

PREPARED BY: City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140

STATE OF SOUTH DAKOTA        )  
  ) SS.        **COVENANT AGREEMENT**  
COUNTY OF PENNINGTON        )

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY, GLM LAND CORPORATION AND CALVARY CHAPEL COMMUNITY CHURCH, REGARDING AN EXCEPTION TO THE STREET DESIGN CRITERIA MANUAL FOR PROPERTY LOCATED AT 320 E. ST. PATRICK STREET IN RAPID CITY.**

This declaration of covenant and agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between GLM LAND CORPORATION, located at 3005 Beale St., Rapid City, South Dakota 57701, herein after referred to as "GLM," CALVARY CHAPEL COMMUNITY CHURCH, located at 120 Knollwood Drive, Rapid City, South Dakota 57701, herein after referred to as "Calvary," and the CITY OF RAPID CITY, a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota, 57701, herein after referred to as the "City."

**RECITALS**

WHEREAS, GLM owns property located generally at 320 E. St. Patrick Street (the "Property") within the City of Rapid City and legally described as:

The West 250 feet of Lot 2 of Hansen Heights, all located within Section Six (6) of Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, State of South Dakota; and

WHEREAS, Calvary has leased the Property with an option to buy; and

WHEREAS, the Property currently has a structure and parking lot located on it; and

WHEREAS, Calvary has applied for a Planned Commercial Development ("PCD") and building permit in order to renovate the structure on the Property and use it as a church; and

WHEREAS, the current parking lot has two driveway curb cuts allowing access to E. St. Patrick Street which do not comply with the City's currently adopted Street Design Criteria Manual (the "Criteria Manual"); and

WHEREAS, the eastern driveway is within 75 feet of a driveway for a neighboring property and 145 feet of the western driveway; and

WHEREAS, Section 8.2.2 (Driveway Approach Spacing) of the Criteria Manual requires a minimum 150 foot separation distance between adjacent driveways; and

WHEREAS, the width of the driveways is currently 40 feet; and

WHEREAS, Section 8.2.1(B) of the Criteria Manual requires that the maximum driveway width be 28 feet; and

WHEREAS, Section 8.2.4 of the Criteria Manual requires that, whenever possible, driveways on opposite sides of the street be directly across from each other, and when not possible that they be offset at least 75 feet; and

WHEREAS, it does not appear the current driveways comply with Section 8.2.4; and

WHEREAS, in order for the City to approve Calvary's application for a PCD and building permit the driveways need to be brought into compliance with the Criteria Manual or an exception to the standards in the Criteria Manual needs to be obtained; and

WHEREAS, Calvary requested an exception to the Criteria Manual to allow the driveways to remain as they currently exist; and

WHEREAS, City Staff denied the exception; and

WHEREAS, the Common Council (the "Council") of the City of Rapid City agreed to grant the exception on the stipulation that GLM and Calvary agree to abide by certain terms and conditions; and

WHEREAS, GLM recognizes that the driveway spacing will be an issue for any tenant seeking to make use of the Property and is agreeable to the Council's conditions so it can lease and/or sell the Property; and

WHEREAS, Calvary is also willing to agree to the Council's conditions in order to obtain the exception and be allowed to proceed with the renovation and use of the Property.

NOW THEREFORE, the parties agree as follows:

1. The Council agrees to grant an exception to the City's Design Criteria Manual to allow the Property's current driveways to remain.
2. GLM and Calvary agree if, at any time in the future, E. St. Patrick Street is reconstructed adjacent to the Property, the current driveways will be removed and

replaced with a curb cut(s)/drive way(s) that are in compliance with the Criteria Manual and ordinances in effect at the time of the reconstruction, including, but not limited to, spacing, width and alignment with driveways on opposite sides of the street. GLM and Calvary further agree that if E. St Patrick Street is reconstructed as part of an assessed project that they waive their right under SDCL 9-45-26 to object to such assessed project.

3. Should the current driveways become a safety issue in the opinion of the Director of Public Works, the Council can order that GLM and/or Calvary fix the current drive ways so that the access to the Property is brought into compliance with the currently adopted edition of the Criteria Manual and/or any other relevant City ordinances. In its order, the Council shall specify a reasonable amount of time in which GLM and/or Calvary can complete the work. If GLM and/or Calvary should fail to complete the work in the time specified by the Council, the City has authority to enter onto the Property and complete the work. GLM and Calvary shall be jointly and severably liable for the cost of such work. If GLM and/or Calvary fail to reimburse the City for such work, the City shall be entitled to reasonable attorney's fees and costs necessary to obtain payment from the parties.

