

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER FIFTY-SIX
CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

MCDONALD PROPERTIES SD TWO, LLC.

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2006, between McDonald Properties SD Two, LLC, hereinafter referred to as the “Developer,” and the City of Rapid City, 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 Fifty-Six by resolution on November 21, 2005.

SECTION 2. The City approved a Revised Project Plan for Tax Increment District Number Fifty-Six on February 6, 2006.

SECTION 3. The purpose of this agreement is to allow the Developer 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 the Developer 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 to be paid by Tax Increment District #56, as set forth in the approved revised project plan, are as follows:

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

Phase I Project Costs

Capital Costs:

Farnwood/Eglin Street (Spruce to E. North)	\$ 1,911,000.00
Farnwood/Eglin Street (LaCrosse to Spruce)	\$ 325,000.00
Regional Detention Dam	\$ 650,000.00
Traffic Signals	\$ 260,000.00
Relocate Power Lines	\$ 325,000.00
High Pressure Water Main and Sewer Main*	\$ 1,500,000.00

*Contingent on funding from the .16 Fund.

Professional Service Costs \$ 0

Financing Costs:

Financing interest (Phase I)	\$ 6,635,935.70
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Contingency Costs: \$ 0

Relocation Costs: \$ 0

Organizational Costs: \$ 0

Necessary and Convenient Costs:	\$	0
TOTAL PROJECT COSTS – PHASE I:	\$	11,606,935.70
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 TID #56 fund available to the City Finance Officer on November 15, 2009.

DEVELOPER PROJECT COSTS FOR PHASE I:

Phase I Project Costs

Capital Costs:		
Farnwood/Eglin Street (Spruce to E. North)	\$	1,911,000.00
Farnwood/Eglin Street (LaCrosse to Spruce)	\$	325,000.00
Regional Detention Dam	\$	650,000.00
Traffic Signals	\$	260,000.00
Relocate Power Lines	\$	325,000.00
Professional Service Costs	\$	0
Financing Costs:		
Financing interest	\$	6,077,631.93
Contingency Costs:	\$	0
Relocation Costs:	\$	0
Organizational Costs:	\$	0
Necessary and Convenient Costs:	\$	0
TOTAL	\$	9,548,631.93

CITY PROJECT COSTS FOR PHASE I:

Phase I Project Costs:

Capital Costs:		
High Pressure Water main and Sanitary Sewer Main	\$	1,500,000.00
Professional Service Costs	\$	0

Financing Costs:	
Financing Interest	\$ 558,303.77
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Necessary and Convenient Costs:	\$ 0
 TOTAL	 \$ 2,058,303.77

DEVELOPER - PHASE II FUTURE PROJECT COSTS

Capital Costs – The Developer’s capital costs of \$1,755,000 for Phase II of the Project Plan includes funding for construction of a north-south street lying between East Anamosa Street and the extension of Farnwood/Eglin Street.

Professional Service Costs – No professional service costs have been included in the Phase II Project Plan.

Financing Costs – The financing costs for Phase II of the Project Plan are dependent on the interest rate obtained. The anticipated interest rate used for this projection is 9% for the developer. If a lower interest rate is obtained, the project costs will be repaid more quickly and the property will be returned to the tax rolls sooner.

PHASE II PROJECT COSTS:

Capital Costs:	
North-South Street Construction	\$ 1,755,000.00
Professional Service Costs	\$ 0
Financing Costs:	
Financing Interest	\$ 11,109,454.68
Contingency Costs:	\$ 0
Relocation Costs:	\$ 0
Organizational Costs:	\$ 0
Necessary and Convenient Costs:	\$ 0
 TOTAL PROJECT COSTS – PHASE II	 \$ 12,864,454.68
 TOTAL PROJECT COSTS FOR PHASE I AND PHASE II	 \$ 24,471,390.38

SECTION 5. The base value of the property located in Tax Increment District Number Fifty-Six has yet to be certified by the South Dakota Department of Revenue. Both

parties understand that before any increment can be generated by the district that the base valuation of the property within the district must be certified by the Department of Revenue. It is further understood that this agreement is contingent upon certification of the value of the land in the district by the South Dakota Department of Revenue. When the certified land value has been received by the City from the Department of Revenue it will be incorporated into, and become part of, this agreement. The Developer assumes any and all risk that may result from entering into this agreement prior to receiving a certified land value from the Department of Revenue.

SECTION 6. It is anticipated that the Developer 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 7. Developer shall complete the improvements described in the approved project plan. Upon completion, Developer shall certify to the City Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. Furthermore, the Developer shall provide sufficient documentation to certify that the terms of Section 12 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 Fifty-Six 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 8. 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 satisfied, will the City have a duty to disburse funds under this agreement.

SECTION 9. It is understood by the parties that it will not be possible to determine what the positive increment is until the Dept. of Revenue determines the certified land valuation for the property within the district. It is further understood that until the Dept. of Revenue determines the certified land value, no obligation to make deposits into the "Fund" will arise. Once the certified land value of the district is received from the State, 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 7, 8 and 12 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 7 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Fifty-Six Revised 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 all amounts in the "Fund" to the Developer or their designee.

SECTION 10. It is contemplated by the parties that Developer may assign its interest under this agreement as security for the note or loan agreement, or other financing described in Section 6 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.

SECTION 11. 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 9 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 6 and 10 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 9 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 12. 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. The Developer shall provide documentation of compliance with Chapter 5-18 upon the request of the City.

SECTION 13. 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 Forty-One Second Revised 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 14. 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 15. This document along with the 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 16. 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 _____, 2006.

MCDONALD PROP. SD TWO, 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 _____, 2006, 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 McDonald Prop. SD Two, 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 _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw 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)