

AGREEMENT

This Agreement made and entered into this ____ day of _____, 2018, by and between:

Children’s Museum of Minot., Inc., a North Dakota non-profit corporation, Minot, North Dakota

and

Minot Park District, a Municipal Corporation, Minot, North Dakota.

RECITALS

The Children’s Museum of Minot., Inc., a non-profit corporation organization organized under the laws of the State of North Dakota (“CHILDREN’S MUSEUM”), has developed a plan for a children’s museum that will provide a place of learning and discovery for children, families and Schools in the City of Minot as well as the surrounding communities. The CHILDREN’S MUSEUM has developed a general plan for the funding and construction of what will be known as the Magic City Discovery Center (“Discovery Center”). Under this general plan, the CHILDREN’S MUSEUM intends to construct a building and other structures upon a portion of Minot Park District property located at 25 15th Avenue NE, Minot, North Dakota, having legal description of Lot 1, Grandview Park & Boulevard, as depicted on the attached Exhibit “A”. This property is currently referred to as the “_____ Park.” CHILDREN’S MUSEUM and the Board of Park Commissioners of the Park District of the City of Minot (“PARK”) have independently determined that the public needs and interests demand, and that the public would benefit from the development of a Children’s Museum such as the Discovery Center. The general plan is in the fundraising and development stages; the proposed structures and improvements contemplated for the Discovery Center within the _____ Park are, but may not be limited to, a main building which would house and provide the indoor space for the museum’s indoor exhibits, outdoor space to be utilized for public space, outdoor exhibits and possibly other structures, and provide some required parking areas, all of which would comprise the “Discovery Center.” See the attached Exhibit “B”. The parties recognize that these planned structures and improvements may not materialize on the proposed site, or that other structures or improvements may be substituted therefore.

In order to carry out the broad concept of development by the CHILDREN’S MUSEUM of a Discovery Center, CHILDREN’S MUSEUM has approached the Board of Park

Commissioners of the Minot Park District suggesting that a portion of _____ Park be utilized for the construction of the above-mentioned structures and improvements. The PARK is receptive to the concept presented to it.

In accordance with the foregoing recitals, CHILDREN’S MUSEUM and PARK agree as follows:

1. Exhibit “A” is a depiction of _____ Park, Minot, North Dakota, upon which there is generally outlined the tentative location and outline (not necessarily to correct scale) of proposed Structures and Improvements for the Discovery Center. (“Structures and Improvements” comprise the Discovery Center’s buildings, outdoor public areas and exhibits, parking areas and sidewalks and other structures). PARK after due consideration of the CHILDREN’S MUSEUM’S proposal finds that the CHILDREN’S MUSEUM’S suggestion of being located on Park District property is appropriate and consistent with the goals and plans for the PARK for the property identified and known as _____ Park. Further, PARK adopts as its own concept the development of Structures and Improvements to be known as the Discovery Center by the CHILDREN’S MUSEUM as set forth herein, at CHILDREN’S MUSEUM’S cost, and subject to the limitations set forth in this Agreement and by law. Pursuant to this Agreement and to Exhibit “A”, the CHILDREN’S MUSEUM is permitted to locate any or all of the proposed structures in the approximate location, as shown on Exhibit “A”, to the extent permitted by law. To the extent there is any substantive modification to the proposed Structures and Improvements or any substantive changes in their proposed location, PARK shall have authority to give written approval as to the proposed location of each and every such structure, but nothing herein shall require PARK to grant approval, it being recognized that PARK in its discretion and pursuant to the powers given to it by the legislature, retains all rights pursuant to NDCC 40-49-12 as to the maintenance, governance, and improvements of park lands and for the erection of structures thereon. Therefore, no installation nor construction shall be done by CHILDREN’S MUSEUM except upon the approved location and then only with prior written approval of PARK. Each structure when located, shall become a part of the _____ Park concept as developed by CHILDREN’S MUSEUM and PARK, with Park retaining complete ownership.

