

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

CITY CLERK DEPT.
2018 JUL 18 PM3:56

Item 3
Board

DEPARTMENT: Capital Improvement Department

AGENDA DATE: July 23, 2018

CONTACT PERSON/PHONE: Sam Rodriguez, P.E., City Engineer, 212-0065

DISTRICT(S) AFFECTED: ALL

STRATEGIC GOAL: No. 4: Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments

SUBJECT:

Resolution of the Board of Directors of the El Paso Children's Museum Development Corporation (the "Corporation") approving Museum Lease relating to the development of El Paso Children's Museum; and containing other related provisions.

BACKGROUND / DISCUSSION:

On November 6, 2012, the voters of El Paso approved the Quality of Life Bond, which included funding for new and improved amenities around El Paso. One of the projects which funding was included for was a new Children's Museum to be located within the City. On March 6, 2018, El Paso City Council approved the Memorandum of Understanding (MOU) by and between the City and EPC Museum, a Texas nonprofit corporation, to continue to negotiate the El Paso Children's Museum, and to direct the production of definitive documents for City Council's consideration to allow for the public-private partnership to construct and operate the El Paso Children's Museum. The El Paso Children's Museum Development Corporation (the Local Government Corporation or LGC) was created on March 20, 2018, which named the El Paso City Council as the Directors. This resolution provides for the approval of the lease agreement of the El Paso Children's Museum between the City of El Paso and the Corporation. The agreement follows the approved terms under the MOU. This item is related to the other agenda items regarding the LGC and the proposed amendment to the 2019 Capital Funding Plan.

SELECTION SUMMARY:

N/A

PROTEST

☐ No protest received for this requirement.

☐ Protest received.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? ☒ Yes or ☐ Not Applicable (Routine)
If yes, select the applicable districts.

☐ District 1

- ☐ District 2
- ☐ District 3
- ☐ District 4
- ☐ District 5
- ☐ District 6
- ☐ District 7
- ☐ District 8
- ☒ All Districts

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PRIOR COUNCIL ACTION:

March 6, 2018 – El Paso City Council approved the Memorandum of Understanding

March 20, 2018 – El Paso Children's Museum Local Government Corporation was created, naming the El Paso City Council as the Directors

AMOUNT AND SOURCE OF FUNDING:

\$19,250,000, 2012 Quality of Life Bond

\$20,000,000, 2019 Amended Capital Funding Plan

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION (THE "CORPORATION") APPROVING MUSEUM LEASE RELATING TO THE DEVELOPMENT OF EL PASO CHILDREN'S MUSEUM; AND CONTAINING OTHER RELATED PROVISIONS

WHEREAS, on March 20, 2018, pursuant to the authority granted by Subchapter D of Chapter 431, Texas Transportation Code, as amended, and Chapter 394, Texas Local Government Code, the City Council of the City of El Paso, Texas (the "City") authorized the creation of a public, nonprofit local government corporation to act as a duly constituted authority of the City to aid and assist the City in the performance of one or more of the City's governmental functions; and

WHEREAS, Chapter 791, Texas Government Code, as amended, authorizes the Corporation to contract for museum services; and

WHEREAS, the Corporation desires to approve certain contracts to undertake the development and operation of the El Paso Children's Museum, including the Museum Lease by and between the City and the Corporation; and

WHEREAS, this meeting is open to the public as required by law, and public notice of the time, place and purpose of this meeting was given as required by Chapter 551, Texas Government Code, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION:

Section 1. The findings and declarations contained in the preamble of this Resolution are incorporated herein as part of this Resolution.

Section 2. The Board hereby approves the Museum Lease Agreement entered into by and between the Corporation and the City effective upon mutual execution.

Section 3. The Board hereby gives the Executive Director the authority to execute the Museum Lease Agreement entered into by and between the Corporation and the City effective upon mutual execution.

Section 4. This Resolution shall take effect immediately from and after its adoption.

CITY CLERK DEPT.
2018 JUL 18 PM3:57

PASSED AND APPROVED this ____ day of July, 2018.

President, Board of Directors
El Paso Children's Museum
Development Corporation

ATTEST:

Secretary, Board of Directors
El Paso Children's Museum
Development Corporation

MUSEUM LEASE AGREEMENT

BETWEEN

CITY OF EL PASO, TEXAS,

AND

EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION

_____, 2018

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Appendix A – Glossary of Defined Terms

Exhibit A – Real Property

Exhibit B – Insurance Requirements [to come]

Exhibit C – Parking Study [to come]

Exhibit D – Form of Memorandum of Lease

MUSEUM LEASE AGREEMENT

This MUSEUM LEASE AGREEMENT, (this "**Agreement**") is made to be effective as of the _____, 2018 (the "**Effective Date**"), by and between the CITY OF EL PASO, TEXAS, a Texas home rule city ("**City**"), and the EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION, a Texas local government corporation created pursuant to Chapter 431, Texas Transportation Code ("**Tenant**"). City and Tenant are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

WHEREAS, Tenant has been created for the purpose of aiding, assisting, and acting for and on behalf of the City in the performance of the City's governmental functions, including, but not limited to providing the means to acquire, develop, construct, operate, and maintain a children's museum in El Paso, Texas, including leasing the museum site from the City; and

WHEREAS, City Council of City recognizes the presence of children's museum in El Paso, especially in its downtown area, provides a unique value to City, including improving the quality of life and generating new jobs, additional revenue sources, and economic development and increased tourism for City; and

WHEREAS, Chapter 791, Texas Government Code, as amended, authorizes the Parties to contract for museum services; and

WHEREAS, City holds the title to the real property described on Exhibit A, including the Site, as described therein, attached hereto and incorporated herein by reference (the "**Real Property**"); and

WHEREAS, the City Council of City has determined that the construction of the Museum in El Paso's downtown will serve a public purpose and therefore has adopted a resolution on April 17, 2018, authorizing the City Manager of City to sign this Agreement; and

WHEREAS, City and Tenant have entered into that certain Funding Agreement (the "**Funding Agreement**"), whereby Tenant, has agreed to design, construct, and operate a new, first class, state-of-the-art children's museum (the "**Museum**") in conjunction with The EPC Museum, a non-profit organization created by private incorporators as a supporting organization of the El Paso Community Foundation to provide significant financial and other benefits for the Museum, as well as to be a private venture partner in developing and operating the Museum (the "**EPC**") and, provided funding is available under the terms described in the Funding Agreement, the City shall finance and own the Land, the Museum and related improvements; and

WHEREAS, City finds EPC to be a Qualified Operator as defined herein; and

WHEREAS, the City has agreed to lease to Tenant, and Tenant has agreed to lease from City, the Museum and certain Museum Parking as more particularly described herein.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, City and Tenant, each intending to be legally bound, do agree as follows:

Article I General Terms

1.1 Recitals. The recitals are restated and incorporated as part of this Lease.

2.1 Definitions. Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Appendix A and incorporated herein by reference, which also contains rules as to usage that shall be applicable herein. Terms used but not defined herein shall have the meaning ascribed to such terms in the Funding Agreement.

Article II City and Tenant Representatives

2.1 City Representative. City designates the City Manager of City, including his designee, to be the representative of City (the "**City Representative**"), and the City Manager shall have the right, from time to time, to change the Person who is the City Representative. The only functions under this Agreement of the City Representative shall be as expressly specified in this Agreement. Any one of the Persons from time to time serving as the City Representative shall have all right, power, and authority to bind City in any and all instances in which this Agreement specifically provides for the Approval, decision, confirmation, or determination of the City Representative; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the City Representative shall not have any right to modify, amend, or terminate this Agreement.

2.2 Tenant Representative. Tenant designates the EPC executive director to be the representative of Tenant (the "**Tenant Representative**"), who shall be authorized to act on behalf of Tenant under this Agreement pursuant to a Management and Operating Agreement by and between Tenant and EPC (the "**Management Agreement**"). Tenant shall have the right, from time to time, to change the Person who is Tenant Representative. Any written approval, decision, confirmation, or determination hereunder by Tenant Representative shall be binding on Tenant; *provided, however*, that notwithstanding anything in this Agreement to the contrary, Tenant Representative shall not have any right to modify, amend, or terminate this Agreement.

Article III Leasehold Estate Term; Rent

3.1 Grant of Leasehold Estate. In consideration of and pursuant to the covenants, agreements, and conditions set forth herein, City leases, lets, demises, and rents unto Tenant, and Tenant rents and leases from City, on and subject to the terms, conditions and provisions of this Agreement, the Museum, the Museum Parking, City Personal Property, if any, together with all other rights, titles and interests granted to Tenant under this Agreement (collectively, the “**Leasehold Estate**”) for the Term set forth herein.

3.2 Delivery of Possession. On the Commencement Date, City will deliver to Tenant possession and occupancy of the Leasehold Estate subject only to (a) the Permitted Exceptions, (b) the rights and reservations of City under this Agreement including the Reservations, and (c) all Applicable Laws. Subject to Tenant’s rights to access the Museum pursuant to the Funding Agreement, Tenant shall not have the right to use or occupy any part of the Real Property, the Museum or the Museum Parking prior to the Commencement Date.

3.3 Reservations. Notwithstanding anything in this Agreement to the contrary, City hereby reserves (and the Leasehold Estate shall not include) the following with respect to the Museum and the Museum Parking (the “**Reservations**”):

(a) the right of City to install on, under, over or below the Museum and the Museum Parking any and all utilities and appurtenances related thereto that it deems necessary; *provided, however*, that (i) the location and construction of same shall not materially interfere with the operation, or materially change the aesthetics, of the Museum by Tenant or the quantity of Museum Parking spaces by Tenant, each pursuant to the terms of this Agreement and (ii) Tenant shall have no obligation to maintain same after construction by City; and

(b) for the benefit of City, the exclusive right to any natural resources in on and under the Museum or the Museum Parking, including all oil, coal, natural gas and other hydrocarbons, minerals, aggregates and geothermal resources as well as a right to grant leases or to conduct and undertake surface or subsurface extraction of same; *provided, however*, that no extraction of such natural resources shall (i) be inconsistent or incompatible with the rights or privileges of Tenant under this Agreement, or (ii) adversely affect the use or surface of, or undermine the support of, the Museum or the Museum Parking.

3.4 Initial Term. Subject to the terms and conditions hereof, City leases the Museum to Tenant for a period commencing on the Commencement Date and ending on September 30 of that year in which the thirtieth year after the Commencement Date has occurred, unless this Agreement is sooner terminated pursuant to any applicable provision hereof, (the “**Initial Term**”), unless sooner terminated by law or pursuant to the terms and conditions of this Agreement.

3.5 Renewal Periods.

(a) Tenant shall have the option to extend the Initial Term of this Agreement for two consecutive additional periods of ten (10) years each (each such option is referred to herein as a "Renewal Option" and each such period as a "**Renewal Option Period**"). Each Renewal Option Period, shall commence the day immediately following the expiration of the Initial Term or previous Renewal Option Period, as applicable.

(b) Tenant's ability to exercise each Renewal Option shall be subject to Tenant delivering to City a written request to discuss the terms and conditions of the Agreement for the upcoming Renewal Option Period on or before twenty four (24) months prior to the expiration of the Initial Term or eighteen (18) months prior to the expiration of any subsequent Renewal Option Period. If Tenant exercises any Renewal Option, all of the terms of this Agreement shall apply during the Renewal Option Period. In the event Tenant does not timely provide notice of its request to exercise a Renewal Option, then City shall be free to negotiate with, make offers to, entertain offers from, have discussions and communications with and enter into any lease, sublease, license, or similar occupancy agreement with any Person regarding the Museum and the Museum Parking on terms acceptable to City. Should there be an ongoing Tenant Default extending beyond any applicable cure period, then Tenant shall not be entitled to exercise its Renewal Option.

3.6 Rent. In consideration for this Agreement and the leasing of the Leasehold Estate, Tenant agrees to pay twenty four thousand dollars (\$24,000.00) per year in base rent (the "**Lease Payment**"). The first Lease Payment shall be due no later than twenty (20) days after the Commencement Date for the period commencing on the Commencement Date and ending on September 30 immediately following the Commencement Date. Thereafter, Lease Payments shall be due on or before the first day of each Lease Year during the Term. The Lease Payment shall be prorated on a daily basis for any Lease Year that less than a full fiscal year. Tenant shall deposit the Lease Payment into one or more accounts at banks selected by Tenant (the "**Lease Payment Account**"). Other than as administrative agent to Tenant, City shall not have access to the Lease Payment Account, unless Tenant defaults under this Lease Agreement or the related Funding Agreement and such default remains uncured beyond any applicable cure period. Funds from the Lease Payment Account, including any interest accrued, shall be used exclusively for the purpose of maintaining the Museum and making minor repairs, including Routine Maintenance, thereto and shall not be used for Capital Improvements.

