

RESOLUTION NO. 10201

A RESOLUTION CONVEYING CERTAIN PROPERTY LOCATED AT LOTS 1 AND 2 OF THE AIRPORT MINOR SUBDIVISION, A TRACT OF LAND BEING TRACT 1 OF CERTIFICATE OF SURVEY #2271, LOCATED IN THE NW1/4 AND NE1/4 OF SECTION 21, T20N, R3E, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA, AND ESTABLISHING A LEASE AGREEMENT FOR CITY OCCUPATION OF THE SAME.

WHEREAS, the City of Great Falls, Montana, owns the property legally described above; and

WHEREAS, the City of Great Falls has established an Emergency Operations Center (EOC) on the Property; and

WHEREAS, because of failure of contractual obligations with the Federal Aviation Administration the property was never legally conveyed to the City of Great Falls; and

WHEREAS, the City Commission wishes to continue operations at the EOC and cure the legal deficiencies with the conveyance of the property; and

WHEREAS, the City Commission wishes to enter into a lease agreement with the Great Falls International Airport Authority to accomplish the above listed goals.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, that:

1. The Great Falls City Mayor is hereby authorized to convey by Quit Claim Deed any ownership interest in the property legally described as, Lots 1 and 2 of the Airport Drive Minor Subdivision, a tract of land being Tract 1 of Certificate of Survey #2271, located in the NW1/4 and NE1/4 of Section 21, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana, said Quit Claim Deed is attached hereto as Exhibit "A" and is hereby incorporated herein;
2. The City Manager is hereby authorized to enter in to a lease agreement with the Great Falls International Airport Authority for City Occupation of the above legally described property for the purpose of the continued operation of the City EOC;
3. The terms of said lease agreement are more described in attached Exhibit "B" and by reference are hereby incorporated herein; and
4. **EFFECTIVE DATE:** This Resolution shall be effective upon adoption.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, this 3rd, day of October, 2017.

Bob Kelly, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

Sara Sexe, City Attorney

RETURN TO: Ward E. Taleff
Taleff & Murphy, P.C.
P. O. Box 609
Great Falls, MT 59403

QUIT CLAIM DEED

THIS INDENTURE is made this ___ day of September, 2017, between the CITY OF GREAT FALLS, MONTANA, a municipality with principal offices located at 2 Park Drive South, Great Falls, Montana 59401, the party of the first part, and THE GREAT FALLS INTERNATIONAL AIRPORT AUTHORITY, 2800 Terminal Drive, Great Falls, Montana 59404-5599, the party of the second part.

WITNESSETH

That the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) to it in hand paid and other good and valuable consideration by the said party of the second part, receipt of which is hereby acknowledged, does hereby convey, remise, release and forever quitclaim unto the party of the second part all of its right, title and interest in and to the real property situated in the County of Cascade and State of Montana, more particularly described as follows:

Lots 1 and 2 of the Airport Drive Minor Subdivision, a tract of land being Tract 1 of Certificate of Survey #2271, located in the NW1/4 and NE1/4 of Section 21, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

Prior deed reference: P-2012-000016 PL,

together with all the tenements, hereditaments, and appurtenances thereto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said party of the first part, of, in or to the said premises and every part and parcel thereof.

TO HAVE .AND TO HOLD, all and singular the said premises, with the appurtenances thereto belonging, unto the said party of the second part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above.

CITY OF GREAT FALLS, MONTANA

Bob Kelly, Mayor

ATTEST

Lisa Kunz, City Clerk

CITY SEAL

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney



CITY OF GREAT FALLS

AND

GREAT FALLS INTERNATIONAL AIRPORT AUTHORITY

LEASE AGREEMENT

April 1, 2017 - August 30, 2047

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CITY OF GREAT FALLS
And
THE GREAT FALLS INTERNATIONAL AIRPORT AUTHORITY
LEASE AGREEMENT

This Lease Agreement (“Agreement”) is made and entered into as of the 1st day of April, 2017, by and between the Great Falls International Airport Authority, a regional airport authority owning and operating the Great Falls International Airport, 2800 Terminal Drive, Great Falls, Montana 59404 (“the Authority”) and the City of Great Falls, Montana, a municipality with principal offices located at 2 Park Drive South, Great Falls, Montana (“City”).