5. All of the terms and conditions set forth herein shall extend to and be binding upon the heirs, assigns, and successors in interest of GLM and Calvary, and shall be considered as a covenant running with the above described property. Furthermore, it is agreed that, in accepting title to the above described property, any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement recorded with the Pennington County Register of Deeds' Office.

6. The parties acknowledge that in the absence of the promises made by GLM and Calvary in this agreement, the City would not approve the PCD or issue a building permit to renovate the above described property without the reconstruction of the driveways so that they complied with the Criteria Manual. The parties further acknowledge that the City's granting of the exception so that they can make use of the Property without rebuilding the driveways is good and sufficient consideration for the promises made herein.

9. If any section(s), or provision of this agreement are 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.

10. This agreement can only be amended in writing by the consent of all the parties hereto.

11. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this \_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

GLM LAND CORPORATION

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

CALVARY CHAPEL COMMUNITY  
CHURCH

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF SOUTH DAKOTA     )  
  )ss.  
COUNTY OF PENNINGTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_, 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 they, 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.

[SEAL]

\_\_\_\_\_  
Notary Public, State of South Dakota  
My Commission Expires: \_\_\_\_\_



Okrepkie, Chapman, Weifenbach, Olson and Johnson; NO: Hadcock, Hurlbut, Kroeger, Kooiker and LaCroix. On a tie vote, the Chair voted AYE and the motion carried.

LaCroix moved, second by Johnson and carried to (No. PW103007-14), authorize the Mayor and Finance Officer to sign Amendment No. 1 to the professional services agreement with Burns & McDonnell Engineering Company, Inc. for Construction Phase Services for the Water Reclamation Facility Digester Repair and Improvements-Phase II Project No. WRF07-1549A for an amount not to exceed \$64,566.00.

The Mayor presented No. 07EX111, an appeal of the denial for an Exception to Section 8.2 Design Criteria, of the City of Rapid City Street Design Manual, to allow alternate driveway opening width. West 250' of Lot 2, Hansen Heights Addition, Section 6, T1N, R8E, located at 320 East Saint Patrick Street. LaCroix moved, second by Hadcock to approve an Exception to Section 8.2 Design Criteria, of the City of Rapid City Street Design Manual. Alderman Hadcock indicated that she did not see a problem with two approaches being close together, and pointed out that these two approaches have served this property for a long period of time, and several businesses. Alderman Kooiker indicated that he believe this to be a reasonable request, and pointed out that there has been reasonable precedence on similar situations. Alderman Olson asked the Council to give this request consideration to update the quality of the property. Alderman Johnson indicated that there is some financial consideration regarding this matter. He explained that the applicant has offered to stripe the driveways to control traffic; and sign a waiver of right to protest, in case the driveways became a problem. Johnson suggested that whenever the street is reconstructed, the driveways will be reconstructed to meet the criteria as outlined in the Street Design Manual.

A motion to amend the original motion was made by Johnson, second by Olson to approve an Exception to Section 8.2 Design Criteria of the City of Rapid City Street Design Manual to allow alternate driveway opening width. West 250' of Lot 2, Hansen Heights Addition, Section 6, T1N, R8E, located at 320 East Saint Patrick Street with the stipulation that the applicant sign a waiver of right to protest; and that the agreement indicates that in the event that East Saint Patrick Street is reconstructed, the curb cuts will meet the criteria outlined in the most current Street Design Manual. Alderman Hadcock indicated her opposition to the motion to amend. City Attorney Green, responding to a question from Alderman Chapman, indicated that the waiver of right to protest will be brought back to the Council for action. Upon a roll call vote, the following voted AYE: Chapman, Weifenbach, Olson, Kroeger, Kooiker, LaCroix and Johnson; NO: Okrepkie and Hadcock. Motion carried.

Upon a vote being taken on the motion as amended, motion carried.

### **COUNCIL ITEMS & LIAISON REPORTS**

Responding to a request from Alderman Kooiker for an update on the city/county library contract, Mayor Hanks indicated that he received a request that he and representatives of the Library Board meet with representatives of the County and the School. Alderman Kooiker pointed out that the contract is between the Library Board and the County; but as the Council is the representatives of the community, he believed they have a responsibility to explain to their constituents on what is happening. He pointed out that if the contract is not renew, the City will lose, as will the County. Alderman Johnson responded that the Library Board is not responsible for the City's budget or subsidizing the County. He indicated that there is an alternative and