

**FAMILY DISCOVERY CENTER AGREEMENT  
BETWEEN  
THE FIRST AMERICANS MUSEUM FOUNDATION  
AND  
THE OKLAHOMA CITY ECONOMIC DEVELOPMENT TRUST**

This Family Discovery Center Agreement (the “Agreement”), is between the First Americans Museum Foundation (“Foundation”) and the Oklahoma City Economic Development Trust (“OCEDT” or “Trust”), collectively referred to herein as the “Parties”. The Effective Date of this Agreement shall be the date this Agreement is approved by OCEDT.

**Recitals**

**WHEREAS**, on March 15, 2016, in compliance with 74 O.S. §1226.2(B)(5)(f), the City of Oklahoma City (“City”), the Native American Cultural and Education Authority (“NACEA”), and the Office of Management and Enterprise Services (“OMES”) entered into an Agreement for the operation and maintenance of the First Americans Museum (“FAM”) (formerly known as the American Indian Cultural Center and Museum). Among other things, that agreement provided that upon opening of FAM to the public, operations and maintenance would be handled through the City and/or the City’s designee, not NACEA; and

**WHEREAS**, on August 29, 2017, the City designated OCEDT, a public trust formed under authority of 60 O.S. §176, whose sole beneficiary is the City, to assume all of the City’s duties and responsibilities regarding operation and maintenance of the FAM; and

**WHEREAS**, while the City does not own the FAM, it does own the land upon which the FAM is located. On March 26, 2019, the City leased said land to the Oklahoma City Economic Development Trust (“OCEDT”). Upon payment of all outstanding bond indebtedness, ownership of the FAM itself shall pass from the State of Oklahoma to the City of Oklahoma City; and

**WHEREAS**, on March 26, 2019, the City and OCEDT entered into an agreement with the Foundation to provide operation and maintenance services for the FAM (the “Operations Agreement”). The City pays the Foundation an annual operations fee to assist with payment of salaries, legal fees, general maintenance and upkeep of the FAM and its grounds and funds for required, identified capital maintenance. The City/OCEDT operations fee for 2024-2025 was approved for \$4,000,000, which amount did not include funding for the Family Discovery Center; and

**WHEREAS**, the Foundation and other project partners have desired for many years to complete the Family Discovery Center (“Center”) but plans were delayed due to funding issues. However, to date the Foundation has raised over \$3,000,000 in donations, grants and pledges that do not include funds from the City or OCEDT. A further grant agreement with another foundation

commits an additional \$1,500,000 but said funds are contingent upon the City and/or OCEDT providing the final \$2,000,000 needed to make the Center a reality; and

**WHEREAS**, the Center will be particularly attractive to young visitors as it will be located in a mock forest environment in the style of a pop-up book, with animal themed exhibits and interactive components, climbing structure, and Native American family experiences appropriate for children; and

**WHEREAS**, on September 24, 2024 the City and OCEDT approved an allocation to FAM for \$2,000,000 to be provided to the Foundation for costs incurred for the completion of the Family Discovery Center exhibition pursuant to the terms and conditions of a negotiated contract between the two entities.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

## **I. PURPOSE, TERM AND SCOPE OF THE AGREEMENT**

- 1.1 Purpose.** This Family Discovery Center Agreement (“Agreement”) between the Foundation and OCEDT sets forth the terms and conditions under which the Foundation shall complete the Family Discovery Center within the First Americans Museum for the benefit of the public by providing an educational/historical experience for citizens and tourists. FAM and the completion of its Family Discovery Center are of specific benefit to the City of Oklahoma City by helping promote tourism into the downtown area. Additionally, in conjunction with the completion of the OKANA development in 2025, the two facilities will work in tandem to produce additional sales tax revenue and increase tourism for the City.
- 1.2 Term.** The term of this Agreement shall commence on the date signed by OCEDT and shall terminate one year after the Exhibition has been opened to the public, which the parties intend to occur by the end of Summer 2025.
- 1.3 Authority.** Each Party represents and warrants to the other that: (i) it has full authority and power to enter into and perform its obligations under this Agreement; (ii) the person executing this Agreement is fully empowered to do so; and (iii) no consent or authorization is necessary from any third party.
- 1.4 Performance.** The Parties will comply with all the terms and conditions set forth in this Agreement.
- 1.5 Scope of Agreement.**
  - A.** This document, together with the recitals and following attachments, represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, either written or oral.

