

DUPLICATE ORIGINAL

LF110205-28

AMENDED CONTRACT FOR PRIVATE DEVELOPMENT
FOR TAX INCREMENT DISTRICT NUMBER FORTY FOUR
CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

Between

GLM LAND CORPORATION

and

MALL DRIVE, LLC.

and

BY-PASS DEVELOPMENT, LLC

and

THE CITY OF RAPID CITY, SOUTH DAKOTA

Dated as of October 14, 2005

RECEIVED

OCT 19 2005

Rapid City Growth
Management Department

THIS AGREEMENT, is made and entered into as of this 18 day of October, 2005, between GLM Land Corporation, Mall Drive LLC and By-Pass Development LLC, hereinafter collectively referred to as the "Developers," and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the "City."

SECTION 1. The City created Tax Increment District Number Forty-Four by resolution dated April 19, 2004.

SECTION 2. The City approved the development plan for Tax Increment District Number Forty-Four on April 19, 2004.

SECTION 3. The estimated project costs, as set forth in the plan, are as follows:

Capital Costs:

Mall Drive Extension	\$1,081,500.00
Drainage Improvements	500,000.00
Sanitary Sewer Extension	420,000.00
Oversize Sewer Extension	158,500.00
Water Improvements	100,000.00

Professional Service and Engineering Design:

Mall Drive, Sewer Extension, Drainage Improvements	\$ 226,000.00
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Financing Costs:

Financing Interest	\$4,271,706.77
Professional Fees	\$ 0

Contingency Costs: \$ 565,000.00

Relocation Costs: \$ 0

Organizational Costs: \$ 0

Necessary and Convenient Costs: \$ 500,000.00
Contingency

TOTAL: \$7,822,706.77

Imputed Administrative Costs*
City of Rapid City \$ 2,050.00

*The imputed administrative costs are interest-free, are not included in the total project costs, and are to be paid from the balance remaining in the TID #44 fund available to the City Finance Officer on May 1, 2009.

SECTION 4. The base value of the property located in Tax Increment District Number Forty-Four has been certified by the South Dakota Department of Revenue as Three Million Seven Hundred Eighty-Six Thousand Dollars (\$3,786,000).

SECTION 5. The Developers will secure private financing to fund improvements pursuant to the Tax Increment District Number Forty-Four approved Project Plan, anticipated to be a bond or note, at an average interest rate over the life of the loan not to exceed Nine Percent (9%) per annum. It is understood by the parties that should the Developer receive a loan for an amount less than Nine Percent (9%) per annum that the City will only reimburse the actual amount of the loan.

SECTION 6. The Developers shall complete the improvements described in the approved development plan. Upon completion, the Developers shall certify to the City's Finance Officer that such improvements 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 Forty-Four Project Plan have, in fact, been disbursed for the project prior to disbursing any funds pursuant to this agreement.

SECTION 7. All positive tax increments received in Tax Increment District Number Forty-Four shall, upon receipt by the City, be deposited in a special fund to be known as the "Tax Increment District Number Forty-Four Fund, hereinafter referred to as the "Fund." 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 Developers or their designee, subject to 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 6 of this agreement or the total of the estimated project costs set forth in the Tax Increment District Number Forty-Four Project Plan.

SECTION 8. It is contemplated by the parties that the Developers will be assigning their interest under this Agreement as security for a note or loan agreement, or other financing as described in Section 5 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 the Developers. In addition, to prevent the City from having to defend against claims by one of the Developers that money was improperly disbursed to another member of the development group it is agreed by the parties that the City will not make disbursements from the fund to the individual Developers for the repayment of the project costs unless all of the parties agree in writing to the disbursement.

SECTION 9. It is specifically a condition of this 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 Forty-Four receipted into the Fund specified in Section 7 hereof. The obligation of the City to pay pursuant to this

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 5 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 and of this 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 agreement. The Developers shall provide documentation of compliance with Chapter 5-18 upon the request of the City.

SECTION 11. The Developers agree to defend, indemnify and hold harmless the City of Rapid City from obligations or liability, including reasonable attorney's fees, arising out of this agreement or the construction of the improvements contemplated by the Tax Increment District Forty-Four Project Plan. The Developers 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.

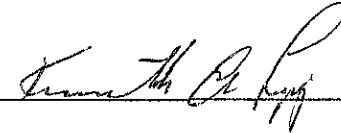
SECTION 12. The Developers agree to immediately satisfy any and all mechanic's liens or material man's liens that arise as a result of this project. This provision shall not prevent the Developers from subsequently seeking compensation from subcontractors or others who may be responsible for such liens or for such payment.

SECTION 13. This document along with the Project Plan for Tax Increment District Forty-Four 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. In the event of a conflict between the Project Plan and this Agreement, this Agreement shall be controlling.

SECTION 14. This Agreement shall be construed and the parties' rights will be 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.

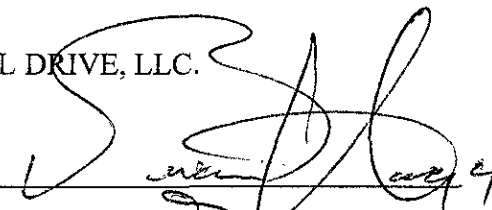
Dated this 18 day of October, 2005.

GLM LAND CORPORATION

BY: 

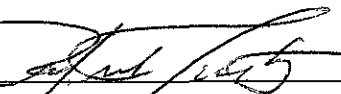
ITS: Pres.

MALL DRIVE, LLC.

BY: 

ITS: Vice Pres.

BY-PASS DEVELOPMENT, LLC

BY: 

ITS: Member

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

