

THIRD REVISED CONTRACT FOR PRIVATE DEVELOPMENT

TAX INCREMENT DISTRICT NUMBER THIRTY SIX

Between

DTH, LLC

and

THE CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, made and entered into as of this ____ day of September, 2010, between DTH, LLC., a South Dakota Limited Liability Corporation (hereinafter referred to as “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 Thirty-Six by resolution dated October 16, 2002.

SECTION 2. The City approved a project plan for Tax Increment District Number Thirty-Six on October 16, 2002.

SECTION 3. The City approved a revised project plan for Tax Increment District Number Thirty-Six on June 6, 2005.

SECTION 4. The City approved a second revised project plan for Tax Increment District Number Thirty-Six on June 5, 2006.

SECTION 5. The City approved a third revised project plan for Tax Increment District Number Thirty-Six on August 16, 2010.

SECTION 6. The estimated project costs, as set forth in the third revised project plan, are as follows:

Capital Costs:

Road Construction and Water/Sewer Extension (Phase I)	\$	507,398.74
Road Construction, Storm Drainage and Water/Sewer Extension - Kathryn Ave (Phase II)	\$	1,031,556.41
Landscaping Buffer (Phase II)	\$	12,000.00

Professional Service:

Engineering Design, Construction and Administration (Phase I)	\$	16,079.00
Engineering Design, Construction and Administration (Phase II)-Kathryn Ave	\$	144,658.59
Legal (Phase I)	\$	8,160.00

Financing Costs:

Financing interest	Paid to 6-1-05	\$	84,160.57
Financing interest	After 6-1-05	\$	759,959.32
Professional Fees		\$	0

Relocation Costs (Phase I) \$ 123,638.00

Organizational Costs \$ 0

Necessary and Convenient Costs:	
Contingency (Phase I)	\$ 41,995.86
Additional Imputed Administrative Fee	\$ 5,000.00
Contingency (Phase II)	\$ 0
Road Construction, Storm Drainage and Water/Sewer Extension (Phase II)-Champion Dr	\$ 448,966.22
Engineering Design, Construction and Administration (Phase II)-Champion Dr	\$ 35,482.99
Other	\$ 0
TOTAL	\$ 3,219,055.70
Imputed Administrative Costs*	
City of Rapid City	\$ 2,050

SECTION 7. The base value of the property located in Tax Increment District Number Thirty-Six has been certified by the South Dakota Department of Revenue as Seventeen Million Nine Hundred Eleven Thousand Six Hundred Fifteen dollars (\$17,911,615.00). The revised project plan has not resulted in an increase in project costs. Pursuant to SDCL 11-9-23 the base value of the property in the district does not have to be redetermined.

SECTION 8. Developer will secure private financing to fund improvements pursuant to the Tax Increment District Number Thirty-Six approved project plan, 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 should the Developer receive a loan for an amount less than Nine Percent (9%) per annum that the City will only reimburse the Developer for the actual amount of the loan.

SECTION 9. The Developer agrees to construct the Phase II improvements as shown in the Third Revised Project Plan and consistent with the costs contained in Section 6 of this agreement. In exchange for the amendment made in Section 12 of this agreement, the Developer agrees to complete construction of Champion Drive, with the exception of sidewalks, by July 1, 2007.

SECTION 10. The Developer further agrees to pay to the City an amount, still to be determined by the City's Finance Office, which is equivalent to the balance remaining on the funds that were expended by the City to construct the improvements contained in Phase I of the Project Plan and which are to be repaid to the City from the increment generated by Tax Increment District Number Thirty-Six.

SECTION 11. In exchange for the Developer paying the debt incurred by the City in constructing the improvements contained in Phase I of the Project Plan, the City agrees to assign its interest in future tax increment payments from Tax Increment District Number

Thirty-Six for the Phase I improvements in an amount equal to, but not to exceed, the amount paid by the Developer to the City in Section 10 hereof.

SECTION 12. The Developer shall complete the improvements described in the approved project plan for Phase II. Upon completion, the Developer shall certify to the Finance Officer that such improvements have been completed and shall certify the amount of money disbursed therefore. The Developer will be allowed to certify and submit the Kathryn Avenue improvements and the Champion Drive improvements separately for certification and reimbursement purposes. The Developer will not be required to install sidewalks for the street improvements to be considered complete for certification and reimbursement purposes. However, prior to certification of the improvements and any reimbursement from the tax increment funds, the Developer will have to provide the City with a surety in a form acceptable to the City Attorney's Office sufficient to secure the cost of constructing the required sidewalks. The surety will contain a term that allows the City to draw on the surety to construct the sidewalks if they are not constructed by the Developer within a certain period of time. The Developer can complete the construction of the final 115 feet of Kathryn Avenue and the seeding that needs to be done at the same time he completes Champion Drive. These improvements will be certified and included in the reimbursement request for Champion Drive. The Developer will have to complete the remaining punch list items for Kathryn Avenue, except for the ones previously mentioned, prior to any disbursements for Kathryn Avenue. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Thirty-Six Third Revised Project Plan have, in fact been disbursed in payment for the improvements.

SECTION 13. All positive tax increments received in Tax Increment District Number Thirty-Six shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Thirty-Six Fund". 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 its designee, subject to 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 12 of this agreement or the total of the estimated project costs for the Phase II improvements set forth in the Tax Increment District Number Thirty-Six Third Revised Project Plan. In addition to disbursing the funds for the Phase II project costs the City shall also disburse any tax increment funds that the City would have been entitled to for the repayment of the costs that the City expended in constructing the improvements contained in Phase I of the Project Plan subject to any limitations contained in Section 11 of this agreement.

SECTION 14. 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 8 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.

SECTION 15. 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 of Rapid City.

SECTION 16. 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 Thirty-Six received into the Fund specified in Section 13 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 Section 6 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 13 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 17. The 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-Six Project Plan and revisions. 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) from the time a bid is awarded until the City accepts the improvements.

SECTION 18. The 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 the Developer from subsequently seeking compensation from subcontractors or other who may be responsibility for such liens.

SECTION 19. This document along with the Project Plan, Revised Project Plan, Amendment to the Revised Project Plan and Third Revised Project Plan for Tax Increment District Thirty-Six constitutes the entire agreement of the parties. However, the terms of the Third Revised Project Plan shall control where the terms differ from the original Project Plan. No other promises or consideration form a part of this agreement. All prior discussions and negotiations are merged into these documents. In the event of a conflict between the Project Plan and this agreement, this agreement shall be controlling.

SECTION 20. 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 September, 2010.

DTH, LLC

By: _____

Doyle Estes

Its: Managing Member

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 Doyle Estes, known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument and acknowledged himself to the Managing Member, of DTH, LLC and acknowledged that he executed the same as Managing Member of DTH, LLC, for the purposes therein 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 Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that they, 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)