

RESOLUTION 10390

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, APPROVING THE BUSINESS IMPROVEMENT DISTRICT'S APPLICATION FOR USE OF DOWNTOWN URBAN RENEWAL TAX INCREMENT FINANCING (TIF) DISTRICT FUNDS

* * * * *

WHEREAS, under the provisions of the Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended, an urban renewal district may be established so that a municipality may undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such district, and apply all or a portion of the tax increment derived from such district to the payment of costs of such urban renewal projects; and

WHEREAS, the City Commission, pursuant to Resolution No. 9961, duly adopted on March 6, 2012, created an urban renewal area as the Downtown Urban Renewal District; and

WHEREAS, pursuant to Ordinance No. 3088, duly adopted on May 15, 2012 after a duly called and noticed public hearing thereon adopted the Downtown Urban Renewal Plan containing a tax increment financing provision and pursuant to Ordinance 3222, duly adopted on October 6, 2020 after a duly called and noticed public thereon adopted a revision to the Downtown Urban Renewal Plan; and

WHEREAS, in April 2013, the City Commission approved the revised Tax Increment Application and Forms that outline eligible activities under state statute, the application process to be followed, and criteria to be used when evaluating applications; and,

WHEREAS, the purpose of the Downtown Tax Increment Financing District is to stimulate revitalization and redevelopment of the Central Business District; and,

WHEREAS, Great Falls Business Improvement District has proposed the maintenance and replacement of boulevard trees within the Downtown Urban Renewal District, with eligible tax increment financing expenses and has applied for such funds; and

WHEREAS, City Staff has assessed the project in relation to the goals and objectives of the Downtown Urban Renewal District Plan, evaluated the project based on the evaluation criteria, and determined that expenditure of TIF funds up to the amount of \$125,000 to be paid out in installments of up to \$25,000 per year for 5 years, is warranted for the purpose of paying for the maintenance and, if necessary, replacement of boulevard trees and sidewalk tree grates within the Downtown Urban Renewal District.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Great Falls, Montana, that the Business Improvement District's Application for use of Downtown Urban Renewal Tax Increment Financing District Funds is approved in the amount of up to \$25,000 for five years (up to \$125,000 total) for the purpose of paying for the maintenance and, if necessary, replacement of boulevard trees and sidewalk tree grates within the Downtown Urban Renewal District.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, April 20, 2021.

Bob Kelly, Mayor

ATTEST:

Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

TAX INCREMENT GRANT AGREEMENT

THIS TAX INCREMENT GRANT AGREEMENT is dated as of _____, 2021 (this “**Agreement**”), between the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the “**City**”), and GREAT FALLS BUSINESS IMPROVEMENT DISTRICT (the “**Grantee**”).

WITNESSETH:

WHEREAS, under the provisions of the Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “**Act**”), an urban renewal district may be established so that a municipality may undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such district, and pay or reimburse the costs of such urban renewal projects; and

WHEREAS, the City Commission of the City (the “**Commission**”), pursuant to Ordinance No. 3088 adopted by the Commission on May 15, 2012, as amended by Ordinance No. 3222 adopted by the Commission on October 6, 2020 (the “**Ordinance**”), created the Downtown Urban Renewal District (the “**District**”) and adopted the Downtown Urban Renewal Plan (the “**Plan**”) containing a tax increment financing provision; and

WHEREAS, the Grantee submitted an Application for City of Great Falls Tax Increment Financing (TIF) Funds dated January 25, 2021 (the “**Application**”) for tax increment financing assistance with respect to a streetscape project consisting of tree trimming, tree well maintenance, and replacement of trees in need within the boundaries of the District, all in coordination with the City Forester (the “**Project**”).

WHEREAS, the City has determined that the Project constitutes an urban renewal project under and pursuant to the Act and the Plan and that it is appropriate to pay or reimburse the Grantee for the costs of the Project with tax increment (as defined in the Act) of the District (“**Tax Increment**”), subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, the City and the Grantee, each in consideration of the representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

Section 1. Grantee’s Undertakings.

1.1. Competitive Bidding; Prevailing Wage Rates; and Preference for Montana Residents. The Grantee understands that the City is obligated to follow certain laws with respect to the expenditure of public funds, which includes Tax Increment. The Grantee agrees that in the awarding of contracts or subcontracts for the Project that (i) it will and it will cause its contractors to competitively bid the contracts and subcontracts for each of component of the Project; (ii) it will and it will cause its contractors and subcontractors to pay the Prevailing Wage Rates on such contracts or subcontracts related to the Project; (iii) it will and it will cause its contractors and subcontractors will give preference to the employment of bona fide residents of the State of Montana (the “**State**”), as required by Montana Code Annotated Section 18-2-403 and as such term is defined by Montana Code Annotated Section 18-2-401(1) and the Administrative Rules of the State, including but not limited to A.R.M. 24.17.147, obliging the Grantee and its contractors and subcontractors to hire 50% bona fide State residents with respect to the installation and construction of the Project; and (iv) when making assignments of work, it will and it will cause its contractors and subcontractors to use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned. The Grantee will provide to the City all documentation requested to verify the compliance of the Grantee and its contractor and subcontractors with the foregoing

