

## **AGREEMENT**

This Agreement is made and entered into on \_\_\_\_\_, 2026, (the “Effective Date”) by and between the City of Billings (“City”), and BIRDworks, an I.R.C. 501(c)(3) Montana Non-Profit Corporation (“BIRD”). For purposes of this Agreement, the City, and BIRDworks are each a “Party” and are sometimes collectively referred to as the “Parties.”

### **RECITALS**

1. This Agreement is for the purpose of assisting the City in the revitalization and continued development of the East Billings Urban Renewal District (“District”) through coordinated planning, project implementation, and economic development initiatives. The BIRDworks will collaborate with City staff, the City’s District Advisory Committee (“EBURD Committee”), and private partners to administer and advance the District’s Urban Renewal Plan, promote investment, identify and facilitate public infrastructure improvements, and assist the Council in evaluating and implementing projects supported by Tax Increment Financing (TIF) and other related programs.

2. The District was created by the City of Billings in 2006 and expanded in 2015 (Ordinance No. 06-5395, Ordinance No. 15-5652) and is defined in the attached Exhibit A map.

3. The City has adopted a TIF Policy by Resolution No. 18-10750 (“Policy”).

4. This Agreement is intended to be a cooperative effort between the City and BIRDworks with the mutual objective of enhancing economic development opportunities in the District by promoting efforts that include, but are not limited to, commercial, residential and mixed-use development, public infrastructure improvement, and implementing the goals for the District as embodied in the 2015 Modified East Billings Urban Renewal Plan, 2009 EBURD Master Plan, 2012 EBURD Code (Ordinance No. 12-5581), 2021 EBURD Code (Ordinance No. 21-5748) 2024 EBURD Code (Ord. No. 24-5885), 2013 Exposition Gateway Concept Plan, 2013 Hospitality Corridor Planning Study, as well as other City-adopted ordinances, plans and programs affecting the District.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, the parties agree as follows:

1. **Incorporation of Recitals.** The recitals are incorporated into this Agreement by this reference.

2. **Purpose.** The City agrees to hire BIRDworks as an independent contractor to perform the services described in the Scope of Work attached hereto as Exhibit B and by this reference made a part hereof.

- a. In performing these services, BIRDworks shall at all times comply with all federal, state and local statutes, rules and ordinances applicable.
- b. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
- c. BIRDworks will maintain compliance with the City's TIF Policy in operating under this Agreement and will use the Policy in its decisions related to any opinions or recommendations rendered to City Council.

3. **Term.** This Agreement shall be in effect from the Effective Date until June 30, 2027. The parties may mutually agree, in writing, to renew this agreement for up to two (2) additional one (1) year terms.

4. **Payment.** As part of the annual budgeting process, City Council will review the work plan and proposed budget prepared by BIRDworks and approve appropriate allocations of TIF funds for BIRDworks to carry out the timely performance of the services required under this Agreement as described in the Scope of Services attached hereto as Exhibit B and incorporated herein by this reference.

The amount of the payment may be modified upon request by BIRDworks with approval of City Council. Except as otherwise specified herein, BIRDworks shall invoice the City monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this Agreement. Such invoices shall specify the services provided to the City during the preceding month and identify the applicable fees and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the City shall pay, net of applicable withholding tax, if any, BIRDworks for said invoice within thirty (30) days after receipt.

It is understood that BIRDworks will not perform any work that the City deems outside the scope prior to receiving written approval from the City. Any payment for work not agreed upon by the City shall be denied.

5. **Relationship of the Parties.** The parties agree that BIRDworks is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. BIRDworks is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose.

- a. BIRDworks is not authorized to represent the City or otherwise bind the City in any dealings between BIRDworks and any third parties.
- b. This Agreement is not intended to create or constitute any joint venture, partnership, joint powers agency, or other formal organization of any kind.

- c. No Party is authorized herein to act as the agent of the other.

