

**CITY OF ARDMORE**  
Office of City Manager

Council Letter No. 5101  
Meeting Date: June 7, 2021

Mayor and City Commission  
City of Ardmore, Oklahoma

RE: Consent to Development Agreement between the Ardmore Development Authority and  
WP Global, LLC

Dear Commission Members:

The Ardmore Development Authority (ADA) requests the City Commission consent to a Development Agreement. The Development Agreement is between the ADA, a public trust of the City of Ardmore and WP Global, LLC, an Oklahoma limited liability company, for the purpose of developing a multimodal transportation hub at the Ardmore Municipal Airport.

Staff recommends approval of the Development Agreement between the Ardmore Development Authority and WP Global, LLC.

Respectfully submitted,



Kevin Boatright  
City Manager

**ARDMORE DEVELOPMENT AUTHORITY  
WP GLOBAL, LLC  
DEVELOPMENT AGREEMENT  
ARDMORE MUNICIPAL AIRPORT**

This Development Agreement (the "Agreement") is dated as of \_\_\_\_\_, 2021, between the Ardmore Development Authority (the "Authority"), a Public Trust of the City of Ardmore, and WP Global, LLC, an Oklahoma limited liability company (the "Developer"). The City of Ardmore, Oklahoma, a municipal corporation (the "City") is a consenting party to this Agreement.

The Authority and the Developer have entered into a Ground Sublease Agreement dated as of \_\_\_\_\_, 2021 (the "Lease Agreement") for the purpose of developing a multimodal transportation hub at the Ardmore Municipal Airport (the "Airpark Project").

The Airpark Project is intended to be a multimodal transportation hub that will serve as an inland port with US Customs operations and become an international trade center generating benefits for the Ardmore community, the region, and the State of Oklahoma.

The Airpark Project will consist of properties owned by the City and leased to the Authority and subleased by Developer for the purpose of the construction and operation of a multimodal hub to include rail and ancillary facilities required for operations. In addition to the transportation assets, Developer may construct, at its expense and with the appropriate approvals from the Authority and City, additional facilities to house warehouse, distribution, and manufacturing operations.

The intent of this Agreement is to achieve the development and economic impact objectives of the Airpark Project by providing procedural, financial, and legal viability to the development process. This will provide mutual consideration between the parties through the planning, financing, development, and implementation of private industry and business that will generate several hundred million dollars of new investment and create hundreds of jobs in connection with the Airpark Project.

**Responsibilities of Developer.** The Developer shall, at no expense to the Authority and City:

1. Create a master development plan that provides the development of the multimodal facility as well as identifies a phasing plan/timeline for construction and completion of improvements (the "Master Development Plan"). The initial Master Development Plan will be completed by September 30, 2021 and shall include certain development benchmarks mutually agreeable to the Authority and the Developer (the "Performance Benchmarks").

2. Make available extension of rail service to the Airpark Project development sites as identified in Exhibit "A" to the Lease Agreement ("Leased Premises" incorporated as part of this agreement). Developer's obligation to full extension of rail and other infrastructure to the

leased premises is contingent on the acceptance and award of the CRISI grant application as defined below.

3. Provide for review and approval of plans and financing for undertaking specific development within the Airpark Project. Developer will, in coordination with the Oklahoma Department of Transportation (“ODOT” and ODOT as the applicant), submit a Consolidated Rail Infrastructure and Safety Improvements Program (CRISI) grant application by September 30, 2021.

4. Construct the facilities identified within the Master Development Plan per the phasing plan/timeline.

5. Coordinate with the Authority on securing grant funding at both the state and federal levels.

6. Comply with any and all federal, state, and local laws and regulations applicable to the Airpark Project, including, without limitation, environmental laws and regulations and the provisions of this Agreement.

**Responsibilities of the Ardmore Development Authority.** The Authority shall, at no expense to the Developer:

1. Cooperate and assist in the development/creation of a Master Development Plan.

2. Arrange for the design, financing and construction of public infrastructure improvements including, but not limited to, utilities and roadways which are necessary to the development of the Airpark Project. The Authority will be the applicant for a Rebuilding America Infrastructure with Sustainability and Equity (RAISE) Grant to be submitted by June 30, 2021.