requirements. Failure of the Grantee and its contractor and subcontractors to pay the Prevailing Wage Rates with respect to the Project shall be considered a breach of this Agreement and the City shall be entitled to exercise any and all measures to assure compliance and retroactive compensation plus interest to employees not paid in accordance with this Agreement, and recovery of any penalty or fine assessed by the State attributed to any failure to pay Prevailing Wage Rates. Additionally, the Grantee acknowledges that a violation of these requirements shall result the City not being able to pay or reimburse the Grantee for costs of the Project. **“Prevailing Wage Rates”** means (i) Montana Prevailing Wage Rate for public works projects are published from time to time by and available from the Montana Department of Labor and Industry, Research and Analysis Bureau, P.O. Box 1728, Helena, Montana 59624, telephone number (800) 541-3904; and (ii) applicable Federal Prevailing Wage Rates for public works projects are published from time to time by and available from <https://www.dol.gov/whd/govcontracts/PrevailingWageResources.htm>.

1.2. Permits. The Grantee will obtain in a timely manner all required permits, licenses and approvals, and will meet all requirements of all federal, State and local laws, rules, regulations and ordinances, which must be obtained or met in connection with the Project.

1.3. Nondiscrimination. The Grantee agrees that all hiring by the Grantee and its contractors and persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or other class protected by State and/or federal law.

Section 2. Reimbursement. The Grantee shall undertake the Project over a five-year period, and the City agrees to pay or reimburse the Grantee for costs of the Project in five annual installments not exceed \$25,000 per year and \$125,000 in the aggregate. Reimbursement for costs of the Project will be based on expenses actually paid or incurred by the Grantee. In connection with each request for payment or reimbursement with respect to the Project, the Grantee shall submit a certificate substantially in the form attached as Exhibit A hereto, along with copies of all invoices and other documentation related to such request. The City may reject, in its sole discretion, any invoice to the extent it is not related to the Project. The obligation of the City to pay or reimburse the Grantee for costs of the Project shall be further subject to (i) the availability, in the sole discretion of the City, of sufficient Tax Increment for purposes of such payment or reimbursement and (ii) compliance by Grantee with its representations, warranties and undertakings as set forth in this Agreement.

Section 3. Limitation of Liability; Release and Indemnification;

3.1. Limitation on City Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the City contained in this Agreement or any other document executed by the City in connection with the Project will give rise to any pecuniary liability of the City or a charge against its general credit or taxing powers, or will obligate the City financially in any way except with respect to the Tax Increment.

3.2. Release and Indemnification. The Grantee releases the City and all Commission members, and all officers, agents, servants and employees of the City (the **“Indemnified Parties”**) from, and covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss, damage, cost (including reasonable attorneys’ fees), claim, demand, suit, action or other proceeding whatsoever arising or purportedly arising out of, or resulting or purportedly resulting from, the Project. No member, officer or employee of the City shall be personally liable to the Grantee in the event of any default under or breach of this Agreement by the City, or for any amount that may become due to the Grantee for any obligation issued under or arising from the terms of this Agreement.

Section 4. General Provisions. No party may assign any rights or privileges or delegate any duties or obligations under this Agreement without first obtaining the written consent of the other party hereto. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Grantee. This Agreement and the legal relations between the parties hereto will be governed by and construed in accordance with the laws of the State of Montana, without giving effect to any choice of law statutes, rules, or principles. All legal actions arising from this Agreement shall be filed in the District Court of the State of Montana in and for Cascade County, Montana or in the United States District Court with jurisdiction in Cascade County, Montana. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the _____ day of _____, 2021.

CITY OF GREAT FALLS, MONTANA

[SEAL]

By _____
Gregory T. Doyon, City Manager

Attest:

Lisa Kunz, City Clerk

APPROVED 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.

GREAT FALLS BUSINESS IMPROVEMENT
DISTRICT

Name:
Title:

EXHIBIT A

REIMBURSEMENT REQUEST

TO: City of Great Falls, Montana (the “City”)
FROM: Great Falls Business Improvement District (the “Grantee”)
SUBJECT: Project Payment and Reimbursement

The undersigned, as an authorized representative of the Grantee, intends that this certificate will satisfy the requirements of Section 2 of the Tax Increment Grant Agreement, dated as of [_____], 2021, between the City and the Grantee (the “Agreement”), and does hereby certify on behalf of the Grantee that:

- (a) the Project expenditures for which payment or reimbursement are requested, are attached hereto, including copies of all invoices and other supporting documentation;
- (b) the amounts requested have been paid or incurred by the Grantee with respect to the Project and, to the best of my knowledge, the fair value of such services or materials is not exceeded by the amounts requested to be paid or reimbursed;
- (c) the cost of work to be paid or reimbursed has been competitively bid and the Grantee, contractor or subcontractor has paid Montana Prevailing Wage Rates for such work; and
- (d) no part of the amounts requested to be paid or reimbursed, as stated in this certificate, has been or is the basis for payment or reimbursement in any previous or pending request.

Dated: _____, 20__

GREAT FALLS BUSINESS IMPROVEMENT DISTRICT

By: _____
Name: _____