Article IV

Use of the Museum; Revenue

4.1 Museum Events. Tenant shall be entitled to the use of all or any portion of the Museum for all (a) displays, showings, exhibitions, conversation, construction, repair, maintenance, and restoration of Museum Exhibits; (b) concerts and other entertainment events; (c) meetings and banquets; (d) community-oriented events (other than City

Sponsored Events); (e) any other nonprofit or for profit events; and (f) Museum routine repairs and maintenance, and for any other short term or temporary lawful purpose that is not a Prohibited Use (collectively, the “**Museum Events**”).

4.2 Scheduling. Notwithstanding anything to the contrary contained in this Agreement, Tenant shall have absolute priority for use of all or any portion of the Museum for any and all Museum Events. Subject to the foregoing, City and Tenant acknowledge that within the framework established by this Section 4.2 and Section 4.3, the scheduling of City Sponsored Events at the Museum will be a cooperative endeavor, and City and Tenant each agree to recognize and, in good faith, attempt to accommodate City with respect to the scheduling of up to twelve (12) City Sponsored Events per year.

4.3 City Sponsored Events.

(a) Subject to availability based on Tenant’s priority use of the Museum described in this Agreement (i) City shall be entitled to use of the public areas of the Museum for civic-oriented, community not-for-profit or educational events such as City ceremonies, conferences, conventions, meetings, educational events, and training sessions, for the benefit of City, (the “**City Sponsored Events**”) and (ii) City shall not attempt to schedule and shall not be authorized to use the Museum for any City Sponsored Events, without the prior written consent of Tenant, which may not be unreasonably withheld.

(b) Subject to the terms and conditions of Section 4.2 and this Section 4.3, City shall notify Tenant in writing of City’s intent to hold a City Sponsored Event at the Museum, which notice shall be given not less than twenty (20) days prior to the proposed City Sponsored Event and shall include a full and complete written description of that event. Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, if Tenant has previously scheduled an event at the Museum on the date of a City Sponsored Event requested by City, Tenant shall have no obligation to make the Museum available to City on such date. Tenant shall have no obligation to reschedule a previously scheduled Museum Event; however, Tenant shall work cooperatively with City to identify alternate dates.

(c) During any City Sponsored Event, Tenant shall, in its sole discretion, have the option of selling Concessions and/or Merchandise, whether through the use of a Concessions Agreement, Merchandise Agreement, or otherwise, and Tenant shall be entitled to receive and retain all revenue generated therefrom as described in Section 4.4. If Tenant does not make such an election and City wishes to provide for the sale and provision of Concessions and/or Merchandise at the Museum for City Sponsored Events, City must negotiate an agreement for the sale of Concessions and/or Merchandise, as applicable, at City Sponsored Events with the then-existing concessionaires, merchandisers and vendors under contract to provide and sell Concessions and Merchandise at the

Museum pursuant to a Concessions Agreement or Merchandise Agreement, as applicable.

(d) After each City Sponsored Event, City shall re-deliver the Museum to Tenant in full compliance with the terms of the Tenant's standard rental agreement form.

(e) City shall be entitled to the "rent-free" use of the Museum for City Sponsored Events; *provided, however*, that for any City Sponsored Event, City shall be solely responsible for all costs and expenses associated with such event that are over and above the costs to maintain and operate the Museum had there been no such City Sponsored Event. City shall pay Tenant for the additional costs associated with such a City Sponsored Event within thirty (30) days after receipt of a reasonably detailed invoice from Tenant, including reasonable back-up documentation as requested.

4.4 Revenue.

(a) Except as otherwise expressly provided by the terms of this Agreement, including Section 4.4(b), Tenant shall be entitled to receive and retain all revenues generated from the Museum, including, without limitation, all revenues from Events, ticket sales, Concessions, Merchandise, interior and exterior Museum advertising and signage, sponsorships, any and all naming rights and other advertising, internet rights, fundraising, and any other sources of revenue; provided such revenues shall only be used in furtherance of the operations of the Museum.

(b) City shall be entitled to receive and retain all revenues generated from ticket sales for City Sponsored Events.

4.5 Permitted Use and Prohibited Uses. The Museum shall be used as a Children's Museum that is operated in accordance with the Quality Standard and for purposes that are in furtherance of such use. Tenant shall not use, or permit the use of, the Museum or the Museum Parking for any other, different or additional purpose that is not a Museum Event operated in accordance with the Quality Standard or other use expressly permitted hereunder without first obtaining the Approval of City Representative. Tenant agrees that the Museum Events are subject to compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Museum and the Museum Parking and that nothing in this Agreement shall constitute or be deemed to constitute a waiver by City of the performance of its Governmental Functions or of any such Applicable Laws or of the duty of Tenant to comply with such Applicable Laws. Notwithstanding the use of the Museum for Museum Events, but as may be otherwise Approved or modified by City Representative from time to time, Tenant agrees that it shall not (collectively, the "Prohibited Uses"):

(a) Create, cause, maintain or permit any public or private nuisance in, on or about the Museum or the Museum Parking;

(b) Use or allow the Museum or the Museum Parking to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws, or operate or allow any Person to operate in, on or about the Museum any store or other facility, a principal or significant portion of the business of which is a "adult (sexually) oriented business", as such term is defined in the El Paso City Code, as same may be amended from time to time during the Term;

(c) Use or allow the Museum or the Museum Parking to be used for any purpose that is violative of Applicable Laws;

(d) Use or allow the Museum or the Museum Parking to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs (or their equivalent);

(e) Use or permit the Museum or the Museum Parking to be used for the public or private sale of guns and other weapons, ammunition, fireworks, or explosives;

(f) Use any portion of the Museum or the Museum Parking, other than portions designated for same inside the Museum building, for storage;

(g) Operate any speakers or amplified music near or on any exterior portions of the Museum or in the Museum Parking other than during Museum Hours, without the Approval of City Representative (but specifically excluding any pre-event sound checks for Museum Events and reasonable testing of the Museum sound facilities), while meeting the City's code requirement related to noise;

(h) Use or permit the use of the Museum or the Museum Parking as a casino (or other establishment in which gambling is permitted or games of chance are operated), a massage parlor, or a tanning parlor; or other use inconsistent with the mission of the Museum, found objectionable to the Controlling Body of the City; or

(i) Use or permit the use of the Museum or the Museum Parking in a manner which would adversely affect the tax-exempt status of any tax-exempt bonds issued to finance the Leasehold Estate.

The provisions of this Section 4.5 shall inure to the benefit of, and be enforceable by, City and its successors and assigns. No other Person, including any guest or patron of the Museum or the Museum Parking, shall have any right to enforce the prohibitions as to the Prohibited Uses.

4.6 Operator. During the Term, Tenant shall engage Museum operator who, on a day-to-day basis, is responsible for the operation and policies of the Museum and the Museum Parking and who operates the Museum and the Museum Parking in accordance with the Museum Standard (the "**Operator**"). Subject to the City's review and approval of

the Management Agreement between Tenant and EPC, the initial Operator shall be EPC. Prior to engaging a third party that is not EPC or its Affiliate to act as Operator and operate the Museum and/or the Museum Parking, Tenant shall request City's Approval, which request shall include the form of Management Agreement to be executed in connection therewith. City shall respond to any such request within thirty (30) days after receipt thereof, and any City Approval shall not be unreasonably withheld so long as any such third party Operator is a Qualified Operator and Management Agreement (as defined below) is satisfactory to the City and does not conflict with the tax exempt rules governing the debt issued to fund the Museum. Notwithstanding the foregoing, an Operator that is solely operating the Museum Parking shall not be required to be a Qualified Operator. In all instances, each Management Agreement with a third party Operator shall (a) require the Operator to comply with the responsibilities and obligations of Tenant described herein, as well as the terms of this Agreement as to the use and operation of the Museum and the Museum Parking, (b) provide that City shall be a third party beneficiary and permitted assignee thereof, and (c) not be modified or amended in any material respect without the prior written Approval of City, which Approval shall not unreasonably be withheld. Each such management agreement with a third party Operator of the Museum and the Museum Parking shall be referred to herein as a "**Management Agreement.**"

Article V

Other Agreements

5.1 **Budget.** Prior to commencement of construction, Tenant shall present a five (5) year Museum operating budget to City, including two (2) years of pre-opening operations and three (3) years of post-opening operations, including anticipated revenue generating activities (such as retail sales, concessions, special events, and educational partnerships). Sixty (60) days prior to the start of a new Lease Year, Tenant shall deliver to City an operating budget for the immediately forthcoming Lease Year that considers anticipated revenue generating activities, including retail sales, concessions, special events, and educational opportunities. All budgets shall be prepared according to the Museum Standard. As part of the budget, Tenant shall submit for review and approval a 5 year CIP.

5.2 **Financial Reporting.** Tenant shall provide annual audited financial statements and other period financial reporting in compliance with the City's grant administration policies, as may be amended from time to time.

5.3 **Subsidy.** In further consideration of Tenant assuming and exercising full responsibility for Museum Operations and EPC securing Donor Contributions and Pledges as described in the Funding Agreement, City shall subsidize Tenant as described in the Funding Agreement:

5.4 **Parking.** The City and the Tenant shall develop a comprehensive parking and traffic flow plan to address safe parking and safe ingress and egress to the Museum by all employees and patrons. Once developed, a Parking Agreement shall be attached to this Agreement as **Exhibit C.**

5.5 Museum Operations. Notwithstanding anything to the contrary, Tenant shall have the sole right, power, authority, and obligation to oversee, operate and manage the Children's Museum, including, without limitation, making any and all decisions relating to museum operations, exhibitions, Museum Exhibits, and employee and personnel matters.

Article VI Operation; Maintenance; Utilities

6.1 Tenant's Operation and Routine Maintenance of the Museum; Utilities. Tenant agrees to operate and maintain the Museum in accordance with the Museum Standard throughout the term of this Agreement.

(a) Except as otherwise provided in this Agreement, Tenant shall be responsible for all aspects of operating the Museum and the Routine Maintenance of the Museum and shall be responsible for all operating expenses and costs for the Museum, including all direct or indirect expenses associated with Museum Operations or Museum Events. Without limiting the generality of the preceding sentence, Tenant shall, throughout the Term, at its own expense (including the Lease Payment) and at no cost or expense to City, and in compliance with Applicable Laws, do the following Routine Maintenance:

(i) Perform all Routine Maintenance and otherwise keep and maintain, or cause to be kept and maintained, (1) the Museum, all Museum Exhibits, and all City Personal Property located within the Museum in good repair, order, and condition so that the Museum may be operated in accordance with the Museum Standard, but in all events in a manner consistent with manufacturers' recommendations, any applicable Casualty or other insurance requirements and as reasonably necessary to avoid or repair waste or damage to any of the foregoing and in compliance with Applicable Laws; and (2) the Museum Parking in good repair, order and condition so that the Museum Parking may be operated in accordance with the operating and maintenance standards for Museum Parking at Comparable Properties, but in all events in a manner reasonably necessary to avoid or repair waste or damage, in compliance with Applicable Laws.

(ii) Promptly make, or cause to be made, all reasonably necessary routine repairs, interior and exterior, foreseen as well as unforeseen, to the Museum and the Museum Parking, excluding those which constitute Capital Improvements, to keep the foregoing clean, in good working order and condition so that that the Museum may be operated in accordance with the Museum Standard and so that both the Museum and the Museum Parking may be operated in compliance with all Applicable Laws.

(iii) Tenant shall perform such operation, maintenance and routine repair activities required in this Article VI in a safe, clean, attractive,

and first class manner comparable to that of the Comparable Properties and in accordance with Museum Standard.

(iv) Tenant may perform such activities itself or hire contractors or managers to perform all or any portion of the same in compliance with all Applicable Laws. Without limiting the foregoing, if Tenant elects to hire a third party facility management firm other than an Affiliate of Tenant to perform any such activities, Tenant shall follow the procedure set forth in Section 4.6. For the avoidance of doubt, Tenant shall not be required to seek prior approval from City for any concessionaires, merchandisers, or other vendors for the Museum; provided Tenant ensures all such concessionaires, merchandisers, or other vendors are in good standing with the State of Texas, carry insurance appropriate to the standard of similar businesses, are not in debt to the City or El Paso County. All concessionaires, merchandisers, and vendors operating on-site during standard Museum operating hours shall be required to demonstrate background checks for employees working at the Museum.

(v) Tenant agrees to do all things reasonably necessary to conduct its affairs and carry on its business and operations in such a manner as to comply in all material respects with any and all Applicable Laws and to duly observe and conform to all valid orders, regulations, or requirements of any Governmental Authority relative to the conduct of its business and its operation of the Museum.

(vi) Tenant, or the concessionaires, merchandisers and/or vendors for the Museum, as appropriate, shall be responsible for obtaining all necessary Governmental Authorizations for operation in the Museum, including, but not limited to, licenses and permits to sell food, beverages, and alcohol.

