

AMENDED CONTRACT FOR PRIVATE DEVELOPMENT

TAX INCREMENT DISTRICT NUMBER SIXTY-FIVE

Between

DENNIS ZANDSTRA REAL ESTATE HOLDINGS, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into on this ____ day of _____, 2019, by and between Dennis Zandstra Real Estate Holdings, LLC, located at 3840 Cambell Street, Rapid City, South Dakota 57701-0127 (“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 (“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-Five by resolution on September 4, 2007; and

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

WHEREAS, thereafter the parties entered into a *Contract for Private Development Tax Increment District Number Sixty-Five*, which was fully executed on October 22, 2008, to establish the conditions under which Developer may be reimbursed from the proceeds of the tax increment district for the Project Plan costs and other terms related to the tax increment district; and

WHEREAS, on December 17, 2018, the City adopted by resolution a Project Plan Revision #1 for Tax Increment District Number Sixty-Five that reallocated certain costs for items completed in the original Project Plan; and

WHEREAS, the purpose of this Amendment is to amend the *Contract for Private Development Tax Increment District Sixty-Five* to revise the allowable payments to Developer for the cost of the improvements within the Project Plan Revision #1; and

WHEREAS, 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 Revision #1; and

WHEREAS, the purpose of this Agreement is to establish the conditions under which the Developer may be reimbursed from the proceeds of the tax increment district for the cost of the improvements which are included in the Project Plan Revision #1.

NOW THEREFORE, the parties hereby agree as follows:

SECTION 1 of the *Contract for Private Development Tax Increment District Sixty-Five* executed October 22, 2008, is hereby amended to read in its entirety as follows:

SECTION 1. The estimated project costs for which the Developer can be reimbursed from Tax Increment District Number Sixty-Five, as set forth in the approved Project Plan and Project Plan Revision #1, are as follows:

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE DEVELOPER:

Capital Costs:

Minnesota Street	\$ 2,455,200.00
Drainage Pond	\$ 450,000.00
Irrigation Pipe	\$ 220,000.00
Minnesota Street – Shared Costs	\$ 572,499.82
Power Line relocation	\$ 182,879.73
Traffic Signal	\$ 71,044.47

Professional Service Costs \$ 366,870.00

Contingency Costs

Phase III \$ 83,945.98

Financing Costs:

Financing interest \$ 10,022,711.62

TOTAL \$ 14,425,151.62

Imputed Administrative Costs*

Original Project Plan	\$ 2,050.00
Amended Project Plan	\$ 10,000.00
Phasing Costs	\$ 2,500.00

* The imputed administrative costs are interest-free and are not included in the total project costs. The parties agree that \$2,050 of the costs have already been paid. The administrative costs will be paid from the balance remaining in the Tax Increment District Sixty-Five Fund available to the City Finance Officer on April 1, 2019, and the Finance Officer may withdraw monies from the fund until such time as this fee is paid in full.

SECTION 7 of the *Contract for Private Development Tax Increment District Number Sixty-Five* executed on October 22, 2008 is hereby amended to read in its entirety as follows:

SECTION 7. All positive tax increment payments for Tax Increment District Number Sixty-Five shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Sixty-Five Fund," hereinafter referred to as the "Fund." Subject to Sections 2, 5, 6, 9 and 10 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 5 of this Agreement or the total of the estimated project costs set forth in the Tax Increment District Number Sixty-Five Project plan or any approved revision 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 Developer's share of the Fund, as set forth below, to Developer or their designee.

As of the time of executing this Amendment, Developer's share of the Fund is Forty-Two and a half percent (42.5%) of the total amount in the Fund. The parties agree that at the time of executing this Amendment, they are engaged in negotiations, along with SSST, LLC, concerning the final certified eligible costs payable pursuant to Section 2. Developer may execute a release authorizing the City to pay all or a portion of its share of the Fund to SSST, LLC. Any such release shall include a specified time period no longer than 180 days during which the release is effective. Upon receipt of such a release, City shall pay SSST, LLC as Developer's designee in accordance with the terms of the release and in accordance with this Agreement.

Developer shall complete a final release upon payment in full for all costs. Upon the City's receipt of this final release, SSST LLC's share of the Fund shall be 100 percent (100%) of the total amount in the Fund, subject to the other provisions in this Agreement.

SECTION 15 of the *Contract for Private Development Tax Increment District Sixty-Five* executed October 22, 2008, is hereby amended to read in its entirety as follows:

SECTION 15. This document along with the Project Plan for Tax Increment District Sixty-Five, the Project Plan Revision #1 for Tax Increment District Sixty-Five, the original *Contract for Private Development Tax Increment District Sixty-Five* executed on October 22, 2008, the various agreements with SSST, LLC, and the Infrastructure Development Partnership Fund Loan agreements 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, except for the extent as provided herein, they do not intend to alter or change in any way the remaining terms of the original *Contract for Private Development Tax Increment District Sixty-Five* executed on October 22, 2008. Unless amended herein, all terms of the original contract shall remain in full force and effect.

Dated this ____ day of _____, 2019.

DENNIS ZANDSTRA REAL ESTATE
HOLDINGS, LLC

BY: _____

ITS: _____

State of South Dakota)
 ss.
County of _____)

On this the _____ day of _____, 2019, 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 Dennis Zandstra Real Estate Holdings, 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)

Dated this ____ day of _____, 2019.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this ____ day of _____, 2019, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he/she, as such Mayor and Finance Officer, being duly authorized to do so, 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)