

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT FINANCING DISTRICT NUMBER FIVE
COUNTY OF PENNINGTON, SOUTH DAKOTA

By and Among

Dream Design International, Inc.
a South Dakota corporation,

PENNINGTON COUNTY, SOUTH DAKOTA,

and

CITY OF BOX ELDER, SOUTH DAKOTA

THIS AGREEMENT is entered into by and among Dream Design International, Inc., a South Dakota corporation (the “Developer”), Pennington County, South Dakota, a political subdivision of the State of South Dakota (the “County”), and the city of Box Elder, a political subdivision of the State of South Dakota (the “City”); collectively referred to as the “Parties.”

RECITALS

WHEREAS, the County created “Tax Increment Financing District Number Five, County of Pennington” (the “TID”) within the City by resolution dated December 15, 2020; and

WHEREAS, the City consented to the creation of the TID within its municipal boundaries by Resolution No. 20-29 on September 16, 2020; and

WHEREAS, the County approved the Project Plan for the TID by resolution dated December 15, 2020;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. The real property contained in the TID is described as:

Lot B Less Lot 1 of the Box Elder DSDP Subdivision and the adjacent N. Ellsworth Road Right of Way, adjacent Constitution Ave Right of Way and adjacent Liberty Blvd Right of Way all located in Section 17, T2N, R9E, BHM, Box Elder, Pennington County, South Dakota, including within and adjacent rights-of-ways.

SECTION 2. The project costs of infrastructure improvements to be paid by the County under this Agreement and as identified in the approved Project Plan as “Tax Incremental District Costs” are:

LIBERTY PLAZA TIF	
INFRASTRUCTURE COSTS	
ESTIMATED PROBABLE TIF COSTS	
ITEM	COST
Environmental and Clean up	200,000.00
Mass Grading	627,000.00
Roads and Utilities	3,665,160.67
Landscaping, Signage, and irrigation	200,000.00
Public Building (Portion of the Costs)	2,000,000.00
TOTAL CONSTRUCTION	6,692,160.67
Contingencies	669,216.07
TOTAL CAPITAL IMPROVEMENTS COSTS	7,361,376.73
FINANCING EXPENSES	2,998,071.00
TOTAL TIF PROJECT COSTS	10,359,447.00

SECTION 3. Under SDCL 11-9-13, the Developer must complete construction of the infrastructure improvements specified in the Project Plan no later than 5 years from the creation of the TID.

SECTION 4. The County agrees to pay to the Developer tax-increment-fund revenues for project costs of the TID as identified in the approved Project Plan. *See supra* § 2. Under SDCL 11-9-25, the positive-tax increments of the district shall be allocated to Pennington County for each year from the date of the creation of the TID until all monetary obligations under this Agreement are paid. However, in no event may the positive-tax increments be allocated after the calendar year 2040. In addition, payment of tax-increment-fund revenues shall not exceed \$10,359,447.00. The Parties further agree that \$1,000 of the positive-tax increment shall be paid to the County as an administrative fee in the fiscal year 2021; the Developer may issue a check January 1, 2022, to pay this fee.

SECTION 5. The purpose of this TID is to (1) grant the Developer \$10,359,447.00, the amount necessary to create the TID; (2) implement the Project Plan; and (3) stimulate and develop the general economic welfare and prosperity of the State.

SECTION 6. The payment of tax-increment funds under this Agreement is a grant under Chapter 11-9 of the South Dakota Codified Laws (the "Grant"). The Grant is a personal-property right that vests with the Developer on the effective date of this Agreement.

SECTION 7. The tax increment base value of the property located in the TID, as certified by the South Dakota Department of Revenue, has an aggregate assessed value of \$0.

SECTION 8. The Parties understand and agree that the County will not issue any revenue or other bonds to cover any cost directly or indirectly relating to the Developer's improvement of the property under this Agreement.

SECTION 9. Upon completion of the construction of the infrastructure improvements, the Developer must certify to the City of Box Elder the costs of construction, including capital costs, professional fees, and contingency costs. The City will be responsible for verifying eligible project costs and reporting that verification to the Pennington County Auditor and the Developer. The Developer must provide contractor or supplier invoices or other supporting documentation upon request of the Auditor or City of Box Elder. The project can be certified in multiple phases as needed for the development. Upon certification by the Developer and verification of costs by the City, the City must pay all available tax-increment-fund revenues from the City Fund not to exceed \$10,359,447.00.

SECTION 10. The Parties understand that the infrastructure cost figures are based upon good faith estimates, and the actual components within a particular phase and cost category may vary from the estimated values. Therefore, the Developer and County agree that the total authorized project costs of \$10,359,447.00 contemplated under this Agreement, including capital costs, professional fees, contingency costs, and financing costs, is the controlling value with respect to the authorized TID expenditures. It is further understood that the line item categories and estimated costs were prepared for guidance in developing the Project Plan, and actual costs will be determined upon completion of the infrastructure improvements; however, if the total of the actual infrastructure-improvement costs and financing costs exceed \$10,359,447.00, the Parties acknowledge and agree that any costs exceeding this amount are guaranteed by the Developer.