(vii) Tenant, in its reasonable discretion, shall provide at its sole cost and expense all interior Museum security, emergency medical, and other necessary staff inside the Museum at a level of service appropriate for the applicable Museum Event and consistent with the Museum Standard. City, in its sole discretion, shall provide at its sole cost and expense or through a reimbursement agreement with the Museum or a Museum Event customer (using City employees or contract services, as determined by City) all customary police, traffic control, fire prevention, emergency medical, street cleaning, trash removal and other similar City-provided services, outside and in the general vicinity of the Museum, at a level of service consistent with the Museum Standard. If City in its sole discretion determines that an emergency public safety issue exists at any Event, City shall have the right to provide additional police or emergency staffing for such Event under the same terms and conditions the City provides

emergency staffing to any other party. The Representatives shall meet from time to time to update each other on staffing needs for scheduled Events.

(b) Except as otherwise provided in this Agreement, Tenant shall be responsible for Museum utilities.

6.2 Capital Improvements; Scheduling of Capital Improvement Repairs.

(a) City shall be responsible for making payments to the Capital Improvement Account as provided for in the Funding Agreement.

(b) Tenant shall be responsible for the prompt and timely making, oversight, installation, repair, and replacement of all Capital Improvements, but only to the extent of available funds in the Capital Improvement Account.

(c) The frequency of, and the work performed in connection with the Capital Improvements, shall be in accordance with the Museum Standard.

(d) Within the first year following the Commencement Date, the Representatives shall meet and jointly develop a five year Capital Improvements plan which, at a minimum, will set forth any anticipated Capital Improvements and set forth Tenant's estimated schedule for the Capital Improvements, and a reasonable contingency to accommodate unexpected Capital Improvements or changes. Such Capital Improvement plan shall be submitted to the Museum's board of directors and the Controlling Body of City for Approval (when so Approved, the "**Capital Improvement Plan**"). The Representatives shall meet no less often than once a year thereafter to revisit and modify, as appropriate, the Capital Improvement Plan, and determine when and whether any additional Capital Improvements are reasonably required to be provided by Tenant. Any modifications, amendments or updates to the Capital Improvement Plan shall also be submitted to the Museum's board of directors and the Controlling Body of City for Approval prior to them becoming effective. City and Tenant agree to act reasonably in agreeing on and implementing the Capital Improvement Plan. Any failure of City and Tenant to agree on a Capital Improvement Plan shall not affect Tenant's other obligations with respect to Capital Improvements.

6.3 City Inspections; Evaluation of Tenant's Operation, Routine Maintenance.

Upon prior written notice to Tenant, City Representative shall be permitted to conduct periodic inspections of the Museum. Tenant (or Tenant's representatives) shall be permitted to attend any such inspections.

6.4 Improvements by Tenant.

(a) Tenant shall be permitted to make additions or improvements to the Museum, at its expense, as long as such additions or improvements meet the Museum Standard and are approved in advance, in writing, by the City. Tenant shall provide the City Representative with prior notice of such proposed

improvements and keep the City Representative reasonably advised of the status of such improvements throughout their construction. Notwithstanding anything herein to the contrary, Tenant shall have no obligation to make any Capital Improvements beyond those improvements that can be paid for with funds in the Capital Improvement Account.

(b) In the event Tenant fails to make a Capital Improvement in accordance with the Capital Improvement Plan or otherwise as expressly required by the terms hereof and there is no ongoing dispute with respect to the legitimacy, amount or nature of such Capital Improvement, then City may, but is not obligated to, pay directly the costs of such Capital Improvement. Any amount paid or incurred by City in connection with making such Capital Improvement shall be immediately due and payable from Tenant, and Tenant shall pay all such amounts to City upon demand therefor, together with interest at the Default Rate.

(c) Tenant shall be permitted at any time and from time to time, without notice to the City Representative, to install, remove, change, and relocate Museum Exhibits, at its expense and in its sole and absolute discretion.

6.5 Tenant Personal Property. Tenant Personal Property shall remain the property of Tenant during the Term. Tenant, its assignees, concessionaires, merchandisers, or vendors will be entitled to remove Tenant Personal Property from time to time during the Term and through the Lease Expiration Date.

Article VII

Taxes

7.1 Tenant Payment of Taxes. Tenant shall be responsible for the payment of any taxes legally imposed, assessed, or levied against Tenant Personal Property and the Leasehold Estate and for the payment of any excise taxes legally imposed, assessed or levied against Tenant on account of tickets, parking, Concessions, or Merchandise, and similar sales or transactions related to Tenant's use or occupancy of the Museum or any Museum Event.

7.2 Ad Valorem Taxes. City and Tenant intend that the Real Property, the Museum, the Museum Parking, and the Leasehold Estate of Tenant hereunder (for so long as the Museum and the Museum Parking are owned by City or other Governmental Authority and for so long as Tenant operates a non-profit organization) presently are and shall continue to be exempt from real estate ad valorem taxes ("Property Taxes") as exempt properties under the applicable provisions of the Texas Constitution, the Texas Tax Code, and other Applicable Laws. Tenant is authorized to assert, insist upon, continue, and restate this joint intent to any agency, forum, or court having jurisdiction and at which the question may arise or be presented, and City, at the request and sole expense of Tenant, shall jointly take and pursue such lawful actions with Tenant, including, if necessary, judicial actions, as may be available and appropriate, to protect and defend the Museum, the Museum Parking, and the Leasehold Estate of Tenant against the levy, assessment or collection of Property Taxes by any Governmental Authority asserting the power to levy,

assess, and collect such taxes under Applicable Law. In the event that such Property Taxes are assessed against the Real Property, the Museum, the Museum Parking or the Leasehold Estate of Tenant hereunder, then Tenant shall pay such Property Taxes before they become delinquent, subject to Tenant's right of contest as provided in this Agreement, and the aggregate of such Property Taxes owing and paid to City as a governmental taxing entity, but not to other taxing jurisdictions, throughout the Term shall be promptly refunded by City to Tenant as permitted by Applicable Laws.

7.3 Joinder of City Not Required. City shall not be required to join in any Tax Proceeding or other Action or Proceeding referred to in this Section unless required by Applicable Law in order to make such Action or Proceeding effective, in which event any such Action or Proceeding may be taken by Tenant in the name of but without expense to City, and TENANT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM ALL COSTS, FEES, EXPENSES, CLAIMS, LOSSES, OR DAMAGES BY REASON OF, IN CONNECTION WITH, OR IN ACCOUNT OF, GROWING OUT OF, RESULTING FROM, ANY SUCH ACTION OR PROCEEDING. To the extent such cooperation is required by the applicable Governmental Authority for such Tax Proceeding, City shall cooperate in any such Tax Proceeding as reasonably requested by Tenant, at Tenant's sole cost and expense, whether or not City is joined pursuant thereto, and City agrees to take no action that would be materially adverse to Tenant in any such Tax Proceeding where Tenant seeks to reduce its obligation to pay such Property Taxes.

7.4 No City Obligations. Except for the Subsidies that City has specifically agreed to pay pursuant to the express terms of this Agreement, (a) City shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement, the Museum, the Museum Parking, or any Property Taxes and (b) it is expressly understood and agreed that this Agreement is a completely net lease.

7.5 No Target Taxes. City shall not impose, or agree to be imposed, any targeted or special taxes, fees, or assessments on the Museum, the Museum Parking, or Museum Events, including, without limitation, special district taxes, fees, or assessments.

Article VIII Insurance; Indemnity

8.1 Insurance.

(a) Tenant shall, at its sole expense, obtain and maintain during the Term, a Commercial General Liability Policy and Auto Liability Policy of Insurance (for owned, hired and non-owned vehicles of Tenant) which will adequately and sufficiently protect City and Tenant, their agents, representatives and servants from losses arising directly or indirectly from Tenant's and City's use of the Museum and Museum Parking. City shall be named on the insurance certificate(s) as an additional insured party and Tenant shall use commercially reasonable efforts for the umbrella coverage to follow form to include City as an

additional insured. Required policies and coverage amounts for Tenant insurance are provided in Exhibit B. Such policies shall also include business interruption coverage similar in nature to such coverages in place at Comparable Properties; so long as such business interruption coverage is available at reasonable cost. In the event that at any time City shall determine that such coverage is inadequate when compared to the Comparable Properties, then City may require additional coverage within its reasonable discretion. This clause is in no way intended to limit the liability of Tenant or City under this clause and its hold harmless provisions running towards City or Tenant, but is only to be considered as a guideline for minimum amounts of insurance that shall be carried in the amounts required herein.

(b) City agrees, at its sole expense, to obtain and maintain property insurance at all times during the Term of this Agreement, insuring all buildings and structures comprising the Museum against all risk of direct physical loss or damage to the same extent and with the same coverage as other City owned buildings such as the Civic Center, Plaza Theatre, and Convention Center. City may elect to self-insure for any deductibles in said insurance policies. Such insurance coverage may be maintained by any combination of single policies and umbrella policies and shall name Tenant as an additional insured. Such insurance shall include full replacement value cost coverage if it can be obtained at commercially reasonable terms acceptable to City.

(c) All insurance policies of Tenant or City required hereunder (including endorsements thereto) shall (i) be issued by insurance companies authorized to do business in the State of Texas, and rated "A-VII" or better by A.M. Best Company (or equivalent); (ii) name the other party and, to the extent communicated to Tenant or City, as applicable, in writing, any other party reasonably required by such party, as "additional insureds" for the Commercial General Liability Policy of Insurance (and for any other insurance policies required to be maintained hereunder for which "additional insured" coverage is available); (iii) be in a form reasonably satisfactory to the other party; (iv) be noncontributing with, and apply only as primary and not as excess to, any other insurance available to the applicable party (to the extent such provision is reasonably available); (v) contain a provision that a party and all additional insureds shall be entitled to recovery under the policy for any loss occasioned to such party by reason of the negligence of the other party or its respective agents, employees or representatives; and (vi) require the insurer to notify Tenant and City, in writing, not less than thirty (30) days prior to any cancellation or termination thereof, except in the event of non-payment of premium in which case the notice period shall be not less than ten days, to the extent the insurer agrees to provide such notices.

(d) Prior to the issuance by City of the use and occupancy permit for the Museum, the certificates of insurance verifying the existence of the insurance coverage required in the above paragraphs shall be made available to City and Tenant. Each of City and Tenant shall from time to time upon reasonable request

by the other party provide updated certificates of insurance evidencing that all insurance required hereunder is in place and fully paid for in advance.

(e) Each of Tenant and City shall timely pay all premiums due for all insurance policies required hereunder and shall not do anything at the Museum that would impair or invalidate any material obligations of any insurer thereunder. If either Tenant or City fails to obtain and pay for any of the insurance policies required hereunder, and such failure continues for ten days after written notice thereof from the non-defaulting party, then, in addition to all other rights and remedies of the non-defaulting party, the non-defaulting party shall have the right, but not the obligation, to secure the appropriate insurance policies. Any amounts paid by the non-defaulting party in connection with obtaining such insurance shall be immediately due and payable from the defaulting party, and the defaulting party shall pay all such amounts to the non-defaulting party upon demand therefor, together with interest at the Default Rate.

8.2 Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage to property arising out of or relating to this Agreement should be borne by insurance to the extent of available coverage. Accordingly, each of City and Tenant release the other from all claims or liabilities for damage to the Museum, the Museum Parking, City Personal Property, and Tenant Personal Property that are covered by the releasing party's property insurance or that would have been covered by the required insurance if the party fails to maintain the property coverages required by this Agreement. The party incurring the damage or loss will be responsible for any deductible or self-insured retention under its property insurance. City and Tenant will notify the issuing property insurance companies of the release set forth in this paragraph and will have the property insurance policies endorsed, if necessary, to prevent invalidation of coverage. **The release in this paragraph will apply even if the damage or loss is caused in whole or in part by the negligence or strict liability of the released party.**

8.3 Indemnity.

(a) To the extent allowed by Applicable Law, Tenant shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of: (i) Tenant's occupancy, use, operation, maintenance, and/or repair of the Museum, and/or (ii) Tenant's performance under this Agreement.

(b) To the extent allowed by Applicable Law, City shall indemnify, hold harmless and defend Tenant and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and

damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Tenant, City or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of: (i) City's occupancy, use, operation, maintenance, and/or repair of the Museum, and/or (ii) City's performance under this Agreement.

(c) City and Tenant's respective obligations contained in this Section 8.2 shall survive expiration or termination of this Agreement.

Article IX Loss of Facilities

9.1 Condemnation.

(a) If all of the Museum or the use thereof is taken by power of eminent domain, condemned, or sold in lieu of condemnation proceedings, this Agreement, subject to Section 9.1(c), shall automatically terminate on the earlier to occur of (i) the date on which title to the Museum vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the Museum. Except as otherwise required by issues of public safety in the exercise of its Governmental Function, City shall not exercise its power of eminent domain on all or any portion of the Leasehold Estate.