- B. The recitals and following attachments are incorporated into and made a part of this Agreement as if fully set out herein:
  - Exhibit A** – Conceptual Drawings of the Family Discovery Center
  - Exhibit B** – Form of Reimbursement Request to be Used by the Foundation
- C. Any reference to the Agreement herein shall include all of the above-listed incorporated attachments.
- D. If there is a conflict in language, terms, conditions, or provisions, between the text of this document and any language, term, condition, or provision in any attachment, then the text of this document shall govern and control.

## II. SCOPE OF THE PROJECT AND DEFINITIONS

- 2.1 **The Exhibition.** As proposed by the Foundation, the Family Discovery Center (“Center”) will consist of more than 5000 square feet of space within the existing building shell designed as a mock forest environment in the style of a pop-up book with an interactive animal-themed exhibit, climbing structure, and Native American family experiences appropriate for children, the design of which is attached as **Exhibit A**.
  - A. The Foundation will develop and construct the Project within the FAM.
  - B. The Foundation will invest at least \$4,500,000 in funds from sources other than the City or its trusts for the construction of the Center. The Foundation shall demonstrate to the satisfaction of City/OCEDT staff that it has obligated at least \$4,500,000 on completion of the Center before it shall seek reimbursement of the Trust’s/City’s not-to-exceed \$2,000,000 allocation on Reimbursable Project Expenditures.
- 2.2 **Definitions.** The following terms, when capitalized and used throughout this Agreement, shall have the following meanings:
  - A. “**Business Day**” means a day of the year other than Saturdays, Sundays and legal holidays on which banks are required to be closed in Oklahoma. Unless otherwise specified, in computing any period of time described herein, the Business Day of the act or event after which the designated period of time begins to run is not to be included and the last Business Day of the period so computed is to be included. Unless otherwise expressly provided herein, the last Business Day of any period of time described herein shall be deemed to end at 5:00 p.m. CT.
  - B. “**Reimbursable Project Expenditures**” shall mean actual costs paid by the Foundation to a vendor, professional, contractor or subcontractor for work on the Family Discovery Center for materials, custom fabricated exhibition furniture and other custom components, labor, equipment, and incidental and necessary architectural/engineering/project management services related thereto, but do NOT include the Foundation’s operating expenditures, legal fees, regular administrative fees, overhead, an allocation of other general FAM expenses to the completion of the Center, or the Foundation’s expenditures under a “public construction contract” subject to the Public Competitive Bidding Act of 1974, 61 O.S. §101, et seq., unless the contract is awarded pursuant to the Act, provided such costs are paid by the Foundation after July 1, 2024 and before the end of the Term.
  - C. “**Capital Expenditures**” shall mean all costs incurred by the Foundation that are necessary and incidental to the completion of the Center.

