

CONTRACT FOR PRIVATE DEVELOPMENT
TAX INCREMENT DISTRICT NUMBER THIRTY NINE
CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

A/R Group, LLC

and

CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of August 18, 2003

THIS AGREEMENT, is made and entered into as of this 18th day of August, 2003, between A/R Group, LLC, a South Dakota limited liability company, (hereinafter "Developer") and the City of Rapid City, a municipal corporation and political subdivision of the state of South Dakota (hereinafter "City").

SECTION 1. The City created Tax Increment District Number Thirty Nine by resolution dated April 21, 2003.

SECTION 2. The City of Rapid City approved the development plan for Tax Increment District Number Thirty Nine on April 21, 2003.

SECTION 3. The estimated project costs, as set forth in the plan, are as follows:

Capital Costs:

Relocate WAPA power lines	\$300,000.00
Extend existing water and sewer to site	\$50,000.00
E. North Street traffic signal and turn lanes	\$150,000.00
Oversize construction of Anamosa Street (1300 feet)	\$600,000.00
Oversize right-of-way cost of Anamosa Street	\$200,000.00

Financing Costs:

Financing interest:	\$1,921,662.05
---------------------	----------------

Other Necessary and Convenient Costs:

Contingency Costs	\$200,000.00
Other	\$200,000.00

TOTAL TID NUMBER 39 PROJECT COSTS \$3,621,662.05

Imputed Administrative Costs

City of Rapid City	\$2050.00
To be paid April 15, 2008 as described in the approved development plan.	

SECTION 4. Cost Allocation.

The Developer and the City shall share the responsibility for the costs of this project as follows:

Developer's Costs

Capital Costs:

Relocate WAPA power lines	\$300,000.00
Extend existing water and sewer to site	\$50,000.00
E. North Street traffic signal and turn lanes	\$150,000.00

Financing Costs:

Financing interest:	\$1,218,393.31
---------------------	----------------

Other Necessary and Convenient Costs:

Contingency Costs	\$200,000.00
Other	\$100,000.00

TOTAL DEVELOPER PROJECT COSTS	\$2,018,393.31
--------------------------------------	-----------------------

City's Costs

Capital Costs:

Oversize construction of Anamosa Street (1300 feet)	\$600,000.00
Oversize right-of-way cost of Anamosa Street	\$200,000.00

Financing Costs:

Financing interest:	\$703,268.74
---------------------	--------------

Other Necessary and Convenient Costs:

Contingency Costs	\$0.00
Other	\$100,000.00

TOTAL CITY PROJECT COSTS	\$1,603,268.74
---------------------------------	-----------------------

SECTION 5. The base value of the property located in Tax Increment District Number Thirty Nine has been certified by the South Dakota Department of Revenue as One Million Two Hundred Thirty Nine Thousand Seven Hundred dollars (\$1,239,700.00).

SECTION 6. Developer will secure private financing to fund its portion of the Tax Increment District Number Thirty Nine costs, 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. The City shall fund its share of the costs as determined by the Common Council prior to the award of a bid for project construction. The City's interest rate on funds expended for the construction of this project shall be Six Percent (6%).

SECTION 7. Developer shall construct Anamosa Street, including all infrastructure and oversizing in accordance with City standard specifications and as described in the approved project plan. Upon completion of the project, Developer shall certify to the Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Thirty Nine Project Plan have, in fact been disbursed for the project.

SECTION 8. All positive tax increments, as defined in SDCL§ 11-9-26, received by the City shall, upon receipt, be deposited in a special fund to be known as the "Tax Increment District Number Thirty Nine Fund" (hereinafter "the Fund".) The City shall, within thirty (30) days after receipt of each tax increment payment from the Treasurer of Pennington County, disburse fifty percent (50%) of the amount in the Fund to Developer, or its designee, subject to the following limitation: At no time shall the cumulative total of payments made from the Fund to the Developer exceed the lesser of the total amount of disbursements certified by the Developer pursuant to Section 7 of this Agreement or the total of the estimated project costs set forth in the approved project plan for Tax Increment District Number Thirty Nine. The City shall retain the remaining fifty percent (50%) of the funds in the Fund until such time as the City's portion of the project costs, as set forth herein, including interest thereon at six percent (6%), have been fully recovered. After the City's costs have been fully paid, the Developer shall be entitled to one hundred percent (100%) of the amounts deposited in the Fund, subject to the limitations contained in this section and in section 7 of this Agreement.

SECTION 9. 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, but not to Developer's assignee, subject to the limitations on the Developer's right to receive disbursements from the Fund contained herein.

SECTION 10. It is agreed by the parties to this Agreement that Developer shall initially incur the expense for the oversize construction of Anamosa Street (approximately \$600,000) and oversize right-of-way of Anamosa Street (approximately \$200,000) and that the City shall reimburse Developer immediately for these expenditures upon acceptance by the City of these portions of the project. Payment for all other expenditures set forth herein and in the project plan, including interest and principal shall

be limited to the proceeds of the positive tax increment from Tax Increment District Number Thirty Nine received into the Fund. 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 acknowledged by the Developer that the City has made no representation that the proceeds from such fund shall be sufficient to retire the indebtedness incurred by Developer, under Section 6 of this Agreement. The parties further agree that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the fund created by Section 8 hereof.

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 shall provide documentation of compliance with chapter 5-18 upon the request of the City of Rapid City.

SECTION 12. Developer agrees to 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 Thirty Nine Project Plan. 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 throughout the term of this agreement.

SECTION 13. 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 14. This document along with the Project Plan for Tax Increment District Thirty Nine 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 Project Plan and this Agreement, this Agreement shall be controlling.

