

August 29, 2023

CALL TO ORDER

Chairperson Reider called the regular meeting of the Davison County Board of Commissioners to order at 9:00 a.m. All members of the Board were present. Also present was Auditor Kiepke.

PLEDGE

The Pledge of Allegiance was led by Chairperson Reider.

APPROVE AMENDED AGENDA

Motion by Claggett, second by Nebelsick to approve the agenda, as amended, for the August 29, 2023, meeting. All members voted aye. Motion carried.

APPROVE MINUTES

Motion by Nebelsick, second by Claggett to approve the minutes of the August 22, 2023, meeting. All members voted aye. Motion carried.

PUBLIC INPUT

Linda James asked how she would go about getting a jake brake sign on Highway 16.

RECESS BOARD OF COMMISSIONERS/CONVENE BOARD OF ADJUSTMENT

At 9:15 a.m., motion by Claggett, second by Nebelsick to recess Board of Commissioners and convene Board of Adjustment. All members voted aye. Motion carried.

ADJOURN BOARD OF ADJUSTMENT/RECONVENE BOARD OF COMMISSIONERS

At 9:49 a.m., motion by Kiner, second by Nebelsick to adjourn Board of Adjustment and reconvene Board of Commissioners. All members voted aye. Motion carried.

ADOPT RESOLUTION TO PROCEED WITH COURT ACTION

Motion by Kiner, second by Claggett to proceed with court action with regards to the Petrik Sanitation Conditional Use Permit. A roll call vote was taken as follows. Kiner – aye, Claggett – aye, Nebelsick – aye, Reider – aye, Blaalid – abstain. Motion carried.

**Davison County Resolution #082923-01
Resolution to Proceed With
Court Action**

Whereas, a Conditional Use Permit was issued on February 13, 2018, for a Commercial Trucking Terminal on the property described as Lot K of W & L Addition in the NW ¼ of Section 25, T 103 N, R 61 W of the 5th P.M., Davison County, South Dakota; and

Whereas, the Planning & Zoning office has received complaints regarding the use of the aforesaid property as violating the Conditional Use Permit and/or applicable district regulations of the Davison County Planning & Zoning Ordinance; and

Whereas, on August 14, 2023, the Planning & Zoning office (a) notified the owner of the aforesaid property of the apparent violations of the Conditional Use permit and other applicable district regulations of the Davison County Planning & Zoning Ordinance and (b) advised that such violations were to be corrected within seven (7) days from receipt of the letter; and

Whereas, more than seven (7) days have passed and the and the violations have not been corrected.

Now, therefore, be it resolved that the Davison County Commission hereby authorizes the Davison County States Attorney’s office to institute such legal proceedings as the State’s Attorney deems necessary and appropriate, to include, but not be limited to, action for injunctive relief as against all necessary parties in order to enforce the provisions of the above-described Conditional Use Permit, enjoin an violations thereof, and otherwise enforce the applicable district regulations of the Davison County Zoning Ordinance relating to the described real property..

Dated in Mitchell, South Dakota this 29th of August, 2023.

Randy Reider, Chairperson

ATTEST:

Susan Kiepke, Auditor

ADOPT RESOLUTION TO AMEND DEVELOPMENT AGREEMENT

Motion by Nebelsick, second by Claggett to adopt a resolution to amend the developer for the original development agreement signed on May 23, 2023. A roll call vote was taken as follows. Bhaalid – aye, Nebelsick – abstain, Claggett – aye, Kiner – aye, Reider – aye. Motion carried.

**DAVISON COUNTY RESOLUTION #082923-02
AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT
of DAVISON COUNTY RESOLUTION #052323-02**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT is entered into as of this 29th day of August 2023, (this “Agreement”) by and between Davison County a South Dakota Municipality (“County”), and **High Plains Processing, LLC**, a Delaware limited liability company (“Developer”);

WITNESSETH:

WHEREAS, The County has an interest in promoting economic development and Industrial Development and is authorized pursuant to SDCL Chapter 11-9 (the “Act”) to create tax increment districts for such purposes; and;

WHEREAS, in order to accelerate the development of certain property that would not otherwise occur solely through private investment in the reasonably foreseeable future, the County Commission on May 23rd, 2023, adopted Resolution #052323-02 a copy of which is attached hereto as *Exhibit A*, County created Tax Increment District Number 4 (the “TID” or “District”) encompassing the following described real property:

- NW1/4 EX LOT A OF JOHNSON'S SUB & EX H1 H2 RY

- SW1/4 EX RY & H2 AND EX SW1/4 OF SW1/4 OF SW1/4 OF SEC 11 LYING WEST OF RR R-O-W & LYING E OF H-2

All Located in Davison County, South Dakota including within and adjacent rights-of-ways.

