

**TAX INCREMENT FINANCING REVENUE CAPTURE AGREEMENT  
BETWEEN THE CITY OF PINCONNING DOWNTOWN DEVELOPMENT  
AUTHORITY AND THE CITY OF PINCONNING**

This Tax Increment Financing Revenue Capture Agreement (“Agreement”) dated this 20<sup>th</sup> day of February 2024, is entered into by and between the City of Pinconning Downtown Development Authority, a Michigan public body corporate whose address is 208 S. Manitou Street, Pinconning, Michigan 48650 (hereinafter the “DDA”) and the City of Pinconning, a Michigan Home Rule city, whose address is 208 S. Manitou Street, Pinconning, Michigan 48650 (hereinafter the “City”). The DDA and the City are sometimes hereinafter referred to as parties or the party if in the singular.

**RECITALS**

**Whereas**, as more fully set forth in Article III of this Agreement, the electors of the city voted in a Special Millage for Public Safety; and

**Whereas**, the DDA Board decided not to collect the Millage as the Millage is used to provide services and protection directly for the benefit of the DDA district as well as the city as a whole; and

**Whereas**, the DDA has decided to share this Millage back to the City via this agreement so that both parties clearly understand the rights and obligations of this decision by the DDA; now.

**Therefore**, for good and value consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I**

**Adoption of Recitals**

All of the matters stated in the Recitals above of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth herein in their entirety herein, provided that in cases of conflict, provisions of this Agreement shall control over matters stated in the recitals.

**Article II**

**Right to Capture the Millages**

As the City did not or was not allowed to opt out of the DDA district it is subject to have its tax increment financing revenue captured by the DDA. Section 201 of 2018

PA 57, as amended, being MCL Section 125.4201 (cc) provides that only certain millages are exempt from capture by the DDA. The Millage discussed herein is not exempt from capture by the DDA. Therefore, the DDA has the authority and absolute right under the law to capture the Millage.

### **Article III**

#### **Agreement to Share Millage with City**

Subject to Article V, the DDA Board has agreed to enter into this Agreement with the City to share the captured assessed value in the DDA district pursuant to Section 214(4) of 2018 PA 57, being MCL Section 125.4214(4). The DDA agrees to share the Millage back to the city as more fully set forth below.

| <b>Millage</b>       | <b>Millage Rate to be Shared</b> |
|----------------------|----------------------------------|
| <b>Public Safety</b> | <b>3 Mills</b>                   |

If in the future the electors of the City increase or decrease the millage rate set forth above, the rate shall automatically increase or decrease accordingly. If the millage expires or is not renewed, the millage will automatically be removed from the above chart. Additionally, if the millage rate set forth above is adjusted due to the Headlee Amendment rollback provision, the above millage rate shall automatically adjust accordingly.

### **Article IV**

#### **Revenue Sharing Process**

The municipality and county treasurer shall transmit to the DDA tax increment revenues as set forth in 215(1) of 2018 PA 57, being MCL § 125.4215(1). Thereafter, on a date or dates determined by the DDA, the DDA shall provide the City with a check for the Millage it has captured based upon the rate for the Millage set forth in Article III herein. The City shall thereafter ensure that shared revenue is deposited into the correct account at the City and spent only on the purpose that the electors provided the Millage to be used for when they approved the same which in this case is public safety.

## Article V

### Term

As stated in Article II of this Agreement, the DDA Board has adopted a development and tax increment financing plan that the city has not or could not opt out of at the time of adoption and as such the DDA is legally entitled to capture the Millage. Due to this fact, the DDA Board is not legally obligated to share the Millage with the City. The DDA has several projects in its development and tax increment financing plan that have not been finished. Therefore, the DDA Board may, in the future, decide to use the shared Millage for some of those projects. This Agreement shall continue until the DDA Board decides at an open meeting not to share the Millage with the City and after providing notice to the City with at least one (1) years' notice that it will be terminating this Agreement. In lieu of terminating this Agreement, the DDA Board and the City may mutually agree to suspend this Agreement in writing for a period of time that is mutually agreeable to the DDA and the City.

## Article VI

### Miscellaneous Provisions

1. **Remedies Upon Default.** If the DDA fails to make payment as set forth in this Agreement, the City shall have all available remedies in law and equity against the DDA.
2. **Freedom of Information Act Requests.** If either party receives a Freedom of Information Act request related to this Agreement, it shall immediately notify the other party hereto.
3. **Severability.** The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Michigan or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

4. **Venue.** It is specifically agreed among the parties to this Agreement that Bay County, State of Michigan is the place of performance of this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in the Bay County Circuit Court.

5. **Interpretation/Construction.** For purposes of interpretation and construction of this Agreement, this Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties hereto. This Agreement therefore shall not be construed against any party to this Agreement.

6. **Modification.** This Agreement shall not be modified, altered, or amended except through a written amendment signed by the DDA and the City.

7. **No Third-Party Beneficiaries.** This Agreement is not intended to confer upon any person or entity, other than the parties hereto, any rights or remedies of any kind or nature whatsoever.

8. **Counterparts.** This Agreement may be executed in several counterparts each of which shall be deemed one and the same Agreement. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

9. **Captions and Bylines.** The captions and bylines used in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope of intent of any provision of this Agreement.

10. **Addresses and Notice.** Unless otherwise provided herein and except for invoices for construction, any other notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

**If to DDA, to:**

City of Pinconning Downtown Development Authority

Attn: Director

208 S. Manitou Street P.O. Box 628

Pinconning, Michigan 48650

**If to City, to:**

City of Pinconning

Attn: City Manager

208 S. Manitou Street P.O. Box 628

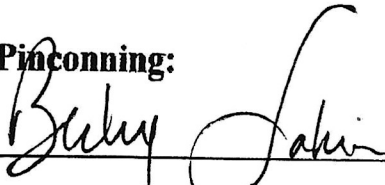
Pinconning, Michigan 48650

The parties hereto shall have the right to agree to using email as a form of communication for Notice if both parties agree to its use. Additionally, the parties shall have the right to agree from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party hereto.

**IN WITNESS WHEREOF**, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Agreement Date.

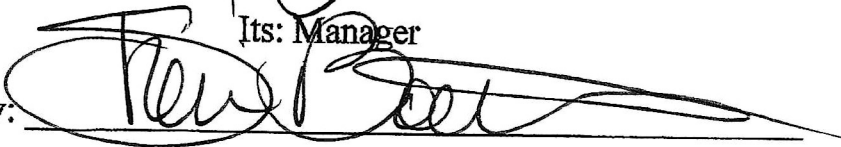
**City of Pinconning:**

By:



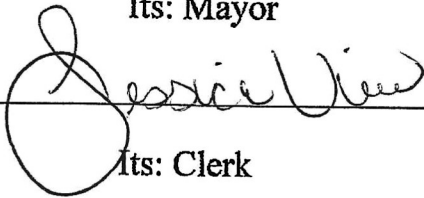
Its: Manager

By:



Its: Mayor

By:



Its: Clerk

**City of Pinconning Downtown Development Authority:**

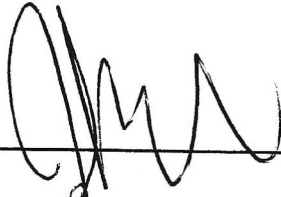
By:



Its: Chairman of DDA

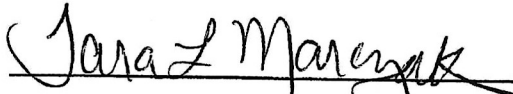
**ATTEST:**

By:



Its: Treasurer

By:



Its: Secretary