(b) If a portion of the Museum or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects Tenant's ability to use or otherwise operate and derive revenue from the Museum, Tenant, subject to Section 9.1(c), shall have the right to terminate this Agreement effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Museum vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the portion of the Museum, by giving written notice to City within 60 days after Tenant's receipt of notice of the partial condemnation.

(c) Before this Agreement terminates, or is terminated, pursuant to Section 9.1(a) or 9.1(b), City and Tenant agree for a period of one hundred eighty (180) days, which period may be extended by mutual agreement (with such period, including extensions, being referred to as the "**Cooperative Relocation Period**") to exercise commercially reasonable efforts to cooperatively and expeditiously work together to (i) identify another location to which the Children's Museum can be relocated in downtown El Paso; (ii) negotiate and enter into a mutually acceptable Funding Agreement comparable to the Funding Agreement for the design, development and construction of a safe, attractive and new first-class, state-of-the-art children's museum facility; and (iii) negotiate and enter into a mutually acceptable lease agreement comparable to this Lease for Tenant's use and occupancy of the new facility. City agrees to continue to pay Tenant the Subsidy

during the Cooperative Relocation Period to ensure the continued financial viability of the Children's Museum.

(d) If a portion of the Museum or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and Tenant does not terminate this Agreement pursuant to the terms and conditions of Section 9.1(b): (i) this Agreement shall be deemed terminated with respect to only the condemned portion of the Museum or use thereof; *provided, however*, City's obligation to pay Tenant the Subsidy hereunder shall not be terminated, reduced or diminished; and (ii) City shall, at its sole cost and expense, promptly make any Capital Improvements that the Representatives deem reasonably necessary as a result of such condemnation; and

(e) Each of Tenant and City shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Museum or the use thereof. Neither Tenant nor City shall have any rights to any award made to the other.

(f) If all or a portion of the Museum or the use thereof is temporarily condemned, this Agreement shall remain in full force and effect.

9.2 Casualty Damage to the Museum.

(a) If, at any time during the Term, the Museum or any part thereof shall be damaged or destroyed by Casualty, then Tenant shall promptly secure the area of damage or destruction to safeguard against injury to Persons or property.

(b) If the Museum or any portion thereof is damaged or destroyed by Casualty, then neither Tenant nor City, subject to Section 9.2(d), shall have the right to terminate this Agreement and the Parties shall promptly use commercially reasonable efforts to restore and repair the Museum to a condition substantially similar to that prior to such Casualty and the Term shall be extended by the period of restoration and repair. To that end, City shall use all insurance proceeds available for such purposes. The restoration and repair details shall be undertaken in the same manner involved in the original construction of the Museum.

(c) During any period that the Museum is totally unusable by Tenant due to Casualty, Tenant's obligations hereunder shall abate. If only a portion of the Museum is rendered unusable by the Casualty, Tenant's obligations hereunder shall be equitably reduced.

(d) If the Museum or any portion thereof is damaged or destroyed by Casualty and such damage or destruction (i) causes the Museum to be unusable by Tenant for Museum Events, and (ii) such unusable condition cannot be remedied within twelve (12) months after the date of such Casualty (as reasonably determined by City's construction consultants), then, either (x) Tenant or (y) City if such

Casualty takes place within twenty four (24) months of the Lease Expiration Date, shall have the right to terminate this Agreement.

Article X Defaults and Remedies

10.1 Default by Tenant.

(a) An event of default by Tenant (a "**Tenant Default**") shall be deemed to have occurred under this Agreement if:

(i) The failure of Tenant to cause the Museum and the Museum Parking to be operated continuously as required by this Agreement within sixty (60) days after the City give notice to Tenant of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(ii) The failure of Tenant to cause the Museum and the Museum Parking to be operated in accordance with the requirements of the Museum Standard or Article VI within sixty (60) days after City gives notice to Tenant of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(iii) Tenant fails to observe or to perform any other material obligation, condition, or covenant on its part to be performed or observed in accordance with this Agreement and such failure remains uncured for more than sixty (60) days after Tenant's receipt of written notice of such failure from City (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(iv) An Insolvency Event has occurred with respect to Tenant; or

(v) Substantially all of Tenant's assets are levied upon by virtue of a writ of court of competent jurisdiction; or Tenant ceases to do business in any manner.

10.2 City's Remedies. Subject to this Section 10.2, upon the occurrence of any Tenant Default, City may, in its sole discretion, pursue any one or more of the following remedies, in addition to any other remedies available to City at law or in equity or as otherwise specified in this Agreement, after delivery of written notice to Tenant:

(a) City may (but under no circumstance shall be obligated to) terminate this Agreement and upon such termination City may forthwith reenter and repossess the Museum and the Museum Parking by entry, forcible detainer suit or otherwise,

without demand or further notice of any kind and be entitled to recover, as damages under this Agreement, a sum of money equal to the total of (1) the reasonable cost of recovering the Museum, (2) the reasonable cost of removing and storing Tenant Personal Property or any other occupant's Property that the City wishes to remove, and (3) the unpaid sums accrued hereunder at the date of termination. In the event City shall elect to terminate this Agreement, City shall at once have all the rights of reentry upon the Museum, without becoming liable for damages or guilty of trespass.

(b) City may (but under no circumstance shall be obligated to) enter upon the Museum and the Museum Parking and do whatever Tenant is obligated to do under the terms on this Agreement, including taking all reasonable steps necessary to maintain and preserve the Museum; and Tenant agrees to reimburse City on demand for any expenses which City may incur in effecting compliance with Tenant's obligations under this Agreement (other than expenses of actually operating a business as opposed to maintenance, repair, and restoration) plus interest at the Default Rate, and Tenant further agrees that City shall not be liable for any damages resulting to Tenant from such action. No action taken by City under this Section 10.2 shall relieve Tenant from any of its obligations under this Agreement or from any consequences or liabilities arising from the failure to perform such obligations.

(c) City may exercise any and all other remedies available to City at law or in equity (to the extent not otherwise specified or listed in this Section 10.2), including enforcing specific performance of Tenant's obligation to continuously operate the Museum and the Museum Parking in accordance with the Museum Standard and pursuant to Article VI, and seeking monetary damages to the extent permitted by this Agreement. If City should terminate this Agreement in accordance with Section 10.2, Tenant shall assign to City any and all right, title and interest in any contracts entered into by Tenant for supplies, services, concessionaires, merchandisers, or other vendors, or other similar agreements necessary for the daily operation of the Museum (other than those contracts with an Affiliate of Tenant). The Parties agree that, upon termination of the Agreement hereunder, all Museum Exhibits and Tenant Personal Property inside the Museum becomes property of the City; *provided, however*, that in consideration EPC assigning the Museum Exhibits and Tenant Personal Property to the City, the City agrees to, and shall, continually maintain and operate the Museum in accordance with the Museum Standard for a period of not less than sixty (60) months.

10.3 Default by City.

(a) An event of default by City (a "**City Default**") shall be deemed to have occurred under this Agreement if:

(i) City fails to perform or observe any material obligation or condition on its part to be performed or observed in accordance with this

Agreement, including without limitation City's obligations to provide certain municipal services and parking, as more particularly described herein and in the Parking Agreement attached hereto, and such failure remains uncured for more than sixty (60) days after City's receipt of written notice of such failure from Tenant (or such longer period as may be reasonably required to effect such cure if such cure cannot be effected within such sixty (60) day period using reasonable efforts); and/or

(ii) A "City Default" or "Event of Default" as defined in the Funding Agreement shall have occurred and remained uncured.

(b) Upon the occurrence of a City Default, Tenant shall be entitled to seek all rights and remedies available to it at law, or in equity, including, but not limited to, the right to: (i) seek and obtain reimbursement for any monetary damage payable by Tenant to a third party that is caused by such City Default; (ii) terminate this Agreement; and (iii) cure such default on behalf of City and bill City for all reasonable costs incurred by Tenant (including attorneys' fees) to affect such cure.

10.4 Remedies Cumulative. Except as expressly limited in this Article X, the remedies described herein are cumulative and are not intended to be exclusive of any other remedies to which the Parties may be entitled at law or in equity. The failure of a Party to (a) insist in any one or more instances upon the strict performance or observance of any of the obligations or conditions of this Agreement by the other Parties; or (b) exercise any remedy contained herein for any nonperformance or nonobservance of any obligation or condition by the other Parties shall not be considered a waiver of such Party's rights to later insist upon performance or observance or to exercise its remedies. Additionally, the exercise or commencement of the exercise of any right or remedy by a Party shall not preclude the simultaneous or later exercise of any or all other rights and remedies available to such Party.

10.5 No Indirect Damages. IN NO EVENT SHALL ANY OF THE PARTIES BE LIABLE TO THE OTHER PARTIES UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES OR RELATED PARTIES; *PROVIDED* THAT WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

10.6 No Waivers. No failure or delay of any Party, in any one or more instances (a) in exercising any power, right or remedy under this Agreement or (b) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation

thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

10.7 No Accord and Satisfaction. Without limiting the generality of Section 10.5, the City's failure to take action upon a breach by Tenant of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach.

Article XI Dispute Resolution

11.1 Generally. In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties thereunder (a "**Dispute**" or "**Controversy**"), including, but not limited to a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation, or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with this Article. In the event a Dispute or Controversy arises, either Representative shall have the right to notify the other Representative that it has elected to implement the following procedures. Within thirty (30) days after delivery of any such notice by one Representative to the other Representative regarding a Dispute or Controversy, the Representatives shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at the meeting of the Representatives, either Representative may request a meeting of the chair of the Tenant's governing body (or if Tenant's rights are assigned, the Chair of the assignee's governing body) and the Mayor of the City. If the Dispute or Controversy is not resolved after the involvement of the chair of the Tenant's governing body (or if Tenant's rights are assigned, the Chair of the assignee's governing body) and the Mayor of the City, then City and Tenant shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within thirty (30) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives or the chair of the Tenant's governing body (or if Tenant's rights are assigned, the Chair of the assignee's governing body) and the Mayor of the City takes place within the forty-five (45) day period following delivery of the initial notice, then each of the Parties may seek injunctive relief or other relief at any time thereafter from any court of competent jurisdiction in El Paso County, Texas.

11.2 Emergency Relief. Notwithstanding any provision of this Agreement to the contrary, each of the Parties may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in El Paso County, Texas in the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the dispute resolution procedures outlined in Section 11.1. Notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that such dispute resolution procedures still will govern the ultimate resolution of any portion of the Dispute or Controversy.

Article XII

Assignment and Subletting

12.1 Assignment by Tenant. Except as otherwise provided in Section 12.2, the Leasehold Estate and/or Tenant's interest in this Agreement may not be assigned without the prior Approval of City except for an assignment to EPC or its Affiliate as long as no continuing Tenant Default exists beyond any applicable cure period. If Tenant wishes to assign this Agreement to a Person who is not EPC or its Affiliate, then Tenant shall request City's Approval of such assignment which shall not be unreasonably withheld as long as (a) the duties and responsibilities of the assignee of Tenant under this Agreement do not change, (b) the Museum will continue to be managed and operated by Tenant or a Qualified Operator and any related management agreement will not jeopardize the tax exempt status of the bonds funding the Museum, (c) any such assignee must expressly assume any and all obligations of Tenant under this Agreement and the Funding Agreement, and (d) there is no continuing Tenant Default hereunder.

12.2 Use Agreement. Notwithstanding Section 12.1, EPC may enter in to a Use Agreement without City's prior written Approval provided that such Use Agreement (a) is subject and subordinate to this Agreement, and to the rights of City hereunder, and shall expressly so state; (b) any Improvements made pursuant to such Use Agreement are made in accordance with the Quality Standard; and (c) for a use that is a Permitted Use. Tenant agrees to exercise commercially reasonable efforts in screening the counter-parties to Use Agreements that are concessioners or service providers in order to verify their financial and reputational credibility.

12.3 Assignment by City. City may assign all of its rights and obligations under this Agreement to a Governmental Authority, a local government corporation formed by City or a trustee in connection with the Financing; provided that City remains liable for the City's financial obligations contained herein.

12.4 No Sublease. Tenant may not sublease all or any portion of its interest in the Museum or the Museum Parking except for an assignment to an EPC or its Affiliate in accordance with Section 12.1 or in connection with a Use Agreement in accordance with Section 12.2.

Article XIII

Naming Rights; Sponsorships, Concessions and Merchandise

13.1 Fund Raising. EPC has agreed to secure contributions and pledges from donors as described in the Funding Agreement (the “**Donor Contributions and Pledges**”). The funds collected through Donor Contributions and Pledges shall be used for Museum Exhibit design, purchase, construction, repair, maintenance, restoration, installation or otherwise and Museum operational expenses, including salaries.

13.2 Contracting Generally. Tenant shall have the exclusive right to and shall be solely responsible for identifying and entering into third party contracts with all concessionaires, merchandisers, and other vendors for the Museum.