CHILDREN’S MUSEUM shall have the following duties, functions and obligations:

- a. To construct and set forth on the property the Structures and Improvements as approved by PARK, at CHILDREN'S MUSEUM'S sole cost and expense, free and clear of all liens, expenses, and charges to PARK (except as otherwise approved by Park) with such Structures and Improvements being installed in accordance with all building codes and ordinances (except where waivers are granted), and in such manner that is consistent with all laws applicable to buildings, structures and property of the United States and North Dakota.
- b. All work performed by CHILDREN'S MUSEUM or its contractors, employees or representatives shall recognize the necessity of obtaining and providing for workers the appropriate safety instrumentalities and Worker's Compensation coverage and CHILDREN'S MUSEUM does hereby warrant and guarantee that PARK is released and indemnified from all claims, demands, and/or judgments arising from the design, construction, installation and operation of the CHILDREN'S MUSEUM'S Structures and Improvements. To this extent, CHILDREN'S MUSEUM shall insure PARK under its policies for construction, installation, development and operational activities. It is agreed by all that the construction and development costs are those of the CHILDREN'S MUSEUM, and PARK is not an agency or privity relationship with CHILDREN'S MUSEUM on the construction of any Structures and Improvements.
- c. To have all of such Structures and Improvements, upon completion, open to the general public as a children's museum, the management, operations and administration of which are the sole responsibility of CHILDREN'S MUSEUM, provided however, that CHILDREN'S MUSEUM acknowledges and agrees to consult with PARK as of would relate to the use and hours of operation of the children's museum, and comply with all conditions imposed by this agreement and the Ground Lease Agreement which has been attached as Exhibit "C".
- d. Keep and maintain all such Structures and Improvements in appropriate condition for use and admission by the general public, including, but not limited to preservation, restoration, the general daily maintenance and cleaning so as to

maintain the proper general appearance, and consistent with the facilities intended use and character.

- e. Take appropriate steps necessary, when such Structures and Improvements are available and open to the public, to ascertain that the sidewalks and approaches to the entry ways of each building, exhibit and structure are safe and free of snow and other obstructions and reasonably convenient for patrons desiring to enter, and are handicap accessible.
- f. Pay any and all costs, expenses, wages, etc. for such personnel as CHILDREN'S MUSEUM may utilize in connection with the operation and maintenance of all Structures and Improvements open to the public or on display, along with the insurance for construction, development, and operations thereon with PARK as a named insured.

2. PARK shall have the following duties, functions and obligations:

- a. To maintain to the extent the PARK deems necessary, any roadway, CHILDREN'S MUSEUM'S parking lot(s) (and excepting sidewalks and building entrances), outdoor public areas, and Park rest areas/facilities adjacent to each such CHILDREN'S MUSEUM Structure and Improvement as part of the general maintenance by PARK of such _____ Park.
- b. To landscape and maintain grass, trees, flowers, and shrubbery around the Structures and Improvements consistent with that of other areas of the _____ park and that the permission granted by PARK to CHILDREN'S MUSEUM under this Agreement for the construction of Structures and Improvements contemplated by this Agreement, shall in no manner whatsoever, except as provided in sub-section (c) below, either now or through the passage of time, create any right, title or interest of CHILDREN'S MUSEUM in and to any of the real estate or structural improvements of _____ Park and that the CHILDREN'S MUSEUM, for itself and its successors and assigns, waives and releases any right, title or interest it has or may subsequently have in and to _____ Park for the purposes herein specified,

- c. CHILDREN’S MUSEUM and PARK hereby agree that CHILDREN’S MUSEUM’S rights and interest in the Real Estate and Structural Improvements comprising the Discovery Center have been memorialized in a Ground Lease Agreement between the parties which has been attached as Exhibit “C.”
- d. CHILDREN’S MUSEUM agrees and understands that it has no right to change the name of _____ Park and will identify, where appropriate, in its advertising, signs or billboards the location of the Discovery Center as being in _____ Park.
- e. Regarding the \$1,000,000 sum disbursed by the City of Minot to the PARK, which sum will be used by the CHILDREN’S MUSEUM to build the Magic City Discovery Center, the PARK AND CHILDREN’S MUSEUM agree and understand that the following standards and requirements shall apply:

(1) The PARK shall ensure that all development activities by the PARK or CHILDREN’S MUSEUM are carried out in accordance with all federal, state, and local laws or regulations;

(2) The PARK shall ensure that the City of Minot and PARK are permitted to inspect or audit the CHILDREN’S MUSEUM’S records as may be necessary to ascertain its compliance with applicable laws and regulations as well as the conditions imposed in connection with this Agreement;

(3) After execution of this Agreement and until completion of the CHILDREN’S MUSEUM project, the PARK shall ensure that the CHILDREN’S MUSEUM submits annual written reports relating to the construction project. The PARK shall ensure that each written report includes, at a minimum, general project information, milestone reviews, issues and/or risks, and project metrics.

In addition, for a period of ten (10) years after completion of the structures and improvements, the PARK shall ensure that the CHILDREN’S MUSEUM

submits annual written reports indicating the various activities and programs provided. The PARK shall ensure that each written report includes, at a minimum, the date of such activities and programs, as well as the general identification of the entities or parties participating in the activities or programs.

Upon receipt of any written report by the PARK, as described previously, the PARK shall provide the written report to the City of Minot; and

(4) The PARK shall monitor and ensure that the Children's Museum does not discriminate in its plans, programs, and activities on the basis of race, color, national origin, creed, religion, race age, sex, handicap, or any other basis which has been declared as discriminatory by federal or state cases or law.

3. The parties agree that the following restrictions will be applied with respect to the location or construction of any Structure and Improvement:

a. Before any Structure and Improvement is placed in _____ Park by CHILDREN'S MUSEUM, CHILDREN'S MUSEUM shall first have given to Park a written instrument specifying the following:

- (1) Identification by name of the Structure and/or Improvement proposed to be installed by the CHILDREN'S MUSEUM;
- (2) General size dimensions of such Structure and/or Improvement;
- (3) General location with points of reference of proposed Structures and Improvements, to fix and determine site area, and location;
- (4) Transfer of title to such Structure and/or Improvement to PARK to be effective when installed or constructed; and
- (5) All Structures and Improvements will be in conformity with all land and site use laws and regulations.

4. CHILDREN'S MUSEUM shall with its funds, and without reimbursement from PARK secure clear title to all Structures and Improvements placed in or upon _____ Park by CHILDREN'S MUSEUM pursuant to this Agreement, free and clear of all liens, mortgages and/or encumbrances except those specifically approved by

the PARK'S board. Unless otherwise agreed by PARK in writing, CHILDREN'S MUSEUM shall pay all costs and expenses of installation, construction and maintenance of such Structures and/or Improvements, to the end that PARK shall in no manner whatsoever be obligated for the expenditure of any public funds, nor trust or foundation funds of Minot Park District, in connection with any of such Structures and Improvements, neither with respect to construction nor to installation nor with respect to future repair and maintenance thereof. The sole obligation of PARK under this Agreement, is to make _____ Park available for the installation of the various Structures and Improvements contemplated by CHILDREN'S MUSEUM, and as approved by PARK from time to time. PARK is only obligated for general maintenance as previously set forth in accordance with its general policies of maintenance with respect to its park areas.

