

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE
EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY REGARDING
THE DESIGN, CONSTRUCTION AND DONATION OF LAND FOR REGIONAL
DETENTION FACILITIES.**

This agreement (the "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 (herein after referred to as the "City") and THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY, located at 4800 West 57th Street, Sioux Falls, SD 57117 (herein after referred to as the "Landowner").

WHEREAS, the Landowner has proposed constructing a large residential development on land formerly owned by the Benedictine Convent of St. Martins (the "Development") which is generally located north of the terminus of City Springs Road, to the west of Sturgis Road and to the south and east of St. Martins Drive; and

WHEREAS, the South Canyon/Lime Creek Drainage Basin Plan (the "Drainage Plan") calls for regional detention facilities and other drainage improvements to be located on this property; and

WHEREAS, regional detention facilities beyond what are necessary to serve the Development are considered oversize costs for which the City is responsible; and

WHEREAS, construction of the regional detention facilities and other drainage improvements called for in the Drainage Plan will be necessary to handle the drainage from this Development; and

WHEREAS, the Landowner is willing to design and construct the drainage facilities shown in the drainage plan, including the oversized regional facilities, if the City agrees to contribute \$515,000 which has previously been budgeted for the construction of metering dams in the vicinity of the St. Martin's property.

NOW THEREFORE, the parties agree as follows:

1. The land which is subject to this agreement is generally located north of the terminus of City Springs Road, to the west of Sturgis Road and to the south and east of St. Martins Drive and legally described as:

The SE1/4 SW1/4 and the SW1/4 SE1/4 and the NE1/4 SE1/4 and the NW1/4 SE1/4 and the SW1/4 NE1/4, Less Lot A of the W1/2 SE1/4, Section 29, T2N, R7E, BHM, Rapid City, Pennington County, State of South Dakota.

2. The Landowner agrees to design and construct drainage facilities to serve the Development which are consistent with the Drainage Plan. The City shall review and approve the design plans for the detention facilities prior to their construction. The

detention facilities the Landowner will construct are identified as Ponds 281, 389, 305, and 388 on sheet C1 of the Landowner's final Initial Planned Development drawings.

3. Prior to entering into a contract for construction of the detention facilities, the Landowner's engineer will identify the percentage of each detention facility that is needed to serve the Landowner's development and the percentage which is oversize. The Landowner's engineer will submit these percentages to the City's Public Works Dept. along with sufficient information necessary to verify the accuracy of the oversize percentage. The City will review the information and must concur with the oversize percentage. If the City does not concur with the oversize percentage, the parties agree to work diligently to come up with an oversize percentage that is mutually agreeable. If the parties are unable to do so, they will be released from their respective obligations under this agreement to construct and pay for the oversizing of the detention facilities but not from any of their other obligations. Once an oversize percentage has been agreed to by the parties, they will document it in writing to be acknowledged by the parties. The Public Works Director or their designee will acknowledge the oversize percentage on behalf of the City. Assuming that an agreement on the percentage is reached, the City agrees to pay the Landowner its proportionate share of the total cost for the regional detention facilities in an amount up to, but not to exceed \$515,000 once the work is actually completed. The City's share will be determined by multiplying the final total cost of construction by the City's oversize percentage. The parties understand that \$515,000 is the maximum amount the City can spend oversizing the detention facilities and the Landowner's engineer shall take this into consideration when designing the detention facilities. Once construction of the regional detention facilities is completed, the Landowner will submit an invoice to the City's Public Works Dept. for payment of the City's oversize percentage. The invoice will contain sufficient information for the City to review the total construction cost and determine the accuracy of the invoice. Upon acceptance of the amount by the City, the City shall remit payment to the Landowner within forty-five (45) days.

5. In conjunction with approval of its Final Development Plan, the Landowner shall also submit a final plan for the Development's drainage, with calculations, demonstrating that it complies with the Drainage Plan. In particular, the drainage information shall include the phasing plan for the drainage improvements and demonstrate adequate pipe sizes, collection systems and size of detention areas.

6. Once the final location and extent of the regional detention facilities has been determined, the Landowner further agrees to donate to the City permanent drainage easements for the areas in which the regional detention facilities will be located. Such easements will be prepared by the City Attorney's Office. Once completed, the easements will be submitted to the Landowner for its review and concurrence. The parties understand the City does not have the ability to conduct the day to day maintenance of the regional detention facilities, but will be responsible for any maintenance beyond the day to day maintenance and the easements will be drafted to reflect this.

7. As additional consideration for this Agreement, the Landowner acknowledges that it made the promises herein contained as additional support for its request that the City provide \$1,000,000 from the City's .16 Fund toward construction of improvements to the City's water system necessary to support the Development. The City approved the use of these funds per the Landowner's request.

8. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowner, 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.

9. 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.

10. 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 application if they can be given effect without the invalid section(s) or provisions.

11. This Agreement is the entire agreement of the parties with respect to the design, construction and donation of land for regional detention facilities on the Landowner's property. No other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

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

13. If the Landowner 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 _____ day of _____, 2008.

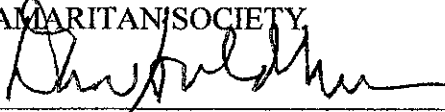
CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

THE EVANGELICAL LUTHERAN GOOD
SAMARITAN SOCIETY



By: Dan Holdhusen

Its: Vice President, Operational Support Services &
Public Affairs

State of South Dakota)
)ss.
County of Pennington)

On this the ____ day of _____, 2008, before me, the undersigned officer, personally appeared Allan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

SEAL

State of South Dakota)
)ss.
County of Minnehaha)

On this 21st day of July, 2008, before me, the undersigned officer, personally appeared Dan Holdhusen, who acknowledged himself to be the Vice President of The Evangelical Lutheran Good Samaritan Society and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Mary K. Sandbulte
Notary Public, South Dakota

My Commission Expires: 2-17-2014