**6. Training and Conflict of Interest.**

- a. BIRDworks shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the City's interest. During the term of this Agreement, BIRDworks shall not accept any employment or engage in any consulting work which creates a conflict of interest with City or in any way compromises the services to be performed under this Agreement. BIRDworks shall immediately notify City of any and all violations of this Section upon becoming aware of such violation.
- b. BIRDworks will participate, support, and assist in providing biannual training for the EBURD Committee in coordination with City staff. The training must include but is not limited to review of urban renewal and tax increment financing laws, Administrative Rules, ethics, conflicts of interest, meeting management, and maintenance of minutes and records.
- c. BIRDworks shall avoid both actual and potential conflicts of interest and shall be subject to the applicable code of ethics provisions in state law and city code including but not limited to all laws governing conflict between public duty and private interest.

**7. Tax Increment Financing Authority and Administration.** The parties agree that City Council shall have the ultimate decision-making authority regarding any expenditure of TIF funds related to the District.

**8. Other Adopted Plans.** The parties agree to consider and implement other adopted plans relevant to the District.

**9. Identify Funding Sources And Facilitate Public Infrastructure Improvements.**

- a. The City will identify appropriate funding sources to facilitate necessary infrastructure and facility improvements as identified in the City's Current Capital Improvement Plan and other infrastructure master plans for projects within the District boundary.
- b. BIRDworks also will work with City staff, the EBURD Committee, and property owners to consider public infrastructure projects in the District and bring recommendations to City Council through established processes, including the City's Capital Improvement Plan.

**10. Indemnity.**

BIRDworks shall:

- a. Indemnify, defend and save the City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in

any way arising or resulting from any intentional, reckless or negligent act on the part of BIRDworks or its officers, agents or employees.

- b. Not indemnify, defend, save and hold the City harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees, expert fees and costs arising from wrongful, reckless or negligent acts, error or omission solely of the City occurring during the course of or as a result of the performance of the Agreement.
- c. Where claims, lawsuits or liability, including attorneys' fees, expert fees and costs arise from wrongful, reckless or negligent act of both the City and BIRDworks, BIRDworks shall indemnify, defend, save, and hold the City harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees, expert fees and costs, which result from BIRDworks's wrongful, reckless or negligent acts occurring as a result of BIRDworks's performance pursuant to this Agreement.

The City shall:

- a. Indemnify, defend and save BIRDworks, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of City or its agents or employees.
- b. Not indemnify, defend, save and hold BIRDworks harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful, reckless or negligent acts, error or omission solely of BIRDworks occurring during the course of or as a result of the performance of the Agreement.
- c. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful, reckless or negligent act of both BIRDworks and the City, the City shall indemnify, defend, save, and hold BIRDworks harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the City's or its officers, agents or employee's wrongful, reckless or negligent acts occurring as a result of the City's performance pursuant to this Agreement.

#### **11. Insurance.**

- a. BIRDworks shall maintain in good standing the insurance described in this Section. Before rendering any services under this Agreement, BIRDworks shall furnish the City with proof of insurance in accordance with this Section.

BIRDworks shall provide the following insurance:

- i. Workers' compensation and employer's liability coverage as required by Montana law.

- ii. Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverages in the minimum amount of \$750,000 per claim and \$1,500,000 per occurrence.
- iii. Automobile liability in the minimum amount of \$1,500,000 per accident.
- iv. Professional liability in the minimum amount of \$1,500,000 per claim.

The limits required by this Agreement can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the City prior to cancellation.

The City shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

BIRDworks shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA.

BIRDworks shall maintain workers' compensation insurance coverage for all employees of BIRDworks's business, except for those persons who are exempted as independent contractors under the provisions of §39-71-401, MCA.

