

DEVELOPMENT AGREEMENT

This agreement (“Agreement”) is made this ___ day of _____, 2024 by and between **GRAND FORKS CHILDREN’S MUSEUM, INC.**, a North Dakota non-profit corporation, whose mailing address is 515 Demers Avenue, Grand Forks, North Dakota 58201 (the “Developer”); the **CITY OF GRAND FORKS**, a North Dakota municipal corporation whose principal office and mailing address is 255 North 4th Street, Grand Forks, ND 58201 (hereinafter the “City”) and the **GRAND FORKS GROWTH FUND**, a Jobs Development Authority, whose mailing address is 255 North 4th Street, P.O. Box 5200, Grand Forks, North Dakota 58203 (hereinafter referred to as the “JDA”)

RECITALS

1. The voters of Grand Forks, North Dakota approved a one percent (1.00%) sales tax, a portion of which may be used for economic development. See City of Grand Forks Home Rule Charter III(p)(1); Grand Forks City Code of 1987, §§ 22-0102, 22-0123.
2. A portion of the one percent (1.00%) sales tax is deposited into the City’s Economic Development Fund 2163 that is a fund dedicated to enhancing, fostering and encouraging improvement to quality of life, economic development and other purposes described in Grand Forks City Code § 22-0123.
3. Under Grand Forks City Code § 22-0123(4), the sales tax imposed and collected or allocated for economic development activities “may be used directly or indirectly in the encouragement and/or creation of new jobs, enhancement of economic climate, saving of existing jobs, creation of new wealth, enhancement of local property tax base, encouragement of public enterprises, private enterprises, public/private partnerships or enterprises, encouragement of capital investment, the improvement of the quality of life within the region, the encouragement of tourism and local events, and the diversification of the local economy [and allocated to] the Grand Forks Growth Fund, the Greater Grand Forks Convention and Visitors Bureau or such other entity as the city council may deem prudent, necessary or convenient for economic development activities.”
4. Under the provisions of the Home Rule Charter of the City of Grand Forks, North Dakota (the “City”), the JDA was created pursuant to N.D.C.C. ch. 40-57.4 and by ordinance adopted by the governing body of the City (Grand Forks City Code of 1987, §§ 24-0101, *et seq*) and the objective, intent and purpose of the JDA is “through direct and indirect actions, [to] encourage the creation of new jobs, enhance the economic climate, save existing jobs, create new wealth, enhance the local property tax base, encourage capital investment, improve the quality of life, enhance tourism and local events, promote public, private, or public/private enterprises or partnerships, and diversify the local economy.”
5. The JDA, among other powers, is authorized to (1) “execute contracts . . . necessary or convenient to the exercise of its powers,” (2) “to cooperate with and enter into agreements with private and public entities” (3) “to loan, grant, or convey any funds or other property held by the [JDA] for any purpose necessary or convenient to carry into effect the

objective of the [JDA] established by [Article 1, Chapter XXIV of the Grand Forks City Code], (4) “use uncommitted funds held by the authority to . . . make other financial commitments to enhance economic development,” and (5) “any other powers necessary to carry out the [Growth Fund’s] purposes.” Grand Forks City Code of 1987, § 24-0104; see also N.D.C.C. § 40-57.4-03.

6. The Developer submitted a presentation to the City and the JDA describing the Children’s Museum and the positive economic development and other benefits to the City from the Construction and operation of the Children’s Museum. A depiction of the currently proposed Children’s Museum is attached hereto as Exhibit 1.6.

7. The Developer has pursued and obtained funds and/or pledges through donations, gifts, and grants from other governmental entities, individuals, private entities and other public entities for the Construction of the Children’s Museum, and currently has raised or has commitments for additional funds through such efforts of \$11.1 million as of March 30, 2024.

8. The Developer has requested funds from the City to assist with the Construction of the Children’s Museum.

9. The Developer has requested a long-term ground lease for the herein described real property, owned by the JDA, where the Children’s Museum will be located.

10. The City and JDA have each determined the Construction and operation of the Children’s Museum meets the requirements of Grand Forks City Code § 22-0123 and the objectives, intentions and purposes of the JDA, respectively, because it will uniquely enhance the economic climate of the City and region, encourage this publicly and privately funded enterprise and capital investment within the City, improve and stimulate the quality of life for the citizens of the City and region, and enhance tourism and local events for the City and its residents, all of which are directed toward the goal of the City to increase the economic and public health, welfare, prosperity and contentment for the citizens of the City.

11. Because of the anticipated positive impacts from the Construction and operation of the Children’s Museum, the City has agreed, subject to availability of funds and subject to the terms of this Agreement, to provide funds for the Construction of the Children’s Museum.

12. Because of the anticipated positive impacts from the Construction and operation of the Children’s Museum, the JDA has agreed, subject to the terms of this Agreement and the Children’s Museum Ground Lease to provide a long-term ground lease for the Construction and operation of the Children’s Museum.

13. The Parties desire to memorialize their understanding of funding by the City for the Construction of the Children’s Museum.

NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

SECTION 1 – DEFINITIONS

The following defined terms and definitions apply to this Agreement:

1.1 “**Agreement**” means this Agreement.