3. Grant utility, road and railway rights of way and easements which are necessary for the development.

4. Developer shall strictly comply with the requirements of 61 O.S. Section 1 Public Buildings and Public Works. Developer will not be required to comply with the bidding requirements under the Competitive Bidding Act when receiving bids for the construction of improvements.

4. Work jointly with the Developer and other prospective participants in the Airpark Project to achieve project objectives in accordance with the Master Plan.

5. Make necessary and appropriate steps to establish U.S. Customs operations at the Ardmore Municipal Airport.

## **Developer's Exclusive Option to Develop the Property**

In accordance with this Agreement, Developer shall have the exclusive option to develop Leased Premises as long as it is not in default under the terms of this Agreement, the Lease Agreement or any Master Development Plan. The Authority will coordinate with Developer on all inquiries from potential business or industry users of the defined property. Developer will promptly advise the Authority of likely developments. Each development transaction shall be subject to determination of each development tract, approval of development plans and evidence of financing. Approval shall not be unreasonably withheld or delayed. Any sublease shall include conditions, covenants, restrictions, and other provisions and be for such term, including renewal option, that may be acceptable to both Developer and the Authority. The exclusive option of Developer to develop tracts in the property shall continue from the date of this Agreement, subject to meeting Performance Benchmarks as mutually established until the expiration or termination of this Agreement. During calendar year 2061, the parties hereto shall update the Master Development Plan and establish new Performance Benchmarks.

The Lease Agreement and future subleases between Developer and subtenants (each, a "Development Sublease") will be supported by such estoppel, subordination, attornment and other supporting documents and agreements executed by the Authority and Developer and its lenders as may reasonably be necessary to provide construction and permanent financing on a development tract.

Approval of Development Plans within a development phase are subject to approval by the Authority and the City. The development plans will conform to the Master Development Plan and applicable zoning requirements and shall reflect the development objectives of the Airpark Project.

Authority will bring all utilities to the leased premises within normal industrial standards.

This Agreement does not create, nor shall it be construed as creating, a partnership or a joint venture between or among the Authority and Developer. No party shall have any authority to make any contract, agreement, warranty, or representation on behalf of any other party or to create any obligation, express or implied, on behalf of any other party. This Agreement does not create any third-party beneficiary rights.

Upon written notice to the Authority, which is given and acknowledged, Developer shall have the right to pledge its interest under this Agreement to its lenders.

### **Term and Termination**

The term of this Agreement shall begin on the date of this Agreement and shall continue thereafter until terminated.

This Agreement and the Lease Agreement may be terminated by:

1. Mutual written consent of the parties hereto and approval by Authority Board of Trustees, or,

2. By the Authority if Developer fails to perform in any material respect any of its duties, obligations, and covenants contained in this Agreement including the Performance Benchmarks outlined in the Master Development Plan (or extensions and modifications thereof) and fails to cure that failure to perform after receiving sixty (60) days' written notice of the alleged failure to perform, or

3. By Developer if the Authority or City fails to perform in any material respect any of its duties, obligations, and covenants contained in this Agreement, and fails to cure that failure to perform after receiving sixty (60) days' written notice of the alleged failure to perform; or

4. By the Authority if Developer defaults in the performance of its obligations with respect to the extension and/or provision of rail service and fails to remedy such default and commence performance or commence in good faith efforts to remedy such default within sixty (60) days, the Authority shall be entitled to enforce such rights by specific performance.

In the event of a default with respect to the Performance Benchmarks, Developer will be entitled to a six (6) month extension upon a showing of good faith efforts to perform. In the case of other defaults, if the default is not susceptible to being cured within sixty (60) days, the defaulting party must commence to cure within such time and diligently complete thereafter.

In the event that Developer materially defaults in any of the terms of this Agreement, it will also be considered to default under the terms of the Lease Agreement.

**Representations and Warranties. The Authority hereby represents and warrants to the Developer the following:**

1. **Authority.** The Authority has the requisite power to execute and deliver this Agreement and all the related agreements, documents and instruments referred to in this Agreement, and all those transactions have been duly and validly authorized by all necessary actions of the Authority, and this Agreement and those related agreements, documents and instruments are, and will be, valid and binding obligations of the Authority in accordance with their respective terms and conditions.