- D. “**Government Indemnified Parties**” means, collectively, the Trust, the City, and their officers, directors, employees, agents, and affiliates.
- E. “**Material Change**” means (i) a significant and substantial change impacting the overall character, quality, or appearance of the Project as a whole as established by the most recent plans and specifications submitted by the Foundation to the Trust, (ii) changes that would result in an overall decrease of more than ten percent (10%) of the Foundation’s total Project Expenditures, which expenditures are estimated to be \$6,500,000 inclusive of funds provided pursuant to this Agreement, or (iii) exclusion of any one or more of the Project Components listed in Section 2.1 of this Agreement.
- F. “**Reasonable Efforts**” means, with respect to a given goal, the efforts that a reasonable person in the position of the promisor would use so as to achieve that goal as expeditiously as possible. The exercise of reasonable efforts does not include taking any actions that would, individually or in the aggregate, cause the promisor to incur costs, expenses, liability or suffer some other detriment, out of reasonable proportion to the benefits to the promisor under this Agreement, or making any expenditure that is disproportionate or unduly burdensome or that would cause a material adverse change in the financial condition of the promisor. Reasonable efforts do not include the threat or initiation of any litigation or arbitration.
- G. “**Substantial Completion**” means: (i) the plaque requirements in Section 3.6 herein have been satisfied; (ii) the architect-of-record has certified, using an AIA Form Certificate of Substantial Completion, that the Project conforms to the plans and specifications, subject only to minor “punch list” items that must be completed within thirty (30) Business Days thereafter; and (iii) any certificates of occupancy or permits required to operate the Center as contemplated by this Agreement have been secured; and (iv) any additional forms or records reasonably necessary to verify the development and construction of the Project is complete as required by this Agreement.
- H. “**Target Substantial Completion Date**” means September 30, 2025.

### III. DESIGN, CONSTRUCTION AND COMPLETION OF THE PROJECT

**3.1 Development Plans and Specifications.** The Foundation will provide OCEDT’s Project Manager, Joanna McSpadden, with plans and specifications to the extent deemed reasonably necessary by the Project Manager to make reimbursements pursuant to this Agreement.

**3.2 Completion.**

- A. The Foundation will develop and complete the Project in accordance with the scope of the Project as described in this Agreement and in accordance with the plans and specifications. In doing so, the Foundation shall comply with all applicable laws and regulations, including the Oklahoma Competitive Bidding Act, if applicable to a particular agreement.
- B. The Foundation is solely responsible for all methods, techniques, and procedures employed by the Foundation, its agents, contractors, and subcontractors in connection with the Project.



- C. Except as otherwise expressly provided for in this Agreement, OCEDT will not be responsible for any development or other action with respect to the Project or any part thereof.
- D. In performing the development and completion of the Project pursuant to this Agreement, the Foundation and its employees, agents, and project team will exercise the degree of care, skill, and diligence normally exercised by organizations developing projects of a similar nature. The Foundation will also require its vendors and contractors to exercise the degree of care, skill, and diligence normally exercised by members vendor or contractor's.

### **3.3 Completion Schedule.**

- A. Although the parties agree the Project would halt and not be completed without the funding pursuant to this Agreement, the Foundation previously started project completion activities in an effort to enable completion of the project by the Target Substantial Completion Date.
- B. Subject to any extensions, delays, and requests explicitly provided for within this Agreement, or as otherwise agreed upon by the Parties in writing, the Foundation will use Reasonable Efforts to ensure that the Project is Substantially Completed by the Target Substantial Completion Date.

### **3.4 Reporting.** Until the Project has been completed, the Foundation agrees to submit reports in such detail and at such times as may reasonably be requested by the Project Manager as to the actual progress of the Project.

### **3.5 Material Change.** The Foundation shall promptly notify the Project Manager in writing if it desires to make a Material Change in the Project. If the Project Manager receives a notice of a Material Change from the Foundation or believes that there has been a Material Change to the Project and has provided notice thereof to the Foundation, the Parties shall meet and confer to negotiate in good faith approval by the Trust of the Material Change. If the Parties proceeding in good faith are unable to reach agreement on any Material Change under consideration within sixty (60) Business Days from the date of the Material Change notice, then either Party may proceed under Section 5 of this Agreement or the amount of City/Trust allocation may be reduced in accordance with Section 4.3 herein.

### **3.6 Plaque.** The Foundation agrees to design, purchase, and attach a plaque, sign or monument to the Project, in a location that is viewable by the general public, that acknowledges the completion of the Project was made possible in part by the assistance of funding provided by the Trust, with support from the City, which requirement may be satisfied by inclusion of an acknowledgement of Trust and City involvement on a plaque, sign or monument acknowledging contributors to the Project. The proposed design and location of the plaque will be presented to the Project Manager who may offer comments. The Foundation agrees to consider the comments submitted by the Project Manager, if any, and implement them if reasonable.

- 3.7 Extension.** The Foundation may request an extension of the Target Substantial Completion Date, on a one-time basis only, from the Project Manager, for a period of time not to exceed twelve (12) months, in addition to, and regardless of, any extensions due to force majeure events as set forth in Section 3.9 of this Agreement or delays caused by the Trust as set forth in Section 3.8 herein. The request shall be in writing and shall explain the need for the extension and shall be submitted to the Project Manager not less than sixty (60) Business Days prior to the Target Substantial Completion Date as set forth in this Agreement. If the Project Manager believes in his or her reasonable discretion that sufficient reason has been presented to justify an extension of the Target Substantial Completion Date, the Project Manager may grant an extension of up to twelve (12) months in addition to, and regardless of, any extensions due to force majeure events as set forth in Section 3.9 of this Agreement. Any other or further extension may be granted only by the express written consent of the Trust, which the Trust may grant or withhold in its reasonable discretion. Nothing herein shall be construed to mean the Foundation has failed to perform its duty to use Reasonable Efforts to complete the Project by the Target Substantial Completion Date solely due to the fact the Foundation requests an extension of the Target Substantial Completion Date under the terms and provisions of this Section 3.7.
- 3.8 Delay by the Trust.** In the event that the Trust fails to timely perform any of its obligations set forth in this Agreement, and as a result, such failure delays the performance by the Foundation of any of its obligations under this Agreement, then the time for the performance of such obligation by the Foundation completion of the Project will be extended for the period of the delay caused by the Trust; provided, that the Foundation shall notify the Trust in writing, within ten (10) Business Days after the beginning of any such delay. Said notice shall describe the problem and its causes and claim an extension for the period of any such delay.
- 3.9 Force Majeure.** For purpose of this Agreement, neither the Trust, nor the Foundation, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the beginning and completion of the Project, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of terrorism, acts of the federal government, acts of any of the other parties, fires, floods, tornadoes, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Trust with respect to providing the assistance in development financing or of the Foundation with respect to completion of the Project, as the case may be, shall be extended for the period of the forced delay; provided, that the Party seeking the benefit of the provisions of this Section 3.9 shall, within fifteen (15) Business Days after the beginning of any such forced delay, have first notified the other Party in writing, and of the cause or causes thereof, and requested an extension for the period of the forced delay.

- 3.10 Inspections.** The Trust, by and through the Project Manager and/or other designees, shall have the right, but not the obligation, to inspect the progress and quality of all work performed by the Foundation, the Foundation's Affiliates, their contractors and vendors, and any other contractors in connection with the Project. The failure of the Trust to inspect the work shall not relieve the Foundation and said parties of their duties under this Agreement. The Foundation shall reasonably cooperate with the Trust to enable its representatives to conduct any visits, inspections, and appraisals it may reasonably request.
- 3.11 Certificate of Completion.** Promptly upon attaining Substantial Completion of the Project, the Foundation shall provide the Project Manager with reasonably satisfactory evidence of Substantial Completion.

#### **IV. PUBLIC ASSISTANCE FOR ECONOMIC DEVELOPMENT PROJECT**

##### **4.1 General.**

- A. The Trust will pay the Foundation not-to-exceed \$2,000,000 for Reimbursable Project Expenditures for the Project in accordance with the terms of this Agreement.
- B. The Trust shall not have a duty to pay to the Foundation and the Foundation shall not be entitled to receive any Trust funds for the Project in any amount exceeding \$2,000,000.
- C. The Foundation shall not submit any invoices for reimbursement for work performed after the Target Substantial Completion Date, or on or before July 1, 2024, unless said date has been extended pursuant to Sections 3.7, 3.8, and/or 3.9.
- D. The Project Manager shall process all invoices from the Foundation and shall make all reasonable efforts to submit reimbursement to the Foundation no later than 30 days after receipt of an invoice from the Foundation containing all required documentation evidencing its expenditures.

