

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Great Falls, Montana (the “City”), hereby certify that the attached resolution is a true copy of Resolution No. 10399 entitled: “A RESOLUTION APPROVING AN INDUSTRIAL DEVELOPMENT PROJECT IN THE GREAT FALLS INTERNATIONAL AIRPORT TAX INCREMENT FINANCING INDUSTRIAL DISTRICT; APPROVING THE USE OF TAX INCREMENT REVENUES AND TAX INCREMENT REVENUE BONDS TO PAY, REIMBURSE OR FINANCE COSTS OF ASSOCIATED INFRASTRUCTURE IMPROVEMENTS; AND MAKING A REIMBURSEMENT DECLARATION WITH RESPECT THERETO” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a regular meeting on May 18, 2021, and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commissioners voted in favor thereof: _____

_____ ; voted against the same: _____
_____ ; abstained from voting thereon: _____
_____ ; or were absent: _____.

WITNESS my hand and seal officially this ____ day of _____, 2021.

City Clerk

RESOLUTION NO. 10399

A RESOLUTION APPROVING AN INDUSTRIAL DEVELOPMENT PROJECT IN THE GREAT FALLS INTERNATIONAL AIRPORT TAX INCREMENT FINANCING INDUSTRIAL DISTRICT; APPROVING THE USE OF TAX INCREMENT REVENUES AND TAX INCREMENT REVENUE BONDS TO PAY, REIMBURSE OR FINANCE COSTS OF ASSOCIATED INFRASTRUCTURE IMPROVEMENTS; AND MAKING A REIMBURSEMENT DECLARATION WITH RESPECT THERETO

BE IT RESOLVED by the City Commission (the “Commission”) of the City of Great Falls, Montana (the “City”), as follows:

Section 1. Recitals.

1.01. Under the provisions of the Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), an industrial district may be established so that a municipality may undertake industrial infrastructure projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such district, issue its bonds to pay the costs of such projects, and pledge to the repayment of the bonds all or a portion of the tax increment derived from such district.

1.02. The Commission, pursuant to Ordinance No. 3022, duly adopted on November 5, 2008, and revised by Ordinance No. 3043, duly adopted on September 1, 2009 (as such may be further amended and supplemented, (the “Ordinance”), created an industrial district known as the Great Falls International Airport Tax Increment Financing Industrial District (the “District”) and adopted the Great Falls International Airport Tax Increment Financing Industrial District Plan (the “Plan”) containing a tax increment financing provision. As set forth in the Plan, the purpose of the District is to attract, grow and retain secondary, value-adding industries and the City has identified numerous infrastructure improvements necessary in order to further the objectives of the City and the Authority with respect to the development of the District.

1.03. The Great Falls International Airport Authority, a regional airport authority created by the City and Cascade County, Montana (the “Authority”), proposes to undertake a multi-year, multi-phase development project on a 300-acre site in the District located at 4201 Ulm North Frontage Road Great Falls, Montana 59404, which shall consist of the construction of large metal warehouse buildings to be initially owned by the Airport and a private investment partner and which will be subdivided into smaller bays, converted into condominium units and leased and/or sold primarily to third parties engaged in secondary, value-adding industries in furtherance of the purposes of the District as set forth in the Plan (the “Project”). The first phase of the Project will consist of the construction of a single Warehouse Building.

1.04. The Authority submitted a City of Great Falls Tax Increment Financing (TIF) Application for Funds dated February 12, 2021 for tax increment financing assistance with respect to certain qualified improvements associated with the Project, consisting of design and

construction of electric/data service lines, water lines, sewer lines, storm sewer improvements, and roadway approaches (the “Infrastructure Improvements”), at an estimated cost of \$762,510.

1.05. The City’s Finance, Planning and Community Development, Park and Recreation and Public Works department heads and the Assistant City Manager (the “City Staff”) have jointly reviewed and evaluated the Project and the Infrastructure Improvements and made a report and recommendation (the “City Staff Report”) to the effect that the Project and the Infrastructure Improvements would be beneficial to the public and would result in the rehabilitation and redevelopment of the District, that the Infrastructure Improvements are eligible for tax increment financing in accordance with the Act and the purpose and goals of the District and the Plan, and that the City enter into a development agreement with the Authority with respect to the Project and the Infrastructure Improvements substantially in the form attached hereto as Exhibit A (the “Development Agreement”).

1.06. On February 23, 2021, the City Planning Board (the “Planning Board”) received, reviewed and considered the City Staff Report, as well as information from a representative of the Developer and has made recommendation to the Commission to the effect that Project conforms to the City’s comprehensive plan and the City’s Growth Policy adopted in accordance with Title 76, Chapter 1, and that the Project and Infrastructure Improvements should be approved as an industrial development project and that tax increment revenues of the District be used to finance the Infrastructure Improvements.