BIRDworks shall furnish City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

**12. Agreements of BIRDworks:** As an inducement to the execution of this Agreement by the City and in consideration of the agreements to be performed by the City, BIRDworks agrees that:

- a. Qualifications. BIRDworks is qualified to perform the services to be furnished under this Agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.
- b. Facilities and Personnel. BIRDworks has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.
- c. Subcontracting. None of the work or services covered by this Agreement shall be subcontracted without the prior approval of the City.
- d. Compliance. If BIRDworks does seek contract services, supplies, or expenditures for other capital costs that utilize TIF funds, BIRDworks must follow City purchasing and procurement policies in effect at the time. Additionally, BIRDworks understands and agrees that the provisions of [Billings, Montana City Code Article 2-500. Boards, Commissions and Committees](#) apply to bylaws and any policies and procedures of the EBURD Committee.
- e. Affidavits of Compliance. BIRDworks will, if requested by the City, furnish the City affidavits certifying compliance with the provisions of this Section.

### 13. Agreements of City:

- a. To furnish all information, materials, equipment, supplies, and incidentals necessary to conduct and complete the City's portion of the project as designated in the scope of work.

### 14. Nondiscrimination:

- a. BIRDworks shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. BIRDworks is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by BIRDworks subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. BIRDworks agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, religion, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status ("protected classes") by the persons performing this Agreement. BIRDworks will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the protected classes. Such action shall include, but not be limited to the following: Employment, upgrading, promotion, award of tenure, demotion, or transfer, recruitment, recruitment advertising, and job application procedures; layoff or termination; right of return after layoff and rehiring; rates of pay or other forms of compensation and changes in compensation; job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists; leaves of absence, sick leave, or any other leave; fringe benefits available by virtue of employment; selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; activities sponsored by BIRDworks including social or recreational programs; and any other term, condition, or privilege of employment. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. BIRDworks shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious

affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status.

BIRDworks and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

- c. BIRDworks will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. BIRDworks shall comply with any and all reporting requirements that may apply to it that the City may establish by regulation. BIRDworks will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. BIRDworks shall comply with all applicable federal, state, and city laws, rules, regulations, and relevant orders of the Secretary of Labor concerning the prohibition of discrimination. This includes complying with all provisions of Executive Order No. 04-2016 dated January 18, 2016, by the State of Montana: <https://formergovernors.mt.gov/bullock/docs/2016EOs/EO-04-2016%20Anti-Discrimination%20in%20workplace.pdf>.
- f. In the event of BIRDworks's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

BIRDworks shall include the provisions of Subsections a through f of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of BIRDworks under this Agreement. BIRDworks will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a

subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- g. BIRDworks agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

**15. Permits, Laws, and Taxes.** BIRDworks shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by BIRDworks under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. BIRDworks shall pay all taxes pertaining to its performance under this Agreement.

**16. Nonwaiver.** The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**17. Termination Of Agreement.** The right is reserved by the City to terminate this Agreement, at any time, upon not less than sixty (60) days' written notice to BIRDworks.

In the event the City terminates this Agreement, BIRDworks shall be paid for the amount of work performed or services rendered to date of termination per the Agreement fee.

If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**18. Successors and Assigns.** This Agreement and all the covenants hereof shall inure to the benefit of and be binding upon the City and BIRDworks respectively and their partners, successors, assigns, and legal representatives. Neither the City nor BIRDworks shall have the right to assign, transfer, or sublet their interest or obligations hereunder without written consent of the other party.

**19. Changes in Work:** Any change in the scope of BIRDworks's services as stated in this Agreement for whatever reason, will be negotiated between the City and BIRDworks and an amendment to this Agreement will be issued with the appropriate change of services and Agreement fee noted.

**20. Legal Relations.** BIRDworks shall comply with all federal, state, and local laws and ordinances applicable to the work to be done.

**21. Ownership of Documents.** All information relating to the project and prepared under

the terms of this Agreement, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the City. Reproducibles of all notes, reports, and plans shall be made available at the City's request.

**22. Public Information.** BIRDworks shall not issue any statements, releases, or information regarding the work outlined in this Agreement for public dissemination without prior written approval of the City. All materials related to this Agreement and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1- 4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

**23. Records.** BIRDworks shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the Agreement term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the City and copies thereof shall be furnished if requested.

