



CITY OF RAPID CITY

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MEMORANDUM

TO: Legal and Finance Committee

FROM: Michael Schad

DATE: October 26, 2010

RE: Partial payment to Capital Development, Inc.

The City Attorney's Office has been asked to prepare an amendment to the Contract for Private Development Tax Increment District Number 50 entered into by the City and Capital Development, Inc. on November 30, 2007. Central to the issue is that Capital Development, Inc. failed to advertise for bids as was required by the Contract and South Dakota Codified Laws Chapter 5-18.

The initial discussion, and the request made of the City Attorney's Office, was to amend the Contract for Private Development to allow for a partial payment of the Developer's project costs up to \$50,000, and report back to the Committee on the option of a second payment of up to \$50,000. However, the law in effect at the time the Contract was executed required that public improvements of the type contained within the Contract be advertised for bids if the expenditure was \$25,000 or more. Therefore, the maximum expenditure allowed for a public improvement project without advertising for bids is \$24,999.99. That is the maximum amount available to reimburse the Developer for a single project.

The next question to be addressed is whether a second payment may be made to the Developer under the theory that more than one "project" was undertaken by the Developer in Tax Increment Financing District Number 50. It is my opinion that all of the expenditures made by the Developer under this Contract were in fact for one project, limiting the reimbursement to \$24,999.99.

The Project Plan for Tax Increment District Number 50 identified this Developer's project costs as \$600,000.00 for Philadelphia Street Improvements, and \$720,860.88 for Financing Costs for a total of \$1,320,860.88. The Second Revised Project Plan, approved in January 2008, identified \$722,000.00 for the Philadelphia Street Improvements; \$873,041.63 for Financing Costs; \$39,000.00 to "Demo Existing Street" and \$44,000.00 for a Bike Path. The new total was \$1,678,041.63. The components of the project were not broken into separate phases.

The components of the project include the construction of Philadelphia Street; the demolition of the street existing prior to this project; and the extension of a bike path. Given that the components were in the same general area; that the project was undertaken in the same general time frame; and that the components were all related leads me to the conclusion that this Contract contemplated one project. Furthermore, it is my opinion that the Department of Legislative Audit will consider this one project for the purpose of bid law. A municipality may not avoid the requirements of bid law by breaking down a project into smaller pieces; likewise, under the circumstances in this case, a municipality may not justify reimbursing a developer for separate "projects" when in fact they are part and parcel of the same project.

Had the project been advertised for bids initially, the addition of the bike path would have been incorporated by a change order, assuming sufficient reserves in the bid. Otherwise, a separate advertisement for bids would have been required. Regardless if a change order or new bid letting were done, the result would have been that the addition of the bike path would be considered part of the larger project, not a separate project.