause the Project to be Substantially Complete no later than 26 months after the date of Project Commencement (the "**Completion Deadline**").

C. **Plans and Specifications.** Developer must obtain the County's approval of plans and specifications for the Project so that it has all of the necessary permits and approvals to cause Project Commencement to occur before the Commencement Deadline.

i. **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 the County to 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.

ii. **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.

iii. **Amended Plans.** If, at any time after the submission of the Preliminary Plans the Developer desires to increase the square footage of the Office Component, the Developer shall submit amended plans to the 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. Upon approval of the Final Plans and Amended Plans, if any, this Agreement will be amended to attach a sheet index of the Final Plans as Exhibit [] hereto. Developer shall thereafter construct the Project in accordance with the Final Plans.

iv. **Right to Review.** Upon reasonable notice to Developer, the District shall have the right to review the plans and specifications during business hours.

D. **Cost of the Project.** All costs, expenses and charges incurred in the construction of the Project will be paid by Developer. Notwithstanding the foregoing, District will reimburse Developer for up to \$200,000 of the actual costs to bring adequate utilities to the Premises.

Developer will defend and hold County and District harmless and indemnify it from all such costs, expenses, and charges, including attorneys' fees relating to the construction and maintenance of the Project. Upon development of a final budget for the Project, but in no event later than the date of Project Commencement, this Sublease will be amended to attach the Project budget (the "**Budget**") as Exhibit [] hereto. Thereafter, Developer will complete the Projects for the amounts set forth in the Budget, with variances of up to 10% allowed.

E. **County Inspections.** Developer will provide representatives of County Development Services reasonable access necessary for such representatives to inspect and evaluate the Project at appropriate stages of construction.

F. **Substantial Completion.** Construction of the Project shall be substantially completed by the Completion Deadline, subject only to delays occasioned by Force Majeure." If the Project is not Substantially Complete by the Completion Deadline, the District may require the Developer to pay the District [\$750] each day that elapses after the Completion Deadline and before Substantial Completion. "**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 Component, the Parking Component, and an Office Component of no less than five floors and not less than 150,000 square feet.

G. **Force Majeure.** If a Party is delayed, hindered in, or prevented from the performance of any term, covenant, or act required by it under this Agreement by reason of strikes, labor troubles, inability (on commercially reasonable terms) to procure materials or services, power failure, change in government regulation, sabotage, rebellion, war, act of nature, or other like cause ("**Force Majeure**"), any of which must be beyond the reasonable control of such Party, then the performance of that term, covenant, or act is excused for the period of the delay and any deadlines under this Agreement affected as a result of such Force Majeure will be deemed correspondingly extended.

8. **Title to Project.** Provided that Developer has not breached this Sublease, during the Term of the Sublease, the Project will be owned by Developer and Developer alone will be entitled to all of 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 Sublease (other than as a result of a sale of the Premises to District), Developer will peaceably leave, quit and surrender the Premises and Project to the 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.

9. **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 District and County agree, in writing, may be left on the Premises. Any Fixtures not removed when this Sublease terminates (other than as a result of a sale of the Premises to

District) will, at the election of County, become the property of County without payment to the District or Developer, or be deemed abandoned and removed by County at Developer's expense.

10. **Consent and Subordination to Lenders.** The cost of the Project will be funded by Developer in part by loans from one or more lenders (the "**Lender(s)**"). Provided the County and District have received at least 10 days written notice of any intended encumbrance of the Premises, each 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 loans, the proceeds of which were directly used for the construction of the Project. District and 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 District and County. A Lender, in the event of any foreclosure or assignment in lieu of foreclosure, must cure all Developer defaults, and any reletting of the Premises by a Lender must comply with all the terms and conditions of this Sublease. District 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 the District. 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. Developer shall provide County and District at least 30 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, District and County shall give such Lender, in the manner provided by the notice provisions of this Sublease, a copy of each notice of default given by County to District or by District to Developer, at the same time that said notice is provided to Developer; provided, however, that the failure of either the District or the 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 the District or the County until proper notice, and the applicable cure periods, have been provided to Lender. District and County further agree to execute, acknowledge and deliver an estoppel certificate on request from Developer or Lender certifying that this Sublease 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.

11. **Liens.** Except as permitted in Section 10, 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; except that any such lien may remain during the period of time that Developer is diligently and continuously working to contest any such lien. District agrees not to place any liens or encumbrances of any kind on the Premises without the prior written consent of Developer and its Lenders.

