

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER SIXTY-EIGHT

Between

SODAK DEVELOPMENT, INC.

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT is made and entered into on this ____ day of _____, 2009, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, South Dakota 57701 (hereinafter referred to as “City”), and Sodak Development, Inc., of 6150 Laredo Lane, Black Hawk, South Dakota 57718 (hereinafter referred to as “Developer”).

RECITALS

WHEREAS, pursuant to the power and authority granted to it under Chapter 11-9 of the South Dakota Codified Laws, the City created Tax Increment District Number Sixty-Eight by resolution on April 21, 2008.

WHEREAS, on the same day, the City adopted by resolution a Project Plan for Tax Increment District Number Sixty-Eight which identifies expenditures for public improvements which qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15.

WHEREAS, the purpose of this Agreement is to establish under what conditions the Developer can be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Project Plan. It further establishes the procedures by which the Developer may assign its right to any proceeds from the district in order to secure private financing for the public improvements. Pursuant to SDCL 11-9-2(5), the City is empowered to enter into contracts or agreements necessary and convenient to implement the provisions and effectuate the purposes of the Project Plan.

NOW THEREFORE, the parties agree as follows:

SECTION 1. The estimated project costs to be paid by the district, as set forth in the Project Plan, are as follows:

Capital Costs:	
Oversizing Drainage/Storm Sewer	\$ 136,340.32
Oversizing Grading	\$ 442,759.25
75 foot Extension of Homestead Street for Rapid City School District	\$ 50,000.00
16 inch Water Main	\$ 200,000.00
Professional Service Costs	\$ 55,000.00
Financing Costs:	
Financing Interest	\$1 ,273,686.47
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0

Necessary and Convenient Costs:	\$ 100,000.00
TOTAL	\$ 2,257,786.04
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 Homestead TID fund available to the City Finance Officer on April 15, 2013.

SECTION 2. As set forth in the Project Plan, the project costs are to be divided between the City and Developer as follows:

A. DEVELOPER ESTIMATED PROJECT COSTS TO BE PAID BY THE TAX INCREMENT DISTRICT

Capital Costs:	
Oversizing Drainage/Storm Sewer	\$ 136,340.32
Oversizing Grading	\$ 442,759.25
75 Foot Extension of Homestead Street for Rapid City School District	\$ 50,000.00
Professional Service Costs	\$ 45,000.00
Financing Costs:	
Financing Interest	\$ 1,081,846.61
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Necessary and Convenient Costs:	\$ 50,000.00
TOTAL	\$ 1,805,946.18

B. CITY ESTIMATED PROJECT COSTS TO BE PAID BY THE TAX INCREMENT DISTRICT

Capital Costs:	
16 Inch Water Main	\$ 200,000.00
Professional Service Costs	\$ 10,000.00
Financing Costs:	
Financing Interest	\$ 191,839.86
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0

Organizational Costs:	\$	0
Necessary and Convenient Costs:	\$	50,000.00
 TOTAL	\$	 451,839.86

SECTION 3. The Developer agrees to design and construct the public improvements contemplated in Section 1 of this Agreement. The Developer will be solely responsible for obtaining the capital necessary to fund these improvements.

SECTION 4. The base value of the property located in Tax Increment District Number Sixty-Eight has been certified by the South Dakota Department of Revenue as One Hundred Seventy-Three Thousand Nine Hundred Sixty-Four dollars (\$173,964.00).

SECTION 5. The Developer may secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Sixty-Eight Project Plan. If the Developer obtains private financing, the interest rate shall not exceed nine (9%) percent per annum during the life of the loan. During the construction phase of the project and until the project is cash flowing from a tax revenue basis the Developer and lender shall be free to negotiate an interest rate not to exceed nine (9%) percent per annum. Within 90 days of the date the Developer is notified by the City that the tax revenue is sufficient to amortize the debt over the remaining life of the Tax Increment District and confirmed by the financial institution financing the public improvements, the interest rate on the remaining balance shall be reset at an interest rate of not more than three (3%) percent over the published ten (10) year U.S. Treasury rate not to exceed nine (9) percent per annum. That rate shall remain in effect for a five year period, at which time it will be reset using the same formula. It is understood by the parties that should the Developer receive a loan with an interest rate of less than Nine Percent (9%) per annum, the City will only reimburse the Developer for the amount of interest actually paid to a financial institution providing funding for the public improvements contained in the Project Plan. The City shall retain the right to refinance any Tax Increment District through the use of Revenue Bonds or any other funding source available during the life of the Tax Increment District.

SECTION 6. Developer shall complete the improvements described in the approved Project Plan. The Developer shall certify to the City Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. Upon completion of the various phases, the Developer may certify to the City Finance Officer the public improvements for that phase have been completed and certify the amount of money disbursed therefore. The reimbursement for the public improvements for the various phases may begin upon the certification of the costs for that phase. Furthermore, the Developer shall provide sufficient documentation to certify that the terms of Section 11 of this Agreement are complied with. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Sixty-Eight Project Plan have, in fact, been disbursed for the costs contemplated in the Project Plan and state bid law has been complied with.

SECTION 7. It is understood by the parties that the boundaries of Tax Increment District Sixty-Eight may overlap the boundaries of other tax increment districts. Any increments generated from areas within overlapping districts will be used to pay for the improvements in the districts based on the chronological order in which the districts were created. Only after the disbursements required of the City in the project plans or developer's agreements for any previously created districts have been satisfied, will the City have a duty to disburse funds under this Agreement.

SECTION 8. All positive tax increment payments for Tax Increment District Number Sixty-Eight shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-Eight Fund," hereinafter referred to as the "Fund." Subject to Sections 3, 6, 7, 10 and 11 of this Agreement and the limitation that at no time shall the cumulative total of payments made from the fund exceed the lesser of the total amount of disbursements certified pursuant to Section 6 of this Agreement or the total of the estimated project costs set forth in the Tax Increment District Number Sixty-Eight Project Plan as well as any other limitations contained herein, the City shall, within thirty (30) days after the receipt of each tax increment payment from the Treasurer of Pennington County, disburse seventy-four percent (74%) of the revenues received to the Developer or his designee for project costs incurred by the Developer and twenty-six percent (26%) of the revenues received to the City for project costs incurred by the City.

SECTION 9. It is contemplated by the parties the Developer may assign its interest under this Agreement as security for the note or loan agreement, or other financing described in Section 5 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. Any assignee shall agree to be bound by the terms and conditions contained in this Agreement. The City shall have the right to refuse any subsequent assignment if it will result in an increase in the amount of interest being paid to a financial institution, even if the interest rate being charged by the new lender complies with the terms of Section 5.

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 Sixty-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 Sections 5 and 9 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. Selection of contractors for the construction of the public improvements described in Section 1 shall comply with all provisions of South Dakota law regarding the expenditure of public funds contained in Chapter 5-18 of the South Dakota Codified Laws. Upon a request by the City, the Developer shall provide documentation demonstrating that it has complied with Chapter 5-18.

SECTION 12. Developer agrees to defend, 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 Sixty-Eight Project Plan. The 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 as an additional insured. Such a policy shall remain in effect until the City accepts the improvements.

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. The parties acknowledge that the public improvements contemplated in Section 1 of this Agreement could not feasibly be constructed without the creation of this Tax Increment District and the use of private financing being secured by the Developer. Accordingly, the mutual covenants and obligations hereunder shall constitute good and sufficient consideration for the execution and performance of this Agreement.

SECTION 15. This document along with the Project Plan for Tax Increment District Sixty-Eight constitutes 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. This Agreement may only be amended or modified in writing by mutual agreement of the parties.

SECTION 16. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under Sections 5 and 9 of this Agreement, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

SECTION 17. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

SECTION 18. If one or more provisions of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other

section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions.

SECTION 19. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

SECTION 20. This Agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this Agreement.

Dated this ___ day of _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

SODAK DEVELOPMENT, INC.

By:_____

State of South Dakota)
 ss.
County of Pennington)

On this _____ day of _____, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
)ss.
County of Pennington)

On this ____ day of _____, 2009, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of SODAK DEVELOPMENT, INC. and that as such, being duly authorized so to do, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, State of South Dakota

My Commission Expires:

(SEAL)