

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. [____] entitled: “RESOLUTION APPROVING AMENDMENT OF AN URBAN RENEWAL PROJECT (WEST BANK LANDING PROJECT) AND INFRASTRUCTURE IMPROVEMENTS IN THE WEST BANK URBAN RENEWAL AREA AND AUTHORIZING THE USE OF ADDITIONAL TAX INCREMENT REVENUES TO PAY OR REIMBURSE COSTS OF SUCH INFRASTRUCTURE IMPROVEMENTS” (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 [____], 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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. 10397

RESOLUTION APPROVING AMENDMENT OF AN URBAN RENEWAL PROJECT (WEST BANK LANDING PROJECT) AND INFRASTRUCTURE IMPROVEMENTS IN THE WEST BANK URBAN RENEWAL AREA AND AUTHORIZING THE USE OF ADDITIONAL TAX INCREMENT REVENUES TO PAY OR REIMBURSE COSTS OF SUCH INFRASTRUCTURE IMPROVEMENTS

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. Pursuant to Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), and Ordinance No. 2967 adopted on March 20, 2007, as amended by Ordinance No. 3027 adopted on December 16, 2008, Ordinance No. 3145 adopted on August 2, 2016, and Ordinance No. 3209 adopted on November 5, 2019 (collectively, the “Ordinance”), the City created the City of Great Falls West Bank Urban Renewal District (the “District”) as an urban renewal area and approved the West Bank Urban Renewal Plan for the District (the “Urban Renewal Plan”). The Urban Renewal Plan provides for the segregation and collection of tax increment (as defined in the Act) with respect to the District (the “Tax Increment”).

1.02. Pursuant to the Act and the Ordinance, the City has (i) designated and approved a project as an urban renewal project, consisting of a 12.5 acre, multi-phase, mixed-use commercial development in the District, including construction of a four story 127-room hotel and future sites for restaurants, office buildings, retail shops and residential condominiums, located at the West Bank Landing generally on the east side of 3rd Street NW, along and to the northeast of 4th Avenue NW (the “West Bank Landing Project”) and (ii) authorized the use of Tax Increment to pay or reimburse West Bank LLC (the “Developer”) for the costs of certain qualified improvements associated with the West Bank Landing Project, consisting of environmental remediation, removal of existing buildings, design, engineering and relocation of overhead power and telecom utilities, and design, engineering, construction and installation and extension of water, sanitary sewer and storm sewer utilities (collectively, the “Infrastructure Improvements”).

1.03. The City and the Developer entered into a Development Agreement, dated as of August 2, 2016, as amended and supplemented by Amendment No. 1 to Development Agreement dated as of October 1, 2018, Amendment No. 2 to Development Agreement dated as of October 15, 2019, and Amendment No. 3 to the Development Agreement dated as of February 19, 2020 (collectively, the “Development Agreement”), with respect to the West Bank Landing Project and the Infrastructure Improvements. Pursuant to the Development Agreement, the City agreed to pay or reimburse the Developer for costs of the Infrastructure Improvements in the amount of \$2,642,614 (the “Original Reimbursement Amount”). The City has heretofore paid or reimbursed the Developer the Original Reimbursement Amount in full with (i) Tax Increment revenue on hand in the amount of \$1,050,000 and (ii) proceeds of the City’s Tax Increment

Urban Renewal Revenue and Refunding Bonds (West Bank Urban Renewal District), Series 2020 (the “Series 2020 Bonds”) in the amount of \$1,592,614.

1.04 The Developer has represented that the costs of the Infrastructure Improvements exceeded \$6,000,000 and has submitted a City of Great Falls Tax Increment Financing (TIF) Application for Funds dated February 5, 2021 (the “Application”) requesting additional tax increment financing assistance with respect to the costs of the Infrastructure Improvements in the amount of \$1,175,380 (the “Additional Reimbursement Amount”).

1.05. The City’s Fiscal Services, Planning, Community Development, Park and Recreation and Public Works department heads and the Assistant City Manager (the “City Staff”) have jointly reviewed and evaluated the West Bank Landing Project and the Infrastructure Improvements and made a report and recommendation (the “City Staff Report”) to the effect that the West Bank Landing Project and the Infrastructure Improvements are beneficial to the public and have resulted 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 an amendment to the Development Agreement in order to provide for reimbursement to the Developer of the Additional Reimbursement Amount with respect to the Infrastructure Improvements, substantially in the form attached hereto as Exhibit A (the “Amendment”). Pursuant to such Amendment, the total reimbursement to the Developer with respect to the Infrastructure Improvements is \$3,817,994.

Section 3. Findings. Based on the representations of the Developer, the Commission hereby finds, with respect to the West Bank Landing Project and the Infrastructure Improvements, as follows:

- (a) no persons will be displaced from their housing by the West Bank Landing Project or the Infrastructure Improvements;
- (b) the West Bank Landing Project and the Infrastructure Improvements substantially satisfy the review criteria of the funding application process and meet the purpose and goals of the Act, the District and the Plan;
- (c) the Plan, as modified to include the West Bank Landing Project and the Infrastructure Improvements, conforms to the comprehensive plan or parts thereof for the City as a whole;
- (d) the Infrastructure Improvements constitute public improvements in accordance with the Act;
- (e) the Plan, as modified to include the West Bank Landing Project and the Infrastructure Improvements, will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise; and
- (f) a sound and adequate financial program exists for the financing of the costs of the Infrastructure Improvements (including the Additional Reimbursement Amount) using Tax

Increment, taking into account Tax Increment revenue expected to be received by the City and available to pay debt service on the Series 2020 Bonds and other obligations of the City.

