

Legal Finance Agenda

Monday, July 8, 2024 @ 6:00 P.M.

511 6th Avenue – City Hall – Council Chamber

We have just convened a meeting of the Legal Finance Committee for the City of Belle Fourche. Today's date is July 8, 2024. It is 6:00 P.M. in the evening.

An audio and video recording of this open session Committee meeting is being made. I am asking that anyone who wishes to address the Committee on issues request acknowledgement through the Committee Chair.

1. Pledge of Allegiance.
2. Adopt the Agenda as Presented.
3. Community Input – This section of the agenda permits a person to make comments regarding public business. Each speaker is allowed a maximum of three (3) minutes.
4. Recommend approval of the Municipal Off-Sale Operating Agreement from Husker Properties, LLC, DBA: Sunny's 5th Ave.
5. Recommend approval of Resolution 32-2024 – A Resolution to Enter Municipal Off-Sale Operating Agreement with Husker Properties, LLC, DBA: Sunny's 5th Ave.
6. Recommend approval of the new Package (off-sale) Liquor License for the 2024 licensing period. (A public hearing has been set for July 15, 2024)
7. Authorization for Mayor Randy D. Schmidt to sign Assignment Agreement For Tax Increment Financing District Number Six.
8. Informational.
9. Adjourn.

MUNICIPAL OFF-SALE OPERATING AGREEMENT

THIS MUNICIPAL OFF-SALE OPERATING AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF BELLE FOURCHE**, a municipal corporation of the State of South Dakota, hereinafter referred to as "City", and **Husker Properties, LLC, DBA: Sunny's 5th Ave.**, hereinafter referred to as the "Manager".

WHEREAS, the City has been issued an Off-Sale license for the sale of alcoholic beverages and is engaged in the sale of alcoholic beverages, and

WHEREAS, the City desires to enter into this Agreement with the Manager for the purpose of operating an Off-Sale establishment for and on behalf of the City pursuant to applicable law, and

WHEREAS, the Manager has offered to provide facilities in which to operate said Off-Sale establishment on the premises hereinafter described;

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

This Agreement is executed by the respective parties to this Agreement to allow the Manager to operate a retail Off-Sale establishment.

2. EXPENSES OF OFF-SALE ESTABLISHMENT

The Manager shall be responsible for all operating expenses of the Off-Sale establishment including, but not limited to, taxes, insurance, license fees, rents, and utilities, if any.

3. LOCATION OF OFF-SALE ESTABLISHMENT

The Off-Sale establishment shall be located upon and within the property with an address of 510 5th Avenue, Belle Fourche, SD 57717 and legally described as follows:

Lots 13, 14, & 15, Block 10 Original Townsite,
City of Belle Fourche, Butte County, South Dakota.

4. CITY AS SOLE PROVIDER OF ALCOHOLIC BEVERAGES

The Manager shall dispense only alcoholic beverages supplied by or through the City.

5. TERM

This Agreement shall be in full force and effect from the date of execution by both parties hereto for a period of five (5) years, beginning on August 1, 2024, and ending on July 31, 2029.

6. TERMINATION

Either the City or the Manager may cancel this Agreement upon ninety (90) days written notice served by either party upon the other. The City reserves the right to immediately suspend or revoke the Agreement without ninety (90) days written notice for alcohol-related violations, for violations of the City's credit policies or other violations of this Agreement.

7. FEES AND FIXED MARKUP

Initial Fee

At the time of execution of this Agreement the Manager shall pay to the City an initial fee in the amount of Thirty-five Thousand Dollars (\$35,000).

Annual Fee

At the time of execution of this Agreement and on or by January 1, 2025, and each year thereafter that this Agreement is in effect, the Manager shall pay to the City an annual fee of One Thousand Five Hundred Dollars (\$1,500), exclusive of the other provisions of this Agreement.

Fixed Markup in Excess of Actual Cost

The Manager shall also pay to City a Fixed Markup of three (3%) percent in excess of the cost of distilled spirits and wine sold by the City to the Manager for resale. The actual cost shall include cost price and transportation charges. This Fixed Markup shall be paid by the 15th of each month for the previous month's purchases.

Fixed Markup for Sales

The Manager shall pay to City a fixed markup of three (3%) percent in excess of the actual cost of malt beverages sold by the City to Manager for resale. The actual cost shall include cost price and transportation charges. This fixed markup shall be paid by the 15th of each month for the previous month's purchases.

Late Fees

The Manager shall pay a ten percent (10%) penalty for any late payments of the markup or renewal fees.

8. CONSIDERATION

The Manager shall receive the following as full consideration for Manager's services rendered under this Agreement: the net profit from the Off-Sale establishment under its management, after Manager's payments have been made as provided for in Section 7 of this Agreement, plus Zero (0%) of the Fixed Markup for Sales as provided for in Section 7 of this Agreement.

The City shall receive the following as full consideration under this Agreement: the annual fee paid by the Manager, and the Fixed Markup in Excess of Actual Cost, the Fixed Markup for

Sales (minus the percentage of the Fixed Markup to be retained by the Manager), and Late Fees as provided for in Section 7 of this Agreement.