Section 2. Findings. Based on the foregoing representations and subject to the public hearing called for herein, the Commission hereby finds, with respect to the Project (including the Infrastructure Improvements), as follows:

- (a) no persons will be displaced from their housing by the Project (including the Infrastructure Improvements);
- (b) the Plan and the Project (including the Infrastructure Improvements) conform to the City’s growth policy;
- (c) the Plan and the Project (including the Infrastructure Improvements) will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment in the District by private enterprise; and
- (d) taking into account the use of tax increment revenues and the proceeds of tax increment revenue bonds, there is a sound and adequate financial program for the payment, reimbursement and financing by the City of the costs of the Infrastructure Improvements; and
- (e) the Project (including the Infrastructure Improvements) constitutes an industrial development project within the meaning of the Act and the Plan.

Section 3. Approval of the Project as an Industrial Development Project. The Commission hereby approves the Project as an industrial development project under the Act and the Plan. The Project, including the Infrastructure Improvements, is contemplated by and within the scope of the Plan, and the Infrastructure Improvements are eligible for tax increment financing under the Act.

Section 4. Approval of Development Agreement. The Commission hereby approves the Development Agreement. The City Manager and City Clerk are hereby authorized to execute and deliver the Development Agreement, substantially in the form presented to the Commission, with such changes (including to the exhibits attached thereto) as may be approved by the City Manager, in consultation with Dorsey & Whitney LLP, as bond counsel, which approval shall be deemed made by the execution thereof. The execution of the Development Agreement shall be a condition precedent to the reimbursement of the Infrastructure Improvements.

The City intends to pay or reimburse the Authority for costs of the Infrastructure Improvements using tax increment revenues on hand and proceeds of tax increment revenue bonds to be issued by the City (the "Bonds") in accordance with the terms and conditions set forth in the Development Agreement. The payment terms of any such Bonds (including principal amount, interest rates and maturity schedule) shall be reflected in a bond resolution to be approved and adopted by Council, and shall take into account the tax increment revenue of the District expected to be received by the City and available to pay debt service.

Section 5. Reimbursement Expenditures.

5.01. Regulations. The City may issue tax-exempt Bonds in one or more series (the "Bonds") to finance all or a portion of the costs of the Infrastructure Improvements and pay costs associated with the financing. The United States Department of Treasury has promulgated regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the Authority for project expenditures paid by the Authority prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

5.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iii) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Infrastructure Improvements have been paid by the City before the date 60 days before the date of adoption of this Resolution.

5.03. Declaration of Intent. The City reasonably expects that it may reimburse the expenditures made for the Infrastructure Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$652,780 after the date of payment of all or a portion of the costs of the Infrastructure Improvements. All reimbursed expenditures shall be

capital expenditures, a cost of issuance of the bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the portion of the Infrastructure Improvements to be financed with the proceeds of Bonds, other than pursuant to the issuance of the Bonds. The statement of intent contained in this Resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.05. Reimbursement Allocations. The City's Finance Director shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Infrastructure Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Infrastructure Improvements and shall specifically identify the actual original expenditure being reimbursed.

Passed and adopted by the City Commission of the City of Great Falls, Montana, on this 18th day of May, 2021.

Bob Kelly, Mayor

Attest:

Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

EXHIBIT A

DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is dated as of May ____, 2021, between the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the “**City**”), and the GREAT FALLS INTERNATIONAL AIRPORT AUTHORITY, a regional airport authority created by the City and Cascade County, Montana (the “**Authority**”) for the ownership and operation of the Great Falls International Airport (the “**Airport**”).

WITNESSETH:

WHEREAS, under the provisions of the Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “**Act**”), an industrial district may be established so that a municipality may undertake industrial infrastructure projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such district, issue its bonds to pay the costs of such projects, and pledge to the repayment of the bonds all or a portion of the tax increment derived from such district; and

WHEREAS, the City Commission, pursuant to Ordinance No. 3022, duly adopted on November 5, 2008, and revised by Ordinance No. 3043, duly adopted on September 1, 2009 (as such may be further amended and supplemented, (the “**Ordinance**”), created an industrial district known as the Great Falls International Airport Tax Increment Financing Industrial District (the “**District**”) and adopted the Great Falls International Airport Tax Increment Financing Industrial District Plan (the “**Plan**”) containing a tax increment financing provision; and

WHEREAS, as set forth in the Plan, the purpose of the District is to attract, grow and retain secondary, value-adding industries and the City has identified numerous infrastructure improvements necessary in order to further the objectives of the City and the Authority with respect to the development of the District; and

WHEREAS, the Authority proposes to undertake a multi-year, multi-phase development project on a 300-acre site in the District located at 4201 Ulm North Frontage Road Great Falls, Montana 59404, which shall consist of the construction of large metal warehouse buildings (the “**Warehouse Buildings**”) to be initially owned by the Airport and a private investment partner and which will be subdivided into smaller bays (the “**Warehouse Bays**”), converted into condominium units and leased and/or sold primarily to third parties engaged in Secondary Industries (as defined herein) in furtherance of the purposes of the District as set forth in the Plan (the “**Project**”); and the first phase of the Project will consist of the construction of a single Warehouse Building for such purposes (the “**2021 Project**”).

