

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER EIGHT
LINCOLN COUNTY, SOUTH DAKOTA

By and Among

HARRISBURG HERITAGE, LLC.
a South Dakota limited liability company,

LINCOLN COUNTY, SOUTH DAKOTA,

and

CITY OF HARRISBURG, SOUTH DAKOTA

Dated as of May 2, 2016

THIS AGREEMENT is made effective as of the 2nd day of May, 2016, by and among Harrisburg Heritage, LLC., a South Dakota limited liability company (“Developer”), Lincoln County, South Dakota, a political subdivision of the State of South Dakota (the “County”), and City of Harrisburg, a political subdivision of the State of South Dakota (the “City”).

SECTION 1. The County has created Lincoln County Tax Increment District Number Eight (the “TID”) within the City of Harrisburg by resolution dated April 26, 2016.

SECTION 2. The City, pursuant to SDCL 11-9-8 has consented to the creation of the TID within its municipal boundaries by resolution 2016-03 dated March 7, 2016.

SECTION 3. The County has approved the Project Plan for the TID on April 26, 2016.

SECTION 4. The estimated project costs to be paid by County for the TID, as originally set forth in the Project Plan, are as follows:

Eligible Costs:

Kind of Project	Location	Amount	Reference
Capital Costs (Street, Water & Sewer) (cleaning & grading of land & associated costs)	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	\$5,550,000	11-9-15(8)
Eligible Project Costs		\$5,550,000	

County agrees to pay to the City all available tax increment fund revenues it receives from the TID, the total of which shall not exceed \$5,550,000 during the life of the TID. The life of the TID shall not exceed twenty (20) years after the calendar year of the creation of the TID. County and City agree that on all positive tax increment that are

passed on to the City, \$2,500 of the positive increment will be held back and paid to the County as an administrative in year 2018.

City agrees to pay to Developer available tax increment fund revenues it receives from the District, the total of which shall not exceed \$5,000,000 during the life of the TID. City and Developer agree that on all positive tax increment that are passed on to the Developer, ten percent (10%) of all positive tax increment, up to a maximum of \$547,500 over the life of the TID, shall be held back and paid to the City as reimbursement for installation of turning lanes and stop lights to serve the TID and for an administrative fee. The Developer will be entitled to a maximum amount of \$5,000,000 during the life of the TID.

Developer agrees that it will elect NOT to utilize the real property tax discretionary formula utilized by Lincoln County, South Dakota, and authorized as a discretionary action by County under SDCL 10-6-35.2.

City and Developer shall indemnify and hold the County harmless and further release and discharge the County, its officers, and its 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 pay to the City all available tax increment fund revenues it receives from the TID.

SECTION 5. The right to receive the available tax increment funds referred to in Section 4 is a grant under Chapter 11-9 of the South Dakota Codified Laws (the "Grant"). The Grant is a personal property right vested with the City and Developer on the date of execution of this Agreement. The Grant shall constitute a specific project cost under the Act and is deemed made on the date of the execution of this Agreement.

SECTION 6. The base value of the property located in TID will be certified by the South Dakota Department of Revenue.

SECTION 7. Financing for the TID shall be secured by the Developer paying for the improvements. County, City, and Developer represent that they understand and agree that neither the County nor the City will issue any certified tax revenue bonds to cover any cost directly or indirectly relating to Developer's improvement of the TID under this Agreement. This Agreement shall be considered a "bond" document for the purposes of the County.

The Grant of TID funds shall constitute "proceeds" under SDCL Chapter 11-9 as being acquired upon the exchange of this bond obligation. It is understood by the parties that the Developer may spend all or any portion of the approved TID funds as set forth in Section 4 above as the Developer shall determine, in its sole discretion, the amounts if any which shall be spent from TID funds for improvements in

the tax increment district. TID proceeds, as defined herein, shall be utilized only to pay eligible TID project costs or reimbursement for eligible project costs advanced by Developer, notwithstanding any other provision in this Agreement.

SECTION 8. County, City, and Developer acknowledge that the property upon which the development will occur is or will be owned by Developer, and the property in its totality shall not be transferred to any entity which would make the totality of the real property tax exempt until such time as the bonds are fully paid. Developer may use any or part of the TID property as collateral for a construction loan or loans as required for the financing of the project as described in the Project Plan.

SECTION 9. As the property within the TID is located within the boundaries of the City, Developer shall complete any public improvements described and undertaken in the approved Project Plan, pursuant to the requirements of the City and the plans for the public improvements shall be prepared by the Developer's consultant and approved by the City. Developer will certify to the City all costs subject reimbursement from the TID.

The parties recognize 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, Developer and City mutually agree that the total authorized front-end TID project costs of \$5,550,000 for the costs contemplated for the TID, together with capitalized actual interest expenses, financing fees, professional fees, administrative fees and contingency fund, is the controlling value with respect to the authorized TID expenditures rather than particular line item amounts contained in the Project Plan. The line item categories were prepared for guidance in developing the Project Plan, and actual costs will be determined upon completion of the improvements; however, in the event the total of the actual infrastructure improvement costs and/or capitalized interest exceed the authorized amount, the Developer hereby acknowledges and agrees that any costs exceeding this amount are guaranteed by the Developer; however, if the TID bond amount is repaid prior to the expiration of the TID, Developer may be reimbursed for any eligible costs or amounts paid by Developer, not to exceed the total maximum eligible cost of \$5,550,000. Both parties acknowledge that Developer reserves the right to undertake the improvements contained within the Project Plan in its sole discretion.

County and City represent that Developer may rely upon the payments to be made to it solely out of available tax increment funds as specified in this Agreement and that Developer may assign its rights to such payments, either in full or in part, for the purposes of financing its obligations related to this Agreement.

SECTION 10. All positive tax increments received in the TID shall, upon receipt by the County, be deposited in a special fund to be known as the Tax Incremental District

#8 Fund hereinafter referred to as the “Fund,” pursuant to SDCL 11-9-31 and paid out pursuant to SDCL 11-9-32, and as set forth in Section 4 above.

SECTION 11. It is specifically a condition of this Agreement that the County and City’s obligation to pay is limited to the proceeds of the positive tax increment from the TID received into the Fund specified in Section 10. The obligation of the County to pay pursuant to this Agreement does not constitute a general indebtedness of the County or a charge against the County’s general taxing power. The obligation of the City to pay pursuant to this Agreement does not constitute a general indebtedness of the City or a charge against the City’s general taxing power. The provisions of SDCL 11-9-36 are specifically incorporated herein by reference. It is also specifically agreed that neither the County nor the City has made representations that the proceeds from such Fund shall be sufficient to retire any indebtedness incurred by Developer. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments and the fund created by the TID. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 12. Developer represents that it understands that any contributions made by Developer in anticipation of reimbursement from available tax increment funds shall not be, nor be construed to be, a general obligation of the County or the City. The funds are payable only out of the account created under SDCL §11-9-31 of the Act. **THIS AGREEMENT OR THE PROJECT PLAN SHALL NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE COUNTY OR THE CITY OR A CHARGE AGAINST ITS GENERAL TAXING POWER.** Developer shall bear all risks including, but not limited to: income estimates of tax increment, changes in tax rates, or a change in state law; however, the State of South Dakota pursuant to §11-9-39.1 of the Act has pledged not to alter any of the rights vested in this Agreement until they are fully met and discharged.

SECTION 13. Developer agrees to immediately satisfy any and all mechanic’s liens or materialman’s liens that arise as a result of this project. This provision shall not prevent Developer from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 14. This document, along with the Project Plan for the TID, constitutes 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.

SECTION 15. This Agreement shall be construed and the parties’ actions governed by the laws of the State of South Dakota. Any disputes arising out of or related to this Agreement shall be litigated in the Second Judicial Circuit Court for the State of South Dakota, located in Canton, Lincoln County, South Dakota.

CITY OF HARRISBURG,
SOUTH DAKOTA

(SEAL)

Mayor

ATTEST:

Finance Officer

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF LINCOLN)

On this the _____ day of _____, 2016, before me, the undersigned officer, personally appeared _____ and _____, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of City of Harrisburg, 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 City of Harrisburg, South Dakota.

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

Notary Public, South Dakota
My Commission Expires:_____

LINCOLN COUNTY BOARD OF
COMMISSIONERS,

(SEAL)

Michael Poppens, Chairman

ATTEST:

Laura Heckmann, Deputy Auditor

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF LINCOLN)

On this the _____ day of _____, 2016, before me, the undersigned officer, personally appeared _____ and _____, who acknowledged themselves to be the Chairman of the Board of Commissioners and Deputy Auditor, respectively, of Lincoln County, South Dakota, and that they, as such Chairman and Deputy Auditor, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Chairman and Deputy Auditor Officer of Lincoln County, South Dakota.

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

Notary Public, South Dakota
My Commission Expires:_____

COUNTERSIGNED:

Resident Attorney

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF _____)

On this the ____ day of _____, 2016, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person described in the foregoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

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

Notary Public, South Dakota
My Commission Expires: _____