9. RECORDKEEPING

A complete and detailed record shall be maintained by the City of all alcoholic beverages supplied to the Off-Sale Manager and such alcoholic beverages so supplied shall be evidenced by prenumbered invoices prepared in duplicate showing the date, quantity, brand, size and actual cost of each item, and such invoice shall bear the signature of the Off-Sale Manager or his/her authorized representative. One (1) copy of each prenumbered invoice shall be retained by the Off-Sale establishment and one (1) copies shall be filed with the City Finance Officer. All copies shall be kept as permanent records and made available for reference and audit purposes.

10. APPEARANCE OF PREMISES

The Manager agrees to keep the premises in a neat, clean and attractive appearance, and further agrees that it shall operate said Off-Sale establishment only in such a manner and on such days and at such hours as permitted by state law and city ordinances.

11. CREDIT POLICIES

The Manager agrees to abide by any credit policies of the City. The Manager shall pay any vendors/suppliers in a timely manner according to the terms of the credit policies of its vendors/suppliers.

12. INSURANCE

The Manager agrees to furnish the City upon demand, evidence of the following:

A Certificate showing public liability insurance with the City as an additional named insured against claims for injury or damages to persons, said policy to have minimum personal injury limitations of One Million Dollars (\$1,000,000) per person, and Two Million Dollars (\$2,000,000) per claim, together with property damage coverage of \$50,000.00.

13. COMPLIANCE WITH LAWS

The Manager agrees to observe and comply with all federal laws, laws of the State of South Dakota, and all ordinances of the City of Belle Fourche. Manager must be in compliance with applicable laws to hold an off-sale license.

14. CITY'S OBLIGATION

The City covenants and agrees to furnish the Off-Sale license for the purposes of fulfillment of this Agreement.

15. INSPECTIONS BY CITY

The City shall have the right to make inspections and investigations of the premises during the hours of operation, and make audits and examinations of the records of the Manager

relating to the Off-Sale establishment and the Manager agrees to maintain a complete and detailed record of all alcoholic beverages received from the City. Manager's point of contact for the City is the City Administrator or, in the City Administrator's absence, the City Finance Officer; absent specific Council action, only the City Administrator or City Finance Officer can direct Consultant to conduct work pursuant to this Agreement.

16. EQUIPMENT AND FIXTURES

The Manager shall furnish all equipment and fixtures necessary to operate the establishment.

17. WAIVER

It is further specifically understood and agreed that the waiver of the rights of the City under this Agreement shall not constitute a continuous waiver, and any violation or breach of the terms of this Agreement by the Manager shall constitute a separate and distinct offense and grounds for immediate termination and revocation of this Agreement.

18. ASSIGNMENT PROHIBITED

This Agreement shall not be assignable to another person or entity or to another location without the written consent of the City.

19. SEVERABILITY

If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

20. NEUTRAL CONSTRUCTION

This Contract and the wording contained herein accords with the negotiations of the Parties. Accordingly, no provision hereof shall be construed against one Party or in favor of another Party merely by reason of draftsmanship.

21. TIME OF ESSENCE

Time is of the essence of this Contract.

22. ENTIRE CONTRACT

This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof.

23. GOVERNING LAW

This Contract shall be construed in accordance with and governed by the laws of the State of South Dakota.

Dated this _____ day of July 2024.

CITY OF BELLE FOURCHE

(Seal)

By: _____
Randy Schmidt, Mayor

ATTEST:

Wayne Tonsager, City Finance Officer

Dated this _____ day of July 2024.

HUSKER PROPERTIES, LLC, MANAGER

By: _____
Tate Schipporeit, Owner

RESOLUTION NO. 32-2024

A Resolution to Enter Municipal Off-Sale Operating Agreement.

WHEREAS, the City of Belle Fourche has an off-sale liquor license and operates its own liquor store; and

WHEREAS, pursuant to SDCL § 35-4-22 and other applicable law, the City of Belle Fourche has the authority to enter into an operating agreement with the manager of a legitimate operating business concern for the specific purpose of operating the City's off-sale liquor store for the municipality; and

WHEREAS, the City desires to enter into an operating agreement as described above; and

WHEREAS, a public hearing was held at a regular Council meeting on the matter on July 15, 2024.

THEREFORE, BE IT RESOLVED that the City of Belle Fourche hereby approves entering into the Off-Sale Operating Agreement between the City of Belle Fourche and Husker Properties, LLC, DBA: Sunny's 5th Ave., Tate Schipporeit, Owner, for the purpose of operating the off-sale establishment or business for and on behalf of the City of Belle Fourche at 510 5th Avenue, Belle Fourche, SD 57717, with the following Legal description: Lots 13, 14, and 15, Block 10 Original Townsite, City of Belle Fourche, Butte County, South Dakota.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be authorized to execute the Off-Sale Operating Agreement on behalf of the City, which shall be for a period of 5-years and comply with SDCL § 35-4-23 and other applicable law.

I, the undersigned, do hereby certify that the above Resolution was duly adopted by the City of Belle Fourche at its regular meeting held on July 15, 2024.