13.3 Naming Rights. Tenant shall have the exclusive right to name, or contract with a naming sponsor for, all or any part of the Museum, from time to time during the Term and to receive and retain all revenues throughout the Term from such naming rights, and to install permanent signage and displays related thereto in, on, and about any portion of the Museum, including without limitation, Museum fences and walls, structures erected above fences and walls, video boards, pedestrian walkway and concourse areas outside and inside the Museum and concession, merchandise and catering areas; *provided* that such naming shall not (a) include racial epithets, barbarisms, obscenities, names relating to any alcohol or tobacco products, sexually-oriented businesses, or enterprises or containing any overt political reference, (b) otherwise reasonably cause embarrassment or disparagement to City, (c) include the name of another political subdivision or governmental authority (collectively the “**Prohibited Messages**”), or (d) create an adverse effect on the tax exempt debt used to finance the Museum. City shall have a non-exclusive license to Museum’s logo, name, images, and URL for purposes promoting the Museum to residents, visitors, and economic development partners.

13.4 Tenant Sponsorships and Advertising. Tenant shall have the exclusive right to (a) all sponsorship revenues of every kind throughout the Term, and (b) sell, contract for, and retain all revenues throughout the Term from advertising, promotional, and pouring rights of every kind in, on or about the Museum, and to install permanent signage and displays related thereto in, on and about any portion of the Museum, including without limitation, Museum fences and walls, structures erected above fences and walls, Museum facade, video boards, pedestrian walkway and concourse areas outside and inside the Museum and concession and catering areas and other areas within the Museum as determined by Tenant; *provided* that no such signage or displays shall include any Prohibited Messages, violate the Museum Standard, or create an adverse effect on the tax exempt debt used to finance the Museum.

13.5 Premium Memberships, Concessions and Merchandise. Tenant has the exclusive right to contract for, market, sell and retain all revenue from the sale of and fees and payments associated with (a) all premium memberships or admissions to the Museum and (b) Concessions and Merchandise at the Museum.

Article XIV
Covenants, Representations and Warranties of Tenant and City

14.1 Tenant Covenants. Tenant, and its successors or assigns, covenants that during the Term (or such shorter period as provided herein):

(a) Tenant shall use commercially reasonable efforts to ensure that the Museum Operations are conducted in accordance with the Museum Standard;

(b) Tenant shall use commercially reasonable efforts to ensure that the pricing of tickets for Museum Events will be in amounts that provide an affordable recreational activity in City;

(c) Tenant shall endeavor to provide attractive and meaningful programs that are designed to maintain the affordability of Museum Events for families in City, including implementing programs for children;

(d) At all times during the Term and in connection with any activity under this Agreement or with respect to the Museum, Tenant shall comply with the requirements of the Applicable Laws and shall refrain from any activity that jeopardizes the tax exempt status of the bonds financing the Museum; and

(e) At all times during the Term, Tenant shall obtain and maintain all Governmental Authorizations necessary for the use and occupancy of the Museum and the Museum Parking in accordance with the terms of this Agreement.

14.2 Tenant's Representations and Warranties. As an inducement to City to enter into this Agreement, Tenant represents and warrants to City that notwithstanding anything herein to the contrary and as of the Effective Date:

(a) Tenant is a Texas nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Texas. The business which Tenant carries on and which it proposes to carry on may be conducted by Tenant. Tenant is duly authorized to conduct business as a nonprofit corporation in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) The execution, delivery and performance of this Agreement by each of Tenant are within Tenant's powers, respectively, and have been duly authorized by all necessary action of Tenant.

(c) Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Tenant nor any Applicable Laws to which Tenant is subject or any judgment, decree, license, order or permit applicable to Tenant, or will conflict or be inconsistent with, or will result in any breach of any of the terms

of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Tenant pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Tenant is a party or by which Tenant is bound, or to which Tenant is subject.

(d) No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Tenant of this Agreement.

(e) This Agreement is the legal, valid and binding obligation of Tenant, enforceable against each of Tenant in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Tenant, threatened against or affecting Tenant, which the management of Tenant in good faith believe that the outcome of which would (i) materially and adversely affect the validity or enforceability of, or the authority or ability of Tenant under, this Agreement to perform their respective obligations under this Agreement, or (ii) have a material and adverse effect on the consolidated financial condition or results of operations of Tenant or on the ability of Tenant to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Museum).

14.3 City Covenants. City, and its successors or assigns, covenants that during the Term:

(a) City shall not operate, establish, support or sponsor, directly or indirectly another Children's Museum (though the City may support children's programs at its other museums); and

(b) City shall not involve itself in the business, affairs, management or operations of Tenant or the Children's Museum, except in City's performance of its Governmental Functions, including the participation of City appointees on the Museum's board of directors.

The Parties agree that the above restrictions are necessary to allow this transaction to be economically viable for the Parties, and that without these restrictions, the Parties would not be able to accomplish the goal of opening a Children's Museum in the City for the benefit of the public.

14.4 City's Representations and Warranties. As an inducement to Tenant to enter into this Agreement, City represents and warrants to Tenant that notwithstanding anything herein to the contrary and as of the Effective Date:

(a) City is a municipal corporation duly formed and validly existing under the laws of the State of Texas, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated;

(b) The execution, delivery and performance of this Agreement by City is within City's powers, respectively, and have been duly authorized by all necessary action of City;

(c) Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene any Applicable Laws to which City is subject or any judgment, decree, license, order or permit applicable to City;

(d) Upon the execution of this Agreement by City, City will have caused all governmental proceedings required to be taken by or on behalf of City to authorize City to make and deliver this Agreement and to perform the covenants, obligations and agreements of City hereunder;

(e) This Agreement is the legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time; and

(f) Except as previously disclosed to Tenant in writing, there is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of City, threatened against or affecting City, which City in good faith believes that the outcome of which would (i) materially and adversely affect the validity or enforceability of, or the authority or ability of City under, this Agreement to perform its obligations under this Agreement, or (ii) have a material and adverse effect on the consolidated financial condition or results of operations of City or on the ability of City to conduct its business as presently conducted or as proposed or contemplated to be conducted.

14.5 Governmental Rule. No Approvals by City or City Representative under this Agreement shall relieve or release Tenant from any Applicable Laws relating to the operation or occupancy of the Museum (including Applicable Laws that are procedural, as well as or rather than, substantive in nature). The Approval by City or City Representative of any matter submitted to City or City Representative pursuant to this Agreement, which matter is specifically provided herein to be Approved by City or City Representative shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, such

permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Tenant from, any requirement hereunder for the Approval of City or City Representative.

Article XV Quiet Enjoyment

City covenants that, subject to the terms and conditions of this Agreement, Tenant shall peaceably and quietly have, hold and enjoy the Leasehold Estate and have the right to use the Leasehold Estate in accordance with the terms hereof during the Term. City represents that as of the Effective Date there are no, and as of the Commencement Date there will be no, Liens, judgments or claims to the Museum that will affect Tenant's right to occupy and enjoy the Museum.

Article XVI General Provisions

16.1 Leasehold Mortgages Prohibited. Neither Tenant nor any of its respective successors or assigns shall have the right to grant a Leasehold Mortgage. Nor shall Tenant permit any mechanics or materialmen's lien or other judgement or claim on the Museum or other City property.

16.2 No Broker's Fees or Commissions. Each Party hereto hereby represents to the other Parties hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Agreement.

16.3 Council Approval. Notwithstanding anything to the contrary set forth in this Agreement, Tenant recognizes and agrees that any contracts or agreements, or amendments thereto, contemplated to be entered into by City under the terms of this Agreement which are entered into after the date of this Agreement will be subject to the prior Approval of the Controlling Body of City, but not Approvals and confirmations expressly permitted in this Agreement to be given by City Representative.

16.4 Recording of Memorandum of Lease. Tenant may file of record a Memorandum of Lease in the form attached hereto as Exhibit E in the Real Property Records of El Paso, Texas upon the Commencement Date. Upon the Lease Expiration Date, Tenant shall execute such instruments reasonably requested by City in recordable form which are sufficient to release of record any rights or interests of Tenant in and to the Museum or the Leasehold Estate. In this connection, Tenant irrevocably and unconditionally appoints City as its attorney-in-fact, coupled with an interest, which appointment shall survive the bankruptcy, insolvency or other legal disability of Tenant, to take all actions necessary to perform Tenant's obligations under this Section 16.4.

16.5 Compliance with Applicable Laws and Permitted Exceptions. Tenant shall, (a) throughout the Term and within the time periods permitted by Applicable Law, comply

or cause compliance with all Applicable Laws applicable to the Museum and the Museum Parking, including any applicable to the manner of use or the maintenance, repair or condition of the Museum or the Museum Parking or any activities or operations conducted in or about the Museum or the Museum Parking and (b) throughout the Term, comply or cause compliance with the Permitted Exceptions, but with respect to each of the foregoing, Tenant shall not be responsible for any failure to comply with Applicable Law or the Permitted Exceptions to the extent caused by City or its Affiliates. Tenant shall, however, have the right to contest the validity or application of any Applicable Law, and if Tenant promptly contests and if compliance therewith may legally be held in abeyance during such contest, Tenant may postpone compliance until the final determination of such contest, provided that such contest is prosecuted with due diligence and that Tenant shall not so postpone compliance therewith in such a manner as to, or if doing so would (x) impair the structural integrity of the Museum or the Museum Parking, (y) during such contest, subject City to any fine or penalty or to prosecution for a criminal act, or expose City to any civil liability or (z) cause the Museum or the Museum Parking to be condemned or vacated; provided that a Lien against the Museum or the Museum Parking shall not be imposed by reason of such noncompliance. Tenant shall give City reasonable notice (which in no event shall be less than thirty (30) days) of its intent to carry on such contest, specifying the Applicable Law that Tenant proposes to contest, the name of counsel representing Tenant in such contest and the Excusable Tenant Delay, if any, that such contest will cause in any repair, alteration or improvement of the Museum or the Museum Parking.

16.6 No City Obligations. Except for costs that City has specifically agreed to pay pursuant to the express terms of this Agreement, (a) City shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Agreement, the Museum, or the Museum Parking and (b) it is expressly understood and agreed that this is a completely net lease.

16.7 Tenant's Obligations; No Termination. Except as otherwise expressly provided in this Agreement, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen and howsoever extraordinary or beyond the contemplation of the Parties, shall relieve Tenant from its liabilities to pay the amounts of any of its obligations under this Agreement or permit Tenant to terminate this Agreement.

16.8 Access to Museum and Museum Parking by City. Without limiting City's rights with respect to the Reservations, City shall have the right of access and entry, without charges or fees and with reasonable notice to Tenant, for itself and its authorized representatives, to the Museum and the Museum Parking at all times, for the purposes of (a) assuring compliance with this Agreement, (b) performing or undertaking any rights or obligations of City under this Agreement and (c) showing the Museum and the Museum Parking to prospective tenants during the last twelve (12) months of the Term; *provided, however*, that in all instances such access and entry shall be conducted in a manner so as to minimize interference with Tenant's use and operation of the Museum and the Museum Parking then being conducted by Tenant pursuant to the terms of this Agreement.

Article XVII
Surrender of Possession; Holding Over

17.1 Surrender of Possession. Tenant shall, on or before the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to City the Museum and the Museum Parking free of subtenancies (including any Subtenants), and in a clean condition and free of debris or as otherwise provided for in this Agreement, subject to the terms of Article IX.

17.2 Removal of Tenant Personal Property.

(a) Tenant's Obligation to Remove. All Tenant Personal Property installed, placed or used in the operation of the Museum throughout the Term shall be deemed to be the property of Tenant. All such Tenant Personal Property shall be removed by Tenant within thirty (30) calendar days after the Lease Expiration Date, provided that Tenant shall promptly repair any damage to the Museum and the Museum Parking caused by such removal.

(b) City's Right to Remove. Any Tenant Personal Property which shall remain in the Museum and the Museum Parking for thirty (30) days after the Lease Expiration Date may, at the option of City, be deemed to have been abandoned by Tenant and either may be retained by City as its Property or be disposed of, without accountability, in such manner as City Representative may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by Tenant, together with reasonable outside counsel's fees, charges and costs.

17.3 Holding Over. In the case of any holding over or possession by Tenant after the Lease Expiration Date without the Approval of City, Tenant shall not pay any rent nor shall any further Subsidy payments be made to Tenant. However, in the event Tenant shall hold over beyond any date for surrender of the Museum and the Museum Parking set forth in City's written notice demanding possession thereof, Tenant shall reimburse City for all actual expenses and losses incurred by City by reason of City's inability to deliver possession of the Museum to a successor tenant, together with interest on such expenses and losses at the Default Rate from the date such expenses are incurred until reimbursed by Tenant, together with City's reasonable outside counsel's fees, charges and costs. City's failure to immediately evict Tenant after the Lease Expiration Date under this Section 17.3 shall not constitute an extension of the Term of this Agreement or afford Tenant any right to possession of the Museum and the Museum Parking beyond the Lease Expiration Date. Unless City otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the Approval of City.