5. Except as otherwise provided for herein as to construction of CHILDREN'S MUSEUM Structures and Improvements, or as otherwise provided in the accompanying Lease Agreement, PARK will procure appropriate liability Insurance sufficiently to cover any liability that might be imposed on the Park in connection with the CHILDREN'S MUSEUM's operation of the future Magic City Discovery Center, and Property Insurance to cover the Buildings and Structures which the CHILDREN'S MUSEUM will be constructing on the Premises. CHILDREN'S MUSEUM will be billed by the Park, at least annually for the amount of the premium for the Property Insurance. CHILDREN'S MUSEUM will also provide liability insurance coverage in an amount determined by the Park from time to time to be adequate relating to the assets and liability issues that may arise with respect to the CHILDREN'S MUSEUM's operation of the Magic City Discovery Center, including all costs, expenses, and attorneys' fees which may in any manner result from or arise with respect to the Magic City Discovery Center. The CHILDREN'S MUSEUM also agrees to defend, indemnify, and hold the PARK harmless for all claims, costs, expenses, and attorneys' fees incurred in any litigation relating in any way to the CHILDREN'S MUSEUMS operation Magic City Discovery Center . The Ground Lease Agreement shall provide the manner in which the CHILDREN'S MUSEUM shall reimburse PARK for amounts PARK shall expend for such Property Insurance coverage.

6. CHILDREN'S MUSEUM shall staff and operate at its sole expense all Structures and Improvements which it proposed to install or construct pursuant to this Agreement.

7. This Agreement does not permit CHILDREN'S MUSEUM to lease nor rent its buildings, exhibits and structure without a separate contract, which separate contract must be approved by PARK in writing. The Parties may, at a later date, provide by separate contract the relative rights, duties and functions of the parties with respect to concessions, leases, rentals and the net income thereof. Until such time as such contract is executed by the parties hereto, PARK may, but is not required to, install and operate such concessions as it may desire and retain the net income therefrom.

8. CHILDREN'S MUSEUM must acquire all permits and approvals required by any and all governmental, regulatory or permitting agencies prior to the beginning of construction. To the extent any Structure and/or Improvement is found by any court to be inappropriate for PARK land, the CHILDREN'S MUSEUM agrees to have said Structure or Improvement removed at its sole cost and expense.

9. If, at some later date, either PARK or CHILDREN'S MUSEUM finds that the premises is no longer suitable for the Discovery Center, or if the CHILDREN'S MUSEUM defaults under the terms of the Ground Lease Agreement and the Ground Lease Agreement is thereafter terminated by PARK, then, in that event, unless agreed otherwise by the parties, the PARK shall retain ownership of all Structures and Improvements on the Premises, to the exclusion of the CHILDREN'S MUSEUM'S, and PARK shall be able to repurpose and/or re-rent the Structures and Improvements at their sole discretion, including for the purposes of a museum.

10. In consideration of the City of Minot's contribution of \$1,000,000 to the PARK and the CHILDREN'S MUSEUM for the purposes of constructing the Discover Center as defined in this Agreement, CHILDREN'S MUSEUM also agrees to defend, indemnify, and hold the City of Minot harmless for all claims, costs, expenses, and attorneys' fees incurred in any litigation or administrative proceedings relating in any way to the CHILDREN'S MUSEUM'S design, construction, installation and operation of the Structures and Improvements that will constitute the Magic City Discovery Center.

11. **ADDITIONAL TERMS AND CONDITONS:**

- a. The parties hereby acknowledge and agree that CHILDREN'S MUSEUM will from time to time contract with individuals, corporations and other entities for the rights to name certain buildings, exhibits, rooms or features involving the Structures and Improvements defined herein which, as it applies to the exterior

of the building or outdoor features, shall be approved by PARK, which approval shall not be unreasonably withheld.

- b. It is understood and agreed that PARK shall be responsible for providing water, wastewater, and electrical trunk infrastructure to the street immediately adjacent to the CHILDREN MUSEUM'S primary structure.

IN WITNESS WHEREOF, the parties have hereunder set their hands the day and year first above written.

CHILDREN'S MUSEUM OF MINOT, INC.

By: _____
President

ATTEST:

Secretary

BOARD OF PARK COMMISSIONERS

By: _____
Board President

ATTEST:

Clerk