City of Belle Fourche

Wayne Tonsager
Finance Officer

Date Received _____
Date Issued _____

License No. _____

Uniform Alcoholic Beverage License Application

A. Owner Name and Address

Husker Properties LLC
820 E Colorado Blvd
Spearfish, SD 57783

Owner's Telephone #: 605-642-7555

B. Business Name and Address

Sunny's Fifth Ave
510 5th Avenue
Belle Fourche, SD 57783

Business Telephone #: 605-642-7555

C. Indicate the class of license being applied for
(submit separate application for each class of license).

- Retail (on-sale) Liquor
- Retail (on-sale) Liquor - Restaurant
- Convention Center (on-sale) Liquor
- Package (off-sale) Liquor
- Retail (on-off sale) Wine and Cider
- Retail (on-off sale) Malt Beverage & SD Farm Wine
- Package Delivery
- Hunting Preserve
- Other _____

Is this license in active use? Yes No

Do you or any officers, directors, partners, or stockholders hold any other alcohol retail, manufacturing, or wholesaler licenses?

Yes No If Yes, please list on the back page.

Place of business is located in a municipality? Yes No

County: Butte

Do you own or lease this property? Own Lease

Are real property taxes paid to date? Yes No

D. Legal description of licensed premise:

Lots 13, 14, + 15
Block 10 Original

Have you ever been convicted of a felony? Yes No

E. State Sales Tax Number 1040-1134-ST

F. New license Transfer? (\$150) Re-issuance

G. CERTIFICATE: The undersigned applicant certifies under the penalties of perjury that all statements provided herein are true and correct; that the said applicant complies with all of the statutory requirements for the class of license being applied for and in addition agrees to permit agents of the Department of Revenue access to the licensed premises and records as provided in SDCL 35-2-2.1, and agrees this application shall constitute a contract between applicant and the State of South Dakota entitling the same or any peace officers to inspect the premises, books and records at any time for the purpose of enforcing the provisions of Title 35 SDCL, as amended.

Date 4/19/24 Print Name Cain Kolar Signature *Cain*

H. APPROVAL OF LOCAL GOVERNING BODY - Notice of hearing was published on _____ . Public hearing on the application was held _____ , not less than SEVEN (7) days after official publication. The governing body by majority vote recommends the approval and granting of this license and certifies that requirements as to location and suitability of premises and applicant have been reviewed and conform to the requirements of local and South Dakota law.

Renewal - no public hearing held
Amount of fee collected with application \$ _____
Amount of fee retained \$ _____
Forwarded with application \$ _____

For Local Government Use

Transferred (State Use)

(Seal) _____
Mayor or Chairman

From: _____
Sales tax approval _____ Date _____

STATE LIQUOR AUTHORITY:

APPROVAL _____ REVIEW _____

If disapproved, endorse reason thereon and return to applicant

**Company supplement information
(For corporate/partnership/LP/LLC applicants)**

Name of corporation/partnership/LP LLC Husker Properties LLC
 Address of office and principal place of business of corporation/partnership/LP/LLC 820 E Colorado Blvd, Spearfish, SD 57783

Are all managing officers of this corporation/partnership/LP/LLC of good moral character having never been convicted of a felony? Yes No

Name, title of office, occupation and address of each of the officers/owners of the corporation, partnership, LP or LLC:

Name	Office	Address	Occupation
Tate Schipporeit	Owner (50%)	43090 Raven Rd, Ainsworth, NE 69210	Self-Employed
Sarah Schipporeit	Owner (50%)	"	"

Name of any officers, directors, partners or stockholders of applicant having a financial interest or capital stock in any other alcoholic beverage license:

Name	Type of License, License Number, Financial Interest Held, and Address of Business Location
	See Attached

Where and with whom are all company records kept, such as charter, by-laws, minutes, accounts, notes payable, and notes and accounts receivable, etc?

820 E Colorado Blvd, Spearfish, SD 57783 (Cain Kolar)

With signature the applicant agrees to the following:

That the applicant company will comply with all provisions of ARSD chapter No. 64:75:02 of the Department of Revenue, relating to the transfer of stock and prior approval of the transfer of such stock by the Secretary of Revenue and violation of any of the provisions of said regulation or failure to comply therewith, whether by the undersigned corporation, partnership/LP/LLC or by any stockholder thereof, or by anyone interested in said company, shall constitute cause for revocation or suspension of any license issued pursuant to and in reliance on this application, or for refusal to renew such license upon expiration thereof.

We the undersigned officers and directors of the applicant company acknowledge that the within supplement application form is true and correct in every respect and that there exists no financial arrangement concerning this or any other alcoholic beverage license than that expressly set forth above. If company stock is to be transferred we ask for approval of such voluntary stock transfer.

Signature of Authorized Officer/Director/Partner

Date

Husker

4/19/24

HUSKER PROPERTIES LLC
SASSY SALLY'S
820 E COLORADO BLVD
SPEARFISH, SD 57783

September 25, 2023

Below is your current South Dakota tax license.

Please review this card. Please contact our department if there are any changes in ownership, names, or addresses.

If you have a Streamlined sales tax license any changes must be made through the Streamlined Registration System.

Website: <http://dor.sd.gov>
SD EPath: <http://dor.sd.gov/EPath>

Taxpayer Assistance Number: 1.800.829.9188
Email: bustax@state.sd.us

Streamlined Sales Tax Website: www.streamlinedsalestax.org



<http://dor.sd.gov>

This license is issued to the below named. This license remains the property of the State of South Dakota and, while in possession of the person to whom issued, entitles the licensee to transact the business or activity specified on this license until this license expires or is cancelled. This license makes no representation about the legality of products or services sold.

