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May 31, 2017

SENT VIA E-MAIL

Members of the City Council
City of Rapid City
300 Sixth Street
Rapid City, SD 57701

RE: Agenda Item 17TI001. Revision #2 to Project Plan for TID #54

Ladies and Gentlemen:

I am writing you on behalf of, and as legal counsel for, DTH, LLC. Doyle D. Estes the involved representative of DTH, LLC. DTH, LLC, is the Developer for Tax Increment District #54. As described in the application to revise the project plan, Tax Increment District #54 constructed the Northridge water infrastructure – booster station, water reservoir and access road, plus the Vicki Powers Park and an extension of a looped water main in Bunker Avenue. TID #54 was originally approved and established by the City Council in September of 2005. The original Project Plan included cost estimates for Capital Costs in the amount of \$2,650,000.00 and interest costs of \$2,456,456.67 for total expenditures of \$5,106,456.67.

As originally conceptualized, TID #54 included \$750,000.00 for the drilling and equipping of a new water well. In 2008 a revised Project Plan was approved by the City to remove the water well from the Project Plan and to include a substantial water reservoir, i.e., the water tower had not been part of the original plan. Besides reallocating costs originally projected for the water well to costs for the water reservoir the first revision to the Project Plan for TID #54 also reallocated approximately ten percent (10%) of the capital improvement costs for each stage of the work for the improvements for TID #54 to professional services associated each of those phases of work.

As with every tax increment district, the original projections for costs for capital expenditures and interest for TID #54 were made based upon estimates and financial projections made before any contracts for construction were incurred and before the tax increment district financing was negotiated with the lender. The revisions to the Project Plan

being here proposed by DTH, LLC, are done solely for the purpose of bringing the cost allocations for the Project Plan into line with the actual costs that have been incurred in constructing and paying for the project improvements for TID #54. There is no change to the scope of the improvements being paid for through the tax increment district and the total allowable costs to the TID have not changed.

Once the revision to the Project Plan requested by DTH, LLC, is approved by the City, DTH, LLC, will cooperate with the City as it reviews for eligibility the third, and final, cost certification for the actual final costs that have been incurred in constructing and paying for the public infrastructure improvements that are part of TID #54.

One question that has been raised is with the timing of DTH, LLC, approaching the City for a revision to the Project Plan after having previously presented the City with two cost certifications. At the time that DTH, LLC, presented its first cost certification to the City for TID #54, the work was complete on Phase 1 of the work on the tax increment district improvements, which is to say that the work was completed on the construction of the Water Main in Bunker Drive. At the time that DTH, LLC, presented its second cost certification to the City for TID #54, the work was complete on what might be considered Phase 2 of the work on the tax increment district improvements that DTH, LLC, was responsible to construct, those costs described in the Contract for Private Development, as amended, for this tax increment district as the "Balance of the Improvements." Other portions of the work on the public infrastructure improvements for TID #54, however, were not the Developer's obligation to construct but, rather, were the City's obligation to construct (while being reimbursed by the Developer for certain agreed costs). At the time DTH, LLC, presented its second cost certification to the City for TID #54, the City had not completed its work on those portions of the water infrastructure that the City was obligated to construct. The City was responsible, for instance, for contracting for construction of the water storage reservoir and the water booster station.

At the time DTH, LLC, presented its second cost certification to the City for TID #54, DTH, LLC, could not present a final cost certification to the City because, under its agreement with the City, DTH, LLC, as the Developer, was required to reimburse the City for the professional services provided to the City by Dream Design International, Inc., for construction administration during construction, by a contractor under contract with the City, of the water booster station. At the time of the Developer's second cost certification for TID #54 in 2012, the City had not yet invoiced the Developer for the professional services fees for those construction administration services during construction of the water booster station. The City did not invoice the Developer for those construction administration services until May 1, 2014. A copy of the City's invoice to DTH, LLC, dated May 1, 2014 is attached.

In addition, because the City had not yet invoiced DTH, LLC, for the construction administration services associated with construction of the water booster station, at the time DTH, LLC, presented its second cost certification to the City, DTH, LLC, was not able to present the City with its proposed final revisions to the Project Plan at that time. As a consequence,

when DTH, LLC, presented its second cost certification to the City it was restricted in what it could ask for by the estimated budgets in the Project Plan for the various categories of costs.