12. **Sublease and Assignment.** Developer will not voluntarily assign or encumber this Sublease or any interest in it, except as permitted under Section 10 above, without District's prior written consent, which may be withheld in its sole and absolute discretion. To avoid any doubt, the District's prior written consent will not be required for leases to sub-tenants of the Premises.

13. **Memorandum of Sublease.** Upon the execution of this Agreement, the Parties will also execute a Memorandum of Sublease to be recorded in the official records of the Pima County, Arizona Recorder (the "**Official Records**") in substantially the form attached hereto as **Exhibit []**.

14. **Payment of Additional Amounts.** Other than the District's payment of rent to County pursuant to the terms of the Ground Lease and the District's payment of any taxes to the County for taxes on the Ground Lease Rent payable by the County (the "**Ground Lease Rent**"), this Sublease is a completely net lease. As such, except as specifically provided herein, Developer is solely responsible for any and all capital, operating, maintenance, and replacement costs and any other costs and expenses that result from Developer's development and use of the Premises, including, but not limited to, the construction of the Project. Other than the Ground Lease Rent, Developer's payment of insurance, taxes, utilities and any other charges, costs or fees charged and prorated to Developer under the terms of this Sublease (collectively "**Developer's Obligations**") will accrue and be payable by Developer from and after the Sublease Date throughout the Term. District will promptly forward to Developer any invoices, bills, or other charges representing Developer's Obligations ("**Developer Bills**") that are received by the District. Developer will promptly pay all Developer Bills on or before the date such payment becomes due or if no due date is provided, then within 10 days of receipt of any such Developer Bills. Developer's failure to pay Developer Bills within 10 calendar days after notice from District that such payment is past due will constitute a breach of this Agreement unless Developer is actively contesting the Developer Bill in question.

15. **Utilities.** Developer will promptly pay when due all charges for sewer, water, gas, electricity, telephone, garbage, and any other utilities or services delivered in connection with Developer's use and operation of the Premises during the Term, including connection and disconnection charges, if any.

16. **Taxes.** Developer will pay and discharge as and when the same become due, and prior to delinquency, all real and personal property, Government Property Lease Excise Tax ("**GPLET**"), and *ad valorem* taxes, assessments, levies, and other charges, general and special, which are or may be during the Term levied, assessed, imposed or charged against the Project. This obligation to pay such real and personal property and *ad valorem* taxes, GPLET taxes, assessments, levies, and other charges will begin with respect to amounts first accruing from and after the Sublease Date. District will pay any taxes that County, now or hereafter, is required to pay on the Ground Lease Rent.

17. **Insurance.**

A. **Types of Insurance Required.** Developer, and any contractors, subcontractors, and subtenants of Developer will procure, prior to beginning any activities on the Premises, and

maintain throughout the Term of this Sublease, the following insurance from an insurance company or companies reasonably acceptable to County:

i. Commercial General Liability (CGL): Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.

ii. Business Automobile Liability: Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in connection with the Premises, with minimum limits not less than \$1,000,000 Each Accident.

iii. Workers' Compensation (WC) and Employers' Liability: Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers' Compensation statutory coverage is compulsory for employers of one or more employees.

iv. Property: Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of all improvements on the Premises.

B. Additional Coverage Requirements:

i. 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 Sublease, and Developer must maintain such coverage for a period of not less than three years following expiration or termination of this Sublease.

ii. Insurer Financial Ratings: Coverage must be placed with insurers acceptable to District with A.M. Best rating of not less than A- VII, unless otherwise approved by District.

iii. Additional Insured: The General Liability policies must be endorsed to include County and District, and all of their respective related special districts, elected officials, officers, agents, employees and volunteers (collectively "**County, District and their Agents**") as additional insureds with respect to liability arising out of the activities performed by or on behalf of Developer. The full policy limits and scope of protection must apply to County, District and their Agents as additional insureds, even if they exceed the limits required by this Sublease.

iv. Waiver of Subrogation: Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of County, District and their Agents for losses arising from work performed by or on behalf of Developer.

v. Primary Insurance: The required insurance policies, with respect to any claims related to this Sublease or the Premises, must be primary and must treat any insurance carried by District or County as excess and not contributory insurance. The required insurance policies may not obligate County or District to pay any portion of Developer's deductible or Self Insurance Retention.