WHEREAS, the Authority submitted a City of Great Falls Tax Increment Financing (TIF) Application for Funds dated February 12, 2021 (the “**Application**”) for tax increment financing assistance with respect to certain qualified improvements associated with the Project, consisting of design and construction of electric/data service lines, water lines, sewer lines, storm sewer improvements, and roadway approaches as further described on Exhibit A hereto (the “**Infrastructure Improvements**”); and

WHEREAS, the City has determined, based on representations of the Authority, that the Project and the Infrastructure Improvements constitute an industrial development project (as defined in the Act) under the Act and the Plan and that the Infrastructure Improvements are authorized by the Plan, and pursuant to Resolution No. 10399, duly adopted on May 18, 2021, the City is authorized to enter into this Agreement which sets forth the obligations of the City and the Authority with respect thereto.

NOW THEREFORE, the City and the Authority, 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. Definitions; Rules of Interpretation; Exhibits.

1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings assigned to them, respectively:

“**Act**” has the meaning given such term in the recitals.

“**Actual Taxable Value**” means the taxable value (as defined in the Act) of the Taxable Property as shown on or calculated from the assessment roll last equalized before the date of reference.

“**Agreement**” means this Agreement, including any amendment hereof or supplement hereto entered into in accordance with the provisions hereof.

“**Authority**” has the meaning given such term in the preamble.

“**Base Taxable Value**” means the Actual Taxable Value as of January 1, 2008, as such value is adjusted from time to time in accordance with the Act.

“**Bond Resolution**” means a resolution to be adopted by the Commission pursuant to which the Bonds shall be issued.

“**Bonds**” means the Tax Increment Industrial Infrastructure Development Revenue Bonds (Great Falls International Airport Tax Increment Financing Industrial District) to be issued by the City pursuant to this Agreement and the Bond Resolution.

“**City**” means the City of Great Falls, Montana, or any successors to its functions under this Agreement.

“**Commission**” means the City Commission or any successor governing body of the City, however denominated by statute.

“**Department of Revenue**” means the State of Montana Department of Revenue.

“**District**” has the meaning given such term in the recitals.

“Environmental Laws and Regulations” means and includes the Federal Comprehensive Environmental Compensation Response and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401 et seq., all as the same may be from time to time amended, and any other federal, State, county, municipal, local, or other statute, code, law, ordinance, regulation, requirement, or rule which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, code, law, or ordinance.

“Fiscal Year” means the period commencing on the first day of July of any year and ending on the last day of June of the next calendar year, or any other twelve-month period authorized by law and specified by the Commission as the City’s fiscal year.

“Incremental Taxable Value” means the amount, if any, by which the Actual Taxable Value, as of the date of reference, exceeds the Base Taxable Value.

“Indemnified Parties” has the meaning given such term in Section 6.1 hereof.

“Infrastructure Improvements” means those improvements in the District described on Exhibit A hereto.

“Land Use Regulations” means all federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Project Site or the Project, including under the Act with respect to Secondary Industries.

“Ordinance” has the meaning given such term in the recitals.

“Person” means any individual, corporation, partnership, joint venture, association, committee, limited liability company, limited liability partnership, joint stock company, trust, unincorporated organization, or any government or any agency or political subdivision thereof.

“Plan” has the meaning given such term in the recitals.

“Prevailing Wage Rates” has the meaning given such term in Section 3.3 hereof.

“Project” has the meaning given such term in the recitals.

“Project Site” has the meaning given such term in Section 2.2 hereof.

“Secondary Industries” means those industries that transform raw resources into processed substances from which industrial or consumer products may be manufactured.

“State” means the State of Montana.

“Tax Increment” means the amount received by the City pursuant to the Act from the extension of levies of Taxes against the Incremental Taxable Value of the Taxable Property and

will include all payments in lieu of Taxes or beneficial use taxes attributable to the Incremental Taxable Value.

“**Taxable Property**” means all real and personal property located in the District and subject to Taxes.

“**Taxes**” means all taxes levied on an ad valorem basis by any Taxing Jurisdiction against the Taxable Property and includes all payments in lieu of taxes or beneficial use taxes received by the City with respect to the Incremental Taxable Value of the Taxable Property.

“**Taxing Jurisdiction**” means the State, the City, any school district, local government, municipal corporation, political subdivision, or other government entity that levies, during any Fiscal Year during which the tax increment provision of the District is effective under the Act, ad valorem taxes against real or personal property in the District.

“**2021 Project**” has the meaning given such term in the recitals.

“**Unavoidable Delay**” means a delay resulting from a cause over which the party required to perform does not have control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to acts of God, accidents, war, civil unrest, embargoes, strikes, unavailability of raw materials or manufactured goods, litigation and the delays of the other party or its contractors, agents, or employees in the performance of their duties under or incident to this Agreement.

1.2. Rules of Interpretation.

(a) The words “herein,” “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.

(b) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed unless otherwise indicated.

(c) “Or” is not exclusive but is intended to contemplate or encompass one, more, or all of the alternatives conjoined.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A—Infrastructure Improvements

Exhibit B—2021 Project Costs and Sources of Funds

Exhibit C—Form of Authority Requisition

Section 2. Representations, Covenants and Agreements.

2.1. City Representations. The City hereby represents, covenants and agrees as follows:

(a) Subject to the terms and conditions of this Agreement, the City is committed to paying or reimbursing the Authority \$762,510 with respect to the costs of design, engineering, construction and installation of the Infrastructure Improvements as set forth on Exhibit A hereto.