SECTION 11. The Parties acknowledge that the Developer reserves the right to undertake the infrastructure improvements contained within the Project Plan in its sole discretion. The grant described in this Agreement is only available to pay for eligible project costs actually incurred by the Developer.

SECTION 11. Payments must be made solely from available tax-increment funds as specified in this Agreement.

SECTION 12. Under SDCL 11-9-31, all positive-tax increments received in the TID must, upon receipt by the Pennington County Auditor, be deposited into a special fund to be known as the "Tax Increment Financing District #5 Fund" (the "Fund"). The

positive-tax increments received in the TID, and deposited into the Fund, must be transmitted to the City as soon as reasonably practicable under the circumstances. The City will deposit the positive-tax increments into a special fund, segregated from all other City deposits (the “City Fund.”). The moneys will be paid out of the City Fund only to pay for properly certified and verified project costs under SDCL 11-9-32 and as set forth in this Agreement.

SECTION 13. The Parties specifically acknowledge that the County’s and City’s obligation to pay is limited to the positive-tax increments of the TID received into the Fund and the City Fund. The Parties also specifically acknowledge that the County and City make no representations concerning the sufficiency of Fund moneys to retire any indebtedness incurred by the Developer. The Parties further acknowledge that SDCL 11-9-25 limits the allocation of the positive-tax increments.

SECTION 14. As the property within the TID is located within the boundaries of the City, infrastructure improvements constructed under the Project Plan and this Agreement must conform with (1) plans and specifications approved by the City of Box Elder, and (2) all applicable federal, state, and local laws and regulations.

SECTION 15. The County and the City are not responsible for the bidding or construction of any improvement identified in the Project Plan. The Developer must construct the improvements through private contracts.

SECTION 16. The Developer agrees to immediately satisfy any and all mechanics’ liens or materialman’s liens that arise as a result of infrastructure improvements constructed under the Project Plan and this Agreement. This provision will not prevent the Developer from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment; nor will this provision prevent the Developer from defending against an action to foreclose a mechanics’ lien. If a judgment in a mechanics’ lien foreclosure action is entered against the Developer, the Developer agrees to (1) satisfy such judgment, or (2) post a bond in an amount of the judgment lien during the pendency of any appeal of such judgment by the Developer.

SECTION 17. The City and the Developer must indemnify and hold the County harmless and further release and discharge the County, its officers and employees, from any and all claims, demands, and actions arising out of, or in any way related to, this Agreement, with the exception of the obligation of the County to forward to the City available tax-increment-fund revenues under the terms of this Agreement.

SECTION 18. This “Contract for Private Development” and the Project Plan approved by the Pennington County Board of Commissioners constitute the entire Agreement of the Parties. No other promises or consideration form a part of this

Agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. If a conflict between the provisions of this Contract for Private Development and the Project Plan, then the Contract for Private Development controls.

SECTION 19. This Agreement will be construed according to the laws of the State of South Dakota. Any disputes arising out of or related to this Agreement shall be litigated in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.

SECTION 20. This Agreement may be executed in separate counterparts, all of which executed counterparts will constitute one complete document.

SECTION 21. The Developer may, as needed, assign payments under this Agreement to either Liberty Plaza, LLC, or a financial institution to provide funding for the project.

SECTION 22. The Parties agree that execution of a facsimile or electronic copy of this Agreement will have the same force and effect as an executed original.

SECTION 23. Under SDCL 11-9-34, tax-increment bonds, contracts, or agreements must be authorized by resolution of the governing body. Resolutions passed by a board of county commissioners take effect on the twentieth day after completed publication. This Agreement will take effect upon the effective date of a resolution by the Pennington County Board of Commissioners approving this Contract for Private Development and full execution by the Parties.

Dated this ____ day of _____, 2020.

Dream Design International, Inc.

By _____

Its _____

STATE OF _____)
) SS
COUNTY OF _____)

On this the _____ day of _____, 2020, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be a _____ of Dream Design, Inc., a South Dakota corporation, and that he as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as its _____.

In Witness Whereof I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

CITY OF BOX ELDER,
SOUTH DAKOTA

Larry Larson, Mayor

(SEAL)

ATTEST:

Finance Officer

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2020, before me, the undersigned officer, personally appeared _____ and _____, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the city of BOX ELDER, South Dakota, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the city of Box Elder, South Dakota.

In Witness Whereof I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

PENNINGTON COUNTY
BOARD OF COMMISSIONERS,

Deb Hadcock, Chair

(SEAL)

ATTEST:

Auditor

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2020, before me, the undersigned officer, personally appeared _____ and _____, who acknowledged themselves to be the Chair of the Board of Commissioners and Auditor, respectively, of PENNINGTON COUNTY, South Dakota, and that they, as such Chair and Auditor, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Chair and Auditor Officer of Pennington County, South Dakota.

In Witness Whereof I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires: