

AMENDED
CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER FIFTY-SIX
Between
HDRK PROPERTIES, LLC.
and the
CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ___ day of _____, 2010, between HDRK Properties, LLC, located at 516 Sixth Street, Rapid City, SD 57701-2703, hereinafter referred to as "Developer 2," and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth St., Rapid City, SD 57701, hereinafter referred to as the "City."

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 Fifty-Six by resolution on November 21, 2005.

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

WHEREAS, the City approved the Third Revised Project Plan for Tax Increment District Number Fifty-Six on August 20, 2007.

WHEREAS, the purpose of this Agreement is to establish under what conditions Developer 2 can be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Third Revised Project Plan. It further establishes the procedures by which Developer 2 may assign its right to any proceeds from the district in order to secure private financing for the project 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 Third Revised Project Plan.

WHEREAS, Rushmore Midland ("Developer 1" hereafter), pursuant to a separate agreement with the City, has paid to the City \$531,990.16 toward the completion of Luna Street in Phase II of the project.

WHEREAS, the \$531,990.16 will be reimbursed to Developer 1 from the "Fund".

WHEREAS, the City will pay Developer 2 the \$531,990.16 received from Developer 1, leaving \$723,009.84 as the Phase II capital costs that may be reimbursed to Developer 2 from the "Fund".

NOW THEREFORE, the Parties agree as follows:

SECTION 1. The estimated project costs to be paid by Tax Increment District Number Fifty-Six as set forth in the approved Third Revised Project Plan, are as follows:

ESTIMATED DEVELOPER PROJECT COSTS FOR PHASE I TO BE PAID BY THE TAX INCREMENT DISTRICT

Phase I Project Costs (Midland Rushmore – Developer 1)

Capital Costs:	
Farnwood/Eglin Street	\$ 4,936,563.00
Regional Detention Dam	\$ 650,000.00
Traffic Signals	\$ 260,000.00
Relocate Power Lines	\$ 530,000.00
Right-of-way purchase*	\$ 1,887,000.00
North/South Street (Luna Avenue)	\$ 500,000.00
Professional Service Costs	\$ 359,021.00
Financing Costs:	
Financing interest	\$ 6,370,353.19
Financing/Loan Fee	\$ 115,000.00
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Necessary and Convenient Costs:	\$ 1,387.24
Total Costs for the Developer – Phase I	\$ 15,609,324.43

ESTIMATED CITY PROJECT COSTS FOR PHASE I TO BE PAID BY THE TAX INCREMENT DISTRICT

Phase I Project Costs

Capital Costs:	
Water Main	\$ 780,000.00
Sanitary Sewer Main	\$ 1,026,000.00
Financing Costs:	
Financing interest	\$ 717,672.54
Total Costs for the City – Phase I	\$ 2,523,672.54
<u>TOTAL PROJECT COSTS – PHASE I</u>	<u>\$ 18,132,996.97</u>

ESTIMATED DEVELOPER PROJECT COSTS FOR PHASE II TO BE PAID BY THE TAX INCREMENT DISTRICT

Phase II Project Costs

Capital Costs:

North/South Street (Luna Street)	
Developer 1	\$ 531,990.16
Developer 2	\$ 723,009.84
Total	\$ 1,255,000.00
Financing Costs:	
Financing interest**	\$ 1,011,910.35
Total Costs for the Developers – Phase II	\$ 2,266,910.35
<u>TOTAL PROJECT COSTS – PHASE II</u>	<u>\$ 2,266,910.35</u>

TOTAL PROJECT COSTS FOR PHASE I AND PHASE II \$ 20,399,907.32

Imputed Administrative Costs***

 City of Rapid City \$ 2,050.00

*Any sales of excess land will return to the Tax Increment District to payoff project costs.

**Developer 1 shall be reimbursed for actual interest incurred; any remaining interest available may be paid to Developer 2 based on actual interest incurred.

***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 #56 fund available to the City Finance Officer on November 15, 2010.

SECTION 2. Developer 2 agrees to complete the construction of Luna Street identified as its responsibility in Section 1 of this agreement at its expense. Developer 2 has five years from the date the district was created to complete the balance of the improvements. If Developer 2 does not comply with these deadlines, 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 the agreement, the City shall provide at least fourteen days written notice to Developer 2 and/or any entity that has an assignment interest in the proceeds of the tax increment funds of the date and time of the meeting at which the City Council will consider terminating the agreement.

SECTION 3. The base value of the property located in Tax Increment District Number Fifty-Six has been certified by the South Dakota Department of Revenue as Eighteen Million One Hundred Forty-One Thousand One Hundred Dollars (\$18,141,100).

SECTION 4. It is anticipated that Developer 2 will secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Fifty-Six 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. It is understood by the parties that the financing amount included in the project plan is based on an interest rate of Nine Percent (9%) per annum and that the Developer will not receive any reimbursement for interest that it pays in excess of Nine Percent (9%) per annum. It is further understood that should the Developer receive a loan with an interest rate of less than Nine Percent (9%) per annum, that the City will only reimburse the Developer for the actual amount of interest paid.

SECTION 5. Developer 2 shall complete the balance of the Phase II Luna Street improvements described in the approved Third Revised Project Plan per Section 1 of this Agreement. Phase II will include the balance of the Luna Street improvements which are required to be completed within five years from the date the district was created. Upon completion of a phase, each Developer shall certify to the City's Finance Office that the improvements included in the phase have been completed and shall certify the amount of money disbursed therefore. Furthermore, each 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 amount set forth in the Tax Increment District Number Fifty-Six Third Revised Project Plan have, in fact, been disbursed for the costs contemplated in the project plan and that state bid law has been complied with.

SECTION 6. It is understood by the parties that the boundaries of Tax Increment District Fifty-Six 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 completely satisfied, will the City have a duty to disburse funds under this agreement which were generated in areas that are part of previously created overlapping districts.

SECTION 7. The parties acknowledge that the City will reimburse Developer 2 in the amount of \$531,990.16 for the construction of Luna Street. The City will pay to Developer 2 \$460,859.41 of the \$531,990.16 upon documentation that Developer 2 has paid the contractor and upon certification that the work has been done. Such certification shall include a copy of the invoice and a copy of the check to the contractor. Payment shall be made within forty-five (45) days of said certification. The City will pay Developer 2 an additional \$51,906.25 as soon as punch list items are certified to have been completed and Luna Street is accepted by the City and lien waivers have been filed. The City agrees to accept Luna Street and place it in the warranty period prior to the final 45 feet being constructed. The final payment of \$19,224.50 will not be made until the final 45 feet of Luna Street is constructed and accepted and lien waivers have been filed. The project for the final 45 feet of Luna Street shall be bid and the contract awarded in accordance with State bid law.

SECTION 8. All positive tax increment payments for Tax Increment District Number Fifty-Six shall, upon receipt by the City, be deposited in a special fund to be known as the “Tax Increment District Number Fifty-Six Fund,” hereinafter referred to as the “Fund.” Subject to Sections 5, 6, 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 5 of this agreement or the total of the estimated project costs set forth in the Third Revised Tax Increment District Number Fifty-Six Project Plan as well as any other limitations contained herein, the City shall, within forty-five (45) days after the receipt of each tax increment payment from the Treasurer of Pennington County, disburse the funds in accordance with the Amended Contract for Private Development entered into by and between Midland Rushmore, LLC, the City of Rapid City, and BankWest. Once Developer 1 and the City of Rapid City have been fully reimbursed for the amounts contained in the Third Revised Project Plan, One Hundred Percent of the total amount in the “fund” will be disbursed to Developer 2, up to the total project costs authorized in Phase II of the Project Plan or until November 21, 2025, whichever shall occur first.

SECTION 9. It is contemplated by the parties that Developer 2 may assign its interest under this agreement as security for the note or loan agreement, or other financing described in Section 4 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 2. Any assignee shall agree to be bound by the terms and conditions contained in this agreement.

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 Fifty-Six received into the “Fund” specified in Section 7 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 2 under Sections 4 and 8 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 7 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

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 2 shall provide documentation of compliance with Chapter 5-18 upon the request of the City.

SECTION 12. Developer 2 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 Fifty-Six Third Revised Project Plan. Developer 2 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 2 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 2 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 Third Revised Project Plan for Tax Increment District Fifty-Six 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 15. 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 _____, 2010.

HDRK PROPERTIES, LLC.

BY: _____

ITS: _____

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2010, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be the _____ of HDRK Properties, LLC. 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:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this _____ day of _____, 2010, 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)