Article XVIII
Force Majeure Event and Effect of Delays

18.1 Excusable Tenant Delay. Regardless of the existence or absence of references to Excusable Tenant Delay elsewhere in this Agreement, any deadline or time period within which Tenant must fulfill the obligations of Tenant elsewhere in this Agreement shall each be adjusted as appropriate to include that number of days of delay in the performance by Tenant of its obligations hereunder actually resulting from such Excusable Tenant Delay, unless otherwise expressly provided in this Agreement to the contrary; *provided* that Tenant complies with the requirements of this Article XVIII.

With respect to each occurrence of Excusable Tenant Delay, Tenant shall, within fifteen (15) days Tenant's knowledge of the occurrence of such event of Excusable Tenant Delay, give written notice to Representative of the event constituting Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period resulting therefrom and the basis therefor, Tenant's good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance, together with reasonable documentation supporting the adjustments proposed. If City Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, City Representative shall give written notice to Tenant of the claimed deficiency and Tenant shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from Tenant shall be required with respect to a continuing Excusable Tenant Delay, except that Tenant shall promptly (and in no event less often every thirty (30) days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. City Representative shall have the right to challenge Tenant's assertion of the occurrence of an Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period or changes in the additional time for performance claimed by reason of the Excusable Tenant Delay if City Representative sends notice to Tenant within thirty (30) days after receipt by City Representative of such claim of Excusable Tenant Delay or notice from Tenant of further changes to such dates as a result of such usable Tenant Delay, as the case may be (which challenge shall be deemed to have been made if City Representative gives notice to Tenant of any claimed deficiency in documentation as provided for above in this Section 18.1).

18.2 Excusable City Delay. Regardless of the existence or absence of references to Excusable City Delay elsewhere in this Agreement, any deadline or time period within which City must fulfill the obligations of City in this Agreement shall each be adjusted as appropriate to include that number of days of delay in the performance by City of its Obligations hereunder actually resulting from such Excusable City Delay; *provided* that (a) the obligation to pay amounts when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable City Delay unless otherwise expressly provided herein to the contrary and (b) the City complies with the requirements of this Article XVIII.

With respect to each occurrence of Excusable City Delay, City Representative shall, within fifteen (15) Business Days after City's knowledge of the occurrence of such event of Excusable City Delay, give notice to Tenant of the event constituting Excusable City Delay, City Representative's good faith estimate of the Excusable City delay period resulting therefrom and the basis therefor, City representative's good faith estimate of any adjustment resulting therefrom that is to be made in time for performance, together with reasonable documentation supporting the adjustments proposed. If Tenant believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Tenant shall give notice to City Representative of the claimed deficiency and City Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one notice from City Representative shall be required with respect to a continuing Excusable City Delay, except that City representative shall promptly (and in no event less often than every thirty (30) days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. Tenant's Representative shall have the right to challenge City's assertion of the occurrence of an Excusable City Delay, or City Representative's good faith estimate of the Excusable City Delay Period, or changes in the additional time for performance claimed by reason of Excusable City Delay if Tenant gives notice to City Representative within thirty (30) days after receipt by Tenant of such claim of Excusable City Delay or notice from City Representative of further changes to such dates as a result of such Excusable City Delay, as the case may be (which challenge shall be deemed to have been made if Tenant gives notice to City Representative of any claimed deficiency in documentation as provided for above in this Section 18.2).

18.3 Continued Performance; Exceptions. Upon the occurrence of any Tenant delay or City delay, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practicable. Toward that end, Tenant and City each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Tenant delay or City delay occasioned by an Excusable Tenant Delay or Excusable City Delay, and shall diligently and continuously use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any Excusable Tenant Delay or Excusable City Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any City delay or Tenant delay.

Article XIX

Environmental Provisions

19.1 Remedial Work and Hazardous Materials. From and after the Commencement Date, Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event at, in, on or under the Museum and the Museum Parking occurring from and after the Commencement Date and arising from Tenant's operation of the Museum or Museum Parking ("**Tenant's Remedial Work**"). City shall

be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event at, in, on or under the Museum or the Museum Parking which are not attributable to Tenant's operation of the Museum or Museum Parking ("**City's Remedial Work**"). Prior to undertaking any Tenant's Remedial Work, Tenant shall obtain the Approval of City Representative of the steps Tenant proposes to take with respect to any Tenant's Remedial Work and Tenant shall select, subject to the Approval of City Representative, an independent environmental consultant or engineer to oversee Tenant's Remedial Work. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility. Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Museum or the Museum Parking; *provided, however*, that Tenant and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials at the Museum as may be reasonably necessary for Tenant to operate from the Museum pursuant to the terms of this Agreement so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws. Upon the Lease Expiration Date, Tenant shall surrender the Museum to City in the condition required by Tenant's Remedial Work and in compliance with Applicable Laws. During the Term, Tenant shall give City immediate oral and follow-up written notice within seventy (72) hours of any actual or threatened Environmental Event. Tenant shall cure such Environmental Event (provided same is the responsibility of Tenant to cure in accordance with the provisions of this Section 19.1) in accordance with all Environmental Laws to the reasonable satisfaction of City and any Governmental Authority and such cure shall be deemed part of Tenant's Remedial Work. Upon any Environmental Event, in addition to all other rights available to City under this Agreement, at law or in equity, City shall have the right, but not the obligation, at its option (a) to require Tenant, at its sole cost and expense, to address and remedy such Environmental Event, in which event City shall have the right to Approve any actions taken by Tenant to address and remedy the Environmental Event or (b) if Tenant has failed to commence action to address and remedy the Environmental Event within a reasonable time after notice is given to City, and such failure continues for 30 days after written notice thereof from City to Tenant, to perform, at Tenant's sole cost and expense, any lawful action necessary to address and remedy the same, in which event Tenant shall pay the costs thereof to City, together with interest thereon at the Default Rate until paid, within ten days after written demand therefor.

19.2 Tenant Release. WITHOUT LIMITING TENANT'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, TENANT HEREBY RELEASES CITY AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT TENANT MAY HAVE WITH RESPECT TO THE MUSEUM OR THE MUSEUM PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF TENANT'S REMEDIAL WORK, INCLUDING

ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED.

19.3 City Release. WITHOUT LIMITING CITY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, CITY HEREBY RELEASES TENANT AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT CITY MAY HAVE WITH RESPECT TO THE MUSEUM OR THE MUSEUM PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF CITY'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND THE TEXAS SOLID WASTE DISPOSAL ACT, TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED.

Article XX Notices

All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party as follows:

If to City:

City of El Paso
PO Box 1890
El Paso, Texas 79950
Attention: City Manager

with copies of all notices to City relating to defaults, remedies or indemnification being sent to:

City of El Paso
PO Box 1890
El Paso, Texas 79950
Attention: City Attorney

If to Tenant:

El Paso Children's Museum Development Corporation
300 N. Campbell
El Paso, Texas 79901
Attention: City Manager/CEO

Each Party may from time to time designate a different address for notices by giving notice to that effect to the other Parties in accordance with the terms and conditions of this Article XX.

Article XXI

Miscellaneous

21.1 Partial Invalidity. If any Section of this Agreement or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

21.2 Obligations of City and Tenant. The obligations and undertakings of City and Tenant under or in accordance with this Agreement are and shall be the obligations solely of City and Tenant. Except as otherwise expressly stated herein, no recourse shall be had, whether in contract, in tort or otherwise against any officer, director, employee, agent, member, volunteer or representative of City or Tenant in his or her individual capacity on account of any obligation or undertaking of or any act or omission by City or Tenant under or pursuant to this Agreement.

21.3 Time of the Essence. Time is of the essence with respect to all Sections of this Agreement.

21.4 Successors and Assigns. This Agreement and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

21.5 Entire Agreement. This Agreement (including all exhibits attached hereto), together with the Funding Agreement, constitute the entire and exclusive agreement between City and Tenant with respect to the subject matter contained herein. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Agreement with respect to the subject matter hereof.

21.6 Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement. All Appendices and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all

purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Agreement and any Appendices or Exhibits, the text of this Agreement shall control.

21.7 Anti-Discrimination. In accordance with Applicable Laws, the Parties, in forming their respective obligations hereunder will not discriminate based on race, sex, religion, national or ethnic origin, age or disability.

21.8 Non-Appropriation. Notwithstanding any other provision of this Agreement, City's obligation to pay any money to Tenant under this Agreement is contingent upon an Appropriation of the money by the Controlling Body of City. City's failure to make an Appropriation is not a Default under this Agreement, but Tenant, as its sole and exclusive remedies for such failure, may terminate this Agreement as a result thereof.

21.9 Attorney's Fees. If any Party to this Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Agreement and the other Party hereto places the enforcement of this Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

21.10 Nondisturbance. It is understood by the Parties that City has obtained or anticipates obtaining financing for the construction costs for the Museum and other related City expenses. City agrees that the Leasehold Estate shall not be disturbed by any creditors, bondholders, underwriters, trustees or other third parties related to the financing during the Term, except upon the occurrence of a Tenant Default.

21.11 Confidentiality and Open Records. Disclosure of the terms of this Agreement will be governed by the Texas Public Information Act, Chapter 552, Texas Government Code (as amended, the "**Open Records Act**"). City shall maintain the confidentiality of any proprietary information, trade secrets or other confidential materials delivered to it pursuant to this Agreement and designated as confidential by the delivering Party (the "**Confidential Information**") in accordance with the Open Records Act; *provided, however*, that Tenant will need to assert the basis for any such exclusion from disclosure under the Open Records Act before the Texas Attorney General if City receives an open records request. City shall promptly give Tenant written notice of any request or demand made upon it for inspection, release or disclosure of any Confidential Information of Tenant. Within three Business Days after Tenant's receipt of such notice from City, Tenant shall notify City in writing whether Tenant desires City to request a determination from the Texas Attorney General (an "**Opinion Request**") as to whether the requested information must be disclosed pursuant to the Open Records Act; provided that City shall only be required to comply with the foregoing to the extent that City, in good faith, believes

there is a reasonable basis for claiming that the requested information is subject to an exception under the Open Records Act and the Open Records Act permits City to make an Opinion Request in the circumstance in question. Upon receipt of a request from Tenant for City to make an Opinion Request and provided City is required to act on same pursuant to the terms hereof, City, at Tenant's sole cost and expense, shall provide all commercially reasonable assistance to Tenant necessary to draft the Opinion Request so that it may be completed and filed within the time period prescribed by the Open Records Act. After the Opinion Request is so filed, each Party shall cooperate with each other Party in preparing appropriate responses or filings to the Texas Attorney General and to any other Person with respect to the information request and the Opinion Request, including any commercially reasonable appeals involved with respect thereto, to prevent the disclosure of such information. Each Party shall also cooperate with each other Party and use reasonable efforts to promptly identify any possible third Person whose privacy or property interests may be compromised by any such information request in order to enable City to timely furnish to any such third Person any statutory notice required by the Open Records Act and to seek any applicable exceptions from disclosure under the Open Records Act.

21.12 Counterparts. This Agreement may be executed in multiple counterparts (including by means of facsimile, digital or electronic signature), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. All signatures need not be on the same counterpart.

21.13 Delivery by Facsimile or Email. This Agreement, to the extent signed and delivered by means of facsimile or email with scan or facsimile attachment, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto shall raise the use of a facsimile machine or email to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or email as a defense to the formation or enforceability of a contract, and each such party forever waives any such defense.

21.14 Governing Law. THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS). In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Texas located in El Paso County or any Federal court whose jurisdiction includes El Paso County, Texas.

21.15 Limitation to Capacity as City. The Parties acknowledge that all references to "City" herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to City as the owner of the fee or other real property interest in the Museum, a signature project under the publicly voted 2012 Quality of Life Bonds, and a governmental purpose) shall refer only to City in its capacity as City under this

Agreement. The term "City" and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of City of El Paso, Texas when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of City's Governmental Functions may prevent City from performing its obligations under this Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or claims against City in its capacity as the "City" hereunder, it being acknowledged that Tenant's remedies for any injury, damage or other claim resulting from any such action, omission or circumstances arising out of City's Governmental Functions shall be governed by the laws and regulations concerning claims against City as a Governmental Authority. In addition, except as otherwise expressly provided herein, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Tenant to City under this Agreement as a result of any action or omission of City when performing its Governmental Function.

21.16 Capacity of Persons Acting on Behalf of City. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to Persons acting in City's capacity as the "City" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of City's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of City shall be deemed to be acting in connection with the performance of City's Governmental Functions.

21.17 No Limitation on City's Governmental Functions. The Parties acknowledge that City is a Governmental Authority in addition to being the owner of the Museum, and that no representation, warranty, Approval or agreement in this Agreement by City shall be binding upon, constitute a waiver by or estop City from exercising any of its rights, powers, or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to City when performing its Governmental Functions, which are provided under Applicable Law. Nothing in this Agreement constitutes a waiver of City's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case arising out of the performance of City's Governmental Functions.

