

FINAL CONTRACT FOR PRIVATE DEVELOPMENT  
TAX INCREMENT DISTRICT NUMBER FIFTY FOUR

Between

DTH, LLC

and

THE CITY OF RAPID CITY, SOUTH DAKOTA

THIS FINAL AGREEMENT, is made and entered into by and between DTH, LLC, a South Dakota limited liability company located at 24054 Palmer Gulch Road, Hill City, SD 57745 (“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”).

WHEREAS, the City created Tax Increment District Number Fifty-Four by resolution on October 3, 2005 and approved a Project Plan for the Tax Increment on October 17, 2005 which identifies expenditures for public improvements which qualify as project costs pursuant to SDCL Chapter 11-9; and

WHEREAS, the City and Developer entered into a *Contract for Private Development* on May 15, 2006 (“Original Contract”), which the parties amended on January 22, 2008 by executing an *Amendment to the Contract for Private Development* (“First Amendment”) to allow Developer to certify costs in two phases; and

WHEREAS, the City adopted Project Plan Revision #1 on April 7, 2008, to reallocate allowable project costs, and thereafter the parties amended the Original Contract further on October 14, 2008 through the *Second Amendment to the Contract for Private Development* (“Second Amendment”) to incorporate the provisions in the Amended Project Plan; and

WHEREAS, the parties thereafter amended the Original Contract further on April 5, 2010 to update the timeframes for Developer’s construction of the improvements through the *Third Amendment to the Contract for Private Development* (“Third Amendment”); and

WHEREAS, the parties thereafter amended the Original Contract on September 3, 2010 to further amend the timeframes to construct the improvements by entering into the *Fourth Amendment to the Contract for Private Development* (“Fourth Amendment”); and

WHEREAS, the City adopted Project Plan Revision #2 on June 12, 2017, to reallocate and finalize the allowable project costs that may be paid out of the Tax Increment District Fifty-Four Fund; and

WHEREAS, the purpose of this Final Amendment to the 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 #2.

NOW THEREFORE, the parties hereby agree as follows:

SECTION 1. The maximum project costs to be paid by the district, as set forth in the Project Plan Revision #2, are as follows:

Capital Costs:

Booster Station	\$ 540,000.00
Water Main in Bunker Drive	\$ 96,611.19
Water Main	\$ 600,467.73
Grading over water mains	\$ 270,000.00
Well	\$ 0.00
Park Improvements	\$ 400,000.00
Water Reservoir	\$ 675,000.00

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Total Capital Costs: \$ 2,582,078.92

Professional Service Costs:

Booster Station	\$ 227,538.59
Water Main in Bunker Drive	\$ 30,608.59
Water Main	\$ 180,268.52
Grading over water mains	\$ 30,000.00
Water Reservoir	\$ 75,000.00
Park Improvements	\$ 100,000.00

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Total Professional Service Costs: \$ 643,415.70

Financing Costs:

Financing Interest	\$ 1,880,962.10
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Contingency Costs: \$ 0

Relocation Costs: \$ 0

Organizational Costs: \$ 0

Necessary and Convenient Costs: \$ 0

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TOTAL: \$ 5,106,456.72

Imputed Administrative Costs\*

City of Rapid City	\$ 2,050.00
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\*The imputed administrative costs are interest-free, are not included in the total project costs, and have been paid from the TIF #54 fund.

SECTION 2. The costs of constructing the improvements contained in Section 1 of this Final Agreement are the responsibility of the Developer. The parties agree that the public

improvements described in Section 1 have been fully constructed, that Developer has satisfied its obligation to build the public improvements, and that the public improvements have been accepted by the City.

SECTION 3. The base value of the property located in Tax Increment District Number Fifty-Four has been certified by the South Dakota Department of Revenue as Five Hundred Forty Seven Thousand One Hundred Ninety Dollars (\$547,190).

SECTION 4. It is anticipated that the Developer will secure private financing to fund the improvements contemplated in the approved Tax Increment District Number Fifty-Four Project Plan Revision #2. This private financing is anticipated to be a bond or note, at an average interest rate over the life of the loan. It is understood by the parties that the financing amount included in initial Project Plan was an average interest rate of Nine Percent (9%) per annum, and that the Project Plan Revision #2 is based on an average interest rate of Seven Percent (7%) per annum. Developer will not receive any reimbursement for interest that it pays in excess of an average interest rate of Nine Percent (9%) per annum for the bond or note for the initial Project Plan. Developer will not receive any reimbursement for interest that it pays in excess of an average Seven Percent (7%) per annum for the bond or note for the Project Plan Revision #2. It is further understood that should the Developer receive a loan or with a lower interest rate, that the City will only reimburse the Developer for the actual amount of interest paid.