2. **ADA Lease and Status.** The Lease Agreement along with the Master Development Agreement represents the entire agreement between the Authority and Developer as to the leasing of the Leased Premises and, except as described in this Agreement, has not been modified, changed, altered, or amended in any respect.

3. **City Lease and Status.** The Lease Agreement between the City and the Authority dated as of October 1, 1983, and on file with the Carter County Clerk and recorded at Book 1080, Page 550, as amended, by and between the Authority and the City. (the "City Lease") represents the entire agreement between the Authority and the City as to the leasing of the Leased Premises and has not been modified, changed, altered, or amended in any respect except as provided herein and by the City's consent hereto. The City Lease is the valid and binding obligation of the Authority and it is in good standing and in full force and effect. To the best of the Authority's knowledge, (a)

there is no default under the City Lease, (b) no event has occurred, and no condition exists which, with notice or the passage of time or both, would constitute an event of default under the City Lease, and (c) the City has performed all its obligations under the City Lease that were due to be performed on or before the Effective Date of this Agreement.

4. **Consent to Lease Agreement.** The Authority and the City of Ardmore has consented to the Lease Agreement and hereby reaffirms that consent.

5. **Customs.** The Authority will take the necessary and appropriate steps to receive approval to establish U.S. Customs operations at the Ardmore Municipal Airpark.

**Representations and Warranties of Developer.** The Developer hereby represents and warrants to the Authority the following:

1. **Authority.** Developer has the requisite power to execute and deliver this Agreement and all the related agreements, documents and instruments referred to in this Agreement, and all those transactions have been duly and validly authorized by all necessary actions of Developer and this Agreement and those related agreements, documents and instruments are, and will be, valid and binding obligations of Developer in accordance with their respective terms and conditions.

**Further Assurances.** The parties hereto shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered any instruments and take any other action as may be necessary or advisable to carry out their duties and obligations under this Agreement.

**Notices.** All notices required or permitted under this Agreement shall be in writing and

(a) if by air courier, shall be deemed to have been given one (1) business day after the date delivered to a recognized carrier of overnight mail, with all freight or other charges prepaid,

(b) if by telecopier, facsimile, email, or other electronic means, shall be deemed to have been given when sent, and

(c) if mailed, shall be deemed to have been given three (3) business days after the date when sent by registered or certified mail, postage prepaid, addressed as follows, unless another address is designated by a party to this Agreement:

In the case of the Authority, to:  
Ardmore Development Authority  
410 West Main Street  
Ardmore, Oklahoma 73401  
Attn: President/CEO

In the case of the City, to:  
City of Ardmore  
23 South Washington  
P.O. Box 249  
Ardmore, Oklahoma 73402  
Attn: City Manager

In the case of WP Global, LLC to:

WP Global, LLC  
7815 E. 97<sup>th</sup> Place  
Tulsa, OK. 74133  
Attn: Managing Partner

and

WP Global, LLC  
315 W. 3<sup>rd</sup> Street  
Pittsburg, KS 66762  
Attn: Rick D. Baden, Manager

### **Effect of Agreement**

1. This Agreement shall be effective notwithstanding any other existing agreements between or among the parties hereto related to the lease and development of the Leased Premises. The essential terms included in this Agreement with respect to development of the Airpark Project and the Property shall be included and expanded in the Master Development Plan.

2. This Agreement may not be modified, amended, or terminated except by a written instrument signed by the parties and consented to by all parties to the extent that their consents are required.

3. The execution of this Agreement by the City as Consenting Party shall not be construed as granting its consent to the Authority to incur any debt in connection with the terms of this Agreement as contemplated by 60 O.S. § 176, et seq. Consequently, any debt sought to be incurred by the Authority pursuant to this Agreement shall require separate and specific approval of the City.

### **Waiver**

No waiver of any breach or default under this Agreement shall be considered valid unless waived in writing and signed by the party giving the waiver, and no waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

## **Assignment**

Developer shall not, directly, or indirectly, assign this Agreement or any interest herein or effect a change of control, except by adjustment of interest of current owners of Developer or assignment to a wholly owned subsidiary, without the prior approval of the Authority, which approval shall not be unreasonably withheld or delayed. Developer shall promptly give notice to the Authority of any proposed change in the ownership or any proposed assignment and, upon completion of any transfer, provide documentation of the completed transaction.