Section 4. Approval of Amendment to the Development Agreement. The Commission hereby approves the Amendment to the Development Agreement. The City Manager and City Clerk are hereby authorized to execute and deliver the Amendment, 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 Amendment shall be a condition precedent to the payment or reimbursement of the Additional Reimbursement Amount.

Section 5. Effective Date. This Resolution shall take effect immediately upon its passage and adoption by this Commission.

Passed and adopted by the City Commission of the City of Great Falls, Montana, on this 20th day of April, 2021.

Bob Kelly, Mayor

Attest:

Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

EXHIBIT A

AMENDMENT TO DEVELOPMENT AGREEMENT

AMENDMENT NO. 4 TO DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 4 TO DEVELOPMENT AGREEMENT is dated as of [____], 2021 (this “**Amendment**”), between the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the “**City**”), and WEST BANK LLC, a Montana limited liability company (the “**Developer**”).

WITNESSETH:

WHEREAS, a DEVELOPMENT AGREEMENT dated as of August 2, 2016, as amended by Amendment No. 1 to Development Agreement dated as of October 2, 2018, Amendment No. 2 to Development Agreement dated as of October 15, 2019, and Amendment No. 3 to Development Agreement dated as of February 19, 2020 (collectively, the “**Development Agreement**”), was entered into by and between the City and the Developer; and

WHEREAS, the City and the Developer desire to make certain amendments to the Development Agreement, as more specifically stated herein; and

NOW THEREFORE, the City and the Developer, 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. Amendment of Development Agreement.

1.1. Section 2.1(c) of Development Agreement. Section 2.1(c) of the Development Agreement is amended and restated in its entirety as follows:

“(c) The City is committed to reimbursing the Developer for \$3,817,994 of costs of the Infrastructure Improvements as set forth on Exhibit B hereto.”

1.2. Section 4 of Development Agreement. Section 4 of the Development Agreement are amended and restated in its entirety as follows:

“Section 4. City Undertakings. Subject to the terms and conditions of this Agreement, the City agrees to (i) reimburse the Developer for costs of the Infrastructure Improvements with Tax Increment in the amount of \$2,225,380 and (ii) issue Bonds payable from Tax Increment in a principal amount sufficient to pay or reimburse the Developer for \$1,592,614 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 such costs is approximately \$2,000,000. The Developer understands that the City does not presently have sufficient bonding capacity to issue the Bonds, such bonding capacity being dependent upon the receipt by the City of sufficient annual Tax Increment.

The City’s obligation 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 Developer for \$1,592,614 of the 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, and to provide coverage equal to at least 140% of the maximum annual debt service requirements required under the Bond Resolution. In addition, the Developer 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.

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

1.3. Exhibit B of Development Agreement. Exhibit B to the Development Agreement is amended and restated in its entirety by Exhibit B hereto.

Section 2. Payment of Reimbursement Obligation. On April 18, 2019 and October 24, 2019, the City reimbursed the Developer for costs of the Infrastructure Improvements in the amounts of \$700,000 and \$350,000, respectively, pursuant to clause (i) of Section 4 of the Development Agreement. On April 28, 2020, the City reimbursed the Developer for costs of the Infrastructure Improvements in the amount of \$1,592,614 pursuant to clause (ii) of Section 4 of the Development Agreement. The parties agree that \$1,175,380 remains available pursuant to clause (i) of Section 4 of the Development Agreement, as amended hereby, for reimbursement to the Developer for costs of the Infrastructure Improvements, subject to the satisfaction of all conditions precedent to reimbursement as set forth in the Development Agreement, as amended hereby. The City shall reimburse the Developer for such remaining amount as and when the City has Tax Increment funds on hand and available therefor, as shall be determined by the City Manager and Fiscal Services Director.

Section 3. General Provisions.

3.1. No Additional Amendments. Except as set forth in Section 1 hereof, the terms and conditions of the Development Agreement shall otherwise remain unchanged with no additional amendment.

3.2. Execution Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which will be an original and all of which will 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 _____.

CITY OF GREAT FALLS, MONTANA

[SEAL]

By _____
City Manager

Attest:

City Clerk

APPROVED FOR LEGAL CONTENT:

Sara Sexe, City Attorney

WEST BANK LLC

Name:
Title:

STATE OF MONTANA)
 : ss.
COUNTY OF CASCADE)

 This instrument was acknowledged before me on _____ by
_____ of West Bank LLC, on behalf of said limited liability company.

(Notarial Seal)

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

EXHIBIT B

INFRASTRUCTURE IMPROVEMENTS

	TOTAL	AMT REQ FROM TIF	
Demolition & Removal of Structures			
Remove (E) Structures	\$148,403	\$140,832	
Asbestos Remediation	\$ 3,765	\$ 3,765	
Subtotal:		\$144,597	
Relocation of Public Improvements			
City Utility	\$1,298,681	\$1,298,691	
Power & Telecom	\$ 725,000	\$ 512,735	
Subtotal:		\$1,811,426	
Environmental Remediation			
Petro Remediation	\$1,877,340	\$1, 621,324	
Subtotal:		\$1,621,324	
Fees (associated with eligible activities)			
A/E Fees	\$399,054	\$ 95,217	
Environmental Consultants	\$518,069	\$145,430	
Subtotal:		\$240,647	
Total Request for TIF Eligible Activities for Phase 1 & 2			
	TOTAL		\$3,817,994