C. Verification of Coverage:

i. Certificates. Developer's Insurer or Broker must evidence compliance with the insurance requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include a notation of policy deductibles or SIRs relating to the specific policy and must specify that the policy is endorsed to include additional insured and subrogation waiver endorsements for County, District and their Agents.

ii. Renewal Certificate: A renewal certificate must be provided to County and District not less than 15 days prior to the policy's expiration date, along with actual copies of the additional-insured and waiver-of-subrogation endorsements.

iii. Policies: District and County reserve the right to, at any time, require complete copies of any or all required insurance policies.

iv. Cancellation Notice: Developer will ensure that the insurer notifies County and District Developer must notify County and District in advance, in writing, if a required insurance policy will expire, be cancelled, be suspended, or be materially changed. The notice must be provided to County and District by the earlier of (a) 30 days before the change will take effect, and (b) two business days after Developer receives notice of the change from its insurer. For cancellation for non-payment, Insurer must provide County and District with written notice 10 days prior to cancellation of policy.

D. Approval and Modifications: The Pima County Risk Manager may approve a modification of the above insurance requirements without the necessity of a formal contract amendment, but the approval must be in writing. Neither County's nor District's failure to receive a required insurance certificate or endorsement, County's or District's failure to object to a non-complying insurance certificate or endorsement, or County's or District's receipt of any other information from Developer, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

18. **Repairs and Maintenance.** Developer will, at its sole cost and expense, keep and maintain, and replace where necessary, the Project, including without limitation, buildings, sidewalks, fencing, paving, landscaping, wiring, heating, air conditioning, ventilating, plumbing, parking areas, ingress and egress, and other installations in good condition and repair in all material respects (normal wear and tear excepted). Developer agrees to maintain, and replace where necessary, all underground and unexposed service facilities of the Premises.

19. **Permits, Laws and Ordinances.** Developer will, at its sole cost and expense, comply, and will require that 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 Final Plans and this Agreement.

20. **Environmental Compliance.**

A. **Hazardous Materials Prohibited; Clean Air Act.** Developer and its contractor will not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, or used in or about the Premises without the prior written consent of County, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Sublease and actually being carried out by Developer or its contractors on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Developer's operations on the Premises will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.

B. **Hazardous Material.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 et. seq., (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) 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), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or (vii) 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.

C. **Clean-Up.** If the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by Developer, its sublessee(s) or their agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, Developer will promptly notify District in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that District'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.

D. **Pre-existing Contamination.** District agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Developer will not result in liability for 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 Developer.

E. **Notices Regarding Environmental Conditions.** Developer will, within 10 business days following receipt thereof, provide District 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 Developer or its contractors, or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring Developer 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 Developer 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.

F. **Indemnification.** Developer will, to the fullest extent permitted by law, indemnify, defend, and hold harmless County, District, their respective officers, employees and agents ("**Indemnified Parties**") from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by the Indemnified Parties as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal or administrative proceedings, claims or demands and costs attendant thereto, to the extent caused by 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 Sublease. 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.

21. **Default.** As provided herein, either party may present written notice of default or non-performance to the other party.

A. **Developer Default.** The occurrence of any one or more of the following events will constitute a default and breach of this Sublease by Developer for which District may terminate this Sublease:

i. Operation of Premises. The vacating or abandonment of the Premises, or cessation of activities thereon, where such abandonment continues for a period of 30 calendar days after notice of such default is sent by District to Developer.

ii. Monetary Obligations. The failure by Developer to make any payment required to be made by Developer hereunder, as and when due, where such failure will continue for a period of 10 calendar days after notice from District that such payment is due.

iii. Insurance. The failure by Developer to maintain insurance policies as set forth above for any period of time, in which event Developer must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, District may, in District's sole discretion, obtain necessary insurance coverage in which event Developer will, within ten (10) business days of demand, reimburse and pay to District the full amount of any costs and premiums expended by District to obtain such coverage.

iv. Violation of Law. A final determination, as evidenced by a non-appealable order from a court of competent jurisdiction over the Project, that Developer has violated any law related to its ownership or operation of the Project.