WHEREAS, the Act authorizes the expenditure of funds derived within a tax increment district for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the County establishing the TID, for grants, costs of public works or public improvements in the TID, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the TID, which expenditures and monetary obligations constitute project costs, as defined in Section 11-9-14 of the Act; and **WHEREAS**, on May 23rd, 2023, the County Commission adopted Resolution #052323-02 to approve the Tax Increment Project Plan, a copy of which is attached hereto as *Exhibit B* providing for development of the TID Property (the “Project Plan”), which included the payment of a grant in an amount not to exceed \$21,221,000 toward certain costs of development as described in the Project Plan.

WHEREAS, the original Development Agreement was executed by the County and Developer on May 23, 2023 (“Original Agreement”);

WHEREAS, since May 23, 2023, the Developer has elected to change the state under which it is organized from the state of South Dakota to the state of Delaware effective as of August 7, 2023; and

WHEREAS, the Developer desires to amend and restate the Original Agreement to reflect the Developer’s organization under the State of Delaware.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, apportionment and benefits contained in this Agreement, the County and Developer hereby agree as follows:

Section 1. Definitions

Unless the context otherwise requires, the terms used in this Agreement will have the meanings set forth in this Section. If not defined in this Agreement, capitalized terms will have the meaning given to them in the Project Plan.

“**Act**” means SDCL Chapter 11-9, as may be amended from time to time.

“**Base Revenues**” means the taxes collected on the Base Value.

“**Base Value**” means the value of the TID Property at the time of the creation of the district as certified by the South Dakota Secretary of Revenue.

“**Construction Schedule**” means the timetable for constructing the improvements specified in Section 2.08.

“**Developer**” means High Plains Processing, LLC, a Delaware limited liability company.

“**Grant**” means an amount not to exceed \$21,221,000 in total, payable through the use of Tax Increment Revenues.

“**Project**” means the construction of public improvement (water, sewer, street, drainage) for the industrial improvements

“**Project Costs**” means the approximate cost of construction costs associated with the Project.

“**Project Plan**” means the Project Plan attached as *Exhibit B*.

“**Public Improvements**” means all improvements made by High Plains Processing, LLC, a Delaware Limited Liability Company as estimated and written into the Project Plan.

“**Tax Increment Revenues**” means all tax revenues of the TID Property in excess of the Base Revenues.

“**TID**” will have the meaning specified in the recitals.

“**TID Property**” will have the meaning set forth in the recitals.

Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified. Unless otherwise specified, the terms used in this Agreement found in the Act shall have the meaning set forth in the Act.

Section 2. Obligation and Representations

2.01 Remittance of Tax Increment Revenues; County Expenses.

(a) The County agrees to pay to Developer through a grant, but solely from Tax Increment Revenues, a sum not to exceed \$21,221,000 in total and not to exceed over the life of the TIF.

2.02 Grant. *The parties acknowledge that Developer's right to receive the Tax Increment Revenues hereunder is a grant under the Act, and a personal property right vested with Developer on the date hereof.*

2.03 No Certificated Tax Increment Revenue Bonds. *The County will have no obligations to the Developer except as set forth in this Agreement and will not issue any certificated tax increment revenue bonds to evidence such obligations.*

2.04 Developer's Representations. *Developer represents to County as follows:*

- (a) Developer is a corporation organized in the State of South Dakota
- (b) Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement;
- (c) Developer's performance under this Agreement will not violate any applicable judgment, order, law or regulation;
- (d) Developer's performance under this Agreement will not result in the creation of any claim against the County for money or performance, any lien, charge, encumbrance or security interest upon any asset of the County; and
- (e) Developer will have sufficient capital to perform all of its obligations under this Agreement, and Developer owns the TID Property.
- (f) Developer waives its right to participate in the County or County's Property Tax Reduction Program, if applicable, as described in the Project Plan and Section 3.01 (a).
- (g) Developer recognizes and accepts South Dakota Codified Law 13-13-10.10 13-13-10.10. Industrial, economic development, and fee purposes defined for purposes of § 13-13-10.9. For the purposes of § 13-13-10.9, the terms, industrial, and economic development, include only those areas where there is or will be one or more businesses engaged in any activity defined as commercial or industrial by the governing body that has zoning authority over the real property contained within the tax increment financing district.

This section applies to tax increment financing districts created after June 30, 2018.