SECTION 5. The Developer has completed the improvements described in the Project Plan Revision #2 and in Section 1 of this Final Agreement. The improvements included in the Project Plan have been separated into two phases. Phase I includes the improvements completed by December 31, 2007. Phase II includes the balance of the improvements which were completed by November 1, 2010. Upon completion of a phase, the Developer shall certify to the City's Finance Office that the improvements included in that phase have been completed and shall certify the amount of money disbursed therefore. The City shall have the right to require reasonable documentation to establish that the amounts set forth in the Tax Increment District Number Fifty-Four Project Plan Revision #2 have, in fact, been disbursed in payment for the improvements and interest thereon.

SECTION 6. It is understood by the parties that the boundaries of Tax Increment District Fifty-Four 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 Final Agreement.

SECTION 7. All positive tax increments received in Tax Increment District Number Fifty-Four shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Fifty-Four Fund," hereinafter referred to as the "Fund." Subject to Sections 5, 6, and 9 of this Final 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 Final Agreement or the total of the estimated Project Costs set forth in the Tax Increment District Number Fifty-Four Revised #2 Project Plan 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 all amounts in the fund to the Developer or its designee.

SECTION 8. It is contemplated by the parties that Developer may assign its interest under this Final Agreement as security for the note or loan agreement, or other financing described in Section 4 hereof. It is understood and agreed, by and between the parties, that any such assignment shall be in writing and that if the City shall make disbursement pursuant to such assignment that it shall, to the extent of such disbursement, relieve the City of the obligations to make such disbursement to Developer. Any assignee shall agree to be bound by the terms and conditions contained in this Final Agreement.

SECTION 9. It is specifically a condition of this Final Agreement and a condition of the City's obligation to pay that all sums payable shall be limited to the proceeds of the positive tax increment from Tax Increment District Number Fifty-Four received into the Fund specified in Section 7 hereof. The obligation of the City to pay pursuant to this Final Agreement does not constitute a general indebtedness of the City or a charge against the City's general taxing power. The provisions of SDCL 11-9-36 are specifically incorporated herein by reference. It is also specifically agreed that the City has made no representation that the proceeds from such Fund shall be sufficient to retire the indebtedness incurred by Developer under Section 4 hereof. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the Fund created by Section 7 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 10. It is a condition of this Final Agreement that all provisions of South Dakota law regarding the expenditure of public funds are incorporated herein. Specifically, the requirements of Chapter 5-18 of the South Dakota Codified Laws are an integral part of this Final Agreement. The Developer shall provide documentation of compliance with Chapter 5-18 upon the request of the City.

SECTION 11. Developer agrees to defend, indemnify and hold harmless the City of Rapid City from obligations or liability, including reasonable attorney's fees, arising out of any of the agreements or amendments to the agreements between the parties or the construction of the improvements contemplated by the Tax Increment District Fifty-Four Project Plan Revision #2. Developer shall maintain a policy of liability insurance, acceptable to the City, with liability limits of at least one million dollars (\$1,000,000.00) that names the City of Rapid City as an additional insured. Such a policy shall remain in effect until the City accepts the improvements.

SECTION 12. Developer agrees to immediately satisfy any and all mechanic's liens or material man's liens that arise as a result of this project. This provision shall not prevent

Developer from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 13. This Final Agreement, along with the following documents constitutes the entire agreement of the parties.

- Tax Increment District Fifty-Four Project Plan;
- Tax Increment District Fifty-Four Project Plan Revision #1;
- Tax Increment District Fifty-Four Project Plan Revision #2;
- *Contract for Private Development* dated May 16, 2006;
- *Memorandum of Agreement* dated May 7, 2007;
- *Amendment to the Contract for Private Development* dated January 22, 2008;
- *Second Amendment to the Contract for Private Development* dated October 14, 2008;
- *Third Amendment to the Contract for Private Development* dated April 5, 2010;
- *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* dated October 20, 2008;
- *Amendment to 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* dated April 5, 2010; and
- *Second Amendment to 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* dated September 9, 2010.

No other promises or consideration form a part of this Final Agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. In the event of a conflict between the above documents and this Final Agreement, this Final Agreement shall be controlling.

SECTION 14. This Final Agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. Any dispute arising out of or related to this Agreement shall be litigated in the Seventh Judicial Circuit Court for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.