21.18 Non-Liability of City's Officials and Tenant's Employees. No member of any legislative, executive, or administrative body of, or affiliated with, City or its Affiliates, and no official, agent, employee or representative of City or such body or any of its Affiliates (whether acting in the performance of City's Governmental Functions or otherwise) shall be personally liable to Tenant or any Person holding by, through or under Tenant, for any actions taken in his or her capacity as an official, agent, employee, or representative of such Person in the event of any default or breach by City, or for any amount which may become due to Tenant or any Person holding by, through or under Tenant, or for any other obligation, under or by reason of this Agreement. No officer, director, shareholder, member, agent, employee or representative of Tenant or its Affiliates shall be personally liable to City or any Person holding by, through or under City, for any

actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Tenant, or for any amount which may become due to City or any Person holding by, through or under City, or for any other obligation, under or by reason of this Agreement.

21.19 Payment on Business Days. If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

21.20 Joint and Several Liability. If Tenant at any time comprises more than one Person, all such Persons shall be jointly and severally liable for performance of every obligation of Tenant under this Agreement.

21.21 Relationship of the Parties; No Partnership. The relationship of Tenant and City under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, neither the obligation to pay City any amounts due hereunder nor any other aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Tenant and City. As such, City shall have no direct supervision of or obligation to the employees of Tenant and any communication of employee matters shall be through Tenant Representative.

21.22 Non-Merger of Estates. The interests of City and Tenant in the Museum shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement or the Leasehold Estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Museum or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Museum shall join in the execution of a written instrument effecting such merger of estates.

21.23 Covenants Running with the Estates in Land. The Parties covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Museum, the Museum Parking and the Leasehold Estate, respectively, which shall extend to, inure to the benefit of and bind, City and Tenant, and their permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall always bind the owner and holder of any fee or leasehold interest in or to the Museum, the Museum Parking or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

21.24 Audits. The books and records of each Party pertaining to any obligation of such Party under the terms of this Agreement shall be available for the purpose of the other Party's undertaking reasonable examinations, from time to time, upon reasonable notice; provided however, that any Confidential Information reviewed as a part of such examination shall be reviewed in such a manner such that it remains confidential. The

Parties' respective rights to examine such books and records shall survive termination of this Agreement for a period of one year past the Lease Expiration Date.

21.25 Survival of Existing Claims. Termination of this Agreement shall not alter any existing claim of any Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect to such existing claims shall survive termination.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY OF EL PASO, TEXAS

By: _____

Name: Tomás González

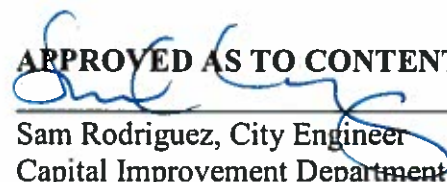
Title: City Manager

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Sam Rodriguez, City Engineer
Capital Improvement Department

**EL PASO CHILDREN'S MUSEUM
DEVELOPMENT CORPORATION**

By: _____

Name: Tomás González

Title: Executive Director

[Museum Lease Agreement - Signature Page]

**APPENDIX A
TO
MUSEUM LEASE AGREEMENT**

Glossary of Defined Terms

“Action or Proceeding” means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

“Affiliate” means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

“Agreement” has the meaning given to that term in the introductory paragraph of this Agreement.

“Antiquities Code” means the Antiquities Code of Texas as codified in Title 9, Chapter 191 of the Texas Natural Resource Code, as may be amended from time to time.

“Applicable Laws” means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include the Antiquities Code, all City Codes, Environmental Laws, any applicable Federal wage requirements, and applicable provisions of the Internal Revenue Code of 1986, as amended, with respect to tax-exempt bond financing.

“Appropriation” means with respect to any payment obligation or other monetary obligation of City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of City.

“Approval” “Approve” or “Approved” means (a) with respect to any item or matter for which the approval of City or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by City pursuant to a written instrument executed by City or City Representative, as applicable, delivered to Tenant, and shall not include any implied or imputed approval, and no approval by City or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any Governmental Functions of City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Tenant is required under the terms of the Agreement, the specific approval of such item or matter by Tenant or Tenant Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Tenant or Tenant Representative, as permitted pursuant to the terms of this Agreement, and delivered to City, and shall not include any implied or imputed approval; and (c) with respect to any item or

matter for which the approval of any other Person is required under the terms of this Agreement, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to City or Tenant, as applicable, and shall not include any implied or imputed approval.

“Business Day” means a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in El Paso, Texas.

“Capital Improvements” means any work (including all design, architectural, engineering and construction work, together with all labor, supplies, materials, equipment and costs of permits and approvals of Governmental Authorities) that is customarily capitalized under GAAP and is reasonably necessary to repair, restore, refurbish, replace or improve (in each case, in a manner that extends the useful life thereof and is performed to ensure that the Museum remains a safe, attractive and first class facility comparable to the Comparable Properties, ordinary wear and tear excepted) any facility, structure, City Personal Property or other component of the Museum or the Museum Parking, if such work is necessitated by:

- (a) any material defects in design, construction or installation of the Museum and/or the Museum Parking;
- (b) Physical Obsolescence;
- (c) requirements imposed by Applicable Laws;
- (d) requirements or recommendations of any insurance carrier insuring any portion of the Museum or the Museum Parking;
- (e) requirements of any manufacturer, supplier or installer of any component, system or equipment at the Museum or the Museum Parking stipulated in the operating manuals therefor;
- (f) the then-current Capital Improvement Plan; or
- (g) any other Capital Improvements mutually agreed upon by City and Tenant. The term Capital Improvements shall not include any Routine Maintenance.

“Capital Improvement Plan” has the meaning given to that term in Section 6.2 and shall address, among other things, any applicable Economic and Technological Obsolescence issues.

“Casualty” means, with respect to the Museum or the Museum Parking, physical damage, physical destruction or other property casualty resulting from any fire or any other Force Majeure Event or other sudden, unexpected or unusual cause.

“Children’s Museum” means an institution located in the City of El Paso that conserves Museum Exhibits that are intended to be of principal interest to children and students and makes such exhibits available for public viewing through exhibitions that may be permanent or temporary.

“City” has the meaning given to that term in the introductory paragraph of this Agreement.

“City Default” has the meaning given to that term in Section 10.3.

“City Museum Exhibits” has the meaning given to that term in the Funding Agreement.

“City Personal Property” means any and all City Museum Exhibits, movable equipment, furniture, fixtures and other tangible personal property that are owned by City as of the Commencement Date or otherwise purchased as part of the development costs of the Museum or Capital Improvements and located on or within the Museum or the Museum Parking (and that do not constitute fixtures) and can be removed from the Museum without damage thereto. The term “City Personal Property” includes any replacements of City Personal Property by City or otherwise. The term “City Personal Property” does not include Tenant Personal Property.

“City Representative” has the meaning given to that term in Section 2.1.

“City Sponsored Events” has the meaning given to that term in Section 4.3.

“Commencement Date” means the date of the latest to occur: (i) City’s issuance of a certificate of occupancy with respect to the Museum or (ii) possession of the Leasehold Estate has been tendered to Tenant by City.

“Comparable Properties” means one or more first-class, state-of-the-art children’s museums (as mutually agreed upon by the Representatives) that (a) have been constructed within five years of the Execution Date, (b) are generally comparable in size, design and quality of construction to the Minimum Requirements and (c) are located in the United States.

“Concessions” means any and all food and beverage items sold anywhere at the Museum, including without limitation, (i) by Tenant, (ii) in accordance with any Concessions Agreement, or (iii) by any third party (without regard to whether such party has entered into a Concessions Agreement).

“Concessions Agreement” means any agreement for the management and operation of Concessions that may be entered into by Tenant from time to time during the term of this Agreement.

“Confidential Information” has the meaning given to that term in Section 21.11.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Controlling Body of City” means City Council of City of El Paso, Texas.

“Cooperative Relocation Period” has the meaning given to that term in Section 9.1(c).

“Default Rate” means the “prime rate” as published in the “Money Rates” section of The Wall Street Journal, plus one percentage point; however, if such rate is, at any time during the Term, no longer so published, the “Default Rate” shall mean the average of the prime interest rates that are announced, from time to time, by the three largest banks (by assets) headquartered in the United States that publish a “prime rate,” plus one percentage point. In no event shall the Default Rate be in excess of the maximum interest rate allowed by applicable law.

“Funding Agreement” has the meaning given to that term in the Recitals.

“Economic and Technological Obsolescence” means any City Personal Property or other facility, component, structure or surface of the Museum that is not then currently state-of-the-art, and includes without limitation any such property, improvements and/or structures that have become outdated due to technological advances, whether or not the same is Physically Obsolete.

“Effective Date” has the meaning given to that term in the introductory paragraph of this Agreement.

“Encumbrances” means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Museum or the Museum Parking, whether evidenced by written instrument or otherwise evidenced.

“Environmental Claim” means any Action or Proceeding regarding the Museum (i) arising under an Environmental Law or (ii) related to or arising out of an Environmental Event.

“Environmental Event” means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Museum caused by a third party; (iii) any event on, at or from the Museum or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; or (v) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials on, at or from the Museum which may cause a threat or actual injury to human health, the environment, plant or animal life.

"Environmental Law(s)" means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

"Event" means any Museum Event or City Sponsored Event.

"Excusable City Delay" means any City delay that is caused by or attributable to (but only to the extent of) a Force Majeure Event. No City delay arising from the failure to make funds available for any purpose shall ever be an Excusable City Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable City Delay.

"Excusable Tenant Delay" means any Tenant delay that is caused by or attributable to (but only to the extent of) a Force Majeure Event. No Tenant delay arising from the failure to make funds available for any purpose shall ever be an Excusable Tenant Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Tenant Delay.

"Financing" means the issuance, by City, or a local government corporation formed by City, of one or more series of bonds or other debt obligations, the net proceeds of which are used to pay for the costs of design, construction and development of Improvements to or expansion of the Museum and/or Museum Parking.

"Force Majeure Event" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays

such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party's fault or negligence. Subject to the satisfaction of the conditions set forth in (a) through (c) above, a Force Majeure Event shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes, lockouts or other labor disputes; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law; (vii) title disputes; and (viii) third party litigation; *provided, however*, that under no circumstances shall a Force Majeure Event include economic hardship.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

"Governmental Authority" means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation.

"Governmental Authorizations" means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

"Governmental Function" means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws including ownership of facilities purchased by City issued bonds and serving a public purpose.

"Hazardous Materials" means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is

regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

“Initial Term” has the meaning given to that term in Section 3.4.

“Insolvency Event” means, with respect to any Person, (a) such Person’s or any of its subsidiaries’ (i) failure to generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its subsidiaries (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s or any of its subsidiaries’ taking any corporate action to authorize any of the actions set forth above in this definition.

“Lease Expiration Date” means the date of termination of this Agreement at the conclusion of the Term or sooner pursuant to any applicable provision hereof “Leasehold Estate” has the meaning given to that term in Section 3.1.

“Lease Year” means the period commencing on the Commencement Date and expiring on the last day of the immediately succeeding September (with such initial Lease Year being referred to as the first Lease Year, even though it may be less than 12 months) and all subsequent Lease Years shall be a period of one year commencing on the first day of October and expiring on the last day of the immediately succeeding September.

“Leasehold Mortgage” means any mortgage, deed of trust or other instrument in the nature thereof which encumbers any of Tenant’s rights, titles and interests in and to use the Museum or the Museum Parking (but not City’s real property interest in the Museum or the Museum Parking), including, without limiting the generality of the foregoing, its right to use and occupy the Museum or the Museum Parking and all of its rights, titles and interests, if any, in and to any and all improvements to the Museum or Museum Parking.

“Legal Holiday” means any day, other than a Saturday or Sunday, on which City’s administrative offices are closed for business.

“Lien” means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any property or assets or any kind, whether real or personal, tangible or intangible, now owned or hereafter acquired.

“Management Agreement” has the meaning given to that term in Section 4.6.

“Merchandise” means any goods (other than food or beverage) sold anywhere at the Museum, including without limitation, (i) by Tenant, (ii) in accordance with any Merchandise Agreement or (iii) by any third party (without regard to whether such party has entered into a Merchandise Agreement).

“Merchandise Agreement” means any agreement for the management and operation of Merchandise that may be entered into by Tenant from time to time during the term of this Agreement.

“Museum” has the meaning given to that term in the Recitals.

“Museum Events” has the meaning given to that term in Section 4.1.

“Museum Exhibits” means any and all works, exhibits, collections, installations, artifacts and other objects of artistic, cultural, historical, educational, or scientific importance that may be made available for public viewing through exhibits that may be special, permanent or temporary. For the avoidance of doubt, the term “Museum Exhibits” includes both the City Museum Exhibits and the Tenant Museum Exhibits.