1.2 “**Calendar Day**” shall mean Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday. When this Agreement requires a calculation of the number of Calendar Days, each day is counted, regardless of whether it is a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

1.3 “**Certificate of Occupancy**” means a certificate of occupancy applied for under City Code § 18-0507 and to be subsequently issued to the Developer for all or any part of the Children’s Museum upon the City finding the terms, conditions and requirements under the City Code for such certificate of occupancy have been satisfied.

1.4 “**Change in the Law**” means the introduction or repeal (in whole or in part) of, the amendment, alteration or modification to, or the change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any applicable laws, standards, practices, or guidelines issued or published by any governmental entity that occur after the Effective Date that are binding on the City, the JDA, the Developer or the Children’s Museum.

1.5 “**Children’s Museum Development Plans**” means the plans and specifications for the development, Construction and operation of the Children’s Museum to be prepared by the Developer Engineer and Architect. The Children’s Museum Development Plans shall include all of such plans and specifications and the Original Estimate of Total Construction Costs.

1.6 “**Children’s Museum**” means the building, improvements, and related infrastructure to be constructed on the Children’s Museum Leased Property and operated by the Developer as a destination location that will provide unique interactive learning, educational and art opportunities for people of all ages and abilities, including a unique regional experience that highlights the City’s and surrounding regional industries and resources through hands-on indoor and outdoor installations showcased in multiple permanent and rotating educational exhibits, and providing the residents of the City, surrounding communities and other visitors to the City with an all-inclusive attraction and a year-round community tourism, gathering and event space. The Children’s Museum is currently planned to be over 30,000 square feet. A depiction of the Children’s Museum is set forth on Exhibit 1.6 attached hereto.

1.7 “**Children’s Museum Leased Property**” means the following described parcel of real property having a street address of 1660 South 42nd Street, Grand Forks, ND 58201 and more particularly described as follows:

Lot 3, Block 1 of Danks Fourth Resubdivision, being a replat of Lots 7-11, Block 1 and the adjacent vacated south 43rd Street Right-of-Way, Danks Second Resubdivision and Lot A, Block 1 of the Replat of Lot 12, Block

1, Danks Second Resubdivision to the City of Grand Forks, North Dakota, according the plat recorded as Document Number 846235.

1.8. “Children’s Museum Ground Lease” means the certain Ground Lease between the Developer and the JDA attached hereto as Exhibit 1.8 for the Children’s Museum Leased Property.

1.9. “City” means the City of Grand Forks, North Dakota.

1.10. “City Administrator” means the Person appointed and acting as the city administrator for the City.

1.11. “City Code” means Grand Forks City Code of 1987.

1.12. “City Construction Funds” means funds in the amount of \$6,300,000.00 to be distributed from the City’s Economic Development Fund 2163 under and in accordance with Section 3, and to be used solely for reimbursement of the costs, expenses and fees for the Construction of the Children’s Museum. The \$6,300,000.00 total amount of the City Construction Funds is subject to reduction pursuant to Section 3.4 below.

1.13. “City Construction Fund Percent” means the percentage resulting from the quotient where the numerator is \$6,300,000.00 and the denominator is the Original Estimate of Total Construction Costs. By way of illustration and example only, and assuming the Original Estimate of Total Construction Costs is ~~\$27,000,000~~~~\$35,000,000.00~~~~\$30,700,000.00~~ [KMI] the City Construction Fund Percent is ~~18%~~~~20.5% (\$6,300,000.00 divided by \$35,000,000.00)~~~~24.8% (\$6,700,000.00 divided by \$27,000,000)~~ 20.5% (\$6,300,000.00 divided by \$30,700,000.00).

1.14. “City Council” means the city council of the City, which is composed of the Mayor and council members.

1.15. “City Inspector” means the Person appointed and acting as the city inspector and head of the City inspection department.

1.16. “City Construction Finance Funds” means the funds to be distributed annually to the Developer by the City under and in accordance with Section 4 below, from the City’s Economic Development Fund 2163 to be used solely to offset the repayment of the Developer’s long-term financing for the Construction of the Children’s Museum, subject, however, to the provision of Section 4.1.5 below.

1.17. “City Planner” means the Person appointed and acting as the planning community development director and head of the City Planning and Urban Development department.

1.18. “Construction” or “Construction Services” means erecting, building, assembling, constructing, installing and/or performing any services or work to erect, build, assemble, construct and/or install any portion of the Children’s Museum.

1.19. “Construction Stoppage” means there has been no Construction Services performed for a period of 30 consecutive Calendar Days, other than as a result of a Force Majeure Event.

1.20. “Developer” means Grand Forks Children’s Museum, Inc. a North Dakota non-profit corporation and its employees, agents, representatives and contractors.

1.21. “Developer Engineer and Architect” means the Person who is a professional engineer licensed in North Dakota under N.D.C.C. ch. 43-19.1 and the Person who is an architect licensed in North Dakota under N.D.C.C. ch. 43-03 engaged by the Developer to prepare the Children’s Museum Plans.

1.22. “Effective Date” means May 20, 2024.

1.23. “Exhibit” means the documents designated as an exhibit and attached to this Agreement. Any reference to an Exhibit in this Agreement shall mean such document and all information contained on the document is incorporated into this Agreement as if fully set forth herein. In the event of any conflict between any provision of an Exhibit and the provisions of this Agreement, the provisions of the Agreement shall prevail.