## **Governing Law**

This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Oklahoma without giving effect to principles of conflicts of laws.

## **Dispute Resolution**

To the extent authorized by law, any dispute concerning this Agreement shall be resolved first by a meeting in good faith between the management of the parties hereto and, if unsuccessful, then by non-binding mediation in good faith in accordance with the American Arbitration Association Commercial Mediation Rules or by final binding arbitration pursuant to the Federal Arbitration Act. A single arbitrator shall be used in any dispute involving less than One Million Dollars (\$1,000,000.00). Three arbitrators shall be used in any dispute involving more than One Million Dollars (\$1,000,000). Any arbitration shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be self-administered if the parties hereto can agree on the arbitrator or arbitrators within thirty (30) days from service of a statement of claim. If the parties hereto cannot agree on the arbitrator(s) within thirty (30) days, the dispute will be administered by the AAA. Each party may resort to provisional remedies from a court, but the parties hereto consent to a stay of any such action after the provisional remedy is adjudicated so the underlying dispute is resolved by arbitration. Each party shall be responsible for its own attorneys' fees and its share of the expenses of arbitration. Any award in arbitration may be confirmed and enforced by any court of competent jurisdiction.

In the event Developer and the Authority are unable to agree on Performance Benchmarks as provided in the Agreement, Developer or the Authority may seek arbitration of the reasonableness of the proposed timing (i.e., targeted dates for commencement and completion) and scope (i.e., minimum development objectives) based on the Master Development Plan.

In the event the Authority and Developer are unable to agree on reasonable requirements for the extension of rail service as provided in this Agreement, the Authority may seek arbitration of the reasonableness of Developer's proposed requirements based on the obligations contained in this Agreement and implementing documents.

## **Force Majeure and Extensions**

**Force Majeure.** The obligations of the parties hereto (other than to make any and all payments hereunder when due) shall be suspended so long as and to the extent that



performance is prevented by fire, labor disputes, acts of God, acts of terrorism, the elements, wars, epidemics, riots, civil disturbances, and other causes, similar or dissimilar, not within the reasonable control of the party claiming relief and which could not be avoided by the exercise of due care. The party affected shall remedy the cause of suspension with reasonable dispatch, retaining to such party unqualified discretion in settling labor disputes.

**Extensions.** It is understood that delays in timely performance by the Authority might delay performance by Developer. Thus, where Developer's delay is caused by the Authority's delay in performing the Authority's obligations pursuant to this Agreement, the time for performance of the Developer's action(s) so delayed will be extended for the period of the delay caused by delay in the Authority's performance; provided, that Developer shall, within ten (10) days after the beginning of any such delay so caused, have first notified the Authority thereof in writing, and of the cause or causes thereof and claim an extension for the period such delay continues. In all cases, the times for performance of Developer's obligations may be extended by the Authority for good cause and the times for prescribed actions by the Authority may be extended by mutual agreement.

### **Headings**

The section and paragraph headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the contents of those sections or paragraphs nor are they to be a substantive part of this Agreement.

### **Counterparts**

More than one counterpart of this Agreement may be executed by the Parties and each fully executed counterpart shall be deemed an original.

### **Severability**

\_\_\_\_\_ In the event any term or provision of this Agreement is found to be unenforceable or void, in whole or in part, as drafted, then the offending term or provision shall be construed as valid and enforceable to the maximum extent permitted by law, and the remainder of this Agreement shall remain in full force and effect.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed on the day and year written below.

Date: 5-18-2021

ARDMORE DEVELOPMENT AUTHORITY,  
A Public Trust of the City of Ardmore, Oklahoma



ATTEST:

By: Nancy Sjulín  
Nancy Sjulín,

Michael A. Bates  
Secretary

WP GLOBAL, LLC  
An Oklahoma Limited Liability Company

By: Stucker Link  
Manager

CITY OF ARDMORE  
An Oklahoma Municipal Corporation  
CONSENTING PARTY

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Lori Linney  
City Clerk