Whereas, the Authority owns and operates the Great Falls International Airport (“the Airport”) and the property on which it is located; and

Whereas, City owns that certain improvement on the Airport described as the 911 Emergency Communications Center (ECC) which houses the Emergency Operations Center (EOC) and the Emergency Coordination Center (ECoC). The EOC and the ECoC operate for the benefit of the City, Cascade County, Malmstrom Air Force Base, the Montana Air National Guard (MANG), and (to some extent) the Authority; and

Whereas the Authority and the City as public entities have a common interest in cooperating to efficiently utilize public funds and to benefit of the public; and

Whereas the City contends it provides services and benefits to the Authority as part of that cooperative interest, including but not limited to:

1. Supporting the Authority’s public safety officers in their activities pursuant to the Authority’s security and disaster plans;
2. Joint training police and fire exercises for, including preparation of Situation Manual;
3. Fire/rescue services for in-flight emergencies, ground emergencies or airport or aircraft disasters;
4. Fire code enforcement for terminal and other airport property renovations;

5. Assistance with planning and coordination in conjunction with the Local Emergency Planning Committee; and

6. Coordination with street and traffic control for maintenance of City-owned property, including City reimbursement of assessments.

Whereas, the Authority contends it provides services and benefits to the City as part of that cooperative interest, including but not limited to:

1. Performing maintenance, repair, expansion and snow removal of all roads within airport boundaries serving FedEx, MANG and the public's use of airport facilities, including over 360,000 annual commercial service passengers;
2. Performing maintenance, repair, expansion and snow removal of the airport entry road providing access to airport facilities and the ECC;
3. Partnering with the City on maintaining and expanding the missions of MANG located at the Airport, including providing MANG with over 500 acres for their base in exchange for firefighting services;
4. Providing MANG better access by fully funding the entry and exit road expansion and intersection improvements to provide more capacity for the MANG entry and exit gate and the terminal loop exit;
5. Coordination with the City on the closure of Airport Avenue B as part of the Authority's plans, which project will enhance capacity to the MANG intersections while retaining access by local property owners who had used Airport Avenue B;
6. Providing significant economic development to the region, estimated at more than 2,100 jobs and \$250,000,000 annually by the Montana Department of Transportation;
7. Encouraging growth in property tax collections by fostering tenant development at the airport; and
8. Incorporating into its master plan future improvements to the Airport that will benefit the region's citizens.

Whereas, the City has made a substantial investment in the ECC and the parties desire to provide for transfer or disposition of the ECC should certain events occur during the term of this Agreement; and

Whereas, as part of the continuing cooperative interests of the parties the Authority desires to lease to the City, on a long-term basis, that portion of the Airport on which the ECC is located, and the City desires to lease the same from the Authority; and

Whereas, the parties desire to memorialize their agreement in writing.

Now, therefore, it is hereby agreed by and between the parties as follows:

1. Property and Term. The Authority hereby leases to the City the property described on "Exhibit A" attached hereto. This Lease commences as of the date hereof and is for a term of thirty years and six months ("the Initial Term").

2. Renewal Option. If this Agreement is not in default at the expiration of the Initial Term, the City shall have an option to renew this Agreement for two additional five (5) year terms on the same terms and conditions as the Initial Term, except for the rent and renewal term period. Exercise of each option must be made by providing written notice to the Authority not less than six (6) months prior to the expiration of the then applicable term.

3. Permitted Uses and City's Obligations. The premises may be used by the City in its sole discretion for any lawful public purpose.

City agrees that no hazardous or unlawful materials, or fertilizers or explosives, will be permitted in or stored upon the leased premises, other than in the usual course of use and operation of City public safety, emergency and administrative buildings. Except as prohibited by law, the Authority will, upon notice, have reasonable rights of access and inspection to enforce the provisions of this Agreement. For purposes of this Agreement, "hazardous materials" shall mean asbestos or any toxic, dangerous or hazardous waste, substance or material under the Comprehensive Environmental Response, Compensation and Liability Act or the Resource Conservation and Recovery Act, as these laws are now in effect or as may be hereafter amended, or any other federal state or local statute, law, rule, ordinance, regulation or code which addresses such topics.