(b) The City is authorized by law to enter into this Agreement, apply Tax Increment funds on hand and, upon adoption of the Bond Resolution, issue Bonds in order to carry out its commitments hereunder.

(c) The State Department of Revenue has advised the City that as of January 1, 2008 the Base Taxable Value of the District was \$107,149.

2.2. Authority Representations. The Authority hereby represents, covenants and agrees as follows:

(a) The Authority is a regional airport authority created by the City and Cascade County, Montana pursuant to Joint Resolution No. 7451 (City) and 80-1 (County) (the “**Joint Resolution**”) for the operation of the Great Falls International Airport pursuant to the provisions of Section 67-11-103, Montana Code Annotated.

(b) The representations and warranties of the Authority in the Application are true and correct as of the date hereof, including with respect to the total investment to be made by the Authority and its private investment partner with respect to the Project and the Infrastructure Improvements.

(c) The Project and the Infrastructure Improvements constitute an industrial development project (as defined in the Act) under the Act and the Plan. Development of the Project will assist the Authority in attracting, growing, and retaining Secondary Industries by providing flexible, cost-effective, industrial buildings that can be subdivided into 1,250 to 30,000+ square foot Warehouse Bays sharing common infrastructure. The industrial buildings will include high ceilings, welding-capable electric, oil -water separators and other industrial features. This type of industrial space is underserved in the City. The Warehouse Bays will be leased and/or sold primarily to third parties engaged in Secondary Industries in furtherance of the purposes of the District as set forth in the Plan.

(d) The Authority has good and marketable title to the land upon which the Project and the Infrastructure Improvements shall be constructed and installed (the “**Project Site**”), free and clear of all liens, encumbrances and defects except such as do not materially affect the value of the Project Site or materially interfere with the use made and proposed to be made of the Project Site by the Authority.

(e) The Authority estimates the total cost of the Infrastructure Improvements is \$762,510 as described in Exhibit A hereto, the total cost of the 2021 Project is \$1,330,000 as described in Exhibit B hereto, and the total cost of the Project is \$12,447,661.

(f) The Authority is not aware of any facts the existence of which would cause the Authority to be in violation of any Environmental Laws and Regulations applicable to the Project Site, the Project, or the Infrastructure Improvements. The Authority has not received from any local, State, or federal official any notice or communication indicating that the activities of the Authority may be or will be in violation of any Environmental Laws and Regulations applicable to the Project Site, the Project or the Infrastructure Improvements.

(g) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prohibited or limited by, conflicts with or results in a breach of the terms, conditions or provisions of the Joint Resolution or any other resolution of the Authority or any evidence of indebtedness, agreement or instrument of whatever nature to which the Authority is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(h) There is no action, suit, investigation or proceeding now pending or, to the knowledge of the Authority, threatened against or affecting the Authority or its business, operations, properties or condition (financial or otherwise) before or by any governmental department, commission, board, authority or agency, or any court, arbitrator, mediator or grand jury, that could, individually or in the aggregate, materially and adversely affect the ability of the Authority to complete the Project.

Section 3. Authority's Undertakings.

3.1. Construction of Project and Infrastructure Improvements. The Authority hereby agrees and commits to the City that it will diligently prosecute to completion the construction of the Project and the Infrastructure Improvements in accordance with the Application, this Agreement, the plans submitted to the City and all applicable federal, State and local laws, rules, regulations and ordinances relating to or governing the development or use of the Project and the Infrastructure Improvements, including applicable Land Use Regulations and Environmental Laws and Regulations. The Authority agrees and commits to the City that construction of the Infrastructure Improvements shall be completed by December 31, 2022 and the 2021 Project shall be completed by December 31, 2023, subject in each case to Unavoidable Delays. The total costs of the Infrastructure Improvements and the 2021 Project are shown on Exhibit A and Exhibit B hereto, respectively. The Authority has the financial capacity to complete the Infrastructure Improvements and the 2021 Project, and the Authority agrees to pay all such costs thereof. If there is an increase in the costs of the Infrastructure Improvements or the 2021 Project from that shown on Exhibit A and Exhibit B hereto that cannot be covered by the contingency amount, the Authority shall notify the City of the increase and submit additional evidence in a form acceptable to the City that the Authority has the financial capacity and/or financial commitments to cover such additional costs and complete the Infrastructure Improvements and the 2021 Project. The Authority acknowledges and agrees that the City is not

responsible for installing, constructing or otherwise providing the Project or the Infrastructure Improvements.

3.2. Preparation, Review and Approval of Construction Plans. In connection with the Project, the Authority, at its sole expense, shall prepare and submit construction plans, drawings, and related documents for each portion of the Project and the Infrastructure Improvements to the appropriate City officials for architectural, engineering or land use review and written approval or permits. The Authority acknowledges that no review or approval by City officials may be in any way construed by the Authority to replace, override or be in lieu of any required review, inspection, or approval by the City Planning and Community Development Office, the City Public Works Department, or any other building construction official review or approvals required by any State laws or local ordinances or regulations.

