

LF081303-15

CONTRACT FOR PRIVATE DEVELOPMENT

TAX INCREMENT DISTRICT NUMBER THIRTY NINE

CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

A/R Group, Inc.

and

CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of August 18, 2003

THIS AGREEMENT, is made and entered into as of this 18th day of August, 2003, between A/R Group, Inc., a South Dakota corporation, (hereinafter “Developer”) and the City of Rapid City, a municipal corporation and political subdivision of the state of South Dakota (hereinafter “City”).

SECTION 1. The City created Tax Increment District Number Thirty Nine by resolution dated April 21, 2003.

SECTION 2. The City of Rapid City approved the development plan for Tax Increment District Number Thirty Nine on April 21, 2003.

SECTION 3. The estimated project costs, as set forth in the plan, are as follows:

Capital Costs:

Relocate WAPA power lines	\$300,000.00
Extend existing water and sewer to site	\$50,000.00
E. North Street traffic signal and turn lanes	\$150,000.00
Oversize construction of Anamosa Street (1300 feet)	\$600,000.00
Oversize right-of-way cost of Anamosa Street	\$200,000.00

Financing Costs:

Financing interest:	\$1,921,662.05
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Other Necessary and Convenient Costs:

Contingency Costs	\$200,000.00
Other	\$200,000.00

TOTAL TID NUMBER 39 PROJECT COSTS      \$3,621,662.05

Imputed Administrative Costs

City of Rapid City of Rapid City	\$2050.00
To be paid April 15, 2008 as described in the approved development plan.	

#### SECTION 4. Cost Allocation.

The Developer and the City shall share the responsibility for the costs of this project as follows:

##### Developer's Costs

###### Capital Costs:

Relocate WAPA power lines	\$300,000.00
Extend existing water and sewer to site	\$50,000.00
E. North Street traffic signal and turn lanes	\$150,000.00

###### Financing Costs:

Financing interest:	\$1,218,393.31
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###### Other Necessary and

###### Convenient Costs:

Contingency Costs	\$200,000.00
Other	\$100,000.00

<b>TOTAL DEVELOPER PROJECT COSTS</b>	<b>\$2,018,393.31</b>
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##### City's Costs

###### Capital Costs:

Oversize construction of Anamosa Street (1300 feet)	\$600,000.00
Oversize right-of-way cost of Anamosa Street	\$200,000.00

###### Financing Costs:

Financing interest:	\$703,268.74
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###### Other Necessary and

###### Convenient Costs:

Contingency Costs	\$0.00
Other	\$100,000.00

<b>TOTAL CITY PROJECT COSTS</b>	<b>\$1,603,268.74</b>
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SECTION 5. The base value of the property located in Tax Increment District Number Thirty Nine has been certified by the South Dakota Department of Revenue as One Million Two Hundred Thirty Nine Thousand Seven Hundred dollars (\$1,239,700.00).

SECTION 6. Developer will secure private financing to fund its portion of the Tax Increment District Number Thirty Nine costs, anticipated to be a bond or note, at an average interest rate over the life of the loan not to exceed Nine Percent (9%) per annum. The City shall fund its share of the costs as determined by the Common Council prior to the award of a bid for project construction. The City's interest rate on funds expended for the construction of this project shall be Six Percent (6%).

SECTION 7. Developer shall complete its portions of the project in conjunction with the City. Upon completion of the project, Developer shall certify to the Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Thirty Nine Project Plan have, in fact been disbursed in payment for the acquisition.

SECTION 8. All positive tax increments received in Tax Increment District Number Thirty Nine shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Thirty Nine Fund" (hereinafter "the Fund". The City shall, within thirty (30) days after receipt of each tax increment payment from the Treasurer of Pennington County, disburse fifty percent (50%) of the amount in the Fund Developer, or its designee, subject to the following limitation: At no time shall the cumulative total of payments made from the fund exceed the lesser of the total amounts of disbursements certified pursuant to Section 7 of this Agreement or the total of the estimated project costs set forth in the plan for Tax Increment District Number Thirty Nine. The City shall retain the remainder of the funds in the Fund until such time as the City's portion of the project costs, including interest thereon at 6%, have been fully recovered. After the City's costs have been fully paid, the Developer shall be entitled to 100% of the amounts deposited in the Fund, subject to the limitations contained in this section and in section 7 of this agreement.

SECTION 9. It is contemplated by the parties that Developer may assign its interest under this Agreement as security for the note or loan agreement, or other financing described in Section 6 hereof. It is understood and agreed, by and between the parties, that any such assignment shall be in writing and that if the City shall make disbursement pursuant to such assignment that it shall, to the extent of such disbursement, relieve the City of the obligations to make such disbursement to Developer.

SECTION 10. It is specifically a condition of this Agreement and a condition of the City's obligation to pay that all sums payable shall be limited to the proceeds of the positive tax increment from Tax Increment District Number Thirty Nine receipted into the special fund specified in Section 8 of this agreement. 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 acknowledged by the Developer that the City has made no representation that the proceeds from such fund shall be sufficient to retire the indebtedness incurred by

Developer, under Section 6 of this agreement. The parties further agree that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the fund created by Section 8 hereof.

SECTION 11. It is a condition of this agreement that all provisions of South Dakota law regarding the expenditure of public funds are incorporated herein. Specifically, the requirements of chapter 5-18 of the South Dakota Codified Laws are an integral part of this agreement. Developer shall provide documentation of compliance with chapter 5-18 upon the request of the City of Rapid City.

SECTION 12. Developer agrees to indemnify and hold harmless the City of Rapid City from obligations or liability, including reasonable attorney's fees, arising out of this agreement or the construction of the improvements contemplated by the Tax Increment District Thirty Nine Project Plan. Developer shall maintain a policy of liability insurance, acceptable to the City, with liability limits of at least one million dollars (\$1,000,000.00) that names the City of Rapid City an additional insured. Such a policy shall remain in effect throughout the term of this agreement.

SECTION 13. Developer agrees to immediately satisfy any and all mechanic's liens or material man'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 Tax Increment District Thirty Nine 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. In the event of a conflict between the Project Plan and this agreement, this agreement shall be controlling.

SECTION 15. Any dispute 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.

Dated this 18th day of August, 2003.

A/R Group, Inc.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

CITY OF RAPID CITY

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Notary Public, South Dakota

My Commission Expires:

(SEAL)