City agrees to cause to be removed from the leased premises, at City's expense, all waste, garbage and rubbish. City agrees not to deposit the same, except temporarily in connection with the collection for removal, on any part of the leased premises or other Airport property.

City agrees to pay all costs of utilities, maintenance, snow removal and other such services that may be necessary or required in the use, operation or maintenance of the leased premises and all City-owned improvements; provided, however, that City is hereby given the right to connect to electrical utility sources as City deems necessary or as may be required, with such connection to be at City's sole expense and cost.

4. Rental Fees. In exchange for use of the leased premises during the Initial Term, and as sole rent for the leased property, the City agrees to construct for the Authority the new entry road as shown in Exhibit B hereto at a cost to the City not to exceed \$104,400. If the cost to the City to complete the new entry road exceeds that amount, the Authority shall pay to the City the amount of the excess cost provided the City provides the Authority a verified total cost tabulation for the project within ninety (90) days following project completion (“the Verified Costs”). Other than the construction of the new entry road, the City undertakes no responsibility to provide or ensure access to other properties which may be served by the new entry road.

Should this Agreement be terminated prior to expiration of the Initial Term pursuant to Section 6, the Authority shall pay the City the unamortized portion of the Verified Costs as calculated on a straight-line basis over the Initial Term (“the Unamortized Cost Payment”). Such Unamortized Cost Payment shall be due within 60 days of lease termination.

The Rental Rate during any Additional Term shall equal the lowest ground rental rate paid per square foot of leased area by a commercial non-airfield tenant at the time of the Agreement expiration and shall be paid annually in advance of the first business day of February each year. The current rental rate which was used to calculate the term of the lease given the cost of the new entry road, is \$.12 per square _____.

5. Termination, Default, Assignment and Transfer. Absent early termination as permitted herein, this Agreement will terminate at the end of the Initial Term unless the option for an extension is exercised. Upon termination, whether at the end of the applicable term or early termination for any cause or reason, City will have no further right or interest in the leased real property.

The default by a party in the performance of any covenant or agreement required of it under this Agreement and the failure of that party to remedy such default within ninety (90) days following written notice from the non-defaulting party will constitute an act of default under this Agreement that provides a basis for termination unless timely cured.

Failure of a party to declare a termination upon the occurrence of a default or defaults will not operate as a waiver of that or any other default or preclude that party from terminating this Agreement based upon such failure.

City may not assign or transfer this Agreement or sublease the premises without the prior written consent of the Authority, which consent will not be unreasonably withheld.

During each term under this Agreement and upon termination of this Agreement, the City shall retain ownership of the ECC building and site improvements on the leased premises. The disposition of said building and site improvements shall follow the procedures in Section 6. below.

6. Early Termination. For the first five years of the Term, either party may only terminate this Agreement under the provisions below. After the initial five-year period, it is recognized that development of the Airport or the City's future needs may require termination or modification of this Agreement prior to the scheduled expiration date. Therefore, it is agreed by and between the parties that each party shall have the right to terminate this Agreement upon providing forty-eight (48) months' notice if, as to the Authority, in its sole discretion, material portions or the entirety of the leased premises are required for an aviation-related major capital improvement that is depicted on an approved airport master plan, or, as to the City, should conditions arise which in the sole discretion of the City make it advisable to the City to terminate this Agreement.

If termination is caused by the Authority's determination and termination requires removal of all or a portion of the existing ECC or the inability to use the ECC for the City's purposes, then the Authority shall pay to the City a "Termination Payment" of \$2,000,000 if termination occurs within the first fifteen years of the Initial Term I. If the termination occurs based on the Authority's determination, after the first fifteen years of the Initial Term but prior to the expiration date of the Initial Term, the Authority shall pay the City \$1,000,000.

If the City terminates this Agreement within the first fifteen years of the Initial Term the City may salvage the ECC and site improvements and remove them at the City's cost and discretion or attempt to sell them. The City shall retain all proceeds of such salvage, sale or disposal. If the City terminates this Agreement as set forth herein, in its determination the City shall be allowed a period of sixty (60) months to effect a sale or assignment of the ECC and site improvements and the Authority agrees to cooperate with City in its sale or assignment efforts.

