

**A RESOLUTION APPROVING THE OPERATING AGREEMENT BETWEEN MADISON COUNTY, MISSISSIPPI, AND CANTON MUNICIPAL UTILITIES GOVERNING THE DIVISION OF RESPONSIBILITIES AND FOR THE PAYMENT AND REIMBURSEMENT OF ELIGIBLE COSTS AND EXPENSES INCIDENT TO THE CONSTRUCTION OF UTILITY FACILITIES FOR THE AMAZON “FULFILLMENT CENTER” IN ACCORDANCE WITH THE GRANT AGREEMENT BETWEEN MISSISSIPPI DEVELOPMENT AUTHORITY, AMAZON.COM SERVICES, LLC, AND MADISON COUNTY, MISSISSIPPI, AND INCIDENT TO THE REGIONAL ECONOMIC DEVELOPMENT ALLIANCE AGREEMENT BETWEEN MADISON COUNTY, MISSISSIPPI, CANTON MUNICIPAL UTILITIES, AND THE CITY OF CANTON, MISSISSIPPI, AND FOR OTHER PURPOSES**

**WHEREAS**, effective July 8, 2020, the Mississippi Development Authority (MDA), on behalf of the State of Mississippi, entered into an Agreement with Amazon.com Services LLC, (the Company), to collaborate in the construction and operation of a new four-story @700,000 sq. ft. “Fulfillment Center” (the Project), located within the premises of the Madison County “Megasite”, at Madison County, Mississippi; and

**WHEREAS**, within the time period governed by the Amazon Grant Agreement between Company and MDA, Company committed to create at least 1,000 new direct, full-time equivalent jobs at the Project site (Job Creation Commitment); and in consideration of the obvious economic development benefits of the Project MDA pledged to allocate through the Mississippi Industry Incentive Financing Revolving Fund (MIIFRF), pursuant to §57-1-221 MS Code of 1972 (Annotated), the sum total of Eight Million Three Hundred Sixty Seven Thousand Six Hundred Thirteen Dollars (\$8,367,613.00) to defray the costs of designing, constructing and installing utilities and other infrastructure (Facilities) to service both the “on-site” and “off-site” utility needs of Project, and for such other future projects that might be recruited to and sited within the Madison County Megasite; and

**WHEREAS**, as a condition of MDA MIIFRF funds, Madison County, Mississippi was designated by MDA as the Local Government Authority (LGA), intermediary conduit, and repository of funds from MDA intended to be used to finance the engineering, design, construction and installation of certain utility infrastructure such as water tanks, water systems, wastewater systems, natural gas system improvements, including but not limited to a new one (1) million gallon elevated storage tank to service the Project; and for the purchase of all materials as needed (Facilities); and

**WHEREAS**, the MDA Grant Agreement provided guidance to Madison County, Mississippi, as LGA and recipient of MIIFRF Funds regarding the requisite terms and conditions for requests for reimbursement of invoices, and costs for both the “hard and soft” charges incident to the design and construction of Facilities; and

**WHEREAS**, through actions of the Madison County Board of Supervisors (Madison County), the Board of Commissioners of Canton Municipal Utilities (CMU), and the Mayor and Board of Aldermen (City of Canton), a Regional Economic Development Alliance Agreement (REDA) was agreed to, collectively signed, and enacted, in order to maximize economic development projects that might be located at the Madison County Megasite, and more particularly, to secure and to expedite the authorizations, approvals, and to cooperatively manage and to complete all of the necessary projects, programs, grants, and all other protocols incident to the building of roads, the purchasing of land, and for the design and construction of utilities, and of all facilities and buildings necessary to achieve the completion of “Project Pine”, later acknowledged as the Amazon.com LLC “Fulfillment Center”; and

**WHEREAS**, Canton Municipal Utilities (CMU) as signatory to the REDA Agreement, and as eventual owner-operator of Facilities, is recognized as the principal beneficiary of the design and construction of the utility facilities, and, as such, has important responsibilities to assist in the design, inspection, and even in the conditional financing of the utility facility and of all associated infrastructure incident to completing and servicing the Project. It is recognized that CMU’s primary responsibility is to design, install and inspect all infrastructure elements of the Project, lying outside of the Madison County Megasite (“off-site”);

**WHEREAS**, the cooperative relationship between Madison County, Mississippi, as LGA, and as sole recipient of the MDA Grant Funds pursuant to the Grant Agreement between MDA and Amazon.com Services, LLC, and Canton Municipal Utilities, as owner-operator, manager and service agent of said Facilities, is critical, and as such, requires an **Operating Agreement** governing the use of MIIFRF Funds, the process and timetable of receiving reimbursements from MDA, and generally to set forth all terms and conditions enabling LGA and CMU to work cooperatively to achieve the design, construction, inspection, and the eventual handoff of all Facilities to CMU, upon final inspection and completion.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF MADISON COUNTY, MISSISSIPPI, and THE BOARD OF COMMISSIONERS OF CANTON MUNICIPAL UTILITIES, AS FOLLOWS:**

### **RECITALS OF OPERATING AGREEMENT**

**SECTION 1. Authorization of Operating Agreement:** The Board of Supervisors of Madison County, Mississippi, and the Board of Commissioners of Canton Municipal Utilities, are independently authorized, and empowered to review, to execute, and to approve the terms and conditions governing this Operating Agreement. Parties

agree that they are members of the Regional Economic Development Alliance (REDA), and that each has an important role to play in the design, construction, inspection, financing, and completion of the utility facilities incident to the completion of the Amazon Fulfillment Center (the Project), located at the Madison County, Mississippi "Megasite."