3.3. Competitive Bidding; Prevailing Wage Rates; and Preference for Montana Residents. The Authority and the City are each obligated to follow certain laws with respect to the expenditure of public funds, which includes Tax Increment funds. The Authority agrees that in the awarding of contracts or subcontracts for the Infrastructure Improvements that (i) it will and it will cause its contractors to competitively bid the contracts and subcontracts for each of component of the Infrastructure Improvements; (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 Infrastructure Improvements; (iii) it will and it will cause its contractors and subcontractors will give preference to the employment of bona fide residents of 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 Authority and its contractors and subcontractors to hire 50% bona fide Montana residents with respect to the installation and construction of the Infrastructure Improvements; 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 Authority will provide to the City all documentation requested to verify the compliance of the Authority, its contractors and subcontractors with the foregoing requirements. Failure of the contractors and subcontractors to pay the Prevailing Wage Rates on the Infrastructure Improvements 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 the Prevailing Wage Rates. Additionally, the Authority acknowledges that a violation of these requirements shall result in the City not being able to pay or reimburse the Authority for costs of the Infrastructure Improvements. “**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>.

3.4. Ownership. The Project will initially be owned by the Airport and a private investment partner. The Warehouse Bays will be leased and/or sold primarily to third parties

engaged in Secondary Industries in furtherance of the purposes of the District as set forth in the Plan. Notwithstanding the foregoing, at all times during the term of this Agreement the Authority shall own the Project Site and the Infrastructure Improvements and shall not sell, assign, convey, transfer, lease, encumber or otherwise dispose of the Project Site or the Infrastructure Improvements without the written consent of the City, subject in each case to ownership of any of the Infrastructure Improvements by the applicable utility service.

3.5. Operation and Maintenance. At all times during the term of this Agreement, the Authority will operate and maintain, preserve and keep the Project Site, the Project and the Infrastructure Improvements, or cause the Project Site, the Project and the Infrastructure Improvements to be operated, maintained, preserved and kept, for the purposes for which it was constructed, and with the appurtenances and every part and parcel thereof, in good repair and condition.

3.6. Utilities. The Authority shall not interfere with or permit interference with, or construct or permit construction of any improvements over, any public street or utility easement without the prior written approval of the City. All connections to public utility lines and facilities shall be subject to approval of the City and any private utility company involved. The Authority at its own expense shall replace any public facilities or utilities damaged by the Authority, its agents or by others acting on behalf of or under the direction or control of the Authority or its agent, or by any tenant or other owner of all or any portion of the Project.

3.7. Easements. To the extent that the Infrastructure Improvements are to be located on Authority property, the Authority will grant, and will cause all tenants and other owners of all or any portion of the Project to grant, to the City from time to time such easements, rights-of-way and similar licenses the City may reasonably request.

3.8. Permits; Environmental Laws and Regulations. The Authority will obtain or cause to be obtained, in a timely manner and at the Authority's sole cost and expense, all required permits, licenses and approvals, and will meet and will cause all tenants and other owners of all or any portion of the Project to meet all requirements of all local, State and federal laws, rules, regulations and ordinances which must be obtained or met, in each case in connection with the acquisition and construction of the Project and the Infrastructure Improvements. Without limiting the foregoing, the Authority will request and obtain, or caused to be requested and obtained, from the City or other appropriate governmental authority, all necessary variances, conditional use permits and zoning changes with respect to the Project and the Infrastructure Improvements. The Authority will comply and will contractually obligate all tenants and other owners of all or any portion of the Project to comply in all material respects with all Environmental Laws and Regulations (as hereinafter defined) applicable to the construction, acquisition and operation of the Project and the Infrastructure Improvements, will obtain and will cause all tenants and other owners of all or any portion of the Project to obtain any and all necessary environmental reviews, licenses or clearances under, and will comply and will cause all tenants and other owners of all or any portion of the Project to comply in all material respects with, Environmental Laws and Regulations.

3.9. Nondiscrimination. The Authority agrees that all hiring by the Authority and its contractors and subcontractors 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.

3.10. Worker's Compensation Insurance. The Authority shall provide in its construction contracts with respect to the Project and the Infrastructure Improvements that each contractor and subcontractor is to be covered by a Worker's Compensation insurance program with the State, a private insurance carrier, or an approved self-insurance plan in accordance with State law.

Section 4. City Undertakings. Subject to the terms and conditions of this Agreement, the City agrees to (i) reimburse the Authority for \$110,000 of costs of the Infrastructure Improvements with Tax Increment funds on hand ("**Cash Reimbursement**") and (ii) issue Bonds payable from Tax Increment in a principal amount sufficient to pay or reimburse the Authority for \$652,510 of costs of the Infrastructure Improvements, to fund a deposit to the reserve account required by the Bond Resolution and to pay costs of issuance of the Bonds. The City estimates that the aggregate principal amount of the Bonds necessary to cover the costs set forth in clause (ii) above is approximately \$800,000. The City's commitment to issue the Bonds is subject to the fulfillment of each and all of the following additional conditions precedent:

(a) There shall be sufficient Tax Increment to issue the Bonds (and pay debt service thereon) in an aggregate principal amount sufficient to pay or reimburse the Authority for \$652,510 of costs of the Infrastructure Improvements, to fund a deposit to a reserve account required by the Bond Resolution and to pay costs of issuance of the Bonds, and to provide coverage up to 140% of the maximum annual debt service requirements required under the Bond Resolution as determined by the City. In addition, the Authority understands and agrees that the City currently has, and may in the future have, binding commitments with respect to the use of Tax Increment, and the obligations of the City to issue Bonds shall not have priority over any such other binding commitments in effect on the date of execution of this Agreement.