1.24. “Finally Completed” means the date the Children’s Museum has been finally and fully completed to the satisfaction of and accepted by the City, as determined by the City Administrator, City Planner and City Inspector, (or their respective designees), in the exercise of their respective discretion. The City Administrator, City Planner and City Inspector shall provide written notice to the Developer upon determining the Children’s Museum is Finally Completed.

1.25. “Force Majeure Event” means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) embargoes or blockades in effect on or after the date of this Agreement; (v) epidemics, pandemics, or other national or regional public health emergencies; (vi) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (vii) shortages of supplies, adequate power, or transportation facilities.

1.26. “Good Faith” means observance of reasonable commercial standards of fair dealing in a given trade or business.

1.27. “Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, contractor, operator, or maintenance provider engaged in the same kind of undertakings or under similar circumstances.

1.28. “Governmental Authority” means (a) the United States of America, the State of North Dakota, the County of Grand Forks, the City, the JDA, and any agency, department, commission, board, bureau or instrumentality of said governmental bodies, and (b) any other

federal governmental entity, state, county, city, political subdivision, agency, department, commission, board, bureau or instrumentality, which has or exercises any jurisdiction over the Developer, the City, the JDA, and/or the Children’s Museum.

1.29. “Governmental Requirement” means any applicable law, statute, code, ordinance (including the City Code), order, rule, regulation, judgment, decree, determination, award, injunction, franchise, permit, certificate, license, authorization, standard, policy, practice, guideline or other direction or requirement (including but not limited to any of the foregoing which relate to zoning and planning standards or controls, environmental standards or controls, engineering standards and codes, energy regulations and occupational, safety and health standards or controls) of any Governmental Authority.

1.30. “JDA” means the Grand Forks Growth Fund, a Jobs Development Authority.

1.31. “Material Change” means a change or modification, either individually or collectively with all other changes or modifications, which results in a reduction in the total cost, expense and fee for the Construction of the Children’s Museum results in the total of all costs, expenses and fees for the Construction of the Children’s Museum to be less than ~~\$30,000,000.00~~\$25,700,000.00 ~~\$23,000,000.00~~.

1.32. “Original Estimate of Total Construction Costs” means the Developer Engineer and Architect’s Good Faith original estimate of the total of all costs, expenses and fees for the Construction of the Children’s Museum based on the originally issued Children’s Museum Development Plans plus any estimate for design, fabrication, and installation for permanent exhibits. The Developer Engineer and Architect shall include the Original Estimate of Total Construction Costs as part of the originally issued Children’s Museum Development Plans. As of the Effective Date, the Developer anticipates the Original Estimate of Total Construction Costs will be ~~\$35,000,000.00~~\$30,700,000.00~~\$27,000,000.00~~.

1.33. “Other Children’s Museum Agreements” means any and all other agreements between the Developer and the City and/or the JDA, now or hereafter executed in connection with the performance of this Agreement, (including but not limited to the Children’s Museum Ground Lease), as such agreements may be amended or supplemented from time to time.

1.34. “Parties” means the City, the Developer and the JDA.

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

1.36. “Substantially Completed” means the time at which the Children’s Museum has progressed to the point where, in the opinion of City, as determined by the City Administrator, City Planner and City Inspector, (or their respective designees), in the exercise of their respective discretion, the Children’s Museum is sufficiently complete, in accordance with the terms hereof, so that the Children’s Museum can be utilized for the purposes for which the Children’s Museum

is intended. The City Administrator, City Planner and City Inspector shall provide written notice to the Developer upon determining the Children's Museum is Substantially Completed.

1.37. "Usual and Customary" means the reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the Parties or so well established, general, and uniform that they must be presumed to have acted with reference thereto.

SECTION 2 – CONSTRUCTION AND DEVELOPMENT OF CHILDREN'S MUSEUM

2.1. The Developer, at the Developer's cost and expense, shall be solely responsible for the preparation and creation of the Children's Museum Development Plans and the design, Construction and installation of the Children's Museum.

2.2. Before any Construction may be commenced by the Developer or any part of the Children's Museum Leased Property is used by the Developer, the Children's Museum Ground Lease shall be executed and delivered by the Developer and JDA.

2.3. The Children's Museum Development Plans shall be prepared, developed, created and approved by the Developer Engineer and Architect. The appropriate professional engineer and architect endorsement shall be placed on the Children's Museum Development Plans, and/or any other documents, plans, or plats relating to or arising from the Children's Museum Development Plans.

2.4. Unless otherwise agreed to by the City and the JDA in writing, Construction of the Children's Museum is anticipated to commence on or before Spring 2026.

2.5. Unless otherwise agreed to by the City and the JDA in writing, the Children's Museum is anticipated to be Substantially Completed on or before May 2027, Finally Completed on or before September 2027 and a Certificate of Occupancy for the Children's Museum in anticipated to be obtained by the Developer on or before September 2027.

2.6. The Developer shall be solely responsible for any costs, expenses, or fees for the operation, maintenance and repair of the Children's Museum, unless otherwise agreed by the City by a subsequent written agreement approved by the City Council.

2.7. The Developer acknowledges and agrees that the City and the JDA have made no representation as to the design, constructability, feasibility, practicality or operation of the Children's Museum.

2.8. The following shall be applicable to and be complied with by the Developer for the Construction and installation of the Children's Museum:

2.8.1. Construction of Children's Museum shall be in accordance with the Children's Museum Development Plans and in compliance with all Governmental Requirements.