In the event of termination by the Authority based on its determination of need for the leased property and upon payment of the indicated amount, the ownership of all permanent site improvements shall vest with the Authority. Any payment based on the Authority's determination to terminate this Agreement prior to its scheduled expiration due to need for the premises are in addition to, and not in lieu of, the Unamortized Cost Payment that may be due under this Agreement.

In the event of termination of this Agreement, all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of such termination and replacement cost obligations) shall thereupon terminate, and if City is not in default under any of the provisions of this Agreement on the effective date of termination, any prepaid rent by City shall, to the extent allocable to any period subsequent to the effective date of the termination, be refunded to City, within thirty (30) calendar days thereafter.

7. Title to Improvements. Title to any building, facility or permanent improvements on the leased premises shall remain with the City except as herein provided. During the

Term of this Agreement, the City shall have the right to sell the improvements and assign this Agreement pursuant to Sections 5 and 6 hereto. Upon expiration of this Agreement pursuant to the Term and/or Renewal Terms identified in Paragraphs 1 and 2 above, providing the City is not in default, the Agreement has not been terminated, or has terminated based on the Authority's determination of need of the leased premises and the Authority has not made the required payment, the City shall have the option to attempt to negotiate a new lease agreement (the Authority being under no obligation to discuss, negotiate or accept any proposal) or to notify Authority of its intent to sell or remove the improvements on the leased premises. In the event that more than sixty (60) days elapses after expiration or termination of this Agreement and none of the foregoing events or conditions has occurred, title to remaining facilities shall vest in the Authority. This sixty (60) day period may be extended by mutual written agreement, and requests for extension will not be unreasonably withheld by Authority.

8. Default. If either Party fails or refuses to perform or observe any of the covenants contained herein, and such default shall continue for a period of ninety (90) days after the non-defaulting party has notified in writing the defaulting party of the default hereunder, then in any of said cases or events, the parties may, at their option, pursue any other applicable remedy available under the laws of the State of Montana. In the case of City's default, the Authority may, at its option, immediately or at any time thereafter, without demand or notice, enter into and upon said leased property without prejudice to or waiver of any remedy which otherwise might be available. In this connection, it is agreed that failure of either party to declare this lease agreement terminated upon the default of the other for any of the reasons set out be a waiver or estoppel shall not operate to bar or destroy the right of the non-defaulting party to declare this Agreement null and void by reason of any subsequent violation of the terms of this Agreement.

9. Remedies Cumulative. The remedies available herein shall not be deemed exclusive, and either party may, at its option, pursue any other applicable remedy available under the laws of Montana.

10. Improvements and Maintenance. In addition to those currently existing on the real property, the City may make and maintain improvements to the leased premises. Absent application of any other provision of this Agreement, fixtures attached to the leased premises (such as antennae, generators, etc.) will, on termination of the Agreement, remain and become the property of the Authority unless the City removes the fixtures and returns the leased premises to their pre-improved condition, reasonable wear and tear excepted.

City shall throughout the term of this Agreement at its own cost and without any

expense to Lessor, keep and maintain the leased premises in good condition and repair. The Authority shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the leased premises or any improvements thereon. City further agrees to repair and restore damage to the demised premises caused by the negligence of City, its officers, employees and agents, or any sublessee, tenant or assignee of City and its officers, employees and agents.

11. Special Conditions. City shall comply with all applicable federal, state and local laws, rules and regulations affecting its use of the leased premises, the conduct of its affairs and the safe and efficient operation of the Airport.

With the Authority's prior written consent, and consistent with Authority rules and requirements, City shall have the right to place such signs or advertising in or on the leased premises as City may deem appropriate in the conduct of its business.

12. Insurance or Risk Pool Indemnity Coverage. The City may, at its sole option, obtain insurance or statutory risk pool indemnity coverage for liability for the interests of the Authority in the leased premises.

City will be responsible for obtaining any coverage for City's property and interests under this Agreement. In the event City obtains fire and extended peril coverage for the property of the Authority, the Authority will be included as an additional insured or covered party under any such policy.

