

LF013107-44

CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER FORTY-ONE

between

LAZY P-6 LAND CO., INC.

and

THE CITY OF RAPID CITY

THIS AGREEMENT is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2007, by and between LAZY P-6 LAND CO., INC., located at 505 Catron Blvd., Rapid City, South Dakota 57701, hereinafter referred to as the "Developer" and the CITY OF RAPID CITY, located at 300 Sixth St., Rapid City, South Dakota 57701, herein after referred to as the "City."

WHEREAS, the City created Tax Increment District Number Forty One by resolution on July 21, 2003; and

WHEREAS, the City approved a Revised Project Plan for Tax Increment District Number Forty One on June 22, 2005; and

WHEREAS, the Revised Project Plan approved on June 22, 2005, included the cost for the design and construction of a lift station and force main that was intended to provide sewer service for property owned by the Developer; and

WHEREAS, the City subsequently decided to construct a gravity sewer line to serve the property owned by the Developer which eliminated the need for the lift station and force main; and

WHEREAS, the City and Developer entered into an agreement on July 19, 2005, whereby the City agreed to provide sewer to the Developer's property by a date specific and to reimburse the Developer for the costs that had been incurred up to that point for the design of the lift station and in exchange the Developer agreed to dismiss a lawsuit he had filed against the City and to abandon construction of the lift station and force main; and

WHEREAS, the City approved a Second Revised Project Plan for Tax Increment District Number Forty One on December 19, 2005; and

WHEREAS, the Second Revised Project Plan included the cost for improvements related to the Black Hills Center Project in addition to the previously approved costs; and

WHEREAS, the purpose of this agreement is to allow the Developer to be reimbursed from the proceeds of Tax Increment District Number Forty One for the money it expended in designing the lift station which it abandoned upon the City's agreement to construct a gravity sewer line to serve its property.

NOW THEREFORE, the parties hereby agree as follows:

1. The Developer may be reimbursed for the costs it actually expended for the design of the proposed lift station and force main in the amount of \$30,455.09. Of this amount \$1,723.87 represents interest paid to a lender between February 1, 2006, and February 1, 2007, to finance the costs of the lift station design. The Developer understands that it will not be able to be reimbursed for the \$1,723.87 in interest without providing proof at the time of certification that this amount was actually paid in interest.

2. The Developer shall certify to the City Finance Office how much money was expended for the design of the lift station or for any qualifying interest payments. The City shall have the right to require reasonable documentation, including but not limited to itemized invoices and bank statements, to establish that the amounts set forth in the Tax Increment District Number Forty One Second Revised Project Plan have been disbursed for the costs contemplated in the project plan and this agreement.

3. After the Developer has submitted a request for reimbursement of eligible costs which has been certified by the City Finance Office, the City shall disburse such amount to the Developer from the proceeds of any increment available in the Tax Increment District Forty One Fund. After a request for reimbursement and certification of the amount, the City shall disburse any funds owing under this agreement within 30 days. The Developer acknowledges that the City's obligation to pay within 30 days may be limited by the terms of paragraph 4 to the amount of money available in the TID #41 Fund.

4. 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-One received into the "Fund" specified in Paragraph 3 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 this reference. It is also specifically agreed that the City has made no representation that the proceeds from such fund shall be sufficient to retire any indebtedness incurred by Developer. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments from the fund. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

5. This document along with the Second Revised Project Plan for Tax Increment District Forty-One, and the July 19, 2005, agreement between the parties shall 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.

6. 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.

CITY OF RAPID CITY

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Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

LAZY P-6 LAND CO., INC.

By: *Orvil F. Shaw*  
President

By: *Lois M. Davis Bennett*  
Secretary

STATE OF SOUTH DAKOTA     )  
  )ss.  
COUNTY OF PENNINGTON     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public, State of South Dakota  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH DAKOTA     )  
  )ss.  
COUNTY OF PENNINGTON     )

On this 24 day of January, 2007, before me, the undersigned officer, personally appeared Orvil Davis and Lois Bennett, who acknowledged themselves to be the President and Secretary of Lazy P-6 Land Co., Inc., and that they as such, being duly authorized so to do, executed the foregoing instrument by signing the name of Lazy P-6 Land Co., Inc., as its President and Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Blake Shouldis  
Notary Public, State of South Dakota  
My Commission Expires: 07-15-08