Without in any limiting the foregoing, but in addition thereto, the Children's Museum shall be constructed in compliance with the City's NDFPDES stormwater permit No. NDR04-0000T, and the Developer Engineer and Architect shall provide a written certification to the City of such compliance with said permit and all stormwater discharge limitations.

2.8.2. The Developer shall require all contractors or sub-contractors performing any Construction Services to have a payment and performance bond in the amount not less than the total price of the Construction contract with such contractor or sub-contractor.

2.8.3. All required permits, licenses, and approvals under the City Code or other Governmental Requirement shall be obtained and all fees, costs and expenses to obtain such permits, licenses, and approvals shall be paid, before the Construction on any part of the Children's Museum may be commenced. Without limitation to the foregoing, the Developer shall request and obtain from the City all necessary variances, conditional use permits, or zoning changes for the Construction.

2.8.4. The Developer shall require each contractor or subcontractor performing any Construction Services and/or providing any materials, equipment or supplies for Construction to secure any and all required licenses, permits or similar authorizations necessary to perform Construction Services and/or to provide such materials, equipment or supplies.

2.8.5. All Construction Services shall be performed in a competent and professional manner and pursuant to Good Industry Practice and that is Usual and Customary. The Developer shall require each contractor or subcontractor performing any Construction Services to employ or contract suitable employees, engineers, contractors and subcontractors, and to extent required, all such employees, engineers, contractors and subcontractors shall have a valid license for the services or work to be performed.

2.8.6. All contractors and subcontractors performing any Construction Services shall be required to comply with any and all Governmental Requirements, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes, costs, fees or expenses imposed by any Governmental Authority for any workers compensation, employment insurance, pensions, old age retirement funds or any similar purpose and to furnish all necessary reports and information to the appropriate federal, state, county, local and municipal agencies with respect to all of the foregoing.

2.8.7. All contractors and subcontractors performing any Construction Services shall be required to erect and maintain good and sufficient guards, barricades, signage and signals at or near the Components (including erecting and maintaining such guards, barricades, signage and signals as required under the Manual of Uniform Traffic Control Devices) and shall in all cases maintain a safe passageway at all streets, road crossings, sidewalks, crosswalks and street intersections. In the event safe passageway at any street, road crossing, sidewalk, crosswalk or street intersection cannot be maintained, the respective contractor or subcontractor shall erect and maintain such guards, barricades and signals as required under the Manual of Uniform Traffic Control Devices for the temporary closure thereof. All contractors and subcontractors performing any Construction Services shall be solely responsible for initiating,

maintaining and supervising all safety precautions and measures in connection with the performance of Construction Services, and shall take all safety precautions with respect to the Construction Services and shall comply with all applicable laws, ordinances, rules and regulations, and lawful orders of any public or governmental authority for the safety of Persons or property. Without limiting the foregoing, but in addition thereto, all Construction Services shall be conducted and performed in such a manner as to not create any unsafe condition for pedestrians, bicyclists or motorists.

2.8.8. All contractors and subcontractors performing Construction Services within any of the City's property, easements, or dedicated areas of rights-of-way or upon the Children's Museum Leased Property shall to the fullest extent permitted by law to indemnify and hold harmless the City and JDA, and their respective agents, officers, employees, contractors and other subcontractors against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of such Construction Services, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the contractor's or subcontractor's work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

2.8.9. All contractors and subcontractors performing any Construction Services shall be required to obtain, maintain, and pay for such amount of comprehensive general liability insurance, builder's risk and comprehensive automobile liability insurance, in amounts that meet Good Industry Practice.

2.8.10. There shall be no event of default by the Developer under the Children's Museum Ground Lease.

2.9. Nothing herein shall relieve the Developer from its obligation to prepare and have the Children's Museum, the Children's Museum Development Plans and the Construction approved, authorized and permitted in accordance and to comply with the City's construction and building permitting processes, including without limit any process and approvals, authorizations and permits required under Chapters XVIII and XIX of the City Code. The Parties agree and acknowledge that this Agreement does not constitute a review or approval of any permits, authorizations, approvals, or licenses required by the City.

2.10. The City and the JDA, by and through the City Administrator, City Planner, City Inspector and other officer, employee or agent of the City, shall have the right to access, at reasonable times, to inspect, review and/or oversee the Construction of the Children's Museum, including but not limited conducting an inspection or review to determine compliance with City building codes, and to determine whether the Children's Museum is Substantially Completed and Finally Completed and whether a Certificate of Occupancy for Children's Museum should be issued.

2.11. During Construction, the Developer shall make periodic reports, in such detail and at such times as may reasonably be requested by the City and the JDA, as to the actual progress of Construction of the Children’s Museum. This reporting requirement by the Developer shall continue until both of the following events have occurred: (a) the Children’s Museum is found to be Finally Completed and (b) a Certificate of Occupancy has been issued for the Children’s Museum.

SECTION 3 – DISBURSEMENT OF CITY CONSTRUCTION FUNDS

3.1. Payment of City Construction Funds

3.1.1. Subject to the Developer complying with the requirements under Section 3.2 and the satisfaction of the conditions described in Section 3.3, the City shall, in accordance with the reimbursement process described in Section 3.2, make periodic progress distributions to the Developer of the City Construction Funds.