ISSUE DATE: 06/14/2023
EXPIRATION DATE:
LICENSE NUMBER: 1040-1134-ST
LICENSE TYPE: Sales Tax

SASSY SALLY'S
510 5TH AVE
BELLE FOURCHE, SD 57717-1213

ISSUED TO:
HUSKER PROPERTIES LLC
510 5TH AVE
BELLE FOURCHE, SD 57717-1213

A handwritten signature in black ink, appearing to read "Mike Houdyshell", is written over a faint, larger signature.

Mike Houdyshell
Secretary of Revenue

NON-TRANSFERABLE

HUSKER PROPERTIES LLC
MASON'S OASIS
820 E COLORADO BLVD
SPEARFISH SD 57783

06/14/2023

HUSKER PROPERTIES LLC

This is your current South Dakota tax license. It is non-transferable and shall be valid only for the person or entity named on the license. The license is for the transaction of business at the place designated on the license. The license is to be conspicuously displayed at the place of business.

For more information and contact our department if there are any changes in ownership, names, or addresses. If you have a current South Dakota tax license, any changes must be made through the Streamlined Registration System at www.streamlinedsaletax.org.

For more information, visit our website at <http://dor.sd.gov>, call the Department of Revenue at 1-800-829-9188 weekdays from 8:00 am to 4:00 pm Central Time or e-mail us at bustax@state.sd.us. Thank you.

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ISSUE DATE: 06/14/2023

EXPIRATION DATE:

LICENSE NUMBER: 1040-1135-ST

LICENSE TYPE: Sales Tax

ISSUED TO

HUSKER PROPERTIES LLC
510 5TH AVE
BELLE FOURCHE, SD 57717-1213

MASON'S OASIS

514 5TH AVE

BELLE FOURCHE, SD 57717-1213

Mike Houdysheli
Secretary of Revenue

NON-TRANSFERABLE

HUSKER PROPERTIES, LLC
MINITMAN FOOD & FUEL
820 E COLORADO BLVD
SPEARFISH, SD 57783

September 25, 2023

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ISSUE DATE: 12/20/2018
EXPIRATION DATE:
LICENSE NUMBER: 1034-1943-ST
LICENSE TYPE: Sales Tax

MINITMAN FOOD & FUEL
820 E COLORADO BLVD
SPEARFISH, SD 57783

ISSUED TO:
HUSKER PROPERTIES, LLC
820 E COLORADO BLVD
SPEARFISH, SD 57783

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Mike Houdyshell
Secretary of Revenue

NON-TRANSFERABLE

HUSKER PROPERTIES, LLC
MINITMAN TOO
820 E COLORADO BLVD
SPEARFISH, SD 57783

September 25, 2023

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Streamlined Sales Tax Website: www.streamlinedsalestax.org



<http://dor.sd.gov>

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ISSUE DATE: 12/26/2018
EXPIRATION DATE:
LICENSE NUMBER: 1034-2065-ST
LICENSE TYPE: Sales Tax

MINITMAN TOO
611 E JACKSON BLVD
SPEARFISH, SD 57783

ISSUED TO:
HUSKER PROPERTIES, LLC
611 E Jackson Blvd
Spearfish, SD 57783

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Mike Houdyshell
Secretary of Revenue

NON-TRANSFERABLE

HUSKER PROPERTIES, LLC
MINITMAN FOOD & FUEL
820 E COLORADO BLVD
SPEARFISH, SD 57783

June 22, 2023

Dear HUSKER PROPERTIES, LLC

Below is your Retail On and Off Sale Malt Beverage license. It shall be valid only for the person in whose name it is issued and for the transaction of business at the location approved. The license shall be available for inspection.

A list of the approved alcohol training programs may be found at: <https://dor.sd.gov/businesses/taxes/alcohol/>

Website: <http://dor.sd.gov>

SD EPath: <http://dor.sd.gov/EPath>



This license is issued to the below named. This license remains the property of the State of South Dakota and, while in possession of the person to whom issued, entitles the licensee to transact the business or activity specified on this license until this license expires or is cancelled. This license makes no representation about the legality of products or services sold.

<http://dor.sd.gov>

ISSUE DATE 07/01/2023

EXPIRATION DATE 06/30/2024

LICENSE NUMBER: RB-26185

LICENSE TYPE: Retail On and Off Sale Malt Beverage

ISSUED TO:

HUSKER PROPERTIES, LLC
820 E COLORADO BLVD
SPEARFISH, SD 57783

MINITMAN FOOD & FUEL

820 E COLORADO BLVD

SPEARFISH, SD 57783

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Mike Houdyshell
Secretary of Revenue

HUSKER PROPERTIES, LLC
MINITMAN TOO
820 E COLORADO BLVD
SPEARFISH, SD 57783

June 22, 2023

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ISSUE DATE: 07/01/2023

EXPIRATION DATE: 06/30/2024

LICENSE NUMBER: RB-26186

LICENSE TYPE: Retail On and Off Sale Malt Beverage

ISSUED TO:

HUSKER PROPERTIES, LLC
611 E Jackson Blvd
Spearfish, SD 57783

MINITMAN TOO
611 E JACKSON BLVD
SPEARFISH, SD 57783

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Mike Houdyshell
Secretary of Revenue

HUSKER PROPERTIES LLC
MASON'S OASIS
514 5TH AVE
BELLE FOURCHE, SD 57717-1213

August 17, 2023

Dear HUSKER PROPERTIES LLC

Below is your Retail On and Off Sale Malt Beverage license. It shall be valid only for the person in whose name it is issued and for the transaction of business at the location approved. The license shall be available for inspection.

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ISSUE DATE: 08/14/2023

EXPIRATION DATE: 06/30/2024

LICENSE NUMBER: RB-25388

LICENSE TYPE: Retail On and Off Sale Malt Beverage

ISSUED TO:

HUSKER PROPERTIES LLC
514 5TH AVE
BELLE FOURCHE, SD 57717-1213

MASON'S OASIS
514 5TH AVE
BELLE FOURCHE, SD 57717-1213

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Mike Houdyshell
Secretary of Revenue

HUSKER PROPERTIES LLC
SASSY SALLY'S
510 5TH AVE
BELLE FOURCHE, SD 57717-1213

August 17, 2023

Dear HUSKER PROPERTIES LLC

Below is your Retail On and Off Sale Malt Beverage license. It shall be valid only for the person in whose name it is issued and for the transaction of business at the location approved. The license shall be available for inspection.

A list of the approved alcohol training programs may be found at: <https://dor.sd.gov/businesses/taxes/alcohol/>

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ISSUE DATE: 08/14/2023

EXPIRATION DATE: 06/30/2024

LICENSE NUMBER: RB-25389

LICENSE TYPE: Retail On and Off Sale Malt Beverage

ISSUED TO:

HUSKER PROPERTIES LLC
510 5TH AVE
BELLE FOURCHE, SD 57717-1213

SASSY SALLY'S

510 5TH AVE

BELLE FOURCHE, SD 57717-1213

A handwritten signature in black ink, appearing to read 'Mike Houdyshell', is written over a light blue horizontal line.

Mike Houdyshell
Secretary of Revenue

**ASSIGNMENT AGREEMENT FOR TAX INCREMENT
FINANCING DISTRICT NUMBER SIX**

THIS ASSIGNMENT AGREEMENT FOR TAX INCREMENT FINANCING DISTRICT NUMBER SIX (“Agreement”) is entered into by **AMERICAN CONTRACTING AND CONSULTING, LLC**, a South Dakota limited liability company, of 3207 West Fairgrounds Loop, Spearfish, SD 57783 (“Developer”), the **CITY OF BELLE FOURCHE**, a South Dakota municipal corporation, of 511 6th Avenue, Belle Fourche, SD 57717 (“City”), and **PIONEER BANK & TRUST**, a South Dakota corporation, of 700 State Street, Belle Fourche, SD 57717 (“Lender”). The above-referenced parties may be collectively referred to as the “Parties.”

RECITALS:

WHEREAS, on May 6, 2024, the City Council of the City of Belle Fourche approved Resolution No. 16-2024 creating Tax Increment Financing District Number Six (“TIF District 6”/TID) pursuant to Chapter 11-9 of the South Dakota Codified Laws, a copy of which is attached hereto as Exhibit 1 and is incorporated herein by reference; and

WHEREAS, on May 6, 2024, pursuant to Resolution No. 16-2024 the City entered into a Development Agreement with Developer providing for the development of the TID Property (“Agreement”), a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference; and

WHEREAS pursuant to SDCL 11-9-2(5) the City is empowered to enter into contracts or agreements necessary and convenient to implement the provisions and effectuate the purposes of the Project Plan; and

WHEREAS, on May 24, 2024, Developer and City entered into an Agreement for Public Improvements for the development of public infrastructure necessary for the development of single-family housing of the TID Property, a copy of which is attached hereto as Exhibit 3; and

WHEREAS, Developer has agreed to advance funds necessary to construct the public improvements in the Project Plan as further explained in the Agreement; and,

WHEREAS, Lender has agreed to loan the funds to Developer to accomplish the purposes set forth in the original Agreement on the condition that the City directly pays Lender all future positive tax increments owed to Developer pursuant to the original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth herein, the parties, agree as follows:

1. City’s Payment to Lender. City will pay directly to Lender those positive tax increments which are collected by the City and deposited in the Fund described in the Agreement which are due to the Developer until the Developer’s Loan Obligation to Lender is paid in full or TIF District #6 is dissolved, whichever comes first. “Developer’s Loan Obligation” as used in this

Agreement is Developer's debt to Lender for public improvements approved as Project Costs in any Project Plan for TIF District #6; Developer's Loan Obligation does not include debt of Developer to Lender for improvements which are not Project Costs within any Project Plan approved for TIF District #6. It is the specific intent of the parties that the City is not obligated to pay any sums to Lender other than the amounts due to Developer under the Agreement. Any obligation the City has to pay tax increments due to Lender shall cease when Developer's Loan Obligation with Lender is satisfied or TIF District #6 is terminated, whichever comes first. Payments will be made to Lender at the address above, or at a different address upon written notice from the Lender.

