

**RESOLUTION APPROVING THE CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT FINANCING DISTRICT NUMBER SIX**

**WHEREAS**, the Pennington County Commission has determined that it is in the best interest of the County to implement plans to promote economic development and growth in the County; and

**WHEREAS**, the Commission approved the creation of Tax Increment Financing District Number Six (TIF District #6) by resolution dated December 7, 2021, for the purpose of increasing availability of affordable housing in the Rapid City area and to improve associated community infrastructure; and

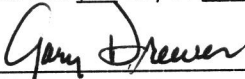
**WHEREAS**, the Commission approved the Project Plan for TIF District #6 by resolution dated December 7, 2021; and

**WHEREAS**, the Commission has received for consideration a Contract for Private Development, attached hereto as Exhibit A, which sets forth the duties and obligations of the respective parties in bringing the Project Plan for TIF District #6 to fruition; and

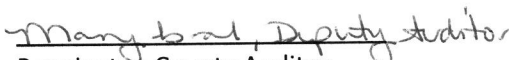
**WHEREAS**, the use of Tax Increment Funding to promote this development is in keeping with the purpose of the statutes adopted by the South Dakota State Legislature; and

**NOW, THEREFORE, BE IT RESOLVED** by the Pennington County Board of Commissioners that the Contract for Private Development (TIF District #6), attached to this Resolution as Exhibit A, is hereby approved and shall take effect on the twentieth day after completed publication.

Dated this 19 day of April, 2022.

  
\_\_\_\_\_  
Gary Drewes, Chair  
Pennington County Board of Commissioners

ATTEST:

  
\_\_\_\_\_  
Pennington County Auditor  
(SEAL)



Publication:

RC Journal	May <u>4</u> , 2022
Pennington County Courant	May <u>5</u> , 2022
Hill City Prevalier	May <u>5</u> , 2022

Effective Date: May 25, 2022

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

By and Among

Pink Cabin, LLC  
a South Dakota corporation, and

PENNINGTON COUNTY, SOUTH DAKOTA, a political subdivision of the State of  
South Dakota

THIS AGREEMENT is entered into by and among Pink Cabin LLC, Inc., a South Dakota corporation (the “Developer”), and Pennington County, South Dakota, a political subdivision of the State of South Dakota (the “County”); collectively referred to as the “Parties.”

## RECITALS

WHEREAS, County created “Tax Increment Financing District Number Six, County of Pennington” (the “TID”) by resolution dated December 7<sup>th</sup>, 2021; and

WHEREAS, County also approved the Project Plan for the TID by resolution dated December 7<sup>th</sup>, 2021.

NOW, THEREFORE, the Parties hereby agree as follows:

**SECTION 1.** The real property located within the TID is described as:

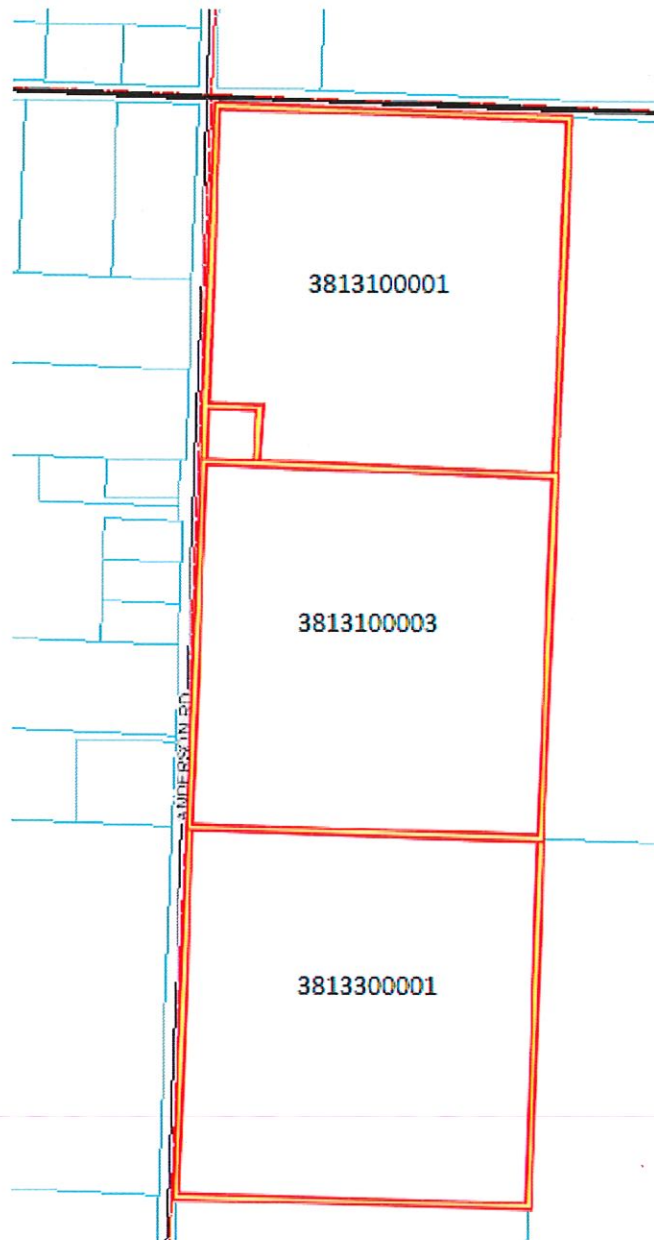
### PROJECT AREA LEGAL DESCRIPTION:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; NW $\frac{1}{4}$ NW $\frac{1}{4}$  (including Lot A) Less ROW; Section 13, T1N, R8E, BHM, Pennington County, South Dakota.

### Parcels Relating to the above described Project Area:

1. 3813100001 (Tax ID 19808)
2. 3813100003 (Tax ID 11533)
3. 3813300001 (Tax ID 19526)

The following map depicts the area of the TID:



**SECTION 2.** The eligible project costs identified in the approved Project Plan to be paid by County under this Agreement are defined below. These costs and line items are only projected estimates however, the controlling number of the reimbursable costs to Developer shall never exceed \$12,413,620, regardless of if actual costs exceed the projections.

<b>Owner</b>	Valley Development, LLC				
<b>Project:</b>	Anderson - Longview Road Infrastructure Improvements				
<b>Date:</b>	8/17/2021				
<b>Contractor:</b>					

TDG

Line Item	Description of Item	Qty.	Unit	Unit Cost	Extd. Cost
<b>General</b>					
100	Mobilization/Incidental Work	1.0	LS	\$ 50,000.00	\$ 50,000.00
101	Traffic Control/Signage	1.0	LS	\$ 50,000.00	\$ 50,000.00
102	Erosion and Sediment Control	1.0	LS	\$ 50,000.00	\$ 50,000.00
103	Wattle	12,000.0	LF	\$ 6.00	\$ 72,000.00
104	Track Out Pad	5.0	LS	\$ 2,500.00	\$ 12,500.00
105	Concrete Clean out	5.0	LS	\$ 1,000.00	\$ 5,000.00
106	Survey	1.0	LS	\$ 50,000.00	\$ 50,000.00
107	Material Testing	1.0	LS	\$ 50,000.00	\$ 50,000.00
<b>REMOVALS</b>					
200	Asphalt Removal	310,000.0	SF	\$ 1.25	\$ 387,500.00
201	Rubble Haul Off	150.0	LDS	\$ 500.00	\$ 75,000.00
<b>EXCAVATION</b>					
300	Grading	50,000.0	CY	\$ 4.00	\$ 200,000.00
301	Topsoil, Stockpile	10,000.0	CY	\$ 4.50	\$ 45,000.00
<b>WATER MAIN</b>					
400	12" PVC Water Main (C-900)	9,000.0	LF	\$ 85.00	\$ 765,000.00
401	12" Gate Valve	30.0	EA	\$ 4,000.00	\$ 120,000.00
402	12" Bends	20.0	EA	\$ 1,000.00	\$ 20,000.00
403	12"x 8" Tee	10.0	EA	\$ 1,200.00	\$ 12,000.00
404	8" PVC Water Main (C-900)	400.0	LF	\$ 45.00	\$ 18,000.00
405	8" Gate Valve	5.0	EA	\$ 2,000.00	\$ 10,000.00
406	8" Cap	5.0	EA	\$ 500.00	\$ 2,500.00
407	Fire Hydrant w/Aux Valve	20.0	EA	\$ 6,500.00	\$ 130,000.00
408	Cathodic Protection	1.0	LS	\$ 100,000.00	\$ 100,000.00
409	Bedding	7,000.0	Ton	\$ 22.00	\$ 154,000.00
410	Pressure Reducing Valve & Vault	1.0	LS	\$ 100,000.00	\$ 100,000.00
411	Highway 44 Bore and Casing - Water	160.0	LF	\$ 800.00	\$ 128,000.00
412	Water Connection to Green Valley	1.0	LS	\$ 25,000.00	\$ 25,000.00
413	Longview Water Services	7.0	EA	\$ 3,000.00	\$ 21,000.00
414	Anderson Water Services	13.0	Ea	\$ 3,000.00	\$ 39,000.00



Sanitary Sewer					
500	18" Sanitary Sewer Main	5,550.0	LF	\$ 120.00	\$ 666,000.00
501	Sanitary Sewer Manhole	23.0	EA	\$ 5,800.00	\$ 133,400.00
502	Highway 44 Bore and Casing	150.0	LF	\$ 1,000.00	\$ 150,000.00
503	Connect to 42" Sanitary Sewer	1.0	EA	\$ 15,000.00	\$ 15,000.00
504	8" Sanitary Sewer Main/Longview	4,600.0	LF	\$ 80.00	\$ 368,000.00
505	8" Sanitary Sewer Manholes/Longview	13.0	EA	\$ 5,800.00	\$ 75,400.00
506	LongView Sanitary Sewer Services	7.0	EA	\$ 5,000.00	\$ 35,000.00
507	Anderson Sanitary Sewer Services	13.0	EA	\$ 5,000.00	\$ 65,000.00
STREET IMPROVEMENTS					
600	1" Aggregate Base Course	15,000.0	Ton	\$ 26.00	\$ 390,000.00
601	Asphalt Paving	10,000.0	Ton	\$ 115.00	\$ 1,150,000.00
602	Geo Fabric	21,120.0	SY	\$ 3.50	\$ 73,920.00
603	Curb and Gutter	1,000.0	LF	\$ 24.00	\$ 24,000.00
604	Pans and Fillets	350.0	SY	\$ 135.00	\$ 47,250.00
DRAINAGE IMPROVEMENTS					
700	24" RCP Stormsewer	1440.0	LF	\$ 80.00	\$ 115,200.00
701	24" RCP Flared End	10.0	EA	\$ 2,000.00	\$ 20,000.00
702	Class II Riprap	400.0	Ton	\$ 150.00	\$ 60,000.00
703	Drainage Channel Construction	2000.0	LF	\$ 25.00	\$ 50,000.00
704	North Regional Detention Pond	1.0	LS	\$ 125,000.00	\$ 125,000.00
705	Outlet Structure and Piping	1.0	LS	\$ 25,000.00	\$ 25,000.00
706	Seeding - Drainage Channel & Pond	10.0	Acre	\$ 2,500.00	\$ 25,000.00
MISC IMROVEMENTS					
800	Striping	42,000.0	LF	\$ 2.00	\$ 84,000.00
801	Traffic Study	1.0	LS	\$ 15,000.00	\$ 15,000.00
802	Warranty Bond	1.0	LS	\$ 50,000.00	\$ 50,000.00
PROJECT COSTS					
900	Engineering, Design Fees	1.0	LS	\$ 500,000.00	\$ 500,000.00
				Subtotal	\$ 6,953,670.00
Contingency				10%	\$ 695,367.00
				Construction Total	\$ 7,649,037.00
Excise Tax				2.0%	\$ 156,116.85
				Project Cost Total	\$ 7,805,153.85

Kind of Project	Location <sup>1</sup>	Amount	Reference <sup>2</sup>
Capital Costs (Street, Water & Sewer) (cleaning & grading of land & associated costs) <sup>2</sup>	District		11-9-15(1)
Financing Costs	District		11-9-15(2)
Real Property Assembly	District		11-9-15(3)
Professional Fees	District		11-9-15(4)
Administrative Costs	District		11-9-15(5)
Relocation Costs	District		11-9-15(6)
Organizational Costs	District		11-9-15(7)
Discretionary Costs and Grants	District	\$12,413,620	11-9-15(8)
<b>Eligible Project Costs</b>		<b>\$12,413,620</b>	

Itemization of Total TIF Amount	
Construction Costs	\$7,805,153
Sheriff Station	\$500,000
Imputed Interest @ 4.5%	\$4,108,467
<b>Total TIF Requested</b>	<b>\$12,413,620</b>

**SECTION 3.** Under SDCL 11-9-13, Developer must complete construction of the infrastructure improvements (including the Sheriff Station) specified in the Project Plan no later than 5 years from the creation of the TID. The Resolution creating the TID became effective on January 12, 2022, therefore, the Parties agree that the 5-year deadline to complete all construction projects as referenced above is January 12, 2027. With regard to construction of the Sheriff Station, the County and Developer will agree upon a mutually acceptable design and location for the Station.

In the event Developer fails to complete construction of the Project as required in this Section or fails to perform any other obligation pursuant to the terms of this Agreement, County may terminate this Agreement if Developer does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from County requesting the failure be cured. The Parties agree that termination by County as provided herein shall release County from any obligation it would otherwise have under the terms of this Agreement.



**SECTION 4.** County agrees to pay Developer positive tax-increment fund revenues for project costs of the TID as identified in the approved Project Plan. *See Section 2 above.* Pursuant to 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 2042. In addition, payment of tax-increment-fund revenues shall not exceed \$12,413,620.

**SECTION 5.** The Parties agree that Developer shall pay County an administrative fee of \$10,000 no later than May 1, 2022. Upon subsequent certification and verification of costs, Developer may seek reimbursement of said administrative fee from available tax increment fund revenues as an approved project cost defined in SDCL 11-9-15(5). Under no circumstance shall the payment of available tax increment fund revenues to Developer exceed \$12,413,620.

**SECTION 6.** The purpose of this TID is to grant the Developer \$12,413,620, the amount necessary to create the TID, implement the Project Plan and stimulate and develop the general economic welfare and prosperity of the State through the provision of affordable single-family residential properties. In consideration of receiving tax increment funds under the terms of this Agreement, Developer agrees to the following limitation on construction of residential structures within the TID: Developer will not construct any apartment(s) or condominium(s) as defined in Sections 103 & 303 of the Pennington County Zoning Ordinance.

**SECTION 7.** 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 8.** 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 \$400,000.

**SECTION 9.** 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 real property under this Agreement.

**SECTION 10.** Upon completion of the construction of the infrastructure improvements, the Developer must certify to the Pennington County Auditor the costs of construction, including capital costs, professional and administrative fees and contingency costs. Developer must provide contractor or supplier invoices or other supporting documentation upon request of the Auditor or other County Officials. The Project can be certified in multiple phases as needed for the development. Upon



certification by Developer and verification of costs by the Auditor, the Auditor must pay all available tax-increment fund revenues from the County Fund to the Developer not to exceed \$12,413,620.

**SECTION 11.** The Parties understand that the infrastructure improvement 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 \$12,413,620 contemplated under this Agreement, which include capital costs, professional and administrative 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 Eligible Project Costs (which includes financing costs) exceed \$12,413,620, the Parties acknowledge and agree that any costs exceeding this amount are guaranteed by the Developer and not an obligation of the County.

**SECTION 12.** 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. County payments must be made solely from available tax-increment funds as specified in this Agreement. The Parties further agree that if Developer receives other sources of funding separate from tax increment funds to pay for the project costs of infrastructure improvements as part of the Project Plan and this Agreement, those separate funds shall be considered a dollar for dollar off-set of the total allowable TID expenditures and shall be deducted from the \$12,413,620 accordingly. Developer shall promptly provide the County Auditor with documentation indicating the receipt and expenditure of any such separate funding sources for the purpose of reducing the total amount of tax increment funds available under the Project Plan and this Agreement.

**SECTION 13.** Pursuant to 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 #6 Fund" (the "Fund"). The positive-tax increments received in the TID, and deposited into the Fund, must be transmitted to the Developer as soon as reasonably practicable under the circumstances. Positive-tax increment will be paid out of the County Fund only to pay for properly certified and verified project costs under SDCL 11-9-32 and as set forth in this Agreement.

**SECTION 14.** The Parties specifically acknowledge that the County's obligation to pay is limited to the positive-tax increments of the TID received into the Fund. The Parties also specifically acknowledge that the County makes 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 15.** As the property within the TID is located within the boundaries of Pennington County, improvements constructed under the Project Plan and this Agreement must conform with (1) plans and specifications approved by the County, and (2) all applicable federal, state, and local laws and regulations including the subdivision regulations of the City of Rapid City.

**SECTION 16.** The County is not responsible for the bidding or construction of any improvement identified in the Project Plan and this Agreement. The Developer must construct the improvements through private contracts.

**SECTION 17.** The Developer agrees to immediately satisfy any and all mechanics' liens or materialman's liens that arise as a result of 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 18.** Developer covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, County (and the elected officials, employees, officers, directors, and representatives of County) from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon County directly or indirectly arising out of, resulting from or related to Developer's negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of Developer, any agent, officer, director, representative, employee, consultant or subconsultants of Developer, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to County under South Dakota Law and without waiving any defenses of the parties under South Dakota Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer shall promptly advise County in writing of any claim or demand against County related to or arising out of Developer's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Developer's cost to the extent required under the Indemnity in this

paragraph. County shall have the right, at their option and at their own expense, to participate in such defense without relieving Developer of any of its obligations under this paragraph.

**SECTION 19.** 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 arises between the provisions of this Contract for Private Development and the Project Plan, then the Contract for Private Development controls.

**SECTION 20.** Developer agrees that the rights and obligations under this Agreement may not be assigned or transferred without prior written approval of County.

**SECTION 21.** 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 22.** This Agreement may be executed in separate counterparts, all of which executed counterparts will constitute one complete document.

**SECTION 23.** The Developer may, as needed, assign tax increment fund payments under this Agreement to a financial institution that provides funding to Developer for the Project.

**SECTION 24.** 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 25.** Under SDCL 11-9-34, tax-increment bonds, contracts, or agreements must be authorized by resolution of the governing body. 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 19 day of April, 2022.



Pink Cabin, LLC (Developer)

By *Andrew Scull*  
Its MEMBER

STATE OF South Dakota )  
 ) SS  
COUNTY OF Pennington )

On this the 20 day of April, 2022, before me, the undersigned officer, personally appeared Andrew Scull, who acknowledged himself to be a Member of Pink Cabin, LLC., a South Dakota corporation, and that he as such Member 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 Member.

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



*Holli Hennies*  
Notary Public

My Commission Expires: 5-16-2022

(SEAL)



ATTEST:

Cindy Mohler  
Auditor

PENNINGTON COUNTY  
BOARD OF COMMISSIONERS (County),

Gary Drewes  
Gary Drewes, Chair

STATE OF SOUTH DAKOTA    )  
  ) SS  
COUNTY OF PENNINGTON    )

On this the 19 day of April, 2022, before me, the undersigned officer, personally appeared Gary Drewes and Cindy Mohler, 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.



Holli Hennies  
Notary Public, South Dakota

My Commission Expires: 5-16-2022