3.1.2. All of the City Construction Funds distributed to the Developer under this Section 3 shall be solely for reimbursement to the Developer of a portion of the costs, expenses and fees the Developer has paid for Construction Services that have been performed and completed for the Construction of the Children’s Museum.

3.2. Reimbursement to Developer

3.2.1. Progress Payment Reimbursement Applications

(a) The Developer shall submit to the City Administrator a written request for a distribution of City Construction Funds to reimburse the Developer for a portion of the costs, expenses and fees that have been paid by the Developer for Construction Services performed and completed as of the date of such written request. As used herein, a written reimbursement request by the Developer, as described in this Section 3.2, shall be referred to as a “Reimbursement Request.”

(b) Each Reimbursement Request shall be accompanied by the Developer’s evidence of the Developer’s payment and the bills of sale, invoices, statement of services or other written documentation describing the performed and completed Construction Services for which the Developer seeks reimbursement under the subject Reimbursement Request. No amount from a prior Reimbursement Request shall be included in a later submitted Reimbursement Request.

(c) Each Reimbursement Request shall also provide the sum total amount of all costs, expenses and fees for Construction Services performed, completed and paid by the Developer through the date of subject Reimbursement Request.

(d) Each Reimbursement Request shall be accompanied by the Developer Engineer and Architect’s written statement describing the progress of the Construction of the Children’s Museum and the Developer Engineer and Architect’s Good Faith

estimate of the progress that the Children’s Museum is to being Substantially Completed (stated in a percentage).

(e) With each Reimbursement Request, the Developer shall provide a statement in which the Developer represents and warrants to the City that as of the date of such Reimbursement Request all costs, expenses and fees for Construction Services have been paid and fully discharged by the Developer.

(f) Provided the Reimbursement Request includes the information and data required by this Sections 3.2.1(a) through 3.2.1(e) above, and the conditions precedent described in Section 3.3 are satisfied, for each Reimbursement Request, the City shall distribute to the Developer, from the City Construction Funds, the lower of

(1) The amount the Developer has paid and seeking reimbursement under the subject Reimbursement Request, as set out pursuant to Section 3.2.1(b); or

(2) The amount that is equal to the \$6,300,000.00 total of City Construction Funds minus all reimbursement distributions made by the City to the Developer for all prior Reimbursement Requests. It is anticipated the funding shall be available in the following years:

2026:	\$5,900,000.00
2027:	\$400,000.00
Total	<u>\$6,300,000.00</u>

3.2.2. Once the City has distributed to the Developer the total \$6,300,000.00 amount of the City Construction Funds, the City Construction Funds shall be fully exhausted, and no further distributions shall be made to the Developer by the City for the Construction of the Children’s Museum, and the Developer shall not be entitled to or otherwise eligible for any further distributions or other payments from the City for the Construction of the Children’s Museum.

3.3. Conditions Precedent to Distributions of City Construction Funds. Before a distribution of any of the City Construction Funds may be made to the Developer for any Reimbursement Request under Section 3.2, each of the following conditions precedent must be satisfied, as determined in the exercise of discretion by the City Administrator or the City Administrator’s designee:

3.3.1. The Construction of the Children’s Museum has in fact progressed to the point represented by the Developer Engineer and Architect under Section 3.2.1(d).

3.3.2. No Construction Stoppage has occurred.

3.3.3. The Developer has provided the City a written and signed sworn statement representing and warranting to the City that:

(a) The Developer has legally binding and enforceable commitments through donor gift agreement(s) or commitments, grants, or through other funding agreements and the sum total to be paid under such agreements, commitments and grants are in an amount that, when added to the \$6,300,000.00 total of the City Construction Funds, is sufficient to pay for all of the costs, expenses and fees for the design and Construction of the Children's Museum, and

(b) The Developer shall utilize the Developer's unrestricted, eligible restricted or other available assets to cover all of the costs, expenses and fees for the design and Construction of the Children's Museum during the time period payments under donor gift agreements or commitments, grants or other funding agreements are being made and in the event any payment under a donor gift agreement or commitment, grant or other funding agreement is unpaid.

3.3.5. The Developer and JDA have executed the Children's Museum Ground Lease for the Construction and operation of the Children's Museum on the Children Museum's Leased Property.

3.3.6. There has been no event of default by the Developer under the Children's Museum Ground Lease.

3.3.7. No event of default has occurred under this Agreement or the Other Children's Museum Agreements by the Developer or any other Person obligated thereunder.

3.3.8. The representations and warranties of the Developer, described in Section 5, are true and correct.

3.4. Material Change to Children's Museum/Children's Museum Development Plans.

3.4.1. In the event Developer makes a Material Change to the Construction of the Children's Museum or any part of the Children's Museum Development Plans after the date of this Agreement, including a change order during Construction, the Developer and the Developer Engineer and Architect, before initiating the same, shall submit, in writing, the proposed change or modification to the City Administrator. The submission to the City Administrator of a Material Change to the Construction of the Children's Museum or any part of the Children's Museum Development Plans shall include the Developer Engineer and Architect's Good Faith estimate of the total of all costs, expenses and fees for the Construction of the Children's Museum based on the Children's Museum Development Plans, as modified by such Material Change to the Construction of the Children's Museum or any part of the Children's Museum Development Plans.