2. Insufficient Increments to Pay Developer's Loan Obligation. Lender agrees that, if City makes payment to Lender of all funds due to Developer under the Agreement, there is no liability by City for Developer's Obligation and Lender shall look solely to its loan agreement(s) with Developer and Developer's guarantors, if any, for any rights of recovery up on default. If TIF District #6 is terminated before Lender is paid in full for Developer's Loan Obligation or if the increments are insufficient to pay Developer's Loan Obligation, Lender's sole recourse shall be against Developer and its guarantors and the City shall have no liability to Lender.

3. Exchange of Information. Upon reasonable request and notice, Lender agrees to provide financial reports to City and Developer to advise them of the ongoing status of the loan obligation by Developer to Lender. Upon reasonable request and notice, City agrees to provide information to Lender about the completion of public improvements and the certification of costs of improvements made in TIF District #6.

4. Developer's Payments to Lender. All Parties to this Agreement acknowledge that City's obligation to pay pursuant to this Agreement remains even if Developer makes payments to Lender for the Developer's Loan Obligation. The Parties agree that City's obligation to pay Lender continues regardless of payments Developer makes to Lender until Lender has been paid in full for Developer's Loan Obligation or until TIF District #6 is dissolved, whichever comes first.

5. Lender Bound by Development Agreement. The parties agree this Agreement is intended as a collateral assignment of future positive tax increments as security for Lender's loan to Developer. As such, Lender agrees to be bound by the terms of the Agreement between City and Developer, but Lender shall not be subject to, liable for, and/or responsible for, any warranties, indemnifications, or other obligations of Developer under such Agreement to City or any other party. The Parties agree that the City's obligation for payment in this Assignment is limited to those amounts set forth in the Agreement. To the extent this Assignment is in conflict with the Agreement, the provisions in the Agreement will control and be applied.

6. Counterparts. This Assignment may be executed in counterparts and by different parties on different counterparts with the same effect as if the signatures thereto were on the same instrument. This Assignment shall be effective and binding upon the Parties as of the date in which all parties have executed a counterpart of this Assignment.

7. Successors and Assigns. Lender may not assign its interest in this Assignment without City's agreement to do so in writing, which City will not unreasonably withhold; this requirement will not apply in the event Lender is involved in an acquisition or merger.

8. Entire Agreement. This Assignment, together with all related written agreements specifically referred to herein, represents the only agreement among the Parties concerning the subject matter of this Assignment.

9. Modification and Waiver. No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in a written document signed by all Parties (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited of any other term hereof or of the same circumstance or event upon any recurrence thereof.

10. Governing Law and Venue. This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of South Dakota, and venue for any dispute arising hereunder shall be exclusively in a court of competent jurisdiction in Butte County, South Dakota.

11. Invalid Provisions and Waiver. If any term, restriction, or covenant of this Agreement is deemed illegal or unenforceable, all other terms, restrictions and covenants hereof shall remain unaffected to the extent permitted by law. No waiver by any party of any default, misrepresentation or breach of any representation, warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of any representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any default, misrepresentation or breach of any representation, warranty or covenant prior to or subsequent to such occurrence.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed in the manner appropriate to each as of the Effective Date.

Dated this ____ day of _____, 2024.