In addition to such property coverage as City may procure, City will obtain and maintain during the term hereof the following coverage and in the following minimum amounts:

public liability coverage - \$1,000,000.00
(personal injury and property damage)
premises coverage - \$ 500,000.00

Upon request of Authority, City agrees to provide the Authority with current certificates of coverage naming the Authority as an additional insured under such policy or policies and ensure that such policy or policies, certificate and information contain a thirty-day cancellation notice, the policy number or numbers, dates of coverage, limits of liability and perils covered.

13. Indemnification. To the extent that the law allows, including but not limited to the application of Mont. Code Ann. §2-9-108, the Parties agree to indemnify and hold harmless the other, its directors, agents and employees from all claims, liens, suits and

actions of every name and description brought against them, or any of them, which may result, for or on account of, any injuries or damage received or sustained by any person or property, by or from the acts of the indemnifying party, its agents, servants or employees, in connection with the lease, use or occupancy of the leased premises, unless such injury or damage is caused solely by the actions of the other party, its agents or employees.

14. Liens. The Parties shall keep the leased premises free and clear of any and all contractor's liens and other liens for or arising out of or in connection with any work or labor done, services performed or materials or appliances used or furnished for or in connection with any operations of that Party, including any alterations, improvements, repairs or redecoration which that Party may make or permit or cause to be made on the leased premises.

15. Nondiscrimination. In connection with this Agreement, the Parties agree that no person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin shall be excluded from participation in, denied benefits of or be otherwise subject to discrimination in the performance of this Agreement. The Parties acknowledge that it is the policy of the Department of Transportation that minority business enterprises as defined in 49 C.F.R., Part 23, shall have the maximum opportunity to participate in the performance of agreements as defined in 49 C.F.R. 23.5. Consequently, this Lease is subject to 49 C.F.R., Part 23, as applicable. Furthermore, in the construction of any improvements on, over or under the leased premises and the furnishing of services thereon, no person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin shall be excluded from participation in, denied the benefits of or otherwise be subject to discrimination. The City shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Acts of 1964, and as said Regulations may be amended.

16. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Authority and City relative to the matters referred to herein. All prior negotiations, agreements or understandings are superseded hereby.

17. Mediation. The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by mediation conducted through a third party, the identity upon which the parties agree. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute

resolution procedures.

18. Attorney Fees. In the event of a dispute or disagreement in regard to this Agreement, including the right to indemnification or the right to attorney fees incurred in seeking indemnification, the prevailing party will be entitled to recover as a cost of suit or action its reasonable attorney fees and costs.

19. Governing Law and Venue. This Agreement is to be construed in accordance with the laws of Montana. Venue for any proceedings hereunder shall be in Cascade County, Montana.

20. Invalidity. The invalidity or ineffectiveness for any reason of any provision of this Agreement shall in no way affect the validity or enforceability of the remaining portion thereof and any invalid or unenforceable provisions shall be deemed severed from the remainder of the Agreement.

21. Waiver. The waiver by the Parties of, or the failure of the Parties to take action with respect to any breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of such term, covenant or condition as to any other or subsequent breach of same, or any other term, covenant or condition herein contained.

22. Effect of City's Holding Over. Any holding over after the expiration of the term of this Agreement shall be construed to be a tenancy from month to month, at the same monthly rental as required pursuant to the terms of this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable.

23. Notices. Any notices or demands to be served upon the parties hereto shall be in writing and shall be deposited in the United States mail, sent certified, return receipt requested, addressed to the parties at the addresses first above written or such other place as the parties may hereafter designate in writing.

24. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns.

25. Time of the Essence. Time is of the essence of this Agreement, and of each and every provision hereof.

Dated the date and year first above written.

GREAT FALLS INTERNATIONAL

AIRPORT AUTHORITY:

By _____

Its _____

CITY OF GREAT FALLS

Bob Kelly, Mayor

ATTEST:

(Seal of the City)

Lisa Kunz, City Clerk

REVIEWED FOR LEGAL CONTENT*

Sara R. Sexe, City Attorney

*By law, the City Attorney may only advise or approve contract or legal document language on behalf of the City of Great Falls, and not on behalf of other parties. Review and approval of this document was conducted solely from the legal perspective, and for the benefit, of the City of Great Falls. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.