**SECTION 2. Recognition of Madison County as LGA (Exclusivity):** Parties to this Operating Agreement understand, acknowledge, and recognize that Madison County, Mississippi, operating through the Board of Supervisors, is the sole applicant, and the only recipient of Discretionary Grant Funds from the Mississippi Development Authority (MDA), pursuant to the MDA Industry Incentive Finance Fund Program, and is the only entity designated by MDA to serve as Local Government Authority (LGA) under the MDA MIIFRF Grant Agreement for the Project that is eligible to receive, disburse, to apply for reimbursements from MDA, and is the only entity tasked with the responsibility by the State of Mississippi, through the Mississippi Development Authority (MDA) to provide oversight regarding the use, disbursement, of the MDA MIIFRF Grant funds to design, build and finance the Facilities for the Project herein. Pursuant to REDA Agreement at Section 5(e) *Operation of Alliance and the Project*, it is understood that the County shall undertake the design, construction and installation of the Utility Facilities Projects and /or any components thereof, including the CMU Participation Funds, if any, and using Grant Funds, Project Funds and/or any other funds that are otherwise made available to the County for purposes of the Project.

**SECTION 3. Use of Funds:** All funds received under the MDA Grant Fund Agreement, attached hereto as Exhibit "A" (Project Funds) will be used to finance the design, construction, and inspection of the utility facilities and infrastructure (the Facilities) for the Amazon.com Services LLC "Fulfillment Center"(the Project), and to enable CMU to service the Project upon completion of the Project, as well as to allow CMU to provide utility services to all other projects that might elect to locate within the confines of the Madison County "Megasite", as might be recruited in the future by Madison County Economic Development Authority (MCEDA). The utility facilities (the Facilities) contemplated herein include the financing of the hard and soft costs incident to the design, construction, inspection of the water systems, wastewater systems, and the natural gas improvement, including but not limited to a new 1 million gallon elevated storage tank that will serve the on-site and off-site needs of the Project, and any other infrastructure improvements that might service future industrial clients at the Madison County Megasite.

**SECTION 4: CMU's Conditional Contribution:** In addition to the preceding sources and uses of Project Funds, the parties herein acknowledge that pursuant to the REDA Agreement (CMU Conditional Participation), CMU agrees, on a conditional and contingency basis, to fund a portion of Facilities Project, in accordance with, and subject to, the following terms and conditions: a portion of the Facilities Project is comprised of the construction and installation of (1) a new natural gas distribution loop feed, (2) a new water well and (3) a new 16 inch water line for fire protection

purposes, which will be constructed and installed, in large part, outside of the Megasite property (off-site), but which are necessary to, among other benefits, to provide and to serve the natural gas and fire protection water to the Megasite tenants, including the Amazon Fulfillment Center. It is acknowledged that CMU, on a contingent basis, pledged to provide to Madison County the sum of up to Nine Hundred and Twenty Thousand Dollars (\$920,000.00), to defray the costs of said “off site” infrastructure projects. Pursuant to clause Section 4 (b) of the REDA Agreement, attached hereto as Exhibit “B”, it is understood that the aforesaid CMU contribution is variable and conditional, and that the CMU contribution is dependent upon the aggregate cost of those projects as identified within Section 4 (1), (2), and (3) herein. It is understood that pursuant to the REDA Agreement, in order to receive any such conditional funds from CMU, Madison County, as LGA, shall provide CMU with either (i.) a copy of the construction contract or contracts for the engineering, construction, and installation of “off site” Facilities demonstrating that the final costs therefore are in excess of the \$2,860,000.00 aggregate amount apportioned to CMU for “off site” construction activities; and/ or (ii) copies of all invoices that have been paid or which are due in payment to CMU evidencing that the final, total costs therefore have exceeded or will exceed \$2,860,000.00. Parties hereto understand that the REDA Agreement shall govern how much, when, and the extent to which the CMU Participation Fund shall be utilized (*see Section 4(b) of REDA Agreement: CMU’s Conditional Contribution*), for guidance and execution of the herein Operating Agreement. Madison County, as LGA, acknowledges that CMU as eventual owner-operator of the utility facilities at the Madison County Megasite, provides a unique, necessary, and indispensable source of technical knowledge and professional insight and agrees to comply and observe Section 9(e) of the REDA Agreement regarding interaction and prior consultation with CMU concerning the “on-site” design of the utility facilities to ensure compatibility with CMU regarding each component of such infrastructure facility.