##### **4.2 Conditions Precedent to Assistance.** The following are conditions precedent to the Trust's obligation to pay the Foundation for the Project. Payments will not be made until the following conditions have been satisfied:

- A. The Foundation shall submit reimbursement requests, on the Reimbursement Request Form attached hereto as Exhibit B with accompanying invoices, to the Project Manager for reimbursement of Reimbursable Project Expenditures no more frequently than once per month, after the Foundation has met the requirement of Section 2.1(B) herein. Said requests shall be accompanied by paid invoices showing the actual amounts for which the Foundation is seeking reimbursement, but not to exceed \$2,000,000; and
- B. The Foundation shall not be in default or breach of its obligations under this Agreement (after the expiration of any cure periods provided for in this Agreement); and
- C. The Foundation has submitted proper evidence to the Project Manager of its payment of Reimbursable Project Expenditures for the Project.

##### **4.3 Effects of Total Expenditure Variation.** The Foundation must provide proof of the total of all Capital Expenditures for the Project. Upon completion of the Project, if the actual

total of all Capital Expenditures made or caused to be made by the Foundation is more than ten percent (10%) less than \$6,500,000, the \$2,000,000 not-to-exceed amount shall be reduced proportionately. By way of example, if the actual total Capital Expenditure is sixteen percent (16%) less than \$6,500,000, the not-to-exceed amount shall be reduced by six percent (6%). There shall be no increase in the public incentive allowed in the event total Capital Expenditures exceed \$6,500,000.

## **V. TERMINATION**

**5.1 Termination for Cause, Notice, and Opportunity to Cure.** Except as otherwise provided in this Agreement or as otherwise agreed upon by the Parties in writing, in the event of any default in or breach of any of the terms or conditions of this Agreement by any Party hereto, or any successor to such Party, the aggrieved Party may terminate this Agreement for cause, after:

- A. Providing written notice to the defaulting or breaching Party specifying the basis of such default or breach; and
- B. Giving the defaulting or breaching Party the opportunity to cure the default or breach within twenty (20) Business Days after receipt of such notice, or for an extended period of time as reasonably agreed upon in writing by the Parties if the default or breach is one not reasonably susceptible of being cured within twenty (20) Business Days and the defaulting or breaching Party has been diligently pursuing to cure the default or breach; provided, if the default or breach is not curable or involves fraud or willful misconduct, the aggrieved Party need not provide an opportunity to cure.

**5.2 Reservation of Rights and Remedies.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by either such Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligations beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the Party.

## **VI. INDEMNITY**

**6.1** Subject to the provisions of Section 6.2 below, the Foundation will fully defend, indemnify, release, and completely hold harmless the Government Indemnified Parties from and against any and all claims, losses, damages, demands, causes of action, suits, judgments, and liabilities of every kind and character, litigation, court costs, expert fees, reasonable

attorneys' fees, and any other associated costs of defense or resolution incurred by or asserted against the Indemnified Parties that arise by reason of:

- (1) Any injury to or death of any person or any damage to property located in or on the Property, unless caused by the City's or Trust's sole negligence or willful misconduct or caused by conditions created by the State of Oklahoma or its contractors;
- (2) Any use, condition, or state of repair of all or any part of the Property, unless caused by the City's or Trust's sole negligence or willful misconduct or caused by conditions created by the State of Oklahoma or its contractors;
- (3) Any uncured default or breach by the Foundation to perform the Foundation's obligations under this Agreement;
- (4) Any other occurrence on the Property, unless caused by the City's or Trust's sole negligence or willful misconduct or caused by conditions created by the State of Oklahoma or its contractors; or
- (5) Any failure on the part of the Foundation, its employees, agents, contractors and/or subcontractors to follow all applicable laws, regulations, codes, and statutes.

**6.2 Concurrent Negligence.** In the event of concurrent negligence of the Foundation and the Trust (or such Party's employees or agents), such negligence will be apportioned comparatively in accordance with applicable law or as otherwise agreed by the Parties in writing.