(b) The Bonds shall be marketable at interest rates acceptable to the City. The Authority understands that the City does not guarantee the marketability of the Bonds or the interest rate(s) thereon.

(c) No court or governmental or regulatory agency shall have enacted or issued any judgment, injunction, statute, rule, regulation or other order, nor shall any action suit, proceeding or investigation before any court or governmental or regulatory authority be pending, which prohibits or would prohibit, in whole or in part, the consummation of the proposed transactions.

(d) All required State and local governmental, regulatory and other third-party approvals or consents shall have been obtained.

(e) The City shall have received an opinion of Bond Counsel as to the tax-exempt status of interest on the Bonds.

(f) All of the Authority's representations as set forth in this Agreement shall be true and correct and the Authority shall not be breach of any covenant or undertaking as set forth in this Agreement.

Section 5. Payment or Reimbursement for Infrastructure Improvements.

5.1. Each payment or reimbursement request by the Authority with respect to the Infrastructure Improvements shall be subject to the following conditions and in accordance with the following procedures:

(a) With respect to the portion of the Infrastructure Improvements payable from the Cash Reimbursement, the Authority shall have completed sufficient categories of Infrastructure Improvements in their entirety and totaling not less than \$110,000 in the aggregate (for example, all of the sanitary sewer improvements plus all of the water extension improvements) and the City shall have delivered to the Authority written acceptance of such completed categories of Infrastructure Improvements (which may be in the form of a Certificate of Completion or such other format as required by the City).

(b) With respect to the portion of the Infrastructure Improvements payable from proceeds of the Bonds, the Infrastructure Improvements shall have been completed in their entirety, the City shall have delivered to the Authority written acceptance of the Infrastructure Improvements (which may be in the form of a Certificate of Completion or such other format as required by the City), and the City shall have issued the Bonds.

(c) Any payment or reimbursement by the City for costs of the Infrastructure Improvements will be based on paid or outstanding invoices for costs incurred by the Authority, its contractors and subcontractors or utility companies. The City may reject, in its sole discretion, any invoice to the extent it is not part of the Infrastructure Improvements.

(d) All of the Authority's representations as set forth in this Agreement shall be true and correct and the Authority shall not be breach of any covenant or undertaking as set forth in this Agreement.

(e) The request for payment or reimbursement must be accompanied by a signed draw request substantially in a form attached as Exhibit C hereto and acceptable to the City, accompanied by the invoices and lien waivers (if relevant) from the contractors or subcontractors performing the work to be paid or reimbursed.

(f) The City will cause payment or reimbursement for all properly submitted and allowable expenses to be paid within 30 days of satisfaction of the requirements of this Section 5, subject to compliance with City accounts payable procedures.

5.2. The Authority acknowledges that the City's commitment to pay or reimburse the Authority for costs of the Infrastructure Improvements is a limited obligation of the City payable solely from the Tax Increment. Such commitment is not a general obligation of the City and neither the general credit nor the taxing power of the City, Cascade County or the State is pledged to the payment thereof. Neither the Ordinance, this Agreement nor any other agreement

or obligation of the City contained herein or therein shall be construed to constitute an indebtedness of the City, Cascade County or the State within the meaning of any constitutional or statutory provisions whatsoever. The Authority understands that the City has no control over the amount of Tax Increment that may be available to pay such commitment and that no other City funds will be available or used to pay such commitment.

Section 6. Release and Indemnification; Insurance.

6.1. Release and Indemnification. The Authority releases the City and all Commission members, officers, agents, servants and employees thereof (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 (i) arising or purportedly arising out of, or resulting or purportedly resulting from, any breach or violation by the Authority of any representation, agreement, condition or covenant of this Agreement, the construction and installation of the Project and the Infrastructure Improvements, the ownership, maintenance and operation of the Project Site, the Project and the Infrastructure Improvements, or the presence on any portion of the Project Site of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances or (ii) which is caused by the Authority or its officers, agents, contractors, subcontractors, consultants or employees or any tenant or other owner of all or any portion of the Project; except that such indemnification shall not apply to the extent that the loss, damage or cost is determined by a court of competent jurisdiction to have been caused by the negligence, willful misconduct or bad faith of the Indemnified Party.

6.2. Insurance. The Authority shall keep, or cause its private investment partner and/or the applicable owner or lessee of the Warehouse Bays to keep, the Warehouse Bays insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with facilities of the type and size comparable to the unit.

Section 7. General Provisions.