**SECTION 5: Staffing:** Parties understand that staffing pertaining to the acquisition, construction, development and or tenant recruitment for the “on-site” features of the Project will be MCEDA, through contracts approved by Madison County, as LGA, with the assistance of MCEDA, and that “off-site”-construction staffing will be provided by CMU.

**SECTION 6: Payment and Reimbursement Procedure:** Pursuant to the MIFRF MDA Grant Funds procedure, grant funds will be disbursed by MDA to Madison County, Mississippi, as LGA, in an amount not to exceed \$8,367,613.00, in the aggregate, to pay costs incurred by the LGA for materials purchased, and work or other services rendered on or after July 14, 2020, to design and construct or install, as applicable, the utility Facilities.

- (a.) Eligible costs include any related hard and “soft costs” and expenses as expressly described, including engineering, architectural, project/construction management and other soft costs association with the Project provided that such engineering, architectural,

- project/construction management, inspection, environmental and other soft costs shall not exceed 15% of the total Grant amount.
- (b.) Pursuant to the Grant Agreement the LGA will provide requests for reimbursement to MDA, of no more than once a month, and will include copies of paid invoices or receipts. MDA will make Grant funds available within forty-five (45) days of a submitted reimbursement request;
  - (c.) Pursuant to Section 6 (c.) above, CMU must also submit its invoice for payment to LGA Madison County on a timely basis. As such, CMU invoices must be submitted to the Engineer of Madison County well in advance of the regular or recess meetings of the Madison County Board of Supervisors, enabling the county engineer enough time to inspect, confirm, and to approve said CMU invoice, and submit same to the MC CFO for inclusion on the regular Claims Docket for approval by the Board of Supervisors. CMU can only submit invoices to MC on a once per month basis.
  - (d.) Upon approval of the invoice by the Board of Supervisors the request for reimbursement by MDA will also be voted upon and said reimbursement request will immediately be sent to MDA;
  - (e.) CMU understands that the LGA will not tender actual payment of the invoice to CMU until LGA actually receives reimbursement from MDA;
  - (f.) In the event MDA declines to pay any reimbursement invoice submitted by Madison County as allowable or authorized under the Grant Agreement, Madison County will notify CMU immediately and both entities will engage MDA in order to cure whatever problem exists. If the invoice is declined or not paid by permanent order of MDA then Madison County is indemnified from any liability as regards any indebtedness to CMU for non-payment of invoices submitted to Madison County by CMU incident to the Project, unless the non-payment of the invoice related directly to some administrative error of Madison County;
  - (g.) All rates, taxes, and procedures for bid and costs of materials for all CMU activities under the Operating Agreement will be fully and continually disclosed to Madison County, pursuant to the oversight responsibility of Madison County, as LGA.
  - (h.) CMU and Madison County shall consider as eligible reimbursable costs no more than 15% of the sum of \$2,860,000,00 apportioned to CMU for "soft costs" (design, inspection, etc.) for the "off site" elements of the Project.

**SECTION 7: Termination:** Termination of this Operating Agreement shall end when all activities pursuant to design, construction, installation and inspection of infrastructure for The Project shall have been achieved, and said facilities shall have been turned over to CMU for servicing and management. Termination of this Operating Agreement shall also be contingent upon fulfillment of all terms of the Grant Agreement and REDA Agreement, and any penalties for breach of this

Operating Agreement shall be informed and controlled by relevant terms and conditions within said Grant and REDA Agreements;

**SECTION 8. Controlling Law:**

(a.) This Operating Agreement has been entered into, under, and shall be interpreted and construed according to the laws of the State of Mississippi;

(b.) Severability: If any item of this Agreement is found to be void or invalid, such provision shall be fully severable here from and such invalidity shall not affect the remaining terms of this Agreement;

(c.) Counterparts: This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the undersigned Parties have executed this **Resolution Approving the Operating Agreement** between the undersigned Parties for the purpose of setting forth the terms and conditions incident to the design, construction, inspection, and contingent financing of and for the Utility Facilities, both “on-site and off-site” for the Amazon “Fulfillment Center”, formerly known as “Project Pine”, scheduled to be built within the confines of the Madison County Megasite, and effective as of the date of signatures, as set forth below.

**MADISON COUNTY, MISSISSIPPI**

BY \_\_\_\_\_  
Gerald Steen,  
President, Board of Supervisors

ATTEST:

BY: \_\_\_\_\_  
Ronny Lott  
Madison County Chancery Clerk

**CANTON MUNICIPAL UTILITIES**

By: \_\_\_\_\_  
Robert C.O. Chinn  
Chairman, Board of Commissioners

ATTEST:

BY: \_\_\_\_\_  
Secretary  
Canton Municipal Utilities