3.4.2. In the event there is Material Change to the Construction of the Children's Museum or any part of the Children's Museum Development Plans, then the total amount of the City Construction Funds may be reduced to an amount that is equal to product of the City Construction Fund Percent, as determined under Section 1.13, and the amount of the Developer

Engineer and Architect’s Good Faith estimate of the total of all costs, expenses and fees for the Construction of the Children’s Museum as determined under Section 3.4.1 above. By way of example and illustration only, if the amount of the Developer Engineer and Architect’s Good Faith estimate of the total of all costs, expenses and fees for the Construction of the Children’s Museum, as determined under Section 3.4.1 becomes ~~\$20,000,000.00~~~~\$28,000,000~~~~\$24,000,000.00~~, (being based on the Children’s Museum Development Plans, as modified by such Material Change to the Construction of the Children’s Museum or any part of the Children’s Museum Development Plans), then the City Construction Funds shall be reduced to \$~~4,600,000~~~~\$5,040,000.00~~~~4,920,000.00~~ (~~20,000,000.00 x 23%~~~~\$28,000,000.00 x 18%~~~~\$24,000,000.00 x 20.5%~~ being the City Construction Fund Percent). If, at the time a Material Change has occurred, the amount of distributions that have already been made by the City of City Construction Funds exceeds the reduced City Construction Funds (as determined under this Section 3.4.2), then the Developer shall reimburse the City such excess, and no further distributions shall be made to the Developer by the City for the Construction of the Children’s Museum, and the Developer shall not be entitled to or otherwise eligible for any further distributions or other payments from the City for the Construction of the Children’s Museum.

3.4.3. For purposes of clarity, the Parties acknowledge and agree any change or modification to the Construction of the Children’s Museum or any part of the Children’s Museum Development Plans that is not a Material Change or that results in an increase in the total costs, expenses and fees for the Construction of the Children’s Museum is not a Material Change to the Construction of the Children’s Museum or any part of the Children’s Museum Development Plans and shall not increase or otherwise require a change to the amount in the City Construction Funds.

SECTION 4 – DISBURSEMENT OF CITY FINANCE FUNDS

4.1. Payment of City Construction Finance Funds

4.1.1. Subject to the provisions of this Section 4.1 and the satisfaction of conditions described in Section 4.2, the City may make distributions of City Construction Finance Funds to the Developer, up to but not exceeding the following described amounts and during the following calendar years:

2027	\$400,000.00
2028	\$400,000.00
2029	\$400,000.00
2030	\$900,000.00
2031	\$400,000.00
2032	\$400,000.00
2033	\$400,000.00
2034	\$400,000.00
Total	<u>\$3,700,000.00</u>

The Parties acknowledge there is a one-time \$500,000.00 increase in the amount that may be distributed in 2030.

4.1.2. Subject to the provisions of Section 4.1.5 below, the City Construction Finance Funds distributed to the Developer under this Section 4 shall be used by the Developer solely for re-payment of debt financing the Developer obtained and where the funds from such debt financing was used exclusively to pay the costs, expenses and fees for the Construction of the Children's Museum.

4.1.3. The Parties acknowledge and agree that in addition to satisfying the conditions described in Section 4.2 below, the distribution of the City Construction Finance Funds, as described in Section 4.1.1, is subject to and shall require the annual approval by the City Council, through the City's budgeting process, and in the exercise of City Council's discretion.

4.1.4. Nothing in this Agreement shall obligate the City to make any distribution of the City Construction Finance Funds, or in any manner limit the City Council's discretion or the facts, circumstances or any other matter the City Council wishes to consider in rendering its decision to make a distribution of the City Construction Finance Funds and/or the amount of a distribution of the City Construction Finance Funds under Section 4.1.1, including without limit the availability of funds and resources of the City, the City Council is satisfied with the operation of the Children's Museum, and the Developer has complied with terms and conditions of this Agreement.

4.1.5. Should associated debt obligations be satisfied before December 31, 2034 the remaining City Construction Finance Funds up to the maximum of \$3,700,000.00 shall be disbursed upon the same schedule set out in section 4.1.1 with the intent that these funds shall be restricted to support ongoing capital costs.

4.1.6. The Developer shall make a request for City of distribution of Construction Finance Funds at least sixty (60) days prior the annual date of payment for its debt financing, and each approved distribution being made within thirty (30) days after City Council's approval thereof.

4.2. Conditions Precedent to Distributions of City Construction Finance Funds

In addition to obtaining the approval of the City Council, as described in Section 4.1.3 and Section 4.1.4 above, for any distribution of City Construction Finance Funds under Section 4.1.1, each of the following conditions precedent must be satisfied, as determined in the exercise of discretion by the City Administrator, (or the City Administrator's designee), before such a distribution of any City Construction Finance Funds may be made to the Developer:

4.2.1. The Developer has provided the City written and signed sworn statement representing and warranting to the City that it obtained debt financing and such the funds from such debt financing were used exclusively to pay the costs, expenses and fees for the Construction of the Children's Museum. The Developer shall provide copies of the debt

financing documentation, including promissory note, mortgage or other agreement executed by the Developer to obtain such debt financing.

4.2.2. The Developer has presented to the City Council a report of the operation of the Children's Museum for the respective calendar year, which shall include, a financial report of income, expenses, assets and liabilities, a statement of the outstanding balance of the debt financing that was described in Section 4.2.1, an operational report describing activities and events, and any other information the City Council may request.