2.05 Approvals. *The County's obligations pursuant to this Agreement are specifically conditioned upon the resolution and ordinances implementing TIF #4 becoming effective.*

2.06 Payment of Tax Increment Revenues. *The County will make eligible payments due to Developer within a reasonable time, not to exceed 45 days from the County's receipt of real estate tax payments semi-annually.*

2.07 Continued Cooperation. *The County and Developer represent each to the other that they will make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires its continued cooperation.*

2.08 No General Obligation of the County. *The County obligations hereunder are limited obligations payable solely out of the Tax Increment Revenues and are not payable from any other revenues of the County, nor a charge against its general taxing power. Developer shall bear all risks that such Tax Increment Revenues may be insufficient to pay the maximum amounts specified in Section 2.01.*

2.09 Assignment of Payments. Upon written notice to the County, Developer may assign its rights to payments hereunder for the purposes of financing its obligations related to this Agreement, but Developer's right to such payments is subject to the other limitations of this Agreement. Any such assignment shall be made in accordance with an Assignment Agreement, the form of which is attached hereto as *Exhibit C* and is incorporated herein by this reference.

Section 3. The Project.

3.01 ***The Project.** The Project will be comprised of real estate, and the design, construction, assembly, and installation of the improvements described in the Project Plan.*

- (a) Description of the Project. The Project consists of \$21,221,000 of improvements to the property.
- (b) Completion of the Project Improvements: Developer shall diligently work to complete the respective portions of the project by 2025.

The time periods set forth above in this Section 3.01(b) shall be extended by reason of delays caused by Force Majeure. As used herein, "Force Majeure" shall refer to delays caused by or occasioned by labor disputes, acts of God, moratoriums, war, riots, insurrections, civil commotion, a general inability to obtain labor or materials, fire, unusual delay in transportation, severe and adverse weather conditions preventing performance of work, unavoidable casualties, failures to act by any governmental entity or their respective agents or employees, governmental restrictions, regulations or controls including the inability to obtain the necessary governmental approvals and/or permits necessary to complete any portion of the Project.

3.02 ***Construction of the Public Infrastructure Improvements.** The Developer will cause Public Improvements will be constructed by the Developer through private contract. The County will not bid nor contract any improvement described in this Agreement. The Developer will make sure all improvements are to Davison County standards and specifications.*

3.03 ***Financing of the Project and Improvements.** Payment of all Project Costs will be made from Developer's own capital and from other sources obtained solely by Developer. Developer may use any or part of the TID Property as collateral for such loans as required to pay Project Costs.*

Section 4. Developer Covenants

4.01 **Duties and Obligations of Developer.** Developer hereby agrees to: (a) complete, or cause to be completed, all improvements described in the Project Plan and this Agreement, (b) provide, or cause to be provided, all materials, labor, and services for completing the Project, (c) obtain or cause to be obtained, all necessary permits and approvals from the County and/or all other governmental agencies having jurisdiction over the construction of improvements to the TID Property, (d) provide the County all necessary information, including documentation of actual expenses incurred for Reimbursable Project Costs, and (e) submit written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the TID was created detailing the amount of Tax Increment Revenues.

4.02 **Insurance.** Developer will maintain a policy of liability insurance, acceptable to the County, with liability limits of at least One Million Dollars (\$1,000,000) that names the County as an additional insured. Such a policy must remain in effect until Davison County accepts the improvements. The County will provide no insurance for the Project.

4.03 **Indemnification.** Developer will without a determination of liability or payment being made FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the County (and the elected officials, employees, officers, directors, and representatives of the 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 the County directly or indirectly arising out of, resulting from or related to Developer's negligence, willful misconduct or criminal conduct in Developer's activities under this Agreement, including any such acts or omissions of Developer, its Members, Managers, 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 the 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 will promptly advise the County in writing of any claim or demand against the County related to or arising out of Developer's activities under this Agreement and will see to the investigation and defense of such claim or demand at Developer's cost to the extent required in this paragraph. The County will have the right, at its option and expense, to participate in such defense with attorneys of its choice, without relieving Developer of any of its obligations under this paragraph.

4.04 Liability. Developer will be solely responsible for compensation and taxes payable to any employee or contractor of Developer, and none of Developer's employees or contractors will be deemed to be employees or contractors of the County. No elected official, director, officer, employee, representative or agent of the County shall be personally responsible for any liability arising out of or resulting from this Agreement.

4.05 Taxes & Licenses. Developer will pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees that are now or may hereafter be levied upon the TID Property or upon Developer or upon the business conducted on the TID Property, or upon any of Developer's property used in connection therewith, including employment taxes; and Developer shall maintain in current status all federal State, and local licenses and permits required for the operation of the business conducted by Developer.