CITY OF BELLE FOURCHE

Randy Schmidt, Mayor

Attest

Jason LaFayette, City Administrator

Sales Tax Comparison

	2019	2020	2021	2022	2023	2024
January	\$ 135,473.30	\$ 210,990.61	\$ 281,133.14	\$ 294,556.64	\$ 267,059.53	\$ 257,889.57
	\$ 109,402.74	\$ 55,407.22	\$ 21,714.75	\$ 21,055.37	\$ 81,909.22	\$ 113,375.44
Monthly Totals	\$ 244,876.04	\$ 266,397.83	\$ 302,847.89	\$ 315,612.01	\$ 348,968.75	\$ 371,265.01
February	\$ 163,381.80	\$ 162,714.61	\$ 165,999.11	\$ 177,787.19	\$ 255,989.21	\$ 287,896.65
	\$ 28,870.77	\$ 57,231.60	\$ 67,149.27	\$ 83,391.17	\$ 44,770.76	\$ 11,870.13
Monthly Totals	\$ 192,252.57	\$ 219,946.21	\$ 233,148.38	\$ 261,178.36	\$ 300,759.97	\$ 299,766.78
March	\$ 170,666.03	\$ 163,666.81	\$ 160,044.65	\$ 201,509.69	\$ 272,119.10	\$ 268,788.18
	\$ 15,519.84	\$ 44,801.37	\$ 69,895.01	\$ 59,590.84	\$ 14,359.39	\$ 13,336.03
Monthly Totals	\$ 186,185.87	\$ 208,468.18	\$ 229,939.66	\$ 261,100.53	\$ 286,478.49	\$ 282,124.21
April	\$ 134,963.50	\$ 223,519.40	\$ 292,834.76	\$ 305,229.36	\$ 324,760.71	\$ 246,367.71
	\$ 98,440.67	\$ 25,409.75	\$ 9,904.33	\$ 18,476.81	\$ 8,291.30	\$ 67,542.24
Monthly Totals	\$ 233,404.17	\$ 248,929.15	\$ 302,739.09	\$ 323,706.17	\$ 333,052.01	\$ 313,909.95
May	\$ 190,078.63	\$ 223,994.17	\$ 275,195.60	\$ 248,318.35	\$ 319,490.82	\$ 310,669.54
	\$ 39,910.97	\$ 16,694.45	\$ 6,991.82	\$ 47,062.73	\$ 27,532.14	\$ 22,088.21
Monthly Totals	\$ 229,989.60	\$ 240,688.62	\$ 282,187.42	\$ 295,381.08	\$ 347,022.96	\$ 332,757.75
June	\$ 110,672.85	\$ 116,380.67	\$ 135,261.96	\$ 314,207.03	\$ 340,129.60	\$ 192,445.30
	\$ 132,345.37	\$ 162,064.84	\$ 178,602.71	\$ 24,293.44	\$ 33,366.33	\$ 161,036.03
Monthly Totals	\$ 243,018.22	\$ 278,445.51	\$ 313,864.67	\$ 338,500.47	\$ 373,495.93	\$ 353,481.33
July	\$ 191,516.60	\$ 291,428.84	\$ 355,591.90	\$ 363,059.82	\$ 375,010.87	
	\$ 124,993.50	\$ 28,219.38	\$ 40,030.55	\$ 18,301.83	\$ 26,862.72	
Monthly Totals	\$ 316,510.10	\$ 319,648.22	\$ 395,622.45	\$ 381,361.65	\$ 401,873.59	\$ -
August	\$ 274,508.38	\$ 279,027.95	\$ 260,580.48	\$ 420,135.86	\$ 323,834.79	
	\$ 29,785.10	\$ 42,699.86	\$ 100,569.87	\$ 87,564.16	\$ 73,915.03	
Monthly Totals	\$ 304,293.48	\$ 321,727.81	\$ 361,150.35	\$ 507,700.02	\$ 397,749.82	\$ -
September	\$ 206,720.34	\$ 226,523.28	\$ 323,064.08	\$ 399,128.01	\$ 343,486.47	
	\$ 67,921.38	\$ 71,171.34	\$ 18,353.10	\$ 22,561.03	\$ 22,907.75	
Monthly Totals	\$ 274,641.72	\$ 297,694.62	\$ 341,417.18	\$ 421,689.04	\$ 366,394.22	\$ -
October	\$ 207,678.43	\$ 271,825.00	\$ 317,378.14	\$ 391,487.07	\$ 331,467.24	
	\$ 56,744.53	\$ 20,355.44	\$ 9,075.30	\$ 12,348.93	\$ 36,323.10	
Monthly Totals	\$ 264,422.96	\$ 292,180.44	\$ 326,453.44	\$ 403,836.00	\$ 367,790.34	\$ -
November	\$ 260,510.90	\$ 252,420.88	\$ 226,860.11	\$ 308,560.64	\$ 322,605.33	
	\$ 19,683.49	\$ 40,357.82	\$ 82,158.91	\$ 70,913.87	\$ 44,338.54	
Monthly Totals	\$ 280,194.39	\$ 292,778.70	\$ 309,019.02	\$ 379,474.51	\$ 366,943.87	\$ -
December	\$ 164,666.54	\$ 157,233.58	\$ 232,213.97	\$ 327,240.95	\$ 305,857.22	
	\$ 70,687.00	\$ 102,306.43	\$ 83,970.96	\$ 19,754.09	\$ 33,734.25	
Monthly Totals	\$ 235,353.54	\$ 259,540.01	\$ 316,184.93	\$ 346,995.04	\$ 339,591.47	\$ -
Monthly Totals	\$ 243,018.22	\$ 278,445.51	\$ 313,864.67	\$ 338,500.47	\$ 373,495.93	\$ 353,481.33
Totals	Difference	\$ 35,427.29	\$ 35,419.16	\$ 24,635.80	\$ 34,995.46	\$ (20,014.60)
				MTD Comparison	Jun 2023 Jun 2024	-5%
Yearly Totals	\$ 1,329,726.47	\$ 1,462,875.50	\$ 1,664,727.11	\$ 1,795,478.62	\$ 1,989,778.11	\$ 1,953,305.03
	Difference	\$ 133,149.03	\$ 201,851.61	\$ 130,751.51	\$ 194,299.49	\$ (36,473.08)
				YTD Comparison	2023 2024	-2%