**24. Attorney's Fees and Costs.** In the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.

**25. Litigation Location.** The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District Court for Yellowstone County and there shall be no other venue for resolution of disputes arising from the Agreement or the performance of its terms.

**26. Modification and Amendments.** That any amendment, modification, or renewal of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

**27. Notice.**

The Parties have identified the following individuals for all communication and coordination. Any notice required hereunder shall be provided in writing.

City:	Wyeth Friday Director, Planning and Community Services Department 316 N 26 <sup>th</sup> St. Billings, MT 59101 <a href="mailto:fridayw@billingsmt.gov">fridayw@billingsmt.gov</a> (406) 657-8249
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BIRDworks:	Heather Doty Community Liaison 319 N 14 <sup>th</sup> St. Billings, MT 59102 <a href="mailto:heather@billingsbird.com">heather@billingsbird.com</a> (406) 545-7007
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28. **Authority and Execution.** Each Party represents that it has the authority to enter into this Agreement and to perform the functions stated herein, and that the persons executing this Agreement on their respective behalf are authorized by law, resolution or other requisite action of the Party's governing body.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates indicated below.

**CITY OF BILLINGS**

By: \_\_\_\_\_  
Mike Nelson, Mayor

ATTEST:

By: \_\_\_\_\_  
Denise R. Bohlman, City Clerk

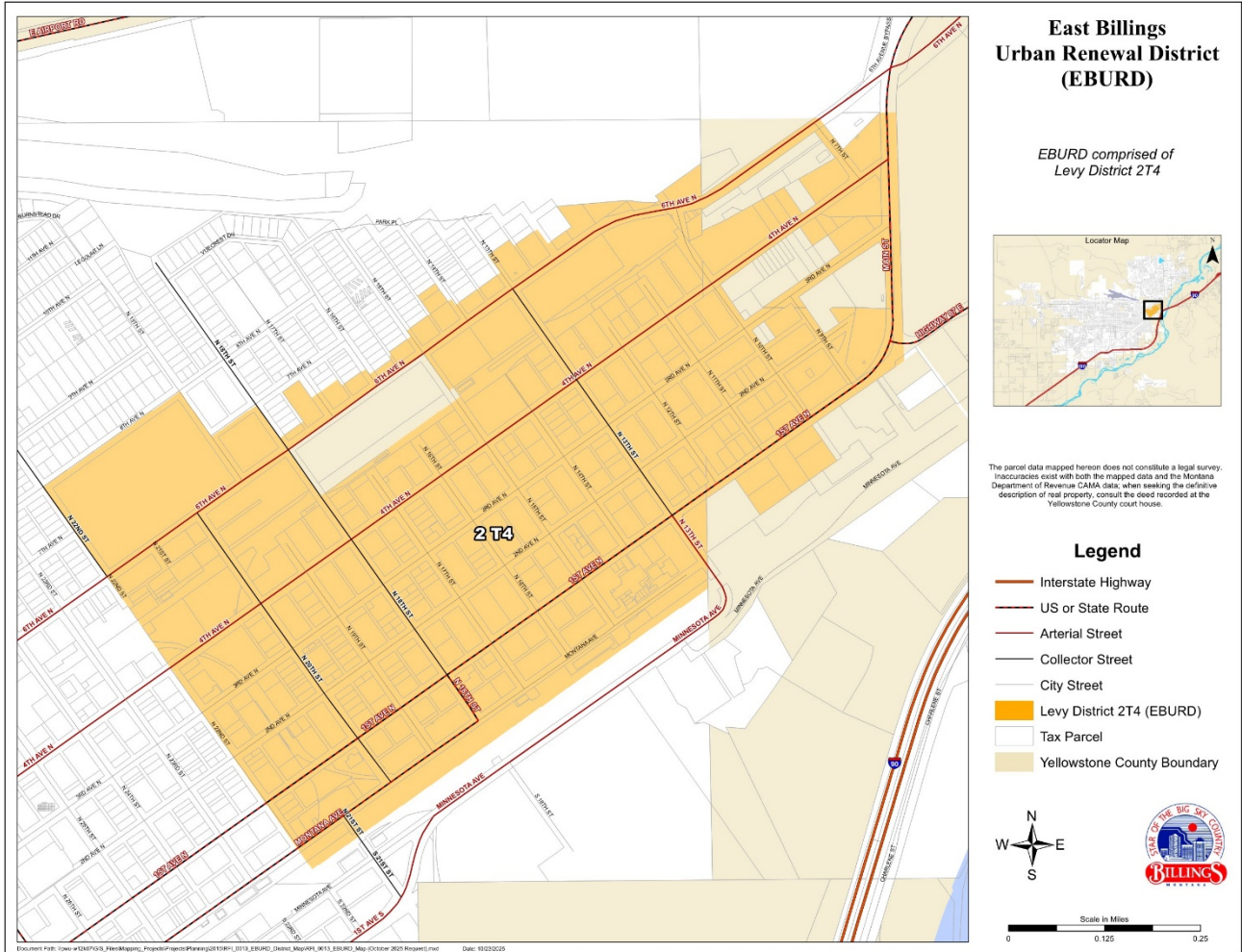
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Gina Dahl, City Attorney