4.06 Examination of Records. Developer will allow the County to conduct examinations and copy, during regular business hours and following notice to Developer by the County, of the books and records related to this Agreement no matter where books and records are located.

Section 5. Term and Termination

5.01 Term. The term of this Agreement shall commence on the date the resolution or ordinance approving this Agreement becomes effective and end on the date which is the *earliest* to occur of the following, at which time the County's obligations hereunder will be deemed fully discharged:

- (i) the date on which the amount payable under Section 2.01 has been paid in full to Developer; or
- (ii) the date this Agreement is terminated as provided in Section 5.02; or
- (iii) the 20th anniversary of the year of the creation of the TID.

5.02 Default and Termination. If Developer fails to commence and complete construction substantially in accordance with the construction schedule detailed in Section 3.01(b) above, the County may terminate this Agreement if Developer does not fully cure its failure within sixty (60) calendar days after receiving written notice from the County requesting the failure be cured. If the Agreement is terminated as set forth in this Section, the County's obligations under this Agreement will be deemed fully discharged.

Section 6. Miscellaneous

6.01 Non-Waiver. Provisions of this Agreement may be waived only in writing. No course of dealing on the part of the County, or Developer nor any failure or delay by the County or Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

6.02 Entire Agreement. This Agreement embodies the final and entire agreement between the parties hereto concerning the subject matter herein. The Exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between any such Exhibit and a provision of this Agreement, the provision of this Agreement will control.

6.03 Amendments. All amendments to this Agreement and the Project Plan may only be made in a writing executed by the County and Developer, after obtaining all necessary approvals.

6.04 Severability. If any clause or provision of this Agreement is held invalid or unenforceable, such holding will not invalidate or render unenforceable any other provision hereof.

6.05 Venue and Governing Law. This Agreement shall be construed under and in accordance with the laws of the state of South Dakota. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Davison County, South Dakota.

6.06 Notice. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

County

Davison County
200 E 4th Ave,
Mitchell, SD 57301

Developer

High Plains Processing, LLC, a Delaware Limited Liability Company
Attn: CEO
100 Caspian Ave,
PO Box 500
Volga, SD 57071

Any of the above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications may be sent.

6.08 Captions. Captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

6.09 Administrative Fee. A fee imposed by the Davison County Commissioners for administrating the TIF process, to include collecting funds and payment of notes. The administrative fee will be equal to 1% of the actual TIF funds requested pursuant to the TIF, exclusive of capitalized and annual interest. In Year 5, when the project has an established valuation and a stabilized increment, the Developer and the County will agree to the structure of the repayment terms of the 1% fee. In Year 5, a calculation will be performed to determine the total gross amount of revenue derived from the Tax Increment District. This calculation will be based on the increment revenue from the creation to dissolution of the District. Once this amount is agreed upon, the 1% Fee will be calculated. This fee will then be paid equally from Years 6 through 15 of the life of the Tax Increment District.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first written above.

Davison County Commission

ATTEST:

Randy Reider, Chair

Auditor

Davison County Deputy State's
Attorney

High Plains Processing, LLC, a Delaware Limited Liability Company

By:
Its:

EXHIBIT A
Boundaries

The County Commission on May 23rd, 2023, adopted Resolution #052323-02, County Tax Increment District Number 4 encompassing the following described real property:

- NW1/4 EX LOT A OF JOHNSON'S SUB & EX H1 H2 RY
- SW1/4 EX RY & H2 AND EX SW1/4 OF SW1/4 OF SW1/4 OF SEC 11 LYING WEST OF RR R-O-W & LYING E OF H-2

All Located in Davison County, South Dakota including within and adjacent rights-of-ways.

INTO EXECUTIVE SESSION

At 10:11 a.m., as per the request of Corrections Administrator Lanning, motion by Claggett, second by Nebelsick to move into executive session to discuss personnel pursuant to SDCL 1-25-2. All members voted aye. Motion carried.

OUT OF EXECUTIVE SESSION

At 10:24 a.m., motion by Nebelsick, second Claggett to move out of executive session. All members voted aye. Motion carried.

ACKNOWLEDGE TERMINATION

Motion by Bhaalid, second by Nebelsick to acknowledge the termination of employee #2287 and advertise for the position. All members voted aye. Motion carried.

UNION CONTRACT NEGOTIATIONS DISCUSSION

HR Director Meaney outlined requests from the union at the jail. No action was taken.

ACCEPT FUEL QUOTE

Motion by Blaalid, second by Kiner to accept the low quote for 7,000 gallons of diesel #2 at a rate of 3.558 per gallon, from Brooks Oil. All members voted aye. Motion carried.