Third Penny Sales Tax

	2019	2020	2021	2022	2023	2024
January	\$ 9,695.46	\$ 11,283.74	\$ 13,042.84	\$ 15,541.63	\$ 13,321.61	\$ 11,058.27
	\$ 2,372.27	\$ 1,375.57	\$ 259.24	\$ 85.99	\$ 1,937.07	\$ 3,764.51
Monthly Totals	\$ 12,067.73	\$ 12,659.31	\$ 13,302.08	\$ 15,627.62	\$ 15,258.68	\$ 14,822.78
February	\$ 10,513.15	\$ 8,765.12	\$ 10,454.32	\$ 9,580.26	\$ 13,827.99	\$ 13,250.86
	\$ 1,800.11	\$ 2,787.61	\$ 2,285.33	\$ 3,844.13	\$ 1,019.57	\$ 658.79
Monthly Totals	\$ 12,313.26	\$ 11,552.73	\$ 12,739.65	\$ 13,424.39	\$ 14,847.56	\$ 13,909.65
March	\$ 9,350.60	\$ 8,699.55	\$ 8,418.32	\$ 11,215.26	\$ 13,579.56	\$ 14,357.59
	\$ 251.49	\$ 2,372.43	\$ 3,534.29	\$ 1,485.71	\$ 114.90	\$ 751.12
Monthly Totals	\$ 9,602.09	\$ 11,071.98	\$ 11,952.61	\$ 12,700.97	\$ 13,694.46	\$ 15,108.71
April	\$ 8,466.25	\$ 10,962.73	\$ 16,080.76	\$ 16,275.96	\$ 16,335.51	\$ 13,281.92
	\$ 3,554.93	\$ 341.94	\$ 1.11	\$ 6.17	\$ 44.82	\$ 3,249.28
Monthly Totals	\$ 12,021.18	\$ 11,304.67	\$ 16,081.87	\$ 16,282.13	\$ 16,380.33	\$ 16,531.20
May	\$ 11,744.66	\$ 10,041.10	\$ 15,268.49	\$ 14,575.91	\$ 15,798.43	\$ 17,890.42
	\$ 781.96	\$ 216.25	\$ 1.42	\$ 924.40	\$ 1,204.67	\$ 78.00
Monthly Totals	\$ 12,526.62	\$ 10,257.35	\$ 15,269.91	\$ 15,500.31	\$ 17,003.10	\$ 17,968.42
June	\$ 8,675.84	\$ 7,208.27	\$ 7,059.66	\$ 18,600.30	\$ 21,233.98	\$ 12,308.58
	\$ 5,580.18	\$ 6,690.81	\$ 10,766.16	\$ 1,209.66	\$ 527.09	\$ 8,298.48
Monthly Totals	\$ 14,256.02	\$ 13,899.08	\$ 17,825.82	\$ 19,809.96	\$ 21,761.07	\$ 20,607.06
July	\$ 13,340.39	\$ 16,477.81	\$ 26,076.54	\$ 23,418.84	\$ 24,587.42	
	\$ 4,440.70	\$ 258.41	\$ 21.21	\$ 8.27	\$ 1,733.46	
Monthly Totals	\$ 17,781.09	\$ 16,736.22	\$ 26,097.75	\$ 23,427.11	\$ 26,320.88	\$ -
August	\$ 26,046.70	\$ 21,333.98	\$ 19,772.29	\$ 25,921.74	\$ 27,271.06	
	\$ 496.88	\$ 347.85	\$ 10,315.94	\$ 3,753.40	\$ 1,582.21	
Monthly Totals	\$ 26,543.58	\$ 21,681.83	\$ 30,088.23	\$ 29,675.14	\$ 28,853.27	\$ -
September	\$ 16,914.75	\$ 18,314.31	\$ 22,047.25	\$ 22,770.89	\$ 22,389.62	
	\$ 3,043.95	\$ 1,064.60	\$ 2,163.71	\$ 2,096.39	\$ 1,088.19	
Monthly Totals	\$ 19,958.70	\$ 19,378.91	\$ 24,210.96	\$ 24,867.28	\$ 23,477.81	\$ -
October	\$ 15,296.56	\$ 18,559.86	\$ 19,324.92	\$ 20,887.00	\$ 19,655.17	
	\$ 1,555.86	\$ 296.84	\$ 48.09	\$ 67.74	\$ 2,308.57	
Monthly Totals	\$ 16,852.42	\$ 18,856.70	\$ 19,373.01	\$ 20,954.74	\$ 21,963.74	\$ -
November	\$ 14,308.19	\$ 12,600.19	\$ 13,057.13	\$ 16,576.71	\$ 17,518.26	
	\$ 238.94	\$ 3,248.99	\$ 4,235.63	\$ 2,133.94	\$ 1,791.23	
Monthly Totals	\$ 14,547.13	\$ 15,849.18	\$ 17,292.76	\$ 18,710.65	\$ 19,309.49	\$ -
December	\$ 11,116.79	\$ 10,415.27	\$ 13,106.84	\$ 16,887.21	\$ 14,757.88	
	\$ 2,753.68	\$ 3,787.62	\$ 3,504.82	\$ 60.58	\$ 2,422.58	
Monthly Totals	\$ 13,870.47	\$ 14,202.89	\$ 16,611.66	\$ 16,947.79	\$ 17,180.46	\$ -
Monthly Totals	\$ 14,256.02	\$ 13,899.08	\$ 17,825.82	\$ 19,809.96	\$ 21,761.07	\$ 20,607.06
	Difference	\$ (356.94)	\$ 3,926.74	\$ 1,984.14	\$ 1,951.11	\$ (1,154.01)
				MTD Comparison	Jun 2023 Jun 2024	-5%
Yearly Totals	\$ 72,786.90	\$ 70,745.12	\$ 87,171.94	\$ 93,345.38	\$ 98,945.20	\$ 78,340.76
	Difference	\$ (2,041.78)	\$ 16,426.82	\$ 6,173.44	\$ 5,599.82	\$ (20,604.44)
				YTD Comparison	2023 2024	0%