**6.3 Notice of Claim.** Each Party shall promptly notify the other Party in writing upon receipt of any action, suit, or proceeding arising under Section 6.1 of this Agreement, and the Foundation will promptly defend any of the Government Indemnified Parties from such action, suit, or proceeding at the Foundation's expense with legal counsel reasonably acceptable to the Trust.

## **VII. INSURANCE**

**7.1 Insurance Requirements.** The Foundation shall procure and maintain insurance at its own expense or cause Project contractors to maintain insurance at their expense against claims which may arise from or in connection with the performance of the services hereunder by the Foundation, its officers, employees, agents, or contractors.

**7.2 Minimum Coverage.** Coverage shall include the following policies with limits at least as broad as that set forth below:

- A. Worker's Compensation Insurance and Employer's Liability Insurance
  - a. Worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury or disease.
- B. Commercial General Liability Insurance
  - a. Commercial general liability insurance coverage, including claims for products and completed operations, property damage, bodily injury and personal and advertising

injury, with limits not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) general aggregate.

C. **Automobile Liability Insurance**

- a. Automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased, or hired vehicles with limit no less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage.

**7.3 Duration of Coverage.** All insurance required under this Agreement shall be procured and maintained in full force and effect:

- A. As of the Effective Date and as a condition of approval of this Agreement; and
- B. Until the Program Manager issues a Certificate of Completion for the Project.

**7.4 Occurrence Policies.** All policies shall be in the form of “occurrence” coverage.

**7.5 Additional Insureds.** All insurance (except worker’s compensation and employer’s liability policies) shall provide that the Trust and the City are named additional insureds.

**7.6 Certifications and Endorsements.** The Foundation shall provide the Trust with certificates of insurance and endorsement pages evidencing compliance with the terms of this Section 7 on a timely basis upon request by the Trust or the City until the Trust issues a Certificate of Completion for the Project.

**7.7 Deductibles.** The Foundation shall be wholly responsible for all deductibles and self-insured retentions that exist in all insurance policies required in this Section 7.

**7.8 Authorized Companies.** All insurance must be from responsible insurance companies which are licensed to transact business in the State of Oklahoma. The insurance policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of the State of Oklahoma.

**7.9 Primary.** All insurance coverage of the Foundation shall be primary to any insurance or self-insurance program carried by the Trust or the City.

**7.10 Subrogation Waived.** The Foundation hereby grants to the Trust and the City a waiver of any right to subrogation which any insurer of the Foundation may acquire against the Trust and the City by virtue of the payment of any loss under such insurance.

**7.11 Change or Cancellation.**

- A. The Foundation shall provide written notice to the Trust of any change, reduction, lapse, suspension, cancellation, or termination of any insurance policy or coverage required by this Agreement and shall use all reasonable endeavors to do so as soon as possible.
- B. If any insurance policy or coverage required by this Agreement is changed, reduced, lapsed, suspended, cancelled, or terminated for any reason during the term of this

Agreement, the Foundation shall be fully responsible and liable for any claim by the Trust or the City for any loss, damages, costs, or expenses, including attorney fees, court costs, and administrative expenses, which would have been covered or assumed by the policy or coverage had the changed, reduced, lapsed, suspended, cancelled, or terminated insurance policy or coverage been in effect without limitation as to the policy amount.

## **VIII. MISCELLANEOUS PROVISIONS**

- 8.1 Non-Discrimination.** The Foundation shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, age, disability, religion, or sex (including pregnancy, sexual orientation, and gender identity), including, without limitation, with regard to employment, promotion, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Foundation will post such notice in a conspicuous place available to employees and applicants. The Foundation will also require these same non-discrimination terms in any subcontracts associated with this Agreement.
- 8.2 Conflict of Interests.** No member, official, or employee of the Trust or the City will have any personal interest, direct or indirect, in this Agreement, nor will any such member, official, or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is interested, directly or indirectly.
- 8.3 The Trust and City Representatives Not Individually Liable.** No member, official, or employee of the Trust or the City will be personally liable to the Foundation, or any successor in interest, in the event of any default or breach by the Trust or the City or for any amount that may become due to the Foundation or its successor on any obligations under this Agreement.
- 8.4 Local, State, and Federal Laws.** The Foundation shall carry out the provisions of this Agreement in conformity with all applicable local, state, and federal laws and regulations. To the extent any funds or resources are provided for the Project using federal programs, the Parties agree they will comply with the requirements applicable to such programs. The Foundation further agrees to comply with the Energy Discrimination Elimination Act of 2022, 74 O.S. § 12001 et seq., as amended and to the extent applicable.
- 8.5 Severability.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision.
- 8.6 Governing Law and Venue.** The Parties expressly agree that this Agreement shall be construed and interpreted in accordance with and subject to the laws of the state of