APPROVE BILLS

Motion by Nebelsick, second by Blaalid to approve the following bills for payment. All members voted aye. Motion carried.

GENERAL FUND:

COMM: Prof Fees/Tristar Benefit Admin-498.00, Recognition/First Bankcard-72.10; **JUD:** Jury Fees/Jurors-529.58, Prof Fees/Carol Johnson-331.50; **AUD:** Trvl & Conf/First Bankcard-1,153.48, Susan Kiepke-159.12; **TREAS:** Passport Postage/First Bankcard-173.70, Supplies/First Bankcard-200.09, State MV Supplies/First Bankcard-200.09; **CRT APPTED ATTY:** Crt Appted Atty/Morgan Theeler-203.30, Pub Def Contract/Alvine Law Firm-16,229.16, Douglas Papendick-16,229.16; **PUB SFTY BLDG:** Repairs/Menards-392.34, Supplies/Jones Supplies-78.00, Gas & Electric/Northwestern Energy-4,839.49; **DOE:** Books/First Bankcard-375.00; **ROD:** Supplies/First Bankcard-78.61; **N. OFC:** Repairs/Advance Auto Parts-66.68, Supplies/Jones Supplies-291.43, Menards-24.94; **VET:** Utilities/First Bankcard-292.99, Recognition & Events/First Bankcard-44.66; **CO COORD:** Postage/Qualified Presort-1,146.70, Postage Meter Fees/Qualified Presort-245.60, Copy Machine Maint/A & B Business Solutions-43.27, Access Systems-64.06; **HR:** Trvl & Conf/First Bankcard-124.56; **SHERIFF:** Tires/TMA-74.88, Ofc Supplies/First Bankcard-278.31, Innovative Office-109.02, Gas Patrol Car/First Bankcard-134.73, Prisoner Transport/Avera Queen of Peace Hosp Accounting-22.00; **JAIL:** Medicine/Lewis Drug Stores-4,040.28, Jail Supplies/Jones Supplies-355.89, Kitchen Supplies/Jones Supplies-262.78, Oth Co Jail BD/Meade County Auditor-760.00, Uniforms/Al's Engraving-16.50, Jack's Uniforms & Equip-107.89, Minor Equipment/First Bankcard-1,227.60, Vehicle Maint/Lube Rangers-84.68; **WELFARE:** Transients/Siesta Motel-58.00; **MENTAL ILL:** Committals/Douglas Papendick-214.00, Hearings/Fox Law Firm, PLLC-162.88, Mark Katterhagen-15.00, Val Larson-15.00, Lincoln Co Treasurer-530.10, Yankton Sheriff's Ofc-150.00; **FAIR:** Gas & Electric/Northwestern Energy-1,867.94, Minor Equipment/Runnings Supply-39.98; **WEED:** Utilities/City of Mitchell-388.40; **P&Z:** Supplies/First Bankcard-17.60; **HIWAY:** Utilities/City of Mitchell-62.25, Northwestern Energy-53.57, Signage & Materials/Newman Traffic Signs-89.19, Projects/Prahm Construction-88,816.00, Oth Projects/SD Dept of Transportation-121.45; **EMG MGMT:** Supplies/Menards-7.49, Training/Dakota Scuba-636.00, Utilities/City of Mitchell-42.05; **M&P:** Trvl & Conf/First Bankcard-139.00.

PAYROLL FOR THE MONTH OF AUGUST

Commissioner-\$7,501.52, Auditor-\$16,164.63, Treasurer-\$13,017.51, State's Attorney-\$33,044.35, Public Safety Building-\$6,285.97, Gen. Government Building-\$3,040.00, Director of Equalization-\$20,192.03, Register of Deeds-\$14,413.74, North Offices-\$6,016.20, Veterans' Services-\$9,651.08, HR-\$4,672.13, 24/7 Program-\$2,949.93, Sheriff-\$45,877.63, County Jail-\$107,710.44, Emergency Management-\$6,217.36, County Road & Bridge-\$49,436.46, Welfare-\$473.84, Community Health Nurses-\$3,281.60, WIC-\$3,104.96, Fairgrounds-\$3,508.80, Extension-\$1,500.41, Weed Control-\$707.25, Planning/Zoning-\$4,183.23.

2024 BUDGET REVIEW

Commissioners continued the 2024 budget review.

ADJOURN

At 11:25 a.m., Chairperson Reider adjourned the meeting and set the next regular Board of Commissioners meeting for September 5, 2023, at 9:00 a.m.

ATTEST

Susan Kiepke, Auditor

Randy Reider, Chairperson

Publish Once
Approximate Cost