AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DTH, LLC REGARDING THE PROJECT RESPONSIBILITIES AND PROJECT CASH FLOW FOR THE CONSTRUCTION OF A WATER RESERVOIR AND WATER BOOSTER STATION FOR TAX INCREMENT DISTRICT 54 RAINBOW RIDGE

This agreement (hereinafter referred to as “Agreement”) is made and entered into by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57701 (hereinafter referred to as the “City”) and DTH, LLC, a South Dakota limited liability company (hereinafter referred to as the “Developer”).

WHEREAS, the Developer has proposed the development of Rainbow Ridge Subdivision (hereinafter referred to as the “Development”) which is located north of Mall Drive and west of Haines Avenue within the City of Rapid City; and

WHEREAS, the development resides outside the City’s existing water service area (the North Rapid pressure zone); and

WHEREAS, the Developer wants to proceed with developing the property by creating a new water service pressure zone; and

WHEREAS, the City has reviewed the water system master plans that in general establish the parameters for developing the proposed new water service pressure zone. The proposed water system pressure zone is commonly referred to as the “North Rapid High Level”. The North Rapid High Level is proposed to provide water service for property located between 3450 msl and 3755 msl along the western and eastern slope of the Dakota Hogback Ridge area. Proposed improvement recommendations ultimately include approximately 5.0 million gallons of water storage, new Madison wells, new water booster stations, and distribution system improvements; and

WHEREAS, the Developer has identified an area within his proposed development as a site for a proposed water reservoir and water booster station; and

WHEREAS, the City has reviewed the proposed water reservoir and water booster station locations within the development and concurs that these proposed facilities in the long term may be incorporated into the proposed improvements identified in the City’s master plan for service within the proposed North Rapid High Level Zone and generally complies with the water system master plan; and

WHEREAS, the cost of constructing water reservoirs and water booster stations is frequently a City expense; and

WHEREAS, the water reservoir and water booster station will benefit the Development by providing water service, fire protection and the ability to provide water service to additional areas outside the Development; and
WHEREAS, based on the benefits to the City’s water system and the City’s ability to incorporate the facilities into those proposed in the water system master plan, the City is willing to fund engineering services and construction for the reservoir and the water booster station; and

WHEREAS, the Developer has agreed to provide lots for the reservoir and the booster station.

NOW THEREFORE, in consideration of the mutual promises made herein the parties hereby agree as follows:

1. The City, through the Public Works Department, shall select an engineering consultant for the reservoir design, bidding, and construction services. The engineering consultant shall be selected per the City’s consultant selection policy. Furthermore, the City shall fund the engineering services for the reservoir.

2. The City, through the Public Works Department, shall bid and administer the reservoir construction project.

3. The Developer shall provide lots for the reservoir and booster station. The water transmission main and appurtenances connecting the reservoir and booster station shall be placed within public right of way or utility easements. The developer shall furnish such easements or right of way. Although it is the intent of this Agreement that all facilities identified within the agreement be located within the Developer’s property, acquiring land from other landowners, if necessary, is the responsibility of the Developer and will be accomplished solely at the Developer’s expense.

4. Within 30 days of execution of a professional services contract for the design, bidding and construction services for the reservoir, the Developer will provide the City $75,000 for professional services. If the professional services costs are less than $75,000, the balance will be returned to the Developer once the final costs are certified. The City will fund professional services costs in excess of $75,000.

5. Prior to the City awarding the reservoir construction contract, the Developer will provide the City $675,000 for reservoir construction. If the final reservoir cost is less than $675,000, the balance will be returned to the Developer once the final costs are certified. The City will fund reservoir costs in excess of $675,000.

6. The reservoir shall be ready to be put into service within Fifteen months of Council approval of this agreement.

7. The Developer shall be responsible for contracting with an engineering consultant for the design, bidding, and construction services for the water booster station.

8. The water booster station design shall generally be designed in a manner similar to the Well #12 Stoney Creek Booster Station and the Terracita Booster Station. The booster shall be a non-skid mount type. The design, bidding, and construction
services for the water booster station shall be completed in compliance with “Attachment One - Scope of Services”. The Public Works Department will perform reviews of the drawings and specifications for the booster station and will have final approval of the drawings for construction. The system shall not be placed into operation until it has been accepted by the City.

9. The City will negotiate professional services with the Developer’s engineer for bidding and construction services for the water booster station. The engineering consultant for these services does not need to be selected per the City’s consultant selection policy. The Developer shall fund the professional services for bidding and construction. The Developer will reimburse the City for professional services costs as requested by the City and upon being presented with proof of payment for services rendered.

10. The Public Works Department on behalf of the City will administer the bidding and construction phases of the water booster station.

11. The City, through the Public Works Department, will publicly bid the water booster station construction project.

12. Prior to the City awarding the booster station construction contract, the Developer will provide the City with $540,000 for the water booster station construction. If the final cost of the booster station is less than $540,000, the balance remaining will be returned to the Developer once the final costs are certified. The City will fund water booster station costs in excess of $540,000. If the total costs for the water booster station, including professional services and construction, are less than $600,000, the Developer agrees to support the reallocation of the balance toward the reservoir.

13. The water booster station shall be ready to be put into service within Fourteen months of Council approval of this agreement.

14. The Developer will be responsible for contracting with an engineering consultant for the design and construction of access, water mains, and other appurtenances not addressed within this document.

15. Any other project components shall be completed in compliance with the City’s subdivision requirements.

16. The City’s Growth Management Department will be responsible for the review and approval of these other project components.

17. The water transmission main from the water booster station shall be ready to be put into service within Fourteen months of Council approval of this agreement.

18. The water reservoir, booster station and transmission main shall be bid and constructed in compliance with state bid law. The engineering consultants shall
provide the City bid letting and construction services, including, but not necessarily limited to, preparation of bid documents for the City's review and approval, award recommendations once the bids are received, and construction observation services. The Consultants will provide recommendations to, and will follow the direction given them by the City's Public Works Department on all aspects of constructing the water reservoir, and booster station. Upon the preparation of the bid documents by the Consultants and acceptance of the documents by the Public Works staff, the project will be bid by the City. Per State bid law, the City Council shall be responsible for approving the City's bid authority and awarding the construction contracts to the lowest responsible bidder. The City Council will also need to approve any payment requests and change orders. Preparation of payment requests and change orders will be in compliance with Public Works format and under the direction of Public Works.

19. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

20. If any section(s), or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions.

21. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit, Rapid City, South Dakota.

22. If the Developer is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

Dated this 30 day of ___October___, 2008.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

DTH, LLC.

By: ______________
Its: _______________
State of South Dakota )

County of Pennington )

On this 33rd day of October, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, 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.

[Signature]
Notary Public, South Dakota

My Commission Expires: 7/15/2012

(SEAL)

State of South Dakota )
County of Pennington )

On this the 14th day of October, 2008, before me, the undersigned officer, personally appeared [Name], known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged himself to be the [Position] of DTH, LLC, and acknowledged that they, being duly authorized to do so, executed the foregoing instrument on for the purposes therein contained.

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

[Signature]
Notary Public, South Dakota

My Commission Expires: January 30, 2012

(SEAL)