

AMENDED CONTRACT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS
THROUGH PRIVATE DEVELOPER
TAX INCREMENT DISTRICT NUMBER SEVENTY

Between

ALTA TERRA DEVELOPMENT, LLC

and the

CITY OF RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT, is made and entered into by and between Alta Terra Development, LLC, a South Dakota limited liability company located at 601 West Boulevard, Rapid City SD 57701-2643, herein after referred to as the “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, herein after referred to as the “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 by resolution on September 15, 2008; and

WHEREAS, on February 6, 2012, the City adopted by resolution a Project Plan for Tax Increment District Number Seventy 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 July 15, 2013, the City entered into a Contract for Private Development Tax Increment District Number Seventy with Developer; and

WHEREAS, on October 3, 2016, the City adopted by resolution a Project Plan Revision #1 for Tax Increment District Number Seventy that reallocated certain costs for items to be completed in the original Project Plan; and

WHEREAS, the purpose of this Agreement is to amend the original Contract for Private Development Tax Increment District Seventy with Developer to revise the allowable payments 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, and to establish 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.

NOW THEREFORE, the parties hereby agree as follows:

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

TOTAL ESTIMATED PROJECT COSTS TO BE PAID BY THE DEVELOPER:

Capital Costs:

12" Sanitary Sewer Main	\$	224,745.00
Grading	\$	728,875.00
Salvage and Place Top Soil	\$	98,455.00
Mobilization	\$	55,555.00
Sewer Manholes	\$	54,830.00
Turn Lanes at Moon Meadows Drive	\$	492,895.00
Traffic Signal	\$	597,600.00
Water Main at Hwy 16 Crossing	\$	419,210.00
Moon Meadows Drive	\$	928,490.00

Professional Costs:

Surveying	\$	10,490.00
Testing	\$	10,550.00
Engineering	\$	551,965.00

Financing Costs:

Financing Interest	\$	<u>2,216,868.00</u>
Total	\$	6,390,528.00

Imputed Administrative Costs

City of Rapid City	\$	20,000.00
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The parties agree that Developer can only seek reimbursement for improvements made within the geographical boundaries of Tax Increment District Seventy. The parties agree that any improvements made outside of the boundaries of Tax Increment District Seventy are not reimbursable from the Tax Increment District Seventy Fund, and Developer agrees that it will not seek reimbursement from City for any such improvements made outside of the district.

SECTION 2. The cost of constructing the improvements contained in Section 1 of this agreement is the responsibility of the Developer, and Developer agrees that it has fully constructed the improvements described in Section 1. The Developer acknowledges that these improvements were started or under contract for construction within 5 years of the approval of this tax increment district (i.e. by September 15, 2013).

The parties acknowledge that the City will reimburse the Developer from the tax increment funds upon the Developer certifying to the Finance Office the amounts actually paid for these improvements. The parties agree that no reimbursement will exceed the specific costs listed in the Project Plan Revision #1 and in Section 1 of this Agreement without the consent of the parties. The Developer may certify those project costs listed under Phase I in the Project Plan Project Plan Revision #1 upon these improvements being completed and accepted by the City. Phase I improvements are 12" Sanitary Sewer

Main, Grading, Salvage and Place Top Soil, and Sewer Manholes as well as associated mobilization, professional and financing costs.

The Developer may certify those project costs listed under Phase II in the Project Plan Revision #1 upon these improvements being completed and accepted by the City. Phase II improvements are Turn Lanes on U.S. Highway 16, Traffic Signal at U.S. Highway 16 and Moon Meadows Drive, Water Main Crossing at U.S. Highway 16, and Moon Meadows Drive construction, as well as associated mobilization, professional and financing costs.

The Developer's reimbursement from the proceeds of Tax Increment District Seventy is subject to the following terms and conditions:

- a. The Developer agrees that the improvements under Section 1 will be dedicated to the City once they are constructed. The process for final acceptance of the improvements by the City will follow Section 7.65 of the Standard Specifications for Public Works Contracts, hereby incorporated into this Agreement. Developer agrees to warrant the improvements for two years after acceptance, in accordance with Section 7.65. Developer also agrees to provide a warranty bond or other equivalent surety in an amount equal to ten percent (10%) of the total cost of the project/improvement for a period of two years, in a manner and form approved by the City.
- b. Prior to certification of any costs as discussed above and in Section 5 of the original Agreement, Developer shall dedicate, assign, or transfer the public improvements to the City via subdivision plat(s) or separate legal instrument(s); this dedication, assignment, or transfer shall be at no cost to the City. No payment shall be made to Developer until the public improvements are fully secured by an easement, an H-Lot, or some other legal dedication reflecting the City's ownership of the public improvements.
- c. Submission of the final costs certification shall be made to the Finance Office no later than 120 days after acceptance of the final project and receipt of warranty surety, if required.
- d. Developer agrees that all public improvements being funded under this Agreement were designed and built in conformity with the City's Standard Specifications for Public Works Construction, Design Criteria Manuals and any other laws, ordinances, policies or resolutions which may be applicable.
- e. Developer agrees that it has not and will not seek any tax abatement for its property within the boundaries of Tax Increment District Seventy until the District is terminated pursuant to SDCL 11-9-46.
- f. It is understood by the parties that the boundaries of Tax Increment District Seventy 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 3. The base value of the property located in Tax Increment District Number Seventy has been certified by the South Dakota Department of Revenue as Twenty-Two Million, Eight Hundred Ninety-Four Thousand, Four Hundred Dollars (\$22,894,400).

SECTION 4. This document along with the Contract for Private Development Tax Increment District Number Seventy, the Project Plan for Tax Increment District Seventy and the Project Plan Revision #1 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 Sections 4 through 12 and 14 through 19 of the original Contract for Private Development Tax Increment District Number Seventy between the Parties remains in full force and effect and are hereby incorporated in their entirety into this Agreement.

Dated this ____ day of _____, 2016.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2016, 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, a municipal corporation, and that they, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this _____ day of _____, 2016.

ALTA TERRA DEVELOPMENT, LLC

Kent Hagg
Its: _____

State of _____)
 ss.
County of _____)

On this the _____ day of _____, 2016, before me, the undersigned officer personally appeared Kent Hagg, who acknowledged himself to be the _____ of Alta Terra Development, LLC, and that 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, _____

My Commission Expires:

(SEAL)