7.1. Conflicts of Interest; City’s Representatives Not Individually Liable. No member, officer, agent, servant or employee of the City or the Authority shall have any personal interest, direct or indirect, in this Agreement, the Project or the Infrastructure Improvements, nor shall any such member, officer 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, directly or indirectly, interested. No member, officer or employee of the City shall be personally liable to Authority in the event of any default under or breach of this Agreement by the City, or for any amount that may become due to Authority for any obligation issued under or arising from the terms of this Agreement.

7.2. Rights Cumulative. The rights and remedies of the parties hereto, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party hereto of any one or more of such remedies shall not preclude the exercise by such party, at the same or different times, of any other remedy for the same default or breach or of any of its remedies for

any other default or breach of the party subject to the limitation of remedies provided herein. No waiver made by such party with respect to the performance or the manner or time thereof, of any obligation under this Agreement, shall be considered a waiver with respect to the particular obligation of the other party or a condition to its own obligation 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 of any obligations of the other party. Delay by a party hereto instituting or prosecuting any cause of action or claim hereunder shall not be deemed a waiver of any rights hereunder.

7.3. Injunction; Specific Performance. The parties hereto agree that, in the event of a breach of this Agreement by any party or its successors or assigns, the non-breaching party would suffer irreparable harm. Therefore, in the event any party or its successors or assigns fails to comply with the provisions of this Agreement, the parties expressly agree that the non-breaching party may pursue any remedy at law or in equity, including without limitation, the remedies of injunction and specific performance. In addition, in the event of a breach of this Agreement by the Authority, including the failure of the Authority and/or its private investment partner to sell or lease the Warehouse Bays primarily to third parties engaged in Secondary Industries, the City may require that the Authority return all amounts paid by the City to or for the benefit of the Authority hereunder.

7.4. Term of Agreement. This Agreement will remain in effect until the date upon which there are no Bonds outstanding and all obligations under this Agreement have been satisfied or discharged; provided that the Authority understands that if Bonds are not issued on or before November 5, 2023, the District will expire and all obligations of the City hereunder shall terminate. Notwithstanding, Sections 6.1 and 7 shall in all events survive the termination of this Agreement.

7.5. 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 Infrastructure Improvements 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 Tax Increment. No failure of the City to comply with any term, condition, covenant or agreement herein will subject the City to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from Tax Increment; and no execution on any claim, demand, cause of action or judgment will be levied upon or collected from the general credit, general funds or taxing powers of the City (except as such constitute Tax Increment). Nothing herein will preclude a proper party in interest from seeking and obtaining specific performance against the City for any failure to comply with any term, condition, covenant or agreement herein; provided that no costs, expenses or other monetary relief will be recoverable from the City except as may be payable from Tax Increment.

7.6. Notices. All notices, certificates or other communications required to be given to the City or the Authority hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to the City: City of Great Falls
P.O. Box 5021
Great Falls, Montana 59403
Attn: Finance Director

If to the Authority: Great Falls International Airport Authority
2800 Terminal Drive
Great Falls, Montana 59404
Attn: Airport Director

The City and the Authority, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

7.7. Assignment. This Agreement is unique between the City and the Authority and no party may assign any rights or privileges or delegate any duties or obligations under this Agreement, including to any tenant or other owner of all or any portion of the Project, without first obtaining the written consent of the other parties hereto.

7.8. Binding Effect. The right and obligations set forth in this Agreement shall inure to the benefit of and shall be binding upon the City and the Authority and their respective successors and assigns.

7.9. Prior Agreements. This Agreement supersedes, merges and voids any and all prior discussions, negotiations, agreements and undertakings between the parties hereto with respect to the subject matter of this Agreement. The parties waive and release each other from any claims, actions, or causes of action that relate in any manner to any prior discussions, negotiations, agreements and undertakings between the parties with respect to the subject matter of this Agreement.

7.10. Severability. 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.

7.11. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Authority.

7.12. Governing Law. 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.

7.13. Further Assurances and Corrective Instruments. The City and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required or advisable for correcting any inadequate or incorrect description of the

Project or the Infrastructure Improvements or for carrying out any of the provisions of this Agreement.

7.14. Execution Counterparts. 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.

7.15. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Development 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

GREAT FALLS INTERNATIONAL
AIRPORT AUTHORITY

Name: John Faulkner
Title: Airport Director

STATE OF MONTANA)
 : ss.
COUNTY OF CASCADE)

This instrument was acknowledged before me on _____, 2021 by
_____ of Great Falls International Airport Authority, on behalf of said
Authority.

(Notarial Seal)

Printed Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission Expires:

EXHIBIT A
INFRASTRUCTURE IMPROVEMENTS

	<u>Estimated Expense</u>
Infrastructure Design	\$70,000
Electrical Extension	\$31,867
Gas Extensions	\$30,120
Water Extensions	\$75,625
Sanitary Sewer	\$76,100
Stormwater	\$212,055
Data/communications	\$26,600
Roadways and Entrance Flatwork	\$240,143