**BIRDworks, INC.**

By: \_\_\_\_\_  
BIRDworks Board President

# EXHIBIT A



## **EXHIBIT B**

### **Scope of Services**

All Services provided under this Agreement must comply with the adopted District Urban Renewal Plan, City's TIF policy, Montana law, and City code and shall include, but are not necessarily limited to:

#### **1. Administration and Implementation of the Urban Renewal Plan**

- a. BIRDworks will ensure any TIF funded projects and activities it proposes to the City in the District align with the Urban Renewal Plan.
- b. BIRDworks shall coordinate with City staff and the EBURD Committee on any recommendations for amendments or updates to the Urban Renewal Plan.
- c. BIRDworks shall coordinate with City staff and the EBURD Committee to provide written quarterly reports to the City on the progress of implementing the Urban Renewal Plan as well as the status of City-approved projects and programs in the District.
- d. BIRDworks will actively work to recruit private investment in the District in partnership with the City.

#### **2. Tax Increment Financing Authority and Administration**

- a. BIRDworks and the City will develop and maintain an application form and assistance guidelines for parties seeking the use of TIF Funds.
- b. BIRDworks will accept and review applications for TIF Funds related to the District and will provide a copy of the application to the City staff at the time it is submitted so City staff may perform a concurrent review.
- c. BIRDworks will work with City staff to ensure applications are complete and the proposals align with the Urban Renewal Plan before EBURD Committee review and consideration.
- d. BIRDworks shall work with City staff to timely submit all complete applications that meet statutory criteria as well as the City's TIF policy to Council for consideration with a recommendation from the District Advisory Committee for approval or denial. The only applications not forwarded to Council should be incomplete applications or those that do not meet criteria of the TIF policy.

- e. Recommendations for expenditures shall be presented to the City Council by BIRDworks in coordination with City staff.
- f. Utilizing templates provided by the City, BIRDworks shall draft development agreements in coordination with City staff for approved applications in accordance with Council's conditions of approval, if any.
- g. BIRDworks shall follow up with the applicant to ensure compliance with the conditions of the development agreement and provide any documentation requested by the City.
- h. Meetings of the EBURD Committee shall be held at City Hall.
- i. BIRDworks shall work with City staff to coordinate, consult, and assist the EBURD Committee to prepare and submit the following:
  - i. Annual work plans and budgets;
  - ii. Allocation of TIF funds for urban renewal projects and programs;
  - iii. Amendments to the District's urban renewal plan; and
  - iv. Other matters as directed by City Council related to the District.