4.2.3. The conditions precedent for the distribution of the City Construction Funds under Section 3.3 above have been satisfied.

4.2.4. The Developer and JDA have executed the Children's Museum Ground Lease for the Construction and operation of the Children's Museum on the Children Museum's Leased Property.

4.2.5. There has been no event of default by the Developer under the Children's Museum Ground Lease.

4.2.6. No event of default has occurred under this Agreement or the Other Children's Museum Agreements by the Developer or any other Person obligated thereunder.

4.2.7. The representations and warranties of the Developer, described in Section 5, are true and correct.

SECTION 5 DEVELOPER REPRESENTATIONS

5.1. Representations and Covenants of the Developer. The Developer represents and covenants to the City and the JDA, which the City and the JDA has relied on in entering into this Agreement and shall continue to rely on in the execution of and performance of this Agreement:

5.1.1. The Developer is a non-profit corporation duly organized and validly existing under the laws of North Dakota, and is authorized to do business in the State of North Dakota.

5.1.2. The Developer is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement, and/or the Developer, the Developer's operations or the Children's Museum is not and shall not become a threat to, conflict with or be contrary to the operation and security of any federal Governmental Authority, state Governmental Authority or the City.

5.1.3. The Developer shall comply with, obtain and satisfy all applicable Governmental Requirements relating to ownership interests or investment in the Developer and/or financing of the Developer from (a) any Person or entity from a foreign country or

identified on the office of foreign assets control sanctions list and/or (b) a foreign governmental body or agency).

5.1.4. The Developer is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions and other agreements contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

5.1.5. This Agreement to which the Developer is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

5.1.6. There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

5.1.7. The Developer's undertakings pursuant to this Agreement are for the purpose of constructing the Children's Museum.

5.1.8. Developer further recognizes that, in view of (a) the importance of the development of the Children's Museum to the general welfare of the City; and (b) the funds that may be made available by the City for the purpose of making such development possible, the qualifications and identity of Developer are of particular concern to the City. Developer further recognizes that it is because of such qualifications and identity that the City are entering into this Agreement with Developer, and, in doing so, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed.

5.1.9. The Developer will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

5.1.10. The Developer shall not cause or agree to a change, modification, termination or other alteration of the Children's Museum Property Lease without the prior written consent of the City.

SECTION 6 DEFAULT BY DEVELOPER / REMEDIES OF CITY

6.1. Default By Developer. An event of default by Developer shall occur if any of the following occur and remains in effect following written notice and a 30-day opportunity to cure, provided that a default which takes longer than 30 days to cure shall not be a default if

Developer has undertaken commercially reasonable efforts to initiate a cure within such 30-day period:

6.1.1. The Developer fails to act or otherwise observe or perform any term condition, covenant or promise of this Agreement, or within any Other Children’s Museum Development Agreement.

6.1.2. The Developer fails to act or otherwise observe or perform any term condition, covenant or promise of the Children’s Museum Ground Lease.

6.1.3. Any representation or warranty by the Developer in this Agreement, the Other Children’s Museum Agreements or in any other agreement, certificate, request, or other document executed, furnished pursuant to or under this Agreement (including in any Reimbursement Request, and any certifications and sworn statements provided under Sections 3.2.1, 3.3.3, 3.3.4 and/or 4.2.1) proves to have been incorrect in any material respect as of the date when made or deemed made.

6.1.4. The Developer admits in writing the fact that its debts exceed a fair valuation of its property.

6.1.5. The Developer commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

6.1.6. The Developer makes an assignment for the benefit of its creditors.

6.1.7. The Developer consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

6.1.8. The Developer has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the Developer, as the case may be, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Developer or for any substantial part of its property, or approving a plan for reorganization of the Developer, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

6.2. Remedies by City. Upon the occurrence of an event of default by the Developer, which default has not been cured following the required notice and opportunity to cure, the City may:

6.2.1. Terminate this Agreement, and Other Children’s Museum Development Agreements and all of the Developer’s or any other Person’s rights under this Agreement and the Other Children’s Museum Development Agreements.

6.2.2. Pursue and obtain against the Developer recovery of all disbursements and payments to the Developer of the City Construction Funds, and/or the City Construction Finance Funds.

6.2.3. Pursue and obtain against the Developer full and complete recovery and reimbursement of all costs, expenses and fees the City incurred in connection with this Agreement.

6.2.4. Pursue and obtain any other legal or equitable remedy against the Developer.

6.2. Remedies by JDA. Upon the occurrence of an event of default by the Developer, which default has not been cured following the required notice and opportunity to cure, the JDA may pursue and obtain any and all available remedies under the Children’s Museum Ground Lease. Nothing herein is intended to, nor does it, limit or otherwise restrict the JDA’s remedies under the Children’s Museum Ground Lease, but are in addition to such remedies.

6.4. Remedies by Cumulative. All rights and remedies from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

6.5. Non-Waiver of Remedy. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice except as may otherwise be provided by law or under this Agreement.

6.6. Force Majeure.

6.6.1. Except as provided in Section 6.6.3 below, neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of either Party to perform its obligations in this Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay.