EXHIBIT B

2021 PROJECT COSTS AND SOURCES OF FUNDS

GREAT FALLS INTERNATIONAL AIRPORT						
WAREHOUSE COMMERCIAL DEVELOPMENT						
PRELIMINARY - CONSTRUCTION COST ESTIMATE						
February 11, 2020						
STORMWATER IMPROVEMENTS						
BID ITEM	SPEC.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	EXTENDED COST
1	P-152	Unclassified Excavation	CY	3,811	\$45.00	\$171,495.00
2	D-701	18 Inch RCP (Class III)	LF	162	\$180.00	\$29,160.00
3	D-701	18 Inch Flared End Section (Class III)	EA	6	\$1,900.00	\$11,400.00
SUBTOTAL =						\$212,055.00
SITE UTILITIES						
BID ITEM	SPEC.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	EXTENDED COST
1	MPWSS 02660	12" PVC Waterline	LF	269	\$125.00	\$33,625.00
2	MPWSS 02660	12" Gate Valve	EA	1	\$3,500.00	\$3,500.00
3	MPWSS 02660	Connect to Existing Waterline	EA	1	\$5,500.00	\$5,500.00
4	MPWSS 02660	Waterline Directional Bore	EA	1	\$25,000.00	\$25,000.00
5	MPWSS 02660	Fire Hydrant Assembly (Includes Valves)	EA	1	\$8,000.00	\$8,000.00
6	MPWSS 02660	6" PVC Sanitary Sewer Service	LF	280	\$70.00	\$19,600.00
7	MPWSS 02730	Sewerline Directional Bore	EA	1	\$35,000.00	\$35,000.00
8	MPWSS 02730	Install Sand/Oil Interceptor	EA	1	\$15,000.00	\$15,000.00

9	MPWSS 02730	4' DIA. Sanitary Sewer Manhole	EA	1	\$6,500.00	\$6,500.00
10	---	2" Gas Line	LF	502	\$60.00	\$30,120.00
11	L-110	4" PVC DEB Primary Conduit	LF	299	\$33.00	\$9,867.00
12	---	Install NW Energy Transformer	EA	1	\$22,000.00	\$22,000.00
13	---	2" Conduit for COMM Extension	EA	240	\$40.00	\$9,600.00
14	---	COMM Pedestal	EA	2	\$1,000.00	\$2,000.00
15	---	COMM Directional Bore	EA	1	\$15,000.00	\$15,000.00
SUBTOTAL =						\$240,312.00
ENTRY ROADWAYS						
BID ITEM	SPEC.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	EXTENDED COST
1	P-152	Unclassified Excavation	CY	1,379	\$45.00	\$62,055.00
2	02235-1	3/4 Inch Minus Crushed Base Course	CY	935	\$50.00	\$46,750.00
3	02502-1	Asphalt Tack Coat	GAL	344	\$4.50	\$1,548.00
4	02510-1	Asphalt Concrete Pavement	TON	1,266	\$65.00	\$82,290.00
5	02510-2	Asphalt Cement	TON	76	\$625.00	\$47,500.00
SUBTOTAL =						\$240,143.00
AUTHORITY FUNDED TRUCK CIRCULATION						
BID ITEM	SPEC.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	EXTENDED COST
1	P-152	Unclassified Excavation	CY	1,545	\$45.00	\$69,525.00
2	02235-1	3/4 Inch Minus Crushed Base Course	CY	1,050	\$50.00	\$52,500.00
3	02502-1	Asphalt Tack Coat	GAL	415	\$4.50	\$1,867.50
4	02510-1	Asphalt Concrete Pavement	TON	1,525	\$65.00	\$99,125.00
5	02510-2	Asphalt Cement	TON	92	\$625.00	\$57,500.00
SUBTOTAL =						\$280,517.50
TOTAL =						\$973,027.50

EXHIBIT C

AUTHORITY REQUISITION FORM

TO: City of Great Falls, Montana (the “City”)
FROM: Great Falls International Airport Authority (the “Authority”)
SUBJECT: Reimbursements for Infrastructure Improvements

This represents Authority Requisition No. ____ in the total amount of \$_____ for payment of the Infrastructure Improvements.

The undersigned, as Authorized Authority Representative, intends that this certificate will satisfy the requirements of Section 3 of the Development Agreement, dated as of [____], 2021 between the City and the Authority, and does hereby certify on behalf of the Authority that:

- (a) the expenditures for which reimbursement is requested are listed in summary form in the attached schedule;
- (b) the amounts requested have been paid by the Authority for property or to contractors, subcontractors, materialmen, engineers, architects or other persons who will perform or have performed necessary or appropriate services or will supply or have supplied necessary or appropriate materials for the acquisition, construction, renovation, equipping and installation of the Infrastructure Improvements, as the case may be, and that, to the best of my knowledge, the fair value of such property, services, or materials is not exceeded by the amounts requested to be paid;
- (c) the cost of work to be reimbursed has been competitively bid and the contractor or subcontractor has paid the Montana prevailing wage for such work;
- (d) no part of the several amounts requested to be reimbursed, as stated in such certificate, has been or is the basis for the reimbursement of any money in any previous or pending request; and
- (e) the reimbursement of the amounts requested will not result in a breach of any of the covenants of the Authority contained in the Agreement.

Dated: _____, 20__

Great Falls International Airport Authority

By: _____
Authorized Authority Representative

Schedule to Authority Requisition No. _____

Payee

Purpose

Amount