

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER SIXTY-ONE

Between

HIDDEN VALLEY, INC.

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this 16 day of ~~DECEMBER~~, 2009, between Hidden Valley, Inc. P.O Box 795 Black Hawk SD 57718, hereinafter referred to as "Developer II," and the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the "City."

SECTION 1. The City created Tax Increment District Number Sixty-One by resolution on October 2, 2006.

SECTION 2. The City approved by resolution a Project Plan for Tax Increment District Number Sixty-One on October 2, 2006. The City approved a Second Revised Project Plan for Tax Increment District Number Sixty-One on January 22, 2008.

SECTION 3. The purpose of this agreement is to allow Developer II to be reimbursed from the proceeds of the Tax Increment District for the cost of the improvements that are included in the Second Revised Project Plan. It further establishes the procedures by which Developer II may assign its right to any proceeds from the district in order to secure private financing for the project improvements.

SECTION 4. The estimated project costs for which Developer II can be reimbursed from the Tax Increment District Number Sixty-One, as set forth in the approved Second Revised Project Plan, are as follows:

A. TOTAL ESTIMATED PROJECT COSTS SUBJECT TO REIMBURSEMENT FROM THE TAX INCREMENT DISTRICT:

Capital Costs:	
Sewer Mains	\$ 375,426.00
Sewer Lift Stations	\$ 497,216.00
Detention Cells	\$ 94,362.75
Water Mains	\$ 9,193.39
Vineyard Ln/Golden Eagle Drive	\$ 181,194.99
Strom Sewer	\$ 16,285.47
Traffic Control	\$ 1,489.89
Turn Lane	\$ 0
Promise Road	\$ 229,540.00
Financing Interest	\$ 1,056,156.77
Contingency Costs	\$ 153,300.11
Relocation Costs	\$ 0
Organizational Costs	\$ 0
Necessary/Convenient Costs	\$ 364,546.28

TOTAL	\$	2,978,711.65
Imputed Administrative Costs*		
City of Rapid 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 #61 fund available to the City Finance Officer on October 11, 2011.

B. PROJECT COSTS PAID FOR BY HIDDEN VALLEY, INC. FOR WHICH IT CAN BE REIMBURSED FROM THE TAX INCREMENT DISTRICT:

CAPITAL COSTS:

Phase 1

Detention Cell	\$	84,570.75
Promise Road	\$	229,540.00
Sewer Mains	\$	53,190.00

Phase 2

Sewer Lift Station	\$	254,700.00
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Financing Interest	\$	383,025.45
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Contingency Costs	\$	93,300.11
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Relocation Costs	\$	0
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Organizational Costs	\$	0
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Necessary/Convenient Costs	\$	0
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TOTAL	\$	1,098,326.31
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SECTION 5. Developer II agrees to construct the improvements contained in Section 4(B) of this agreement. Developer II further agrees to complete the construction of the improvements in Phase I and Phase 2 by October 2, 2011. If Developer II does not complete the improvements by October 2, 2011, the City has the option to terminate this agreement as to any improvements that have not been constructed or on which construction has not been started. Prior to the City terminating this agreement, the City shall provide at least seven days notice to Developer II and/or any entity that has an assignment interest in the proceeds of the tax increment funds on the date of the meeting at which the City Council will consider terminating the agreement.

SECTION 6. The base value of the property located in Tax Increment District Number Sixty-One has been certified by the South Dakota Department of Revenue as One Million Seven Hundred Ninety-Three Thousand Eight Hundred Sixty-Five dollars (\$1,793,865.00). The Second Revised Project Plan has not resulted in an increase in project costs. Pursuant to SDCL 11-9-23 the base value of the property in the district does not have to be re-determined.

SECTION 7. It is anticipated that Developer II will secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Sixty-One Second

Revised Project Plan. This 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 and that Developer II will not receive any reimbursement for interest that it pays in excess of Nine Percent (9%) per annum. It is further understood that should Developer II receive a loan with an interest rate of less than Nine Percent (9%) per annum, that the City will only reimburse Developer II for the actual amount of interest paid.

SECTION 8. Developer II shall complete the improvements set forth in Section 4(B). Upon completion of each phase, Developer II shall certify to the City Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. Furthermore, Developer II shall provide sufficient documentation to certify that the terms of Section 13 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-One Second Revised Project Plan have, in fact, been disbursed for the costs contemplated in the Second Revised Project Plan and that state bid law has been followed. The City shall allow Developer II to certify costs for each phase upon completion of all the improvements within each phase.

SECTION 9. It is understood by the parties that the boundaries of Tax Increment District Sixty-One 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 10. All positive tax increment payments for Tax Increment District Number Sixty-One shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-One Fund," hereinafter referred to as the "Fund." Subject to Sections 8, 9, 12 and 13 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 8 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Sixty-One Second Revised Project Plan as well as any other limitations contained herein, the City of Rapid City Finance Officer shall, within thirty (30) days after the receipt of each tax increment payment from the Treasurer of Pennington County, make the disbursements from the fund in accordance with the Second Revised Project Plan. At such time that one of the Developers certifies costs, and the other developer and the City have not, the City shall pay that Developer one hundred percent (100%) of the revenues received into the Fund. At such time that one of the Developers and the City have certified costs, the City shall pay that Developer ninety-two percent (92%) of the revenues received into the Fund and shall pay the City eight percent (8%) for project costs incurred. At such time as both Developers and the City certify costs, forty-six percent (46%) of the revenues received will be disbursed to each developer for project costs incurred by the developers and eight percent (8%) will be disbursed to the City of Rapid City for project costs incurred by the City.

SECTION 11. It is contemplated by the parties that Developer II may assign its interest under this agreement as security for the note or loan agreement, or other financing described in Section 7 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 II. Any assignee shall agree to be bound by the terms and conditions contained in this agreement.

SECTION 12. 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-One receipted into the "Fund" specified in Section 10 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 II under Sections 7 and 11 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 10 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 13. 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 II shall provide documentation of compliance with Chapter 5-18 upon the request of the City.

SECTION 14. Developer II 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-One Second Revised Project Plan. Developer II 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 15. Developer II 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 II from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 16. This document along with the Second Revised Project Plan for Tax Increment District Sixty-One 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. In the event of a conflict between the revised project plan and this agreement, this agreement shall be controlling.

SECTION 17. 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 _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

HIDDEN VALLEY, INC.

BY: _____


ITS: PRESIDENT

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 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the 16th day of December, 2009, before me, the undersigned officer, personally appeared Phil Olsen, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged himself to be the President of Hidden Valley, Inc., and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, South Dakota

My Commission Expires: **My Commission Expires
January 30, 2012**