Oklahoma. Venue for all legal proceedings arising out of this Agreement shall be in the state or federal court with competent jurisdiction in Oklahoma County, Oklahoma.

- 8.7 Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- 8.8 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.
- 8.9 Time is of Essence.** The Parties agree that time is of the essence with respect to this Agreement, and the time for performance of each task shall be made a part of the Agreement.
- 8.10 Waiver of Terms.** The terms of this Agreement may be waived only by written notice. No course of dealing between the Parties, delay in the exercise of any rights under this Agreement, or failure to object to any act or omission constitutes a waiver of any terms of this Agreement.
- 8.11 Amendments.** This Agreement may not be modified, amended, altered, or supplemented except by an instrument in writing signed by both Parties hereto.
- 8.12 Cooperation between Parties.**
- A. The Parties will use commercially reasonable efforts in good faith to perform and assist each other in performing their respective obligations in accordance with this Agreement. This Agreement does not render any Party liable for any of the debts or obligations of the other Party.
  - B. The Parties will each designate a representative(s) to facilitate communication and cooperation between them regarding the Project. At the written request of the Project Manager for the City, the Project Manager shall be informed of and entitled to attend all meetings with the Foundation's architects, engineers, contractors and suppliers.
- 8.13 Independent Contractor Relationship.** The Foundation is an independent contractor and will act exclusively as an independent contractor. The Foundation is not an agent or employee of the Trust or the City. The Parties do not intend, and will not hold out, that there exists any agency, partnership, corporation, joint venture, association, undertaking for profit, or other form of employment relationship among the Parties, other than that of an independent contractor relationship or as explicitly set forth in the Operations Agreement.
- 8.14 No Presumption as to Drafter.** In the construction and interpretation of this Agreement, the rule that a document is to be construed most strictly against the Party who prepared it does not apply because both Parties participated in its preparation.



- 8.15 Attorneys' Fees.** In the event either Party to this Agreement is compelled to file suit to enforce the terms of this Agreement, the Party prevailing in such litigation, in addition to all other relief granted by the court, will be entitled to the payment by the losing Party of all expenses, court costs, and reasonable attorneys' fees incurred by the prevailing Party in such litigation.
- 8.16 No Brokers.** The Foundation will be responsible for and will fully defend, indemnify, release, and completely hold harmless the Trust and the City with respect to the payment of any commission claimed by or owed to any broker or other person retained by the Foundation and who is entitled to a commission as a result of the execution and delivery of this Agreement.
- 8.17 Notice.** Any notice, request, demand, or other communication required, permitted, or contemplated hereunder shall be in writing and shall be deemed to have been given if hand delivered (in return for a receipt), e-mailed (so long as the intended recipient acknowledges by email or other writing as having received the notice, with an automatic "read receipt" not constituting acknowledgment), or if sent by certified mail (upon the sooner of the expiration of three (3) business days after deposit in a United States post office facility properly addressed with first class postage prepaid or acknowledgment of receipt). All notices and payments to a Party will be sent to the addresses set forth below or to such other address or person as such Party may designate by notice to each other Party hereunder:

To the Foundation:

First Americans Museum Foundation  
Attn: Kelli Mosteller, Executive Director  
659 First Americans Blvd.  
Oklahoma City, OK 73129

with a copies to:

First Americans Museum Foundation  
Attn: Shoshana Wasserman, Deputy Director  
659 First Americans Blvd.  
Oklahoma City, OK 73129

and to:

Michael D. O'Neal  
522 Colcord Drive  
Oklahoma City, OK 73102

To the Trust:

Oklahoma City Economic Development Trust  
Attn: Craig Freeman, General Manager  
200 North Walker Avenue, 3rd Floor  
Oklahoma City, OK 73102

with a copy to:

Oklahoma City Economic Development Trust  
Attn: Secretary  
200 North Walker Avenue, 2nd Floor  
Oklahoma City, OK 73102

and with a copy to its attorney:

Amy Douglas  
Assistant Municipal Counselor  
200 North Walker Avenue, 4th Floor  
Oklahoma City, OK 73102

**8.18 Anti-Collusion.** The Foundation hereby warrants that neither it, nor any of its agents, employees, partners, or contractors, have paid or agreed to pay the City of Oklahoma City, the Oklahoma City Economic Development Trust, or the Alliance for Economic Development of Oklahoma City, or any of those three entities' employees, officers, trustees, board members and/or agents: any fee, commission, percentage, gift, or any other consideration in exchange for the award or making of this Agreement.

**Signature pages to follow.**



**APPROVED** by the Oklahoma City Economic Development Trust this 17TH day of DECEMBER, 2024.

ATTEST:

OKLAHOMA CITY ECONOMIC  
DEVELOPMENT TRUST, a public trust

*Thidi Graham*  
Secretary



*Todd E. Smith*  
Chairman

Concurrence by the Mayor and City Council of The City of Oklahoma City this 31ST day of DECEMBER, 2024.

**THE CITY OF OKLAHOMA CITY**

ATTEST:

*Amy K. Simpson*  
City Clerk



*David Holt*  
MAYOR

REVIEWED for form and legality.

*Amy Douglas*  
Assistant Municipal Counselor

**EXHIBIT A**  
**Conceptual Drawing of the FAM Family Discovery Center**

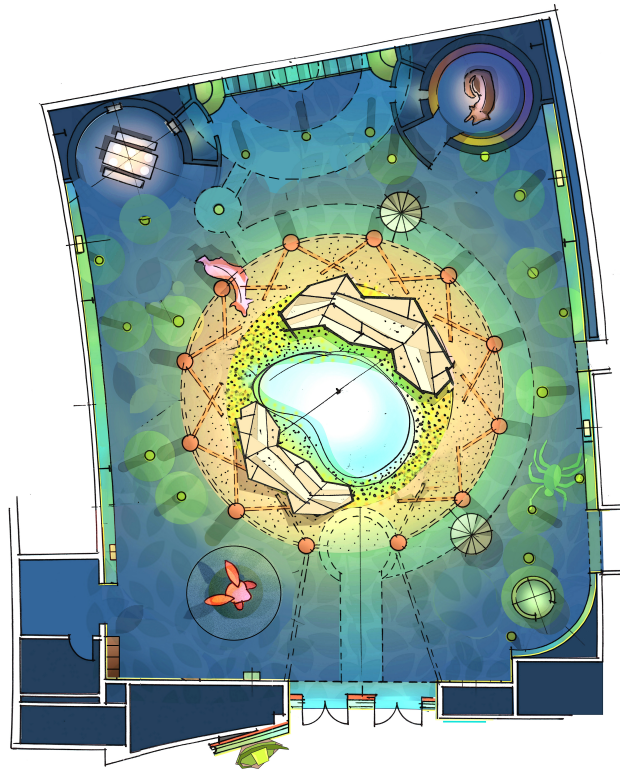


EXHIBIT B



## Reimbursement Request Form

Fil out the form below completely.

All receipts should be attached to the form and emailed to [joanna.mcspadden@okc.gov](mailto:joanna.mcspadden@okc.gov).

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Project Name	_____
Vendor Name	_____
Mailing Address	_____
City / State / Zip	_____
Person Completing Request	_____
Phone	_____
Email	_____
Description of Expense or Activities	_____ _____ _____
Amount of Request	_____ _____

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Signature

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Date