“Museum Hours” means the period beginning one hour before the start of an Event and concluding one hour after such Event.

“Museum Operations” means the sole and exclusive right and obligation to control and manage, and oversee the operations of, the Children’s Museum, and all employees involved in the management and operation of the Children’s Museum, all in accordance with the Museum Standard.

“Museum Parking” has the meaning given to that term in Section 6.1.

“Museum Standard” means the continuous operation, maintenance and repair of the Museum and Museum Parking on a full service basis in a manner consistent with the standards of operations, maintenance and operating and maintenance plans that a Qualified Operator would reasonably be expected to undertake and follow for the operation, maintenance and repair of a Comparable Property.

“Open Records Act” has the meaning given to that term in Section 21.11.

“Operator” has the meaning given to that term in Section 4.6.

“Opinion Request” has the meaning given to that term in Section 21.11.

“Parking Plan” has the meaning given to that term in the Funding Agreement.

“Party” or “Parties” means a party or the parties, respectively, to this Agreement.

“Permitted Exceptions” means (i) those certain Encumbrances upon and/or exceptions to the title to the Museum or the Museum Parking that are referenced and/or

described on Exhibit A attached hereto and (ii) the Reservations and all rights to use the Museum and the Museum Parking pursuant thereto.

“Permitted Use” means the use of the Museum as a Children’s Museum that is operated in accordance with the Quality Standard and for purposes that are in furtherance of such use and is not a Prohibited Use.

“Person” means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

“Physically Obsolete” or “Physical Obsolescence” means any City Personal Property or other facility, component, structure or surface of the Museum or the Museum Parking that does not comply with Applicable Laws or has become dysfunctional due to defects in design, materials or workmanship or ordinary wear and tear other than as a result of Tenant’s failure to perform its maintenance obligations under this Agreement. For purposes of determining Physical Obsolescence or Physically Obsolete, any City Personal Property or other facility, component, structure or surface of the Museum or the Museum Parking shall be deemed dysfunctional if such has deteriorated to a degree that cannot be remedied through Routine Maintenance (including replacement necessitated by repeated breakdown of a component despite efforts to repair or restore it short of replacement).

“Prohibited Messages” has the meaning given to that term in Section 13.3.

“Prohibited Use” has the meaning given to that term in Section 4.5.

“Qualified Operator” means a nationally recognized multi-purpose project operator (or, if its parent company has and continues to unconditionally guarantee the full payment and performance of all of such multi-purpose project operator’s obligations under or in connection with the Management Agreement, such parent company meets) that (a) as of the effective date of the Management Agreement then in effect, operates, on a full-service basis, either directly or through its subsidiaries at least three facilities that are comparable (or superior) to the Comparable Properties, the Museum or other facilities acceptable to City; and (b) an Insolvency Event with respect to such multi-purpose project operator or, in the case of the foregoing guaranty, its parent company does not exist. Additionally, an Affiliate of any entity meeting the foregoing criteria that it is going to be an Operator shall be a Qualified Operator, provided that the applicable entity meeting the foregoing criteria becomes or remains liable for the obligations of the “Operator” under any Management Agreement.

“Quality Standard” means a first-class, state-of-the-art children’s museum, comparable, when taken as a whole, to the Comparable Properties.

“Real Property” has the meaning given to that term in the Recitals. In addition to the description of real property attached hereto as Exhibit A, the term “Real Property” shall

also include any additional real property interests acquired by City and on, over or under which, or pursuant to, the Museum is constructed.

“Related Party” or “Related Parties” means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, consultants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, and Affiliates.

“Renewal Option” has the meaning given to that term in Section 3.5.

“Renewal Option Period” has the meaning given to that term in Section 3.5.

“Representative” means each of City Representative and Tenant Representative or both collectively if used in the plural.

“Reservations” has the meaning given to that term in Section 3.3.

“Routine Maintenance” means all work (including all labor, supplies, materials and equipment) that is of a routine nature and is reasonably necessary for the cleaning and routine care of and preventative maintenance and repair for any property, structures, surfaces, facilities, fixtures, equipment, furnishings, improvements and components that form any part of the Museum or the Museum Parking in a manner reasonably consistent with the standards at other Comparable Facilities; provided however, Routine Maintenance shall not include Capital Improvements. Routine Maintenance shall include the following, together with such other Routine Maintenance described in Section 6.1; (i) preventative or routine maintenance that is stipulated in the operating manuals for the Museum; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal and maintaining all landscaping; (iv) routine maintenance procedures for heating, ventilation and air- conditioning, plumbing, electrical, roof and structural systems and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) cleaning prior to, during and following, and necessary as a direct result of, all Events at the Museum, and routine carpet cleaning; and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use.

“Stipend” means the annual support provided by the City to the EPC in consideration for the EPC’s obligations hereunder. The Stipend is calculated as thirty three percent (33%) of the annual operating budget for the immediately succeeding fiscal year, not to exceed \$2.5 million. The City and the Corporation shall review the Stipend every third year to assess whether the Stipend cap of \$2.5 million is achieving the thirty-three percent (33%) goal stated above and in the Funding Agreement. The Parties agree that any expenses associated with the Tenant’s architectural design competition process and/or a design procurement process for designing the Museum shall be excluded from the operating budget for purposes of determining the amount of the Stipend to be paid hereunder for the applicable year.

“Subsidy” has the meaning given to that term in Section 5.1.

“Tax Proceeding” means any audit, examination, investigation, action, suit, claim, assessment, appeal, request for adjustment, or other administrative or judicial proceeding relating to the payment of any taxes described in this Agreement.

“Tenant” has the meaning given to that term in the introductory paragraph of this Agreement.

“Tenant Default” has the meaning given to that term in Section 10.1.

“Tenant Museum Exhibits” has the meaning given to the term “EPC Museum Exhibits” in the Funding Agreement.

“Tenant Personal Property” means any and all Tenant Museum Exhibits, movable equipment, furniture, fixtures and other tangible personal property that are owned by Tenant or its subtenants and located on or within the Museum or the Museum Parking (including trade fixtures, but not other fixtures) and can be removed from the Museum without material damage thereto. The term “Tenant Personal Property” includes any replacements of Tenant Personal Property by Tenant or otherwise. The term “Tenant Personal Property” does not include any of City Personal Property or any replacements of City Personal Property.

“Tenant Representative” has the meaning given to that term in Section 2.2.

“Term” means the Initial Term and any and all Renewal Option Periods exercised by Tenant as provided in Section 3.5.

“Use Agreement” means a use, sublease, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Museum for any Permitted Use, other than a Museum Event, but shall not include any of the foregoing for all or substantially all of the Museum or for a period greater than the remaining.

Rules as to Usage

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

1. “Include”, “includes” and “including” shall be deemed to be followed by “, but not limited to,” whether or not they are in fact followed by such words or words of like import.

2. “Writing”, “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

3. Any agreement, instrument or Applicable Laws defined or referred to above means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

4. References to a Person are also to its permitted successors and assigns.

5. Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

6. "Hereof", "herein", "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References to "Article", "Section", "Subsection" or another subdivision or to an attachment are, unless the context otherwise requires, refer to an article, section, subsection or subdivision of or an attachment within or to this Agreement as a whole. All references to exhibits or appendices in any agreement or instrument that is governed by this Appendix are to exhibits or appendices attached to such instrument or agreement.

7. Pronouns, whenever used in this Agreement and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

8. References to any gender include, unless the context otherwise requires, references to all genders.

9. The word "or" will have the inclusive meaning represented by the phrase "and/or".

10. "Shall" and "will" have equal force and effect.

11. Unless otherwise specified, all references to a specific time of day shall be based upon Mountain Standard Time or Mountain Daylight Savings Time, as applicable, on the date in question in El Paso, Texas.

12. References to "\$" or to "dollars" shall mean the lawful currency of the United States of America.

13. "Not to be unreasonably withheld" (or any comparable phrase) when used herein with respect to any Approval shall be deemed to be followed by "conditioned, delayed or denied" whether or not it is in fact followed by such words or words of like import.

EXHIBIT A

Legal Description (Include the Site)

EXHIBIT A

PROPERTY DESCRIPTION

Being a portion of Block 18, MILLS ADDITION, City of El Paso, El Paso County, Texas, more particularly described by metes and bounds as follows, to-wit: Beginning at a point, said point being the intersection of the Easterly right-of-way line of Santa Fe Street with the Northerly right-of-way of Main Street;

Thence North 37° 37' West along the Easterly right-of-way line of Santa Fe Street a distance of 111.85 feet;

Thence North 52° 23' East a distance of 129.93 feet to a point lying midpoint in a former 20 foot wide alley;

Thence North 37° 37' West a distance of 7.48 feet to a point for corner;

Thence North 52° 23' East a distance of 129.93 feet to a point lying in the Westerly right-of-way line of El Paso Street;

Thence South 37° 37' East along said Westerly right-of-way line a distance of 119.33 feet to a point, said point being the intersection of the Westerly right-of-way line of El Paso Street with the Northerly right-of-way line of Main Street;

Thence South 52° 23' West along the Northerly right-of-way line of Main Street a distance of 259.86 feet to the point of the beginning.

EXHIBIT B

REQUIRED INSURANCE POLICIES AND COVERAGE AMOUNTS

COMMERCIAL GENERAL LIABILITY:

Written on an occurrence form. (There may be situations where a "claims-made" form may be our only option but it is best we require an occurrence form including all the usual coverage known as:

- Premises/operations liability
- Products/completed operations
- Personal/advertising injury
- Contractual liability
- Broad-form property damage
- Independent contractor liability
- Cyber Liability/Data/Breach/Ransom

Minimum Limits of Liability

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage per occurrence

Commercial General Liability Exclusion Removed/Railroad Protective Liability

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence
Required when a contractor is going to work within 50 feet of any "railroad property"

AUTOMOBILE LIABILITY

\$1,000,000 Bodily Injury/\$500,000 Property Damage Liability per occurrence

WORKERS' COMPENSATION

Statutory Coverage
\$500,000 Employers Liability

PROFESSIONAL (ERRORS & OMISSIONS) LIABILITY (IF REQUIRED)

\$1,000,000 per occurrence

EXCESS LIABILITY INSURANCE (IF REQUIRED)

\$5,000,000 per occurrence

The City, its officials, employees, agents and contractors shall be named as additional insureds. The contractor/vendor and their subcontractors' insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the contractor/vendor's or contractor/vendor's subcontractor's insurance and shall not contribute to the contractor/vendor's or contractor/vendor's subcontractor's insurance.

Prior to undertaking any work under this Agreement, the contractor/vendor, at no expense to the City, shall furnish to the City a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in this exhibit. Any deductibles or self-insured retentions must be declared to, and approved by the City.

EXHIBIT C
PARKING STUDY

EXHIBIT D
FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This MEMORANDUM OF LEASE (this "**Memorandum**") is made to be effective as of the _____, 2018, by and between the CITY OF EL PASO, TEXAS, a Texas home rule city ("**City**"), and EL PASO CHILDREN'S MUSEUM DEVELOPMENT CORPORATION, a Texas nonprofit corporation ("**Tenant**"). City and Tenant are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

WHEREAS, City and Tenant have entered into that certain Museum Lease Agreement (the "**Lease**") dated _____, 2018, pursuant to which City has leased to Tenant and Tenant has leased from City the real property located in El Paso County, Texas described on Exhibit A attached hereto (the "**Museum**") pursuant to the terms and conditions of the Lease; and

WHEREAS, City and Tenant desire to execute this Memorandum to provide notice of Tenant's rights, titles and interest under the Lease and in and to the Museum.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Memorandum shall have the meanings assigned to them in the Lease, which also contains rules as to usage that shall be applicable herein.

2. Lease. The Museum has been leased to Tenant pursuant to the terms and conditions of the Lease, which is incorporated herein by reference and deemed set forth herein in full. In the event of any conflict or inconsistency between this Memorandum and the Lease, the Lease shall control.

3. Lease Term. City has leased the Museum to Tenant for an Initial Term commencing on _____, 20__ and ending on September 30, 20__, unless the Lease is sooner terminated pursuant to any applicable provision thereof.

4. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject however, to the provisions of the Lease regarding assignment.

5. Counterparts. This Memorandum may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Memorandum shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as signatories.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the day and year first above written.

CITY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

**EL PASO CHILDREN'S MUSEUM
DEVELOPMENT CORPORATION**

By: _____
Name: Tomàs González
Title: Executive Director

STATE OF TEXAS)
)
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me on _____, 20__ by _____, _____ of The City of El Paso, on behalf of said city.

WITNESS my hand and official seal.

Notary Public's Signature

My Commission Expires:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me on _____, 20__ by _____, _____ of El Paso Children's Museum Development Corporation, on behalf of said corporation.

WITNESS my hand and official seal.

Notary Public's Signature

My Commission Expires: