

FIRST AMENDMENT TO
CONTRACT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS
THROUGH PRIVATE DEVELOPER
TAX INCREMENT DISTRICT NUMBER SEVENTY-EIGHT

Between

YASMEEN DREAM, LLC

&

THE CITY OF RAPID CITY, SOUTH DAKOTA

THIS FIRST AMENDMENT, is made and entered into by and between YASMEEN DREAM, LLC, a South Dakota limited liability company of 528 Kansas City Street, Ste. 4, Rapid City, SD 57701 (“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, SD 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 Seventy-eight by resolution dated October 3, 2016; and

WHEREAS, on October 3, 2016, the City of Rapid City approved the Project Plan for Tax Increment District Number Seventy-eight which identifies expenditures for public improvements which qualify as project costs pursuant to SDCL 11-9-14 and SDCL 11-9-15; and

WHEREAS, on December 7, 2016, the City entered into a Contract for Construction of Public Improvements Through Private Developer Tax Increment District Number Seventy-eight with Developer (the “Agreement”); and

WHEREAS, on November 4, 2019, the City adopted by resolution a Project Plan Revision for Tax Increment District Number Seventy-eight that reallocated certain costs for items to be completed in the original Project Plan; and

WHEREAS, the purpose of this First Amendment is to amend the Agreement with Developer to revise the allowable payments for the cost of the improvements within the Project Plan Revision; 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.

NOW THEREFORE, the parties hereby agree as follows:

1. Recitals. The recitals set forth above constitute an integral part of this First Amendment and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Amendment of Project Plan. Section 1 of the Agreement is amended to read as follows:

The estimated project costs for which the Developer can be reimbursed from Tax Increment District Number Seventy-eight, shall be as set forth in the approved Project Plan Revision:

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE TAX INCREMENT DISTRICT:

TID #78 Cost Reallocation Summary - Amended Project Plan			
	Project Plan Costs	Reallocation / Line Item Addition	Amended Project Plan Costs
Developer Phase I			
Capital Projects			
Channel Construction ¹	\$929,182.70	(\$142,314.58)	\$786,868.12
Traffic Signal	\$300,000.00	(\$28,672.86)	\$271,327.14
Professional Service Costs			
Channel (Design & CA)	\$200,580.59	\$0.00	\$200,580.59
Traffic Signal Component	\$30,000.00	\$0.00	\$30,000.00
Contingency Costs			
Channel Component	\$64,534.35	(\$64,534.35)	\$0.00
Traffic Signal Component	\$30,000.00	(\$30,000.00)	\$0.00
Developer Phase I Total	\$1,554,297.64	(\$265,521.79)	\$1,288,775.85
Developer Phase II			
Capital Projects			
15" Gravity Sewer Main	\$0.00	\$265,521.79	\$265,521.79
Developer Phase II Total	\$0.00	\$265,521.79	\$265,521.79
Total Developer Phase I and II			
Capital Projects			
Channel Construction	\$929,182.70	(\$142,314.58)	\$786,868.12
Traffic Signal	\$300,000.00	(\$28,672.86)	\$271,327.14
15" Gravity Sewer Main	\$0.00	\$265,521.79	\$265,521.79
Professional Service Costs			
Channel (Design & CA)	\$200,580.59	\$0.00	\$200,580.59
Traffic Signal Component	\$30,000.00	\$0.00	\$30,000.00
Contingency Costs			
Channel Component	\$64,534.35	(\$64,534.35)	\$0.00
Traffic Signal Component	\$30,000.00	(\$30,000.00)	\$0.00
Financing Costs	\$682,714.41	\$0.00	\$682,714.41
TID #78 Developer Total	\$2,237,012.05	(\$0.00)	\$2,237,012.05

¹ City and Developer have entered into an *Agreement Between the City of Rapid City and Yasmeeen Dream, LLC for Oversize Stormwater Drainage Channel Improvements*, whereby the City will reimburse Developer for oversize costs for the drainage channel not to exceed \$361,504.30 for channel reconstruction costs and \$28,920.34 for design costs. These City costs are also Project Costs within Tax Increment District Seventy-Eight Project Plan and will be reimbursed to the City from the Fund once Developer has received payment in full for its certified Project Costs pursuant to Section 5.

City Costs			
Capital Projects			
Channel Construction - Oversizing	\$361,504.30	\$0.00	\$361,504.30
Professional Service Costs			
Channel (Design & CA)	\$28,920.34	\$0.00	\$28,920.34
Contingency Costs			
Channel Component	\$72,300.86	\$0.00	\$72,300.86
Financing Costs	\$130,906.35	\$0.00	\$130,906.35
TID #78 City Total	\$593,631.85	\$0.00	\$593,631.85
TOTAL TID 78 AMENDED COSTS			
Capital Costs (Developer and City)			
Channel Construction	\$1,290,687.00	(\$142,314.58)	\$1,148,372.42
Traffic signal - SD Highway 44 / Elderberry	\$300,000.00	(\$28,672.86)	\$271,327.14
15" Gravity Sewer Main	\$0.00	\$265,521.79	\$265,521.79
Total Capital Costs	\$1,590,687.00	\$94,534.35	\$1,685,221.35
Professional Fees (Developer and City)			
Channel component (Design / Const Adm)	\$229,500.93	\$0.00	\$229,500.93
Traffic signal component	\$30,000.00	\$0.00	\$30,000.00
Total Professional Fees	\$259,500.93	\$0.00	\$259,500.93
Contingency Costs (Developer and City)			
Channel component	\$136,835.21	(\$64,534.35)	\$72,300.86
Traffic signal component	\$30,000.00	(\$30,000.00)	\$0.00
Total Contingency Costs	\$166,835.21	(\$94,534.35)	\$72,300.86
Total Financing Costs	\$813,620.76	\$0.00	\$813,620.76
TOTAL TID 78 AMENDED COSTS	\$2,830,643.90	(\$0.00)	\$2,830,643.90
Imputed Administrative Costs*			
City of Rapid City	\$20,000.00	\$5,000.00	\$25,000.00
*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 #78 fund available to the City Finance Officer on October 3, 2021.			

Developer may request a revision of the Project Plan to reallocate the project costs without increasing the total Developer project costs of \$2,237,012.05 once the improvements are complete and accepted by the City. However, the parties agree that the City is not obligated to revise the Project Plan if Developer seeks a revision, and Developer understands that City does not guarantee that it will approve any revision if requested. Developer agrees not to seek an

amendment to the Project Plan that would reestablish the base value of the property as set forth in Section 3, pursuant to SDCL 11-9-23.

The parties agree that any improvements made outside the boundaries of Tax Increment District Seventy-Eight are not reimbursable from the Tax Increment District Seventy-Eight Fund, and Developer agrees that it will not seek reimbursement from City for any such improvements made outside the District.

3. Other Terms Unchanged. The rest and remainder of the Agreement shall remain in full force and effect, unchanged, as it existed prior to this First Amendment. In the case of conflict of another portion of the Agreement not changed hereby with the amendments above, the amended paragraph shall control.

4. Effective Date. The effective date for the amendments as described above shall be upon execution of this First Amendment by the Mayor and Finance Officer.

5. Counterparts. This First Amendment may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one First Amendment.

Dated this ___ day of _____, 2019.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(seal)

