

AMENDED CONTRACT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

THROUGH

PRIVATE DEVELOPER

TAX INCREMENT DISTRICT NUMBER SIXTY-NINE

Between

NORTH STREET FIRE STATION, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2013, by and between North Street Fire Station, LLC, a South Dakota limited liability company, care of Richard Huffman, DeMersseman, Jensen, Tellinghuisen & Huffman, LLP, P.O. Box 1820, Rapid City, SD 57709, herein after referred to as the “Developer,” and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City.”

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-Nine by resolution effective August 28, 2008; and

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

WHEREAS, the Project Plan listed several developers: Rapid Center, North Street Fire Station LLC, and Chuck Lien; and

WHEREAS, the City expected Rapid Center to sign the Contract for Private Development Tax Increment District Number Sixty-Nine as a developer assuming part of the obligation for the improvements within the Project Plan; and

WHEREAS, Rapid Center did not sign the Contract for Private Development Tax Increment District Number Sixty-Nine and to date has made no improvements to Tax Increment District Number Sixty-Nine; and

WHEREAS, on December 29, 2008, the City entered into a Contract for Private Development Tax Increment District Number Sixty-Nine with North Street Fire Station, LLC; and

WHEREAS, on June 15, 2009, the City adopted by resolution a Revised Project Plan for Tax Increment District Number Sixty-Nine that reallocated certain costs for items that were to be completed in the original Project Plan; and

WHEREAS, on March 18, 2013, the City adopted by resolution a Second Revised Project Plan for Tax Increment District Number Sixty-Nine; and

WHEREAS, to date only North Street Fire Station LLC has made any improvements to Tax Increment District Number Sixty-Nine as defined by the Project Plan, the Revised Project Plan, or the Second Revised Project Plan, and no other developer has made any improvements within the tax increment district as discussed in those project plans; and

WHEREAS, the purpose of this Agreement is to amend the original Contract for Private Development Tax Increment District Sixty Nine with North Street Fire Station LLC as the only developer that can be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Project Plan, Revised Project Plan, and Second Revised Project Plan; and

WHEREAS, the purpose of this amended 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, Revised Project Plan, and Second Revised Project Plan. 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 hereby agree as follows:

SECTION 1. The estimated project costs for which the Developer can be reimbursed from Tax Increment District Number Sixty-Nine, as set forth in the approved Second Revised Project Plan are as follows¹:

Phase I-A

Project Costs:

Tish Boulevard (E North Street) Construction:	
Street	\$ 627,663.15
Lighting	\$ 75,726.94
Water	\$ 155,561.65
Sanitary Sewer	\$ 58,913.10
Storm Sewer	\$ 96,972.72
Widen East Mall Drive by two lanes	\$ 642,766.37
Interim Sanitary Sewer Lift Station and Force Main	\$ 38,149.07
12' x 5' Box Culvert	\$ 202,930.09

Professional Engineering Services:

Construction of Tish Boulevard ²	
Street	\$ 84,570.00
Lighting	\$ 9,030.00
Water	\$ 26,250.00
Sanitary Sewer	\$ 9,450.00
Storm Sewer	\$ 17,430.00

¹ The parties agree that the Revised Project Plan also includes City Costs under Phase I-D in the amount of \$3,543,830.19 and Phase II in the amount of \$3,305,901.94.

² The Original Project Plan refers to East North Street. Since the adoption of the Original Project Plan, the name of East North Street north of Interstate 90 has been changed to Tish Boulevard. For purposes of this Agreement, Tish Boulevard and East North Street may be used interchangeably, and the parties acknowledge they are the same street.

Widen East Mall Drive by two lanes	\$ 96,500.00
Interim Sanitary Sewer Lift Station and Force Main	\$ 7,965.00
12' x 5' Box Culvert	\$ 28,815.00
Downstream Drainage Study	<u>\$ 100,000.00</u>
Phase I-A Subtotal	\$2,278,693.09
 <u>Phase I-B</u>	
<i>Project Costs:</i>	
Traffic Signal at East Mall Drive and Dyess Ave	\$ 50,000.00
Gravity Sewer	\$ 253,025.00
 <i>Professional Engineering Services:</i>	
Gravity Sewer	\$ 37,953.44
Traffic Signal at East Mall Drive and Dyess Ave	<u>\$ 7,030.88</u>
Phase I-B Subtotal	\$ 348,009.32
 <u>Phase I-C</u>	
<i>Project Costs:</i>	
Grass Lined Channel & Channel Protection	\$ 625,000.00
 <i>Professional Engineering Services:</i>	
Grass Lined Channel & Channel Protection	<u>\$ 90,180.00</u>
Phase I-C Subtotal	\$ 715,180.00
 <u>Financing Costs</u>	
Interest	\$2,082,497.19
Contingency	\$ 0
Necessary and Convenient Costs	\$ 35,314.59
Additional Imputed Admin Fee*	(\$ 5,000.00)
Additional Imputed Admin Fee – Amend #1*	\$ 5,000.00
Additional Imputed Admin Fee – Amend #2*	<u>\$ 5,000.00</u>
Financing Costs Subtotal	\$ 2,122,811.78
 Total	 \$ 5,464,694.19

* The imputed administrative costs are interest free, are not included in the total project costs, and are to be paid to the City from the balance remaining in the TID #69 Fund available to the City Finance Officer on August 28, 2013.

The parties agree that Developer can only seek reimbursement for improvements made within the geographical boundaries of Tax Increment District Sixty-Nine. The parties agree that any improvements made outside of the boundaries of Tax Increment District Sixty-Nine are not reimbursable from the Tax Increment District Sixty-Nine Fund, and

Developer agrees that it will not seek reimbursement from City for any such improvements made outside of the district.

SECTION 2. The cost of constructing the improvements contained in Section 1 of this agreement is the responsibility of the Developer, and Developer agrees to design and construct the improvements described in Section 1. The Developer acknowledges that these improvements must be started or under contract for construction within 5 years of the approval of this tax increment district (i.e. by August 28, 2013) in order to be eligible for reimbursement under this Agreement.

The parties acknowledge that the City will reimburse the Developer from the tax increment funds upon the Developer certifying to the Finance Office the amounts actually paid for these improvements. The parties agree that no reimbursement will exceed the specific costs listed in the Second Revised Project Plan and in Section 1 of this Agreement. The Developer may certify those project costs listed under Phase I-A in the Project Plan upon these improvements being completed. Phase I-A improvements include Tish Boulevard Construction (totaling (\$1,014,837.56), East Mall Drive widening by two lanes (\$642,766.37), Interim Sanitary Sewer Lift Station and Force Main (\$38,149.07), and 12' x 5' Box Culvert (\$202,930.09), associated professional engineering services (\$280,010) and a downstream drainage study (\$100,000).

The Developer may certify those project costs listed under Phase I-B in the Project Plan upon these improvements being completed. Phase I-B improvements include traffic signal at East Mall and Dyess Ave. (\$50,000), Gravity Sewer (\$253,025), and associated professional engineering services (\$44,984.32).

The Developer may certify those project costs listed under Phase I-C in the Project Plan upon these improvements being completed. Phase I-C improvements include grass lined channel and channel protection (\$625,000) and related engineering services (\$90,180).

The Developer's reimbursement from the proceeds of Tax Increment District Sixty-Nine is subject to the following terms and conditions:

a. The Developer agrees to design and construct E. North Street from its current terminus just to the north of East Mall Drive to the northern edge of the property described in sub-paragraph (a) of the Section. This street will be designed and constructed as a three lane facility. In conjunction with constructing the street, the Developer agrees to construct the interim lift station, sanitary sewer force main and box culvert referred to in Section 1 of this Agreement. The Developer will provide the City with right-of-way One Hundred (100) feet in width in which to locate this street at no cost to the City. The Developer will provide the City with the necessary right-of-way prior to, or simultaneously with, the platting and donation of the fire station site. Within thirty (30) days of right-of-way being dedicated and accepted by the City, the Developer will provide an engineer's estimate for the cost of constructing the street which will be reviewed and approved by the City in the normal manner for review and approval of subdivision improvements. Nothing in this agreement shall be construed as releasing the

Developer from any obligations under the City's Subdivision Ordinances, including but not limited to the posting of acceptable surety for any required subdivision improvements.

b. The Developer will design and construct E. Mall Drive between E. North Street and Dyess Ave. to a five lane facility. If sufficient right-of-way has not already been dedicated, the Developer will provide the City with right-of-way One Hundred (100) feet in width through the platting of adjacent property or through the creation and donation of H Lots at no cost to the City. Such dedication shall be accomplished within One-Hundred Twenty (120) days of the approval of this Agreement. The Developer further agrees that the scope of this project includes any improvements to the intersection of East Mall Drive and Dyess Ave, including but not limited to the installation of the traffic signals contemplated in Section 1 of this Agreement. Within Thirty (30) days of the right-of-way being dedicated and accepted by the City, the Developer will provide an engineer's estimate for the cost of constructing the street which will be reviewed and approved by the City in the normal manner for review and approval of subdivision improvements.

c. The parties agree that the Project Costs in Section 1 include a traffic signal at East Mall Drive and Dyess Avenue. Developer agrees to purchase all necessary equipment for the traffic signal that is not already owned by the City; to install all components and infrastructure at the intersection that can be installed in advance to prepare the intersection for the traffic signal, including underground wiring, conduit, junction boxes, etc.; and to deliver to the City any remaining traffic signal equipment for City to store until the signal is warranted.

d. Developer agrees to design and construct a grass lined channel and channel protection in accordance with the applicable rules and regulations of the U.S. Army Corps of Engineers, the State of South Dakota, Pennington County, and the City of Rapid City.

e. Developer agrees to design and construct a sanitary sewer utility from Tish Boulevard east and north to connect with the south end of Emerson Lane. To the extent that this improvement is to be constructed in whole or in part on private land, Developer agrees to make a good faith effort to obtain all easements necessary to construct the sanitary sewer. If Developer is unable to obtain any easement(s) over any property on which the sanitary sewer is to be located, Developer may certify only the construction costs it actually incurs to construct a portion of the sanitary sewer utility on its own property, on public land, and on private property in accordance with sanitary sewer easements it has obtained. The parties agree that while Developer may seek bids to construct the entirety of the sanitary sewer utility contemplated in the Project Plans, Developer can only be reimbursed from the proceeds of Tax Increment District Sixty-Nine for the actual costs it expends to construct the sanitary sewer utility.

f. Upon the execution of this Agreement, the Developer will provide evidence of financing to fund the completion of the improvements herein contemplated.

g. All public improvements being funded under this Agreement shall be designed and built in conformity with the City's Standard Specifications for Public Works Construction, Design Criteria Manuals and any other laws, ordinances, policies or resolutions which may be applicable.

h. If the Developer does not meet the time frames specified, the City has the option to terminate this Agreement. Prior to the City terminating the Agreement, the City shall provide at least seven days written notice to the Developer and/or any entity that has an assignment interest in the proceeds of the tax increment funds of the date 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 Sixty-Nine has been certified by the South Dakota Department of Revenue as Five Million, Seven Hundred Fifty-Four Thousand, Four Hundred Twenty-Three Dollars (\$5,754,423.00).

SECTION 14. This document along with the Contract for Private Development Tax Increment District Number Sixty-Nine, the Project Plan for Tax Increment District Sixty-Nine, the Revised Project Plan, and the Second Revised Project Plan 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. This Agreement may only be amended or modified in writing by mutual agreement of the parties.

The parties agree that Sections 4 through 13 and Sections 15 through 19 of the original Contract for Private Development Tax Increment District Number Sixty-Nine between the Parties remains in full force and effect and are hereby incorporated in their entirety into this Agreement.

Dated this ___ day of _____, 2013.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this _____ day of _____, 2013.

NORTH STREET FIRE STATION, LLC

By _____
Its _____

State of _____)
 ss.
County of _____)

On this the _____ day of _____, 2013, before me, the undersigned officer personally appeared _____, who acknowledged himself/herself to be the _____ of North Street Fire Station, LLC, and that 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, _____

My Commission Expires:

(SEAL)