

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER FORTY EIGHT
CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

BWWW ENTERPRISES, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2006, between BWWW Enterprises, LLC, a South Dakota limited liability corporation, herein after referred to as the "Developer," and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, herein after referred to as the "City."

SECTION 1. The City created Tax Increment District Number Forty-Eight by a resolution dated November 15, 2004

SECTION 2. The City approved the Project Plan for Tax Increment District Number Forty-Eight on November 15, 2004.

SECTION 3. The estimated project costs to be paid by the district, as set forth in the plan, are as follows:

ESTIMATED PROJECT COSTS TO BE PAID BY THE TAX INCREMENT DISTRICT

Capital Costs:		
Water line infrastructure improvements	\$	65,000.00
Professional Service Costs:	\$	0
Financing Costs:		
Financing Interest	\$	63,422.36
Contingency Costs:	\$	5,000.00
Relocation Costs:	\$	0
Organizational Costs:	\$	0
Necessary and Convenient Costs:	\$	0
TOTAL:	\$	133,422.36
Imputed Administrative Costs*		
City of Rapid City	\$	2,050.00

*The imputed administrative costs are interest-free, are not included in the total project costs, and are to be paid from the balance remaining in the TID #48 fund available to the City Finance Officer on December 1, 2009.

SECTION 4. As set forth in the project plan, the project costs are to be divided between the City and Developer as follows:

City Funded Project Costs:

Capital Costs:		
Water line infrastructure improvements	\$	30,000.00
Professional Service Costs:	\$	0
Financing Costs:		
Financing interest	\$	20,298.75
Contingency Costs:	\$	5,000.00
Relocation Costs:	\$	0
Organizational Costs:	\$	0
Necessary and Convenient Costs:	\$	0
TOTAL:	\$	55,298.75

Developer Funded Project Costs:

Capital Costs:		
Water line infrastructure improvements	\$	35,000.00
Professional Service Costs	\$	0
Financing Costs:		
Financing interest	\$	43,123.61
Contingency Costs:	\$	0
Relocation Costs:	\$	0
Organizational Costs:	\$	0
Necessary and Convenient Costs	\$	0
TOTAL:	\$	78,123.61

SECTION 5. The base value of the property located in Tax Increment District Number Forty-Eight has been certified by the South Dakota Department of Revenue as One Million Six Hundred and Thirty-Nine Thousand Dollars (\$1,639,000).

SECTION 6. It is contemplated by the parties that the Developer may secure private financing to fund its share of the cost for the improvements contemplated in the Tax Increment District Number Forty-Eight approved project plan. Such private financing is 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. It is understood by the parties that should the Developer receive a loan for an amount less than Nine Percent (9%) per annum that the City will only reimburse the actual amount of the loan.

SECTION 7. The parties agree that the City will be responsible for bidding and managing the construction of the improvements contemplated by the project plan. The parties agree to enter into a separate cost sharing agreement that establishes the responsibilities of the parties for construction of the improvements and payment of the upfront costs.

SECTION 8. All positive tax increments received in Tax Increment District Number Forty-Eight shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Forty-Eight Fund," hereinafter referred to as the "Fund." The City shall, within thirty (30) days after the receipt of each tax increment payment from the Pennington County Treasurer, disburse one-hundred percent (100%) of all amounts in the fund to the Developer or their designee, subject to the limitation that only funds actually expended are reimbursable and that at no time shall the cumulative total of payments made to the Developer from the fund exceed the total amount of the Developer Funded Project Costs listed in Section 4 hereof, subject to the limitation contained in Section 6 hereof. Once the Developer has been completely reimbursed for the eligible costs contained in the Tax Increment District Number Forty-Eight Project Plan, the City can be reimbursed at a hundred percent (100%) of any increment contained in the fund until the City has been fully reimbursed for the money that it has expended pursuant to Section 4 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 obligation 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 Forty-Eight received into the Fund specified in Section 8 hereof. 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 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 hereof. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax

increment payments to the fund created by Section 8 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 11. 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.

SECTION 12. This document along with the Project Plan for Tax Increment District Forty-Eight and the Agreement to Share Water Main Construction Costs 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 13. This Agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. 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 ____ day of _____, 2006.

BWWW ENTERPRISES, LLC

By: _____
Rebecca A. Wagner, President

By: _____
Wesley W. Wood, Vice President

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