6.6.2. Either Party (the “Noticing Party”) shall give the other Party notice within 30 Calendar Days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use reasonable best efforts to minimize the effects of such Force Majeure Event. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

6.6.3. In the event the subject Force Majeure Event, for which a notice under Section 6.6.2 above was issued, has continued for a period of 180 Calendar Days after the date of said notice, then such event shall no longer be a Force Majeure Event, and the rights and obligations of the Parties under this Agreement shall resume.

SECTION 7 MISCELLANEOUS PROVISIONS

7.1. Assignment. Except as otherwise permitted upon the prior written consent by the City and the JDA, the Developer agrees, this Agreement and the rights, interests, and benefits hereunder will not be assigned, transferred, pledged, or hypothecated in any way by the Developer or by any other Person claiming under it by virtue of this Agreement, and will not be subject to execution, attachment, or similar process. Any attempt by the Developer at assignment, transfer, pledge, or hypothecation or other disposition of this Agreement or of such rights, interests, and benefits contrary to the foregoing provisions or the levy of any attachment or similar process, will be null and void and without effect.

7.2. Severability. If any of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

7.3. Entire Agreement. This Agreement constitutes the sole and entire agreement and understanding between the Parties hereto as to the subject matters hereof, and supersedes all prior discussions, agreements and understandings of every kind and nature between them as to such subject matter.

7.4. Amendments. Neither the Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto.

7.5. Change in the Law. The Developer will ensure that the Children's Museum, including the Construction thereof, is performed in accordance with the terms of this Agreement following any Change in Law. If a Change of Law occurs or will occur within one hundred eighty Calendar Days, any Party may notify the other Party and include in such notification: (i) an opinion on its likely effects; (ii) any necessary changes to the Project or implementation of this Agreement, including the full detail of the procedure for implementing such changes; and (iii) amendments (if any) required by this Agreement. After either Party delivers a notice of a Change in Law, the Parties shall meet and discuss the issues referred to in such notice and any ways in which the Developer can mitigate the effect of the relevant Change in Law.

7.6. Authority. The Parties to this Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Agreement. The Parties to this Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Agreement and each agreement, document and instrument executed and delivered pursuant to this

Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

7.7. **Headings.** All titles or headings to articles, sections, subsections or other divisions of this Agreement or exhibits hereto are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the Parties hereto.

7.8. **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota and the Ordinances of the City of Grand Forks and any action or claim related thereto shall be brought in the District Court for Grand Forks County, North Dakota.

7.9. **Waivers.** One or more waivers by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

7.10. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

7.11. **No Third-Party Beneficiary.** This Agreement is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns. No other Person or entity shall have any right to rely on this Agreement or to claim or derive any benefit therefrom absent the expressed written consent of the Party to be charged with such reliance or benefit.

7.12. **Relationship of Parties.** Each Party, its employees, agents, and representatives are not employees, agents or representatives of the other Party for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Compensation Act, and the North Dakota Workers' Compensation Act. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship. Each Party will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

7.13. **Cooperation.** The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

7.14. **Singular and Plural.** Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the

singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

7.15. References. The words “herein,” “hereof,” “hereunder” and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular article, section or subsection. Any reference herein to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Agreement unless otherwise stated herein. Any reference herein to an Exhibit shall be deemed to refer to the applicable Exhibit attached hereto unless otherwise stated herein.

7.16. Authorized Representatives.

7.16.1. The City, and the Developer hereby designate the following individuals as their initial representatives, respectively, to administer this Agreement on their respective behalf:

City Representative: City Administrator

Developer Representative: Katie Mayer

7.16.2. The above-named representatives will be reasonably available to each other during the term of this Agreement and will have the authority to issue instructions and other communications on behalf of the City, and the Developer, respectively, and will be the recipients of notices and other written communications from the other Party pursuant to this Agreement, except as otherwise provided in this Agreement.

7.16.3. The above-named representatives shall not have the authority to make decisions or give instructions binding upon the City, or the Developer, except to the extent expressly authorized by the City, or the Developer, as the case may be, under this Agreement, in writing, or with respect to the City Representative, as may be authorized under the City Code or under applicable policies of the City.

7.16.4. Any reference herein to City approval or consents shall mean any process of the City to approve or consent to a particular matter under Governmental Requirement, including the City Code, or as may be permitted under applicable policies of the City.

7.16.5. In the event either the City, or Developer designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative, as the case may be.

7.17. Notices. Any notice required or desired to be served by either Party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the City:
255 North 4th Street

Grand Forks, ND 58201

To the JDA:
255 North 4th Street
Grand Forks, ND 58201

To the Developer:
P.O. Box 5126
Grand Forks, ND 58206

The provisions of this Section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

7.18. Time of the essence. Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

7.19. Performance of Additional Acts. The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

7.20. Binding Effect. This Agreement will inure to the benefit of and is binding upon the City and the Developer, and their respective successors and assigns.

**GRAND FORKS CHILDREN’S
MUSEUM, INC.,** a North Dakota
non-profit corporation

CITY OF GRAND FORKS,
a North Dakota municipal
corporation

By: Alex Reichert
Its: Board President
Dated: _____

By: Brandon Bochenski
Its: Mayor
Dated: _____

Attest:

By: Maureen Storstad
Its: City Auditor
Dated: _____

GRAND FORKS GROWTH FUND

By: Danny Weigel
Its: Chairperson
Dated: _____