v. Health and Safety Violation. Any action or omission by Developer that, in District's reasonable judgment, causes a threat to the health or safety of the general public that remains uncured 30 days after written notice describing such threat by the District to Developer provided, however, that if the nature of the threat is such that more than 30 days are reasonably

required for its cure, then Developer will not be deemed to be in default if Developer commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

vi. **Other Covenants.** The failure by Developer to observe or perform any other of the covenants, conditions or provisions of this Sublease to be observed or performed by Developer, where such failure continues for a period of 30 days after written notice thereof by District to Developer; provided, however, that if the nature of Developer's default is such that more than 30 days are reasonably required for its cure, then Developer will not be deemed to be in default if Developer commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

B. **District Default.** District will be in default if it fails to comply with any material obligation under this Sublease and fails to cure that failure within 30 days after receiving a written default notice from Developer detailing the nature of the obligation. If, however, the nature of District's default is such that more than 30 days are reasonably required for its cure, then District will not be deemed to be in default if District commences such cure within that period and thereafter diligently prosecutes such cure to completion.

22. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Sublease, including termination of the Sublease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Sublease.

23. **Developer's Lender.** District will provide written notice to any of Developer's lenders simultaneously with its notice to Developer. District agrees to accept the cure of any Developer default from Developer's lender during the same cure periods given to Developer hereunder.

24. **Representations and Warranties.**

A. **Developers Representations and Warranties.** As of the Construction Deadline Sublease Date and on the Purchase Option Closing Date, if any, Developer hereby represents and warrants to District as follows:

- i. Developer is lawfully authorized to conduct business in the State.
- ii. Developer has the full right, power and authority to make, execute, deliver and perform this Agreement.
- iii. Developer's execution and delivery of this Agreement has been authorized by all requisite action on the part of Developer, and the execution and delivery of this Agreement by Developer and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Developer is a party or by which it is bound.
- iv. There is no action, suit, litigation or proceeding pending or, to Developer's knowledge, threatened against Developer that could prevent or impair Developer's entry into this Agreement and/or performance of its obligations hereunder.

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

vi. As of Project Commencement, Developer has the financial capability to complete the Project.

B. District's Representations and Warranties. As of the Sublease Date and on the Purchase Option Closing Date, if any, District hereby represents and warrants to District that, to the best of District Administrator's and the Manager of Real Property Services' knowledge.

i. District has full right, power and authority to make, execute, deliver and perform its obligations under this Agreement. District has obtained and received all required and necessary consents and approvals to enter into this Agreement with District. The entry by District into this Agreement with District and the performance of all of 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 District is a party or by which it is bound.

ii. [As of January 1, 2019], 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.

iii. District 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 Developer.

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

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

25. **General Provisions.**

A. Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. Unless expressly provided for in this Agreement, no waiver will 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 will 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 will be interpreted according to Arizona law, and will 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, will 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. **Attorneys' Fees.** If any action is brought by any Party in respect to its rights under this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs as determined by the court, including attorneys' fees incurred prior to any court or enforcement action that relate to the enforcement hereof.

E. **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

F. **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.

G. **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 will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

H. **Headings.** The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement.

I. **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by the Parties.

J. **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts.

K. **Approvals and Notices.** Any objection, approval, disapproval, demand, document or other notice ("Notice") that any Party may desire or may be obligated to give to any other Party will 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. Change of address by a party will be given by Notice as follows:

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

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

If to Developer: J.E. Dunn Construction Company
1001 Locust Street
Kansas City, MO 64106
Attention: Tim Dunn

With a copy to:

Lawrence M. Hecker, Esq.
Hecker PLLC
405 West Franklin Street
Tucson, Arizona 85701

and:

Keri Silvyn, Esq.
Lazarus, Silvyn & Bangs, P.C.
5983 E. Grant Road., Suite 290
Tucson, Arizona 85712

L. **Conflict of Interest.** This Agreement is subject to and may be cancelled in accordance with the provisions of A.R.S. § 38-511.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

This Sublease and Option Agreement is dated as of the date first above written.

DISTRICT:

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By: _____
Its: Chairman

By: _____
Its: Secretary

DEVELOPER:

929 Holdings, LLC, a Delaware limited liability company,

By: _____
Title _____

EXHIBIT C

(TO GROUND LEASE)

(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 _____, 201_, 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 _____, 201_ (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 _____, 2018, 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: _____
Chairman of the Board of Supervisors

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I HEREBY CERTIFY that on this __ day of _____, 2018, before me, a Notary Public for the state aforesaid, personally appeared Richard Elias, 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 Pima County Board of Supervisors 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 _____