It is perhaps also important to note that the Section 8 of the Contract for Private Development between the City and DTH, LLC, as amended, for TID #54 has no express provisions regarding the timeframe within which cost certifications must be presented to the City. The City has apparently recognized this to be the case in that the City has added express provisions regarding the time for presenting cost certifications in more recent Contracts for Private Development for tax increment districts. The Contract for Private Development for TID #54, however, contains no such provision.

DTH, LLC, now seeks to present its final proposed revisions to the Project Plan for TID #54 to bring the original cost estimates for this tax increment district into line with the actual expenditures incurred by the Developer in constructing the public infrastructure improvements for TID #54. Once the final revisions for the Project Plan are approved, DTH, LLC, will present its final cost certification for TID #54 to the City, seeking reimbursement from tax increment district funds for actual, as opposed to the estimated, expenditures.

As presented to the City at this time, the revisions to the Project Plan for TID #54 does include a reallocation of costs under the Project Plan from interest expenses, which came in under original projections, to capital costs for project improvements and professional services which, in sum total, came in over original projections. The total expenditures for the Project Plan under this second proposed revision to the Project Plan, however, remain limited to the same total amount in the prior Project Plan.

A question has been raised with regard to the propriety of reallocating interest expenses covered in a Project Plan for payment line items for capital improvements and professional services in that same Project Plan. DTH, LLC, has reviewed the City's activities since 2007 with regard to reallocation of costs for tax increment districts and has found that the City has, on no less than nine separate occasions, approved revisions to Project Plans for tax increment districts to revise interest or financing costs downward and to move those savings on interest into other categories to cover increased costs for capital improvements and professional services. A listing of those tax increment districts where the City has reallocated finance costs to costs for construction and professional services is attached.

Three of those nine reallocations have been approved by the City Council in the past 8 months. For TID #64, Cabela's Economic Development, the City itself was the "developer" in which this Council approved a reallocation of savings on interest expenses to cover actual costs for construction and professional services. DTH, LLC, seeks, by its present request for revisions to the Project Plan for TID #54 only to be treated in the same manner that other developers for tax increment districts, including the City itself, have been treated when seeking reallocation of costs in Project Plans for tax increment districts from interest expenses to cover actual costs for capital improvements and professional services, bearing in mind that DTH, LLC, is not seeking

by this present request to amend or revise the total expenditures under the Project Plan for TID #54.

DTH, LLC, respectfully requests approval of its proposed revisions to the Project Plan for TID #54.

Sincerely,



Scott Sumner

**CITY OF RAPID CITY
300 6TH STREET
RAPID CITY, SOUTH DAKOTA 57701
(605) 394-4143**

INVOICE **37313**

INVOICE DATE 5/1/2014

DUE DATE 5/16/2014

SOLD TO

DTH LLC

PO BOX 330

RAPID CITY SD 57709

Description

Pay this amount

**DEVELOPER PORTION OF ENGINEERING COSTS FOR
NORTHRIDGE WATER BOOSTER STATION, PROJECT NO W10-
1898/ CIP NO 50834, AS PER AGREEMENT**

\$84,660.00

Additional Details

SEE ATTACHED

00093407 \$84,660.00

1 - Original

TID Project Plan Revisions for Cost Allocation Since 2007

Reallocated Finance Costs to Construction and Prof Services	TID		Project Plan	Cost Reallocation
	32	Red Rocks	2001	2006, 2007, 2007
X	35	Jolly Lane Drainage	2002	2010
	36	Disk Drive Extension	2002	2005, 2006, 2010
X	38	Heartland Retail Center	2003	2017
X	39	East Rapid Plaza	2003	2006, 2007
	41	5th St South to Catron	2003	2005, 2008
	42	Elk Vale Water/Timmons Blvd	2003	2011
X	44	Mall Drive	2004	2007
	46	Red Rock Meadows	2004	2007
X	47	Tower Road	2004	2007, 2009
	50	Federal Beef	2004	2005, 2008, 2010
	54	Rainbow Ridge	2005	2008
	55	Mall Ridge Lift Station	2005	2006, 2006, 2008
X	56	Rushmore Crossing	2006	2007, 2007
X	64	Cabela's Economic Development	2007	2017
X	61	Villaggio	2006	2007, 2008, 2010
	69	North St Fire Station	2008	2009, 2013
X	70	S Highway 16 Sewer	2012	2016