

**CONTRACT BETWEEN THE CITY OF BROKEN ARROW AND IMMANUEL
EVANGELICAL LUTHERAN CHURCH, INC. FOR CHANNEL AND REGIONAL
DETENTION FACILITY IMPROVEMENTS ON THE UPPER BRANCH OF HAIKEY
CREEK WEST OF ASPEN AVENUE AND A QUARTER MILE SOUTH OF KENOSHA
STREET**

This Contract is entered into between the City of Broken Arrow, a municipal corporation (City) and Immanuel Evangelical Lutheran Church, Inc. (Developer) on this 13th day of December, 2016, for channel and regional detention facility improvements (storm sewer infrastructure) on the upper branch of Haikey Creek west of Aspen Avenue and a quarter mile south of Kenosha Street with direct reimbursement to the Developer.

RECITALS:

Whereas, the City and Developer agree that it would be mutually beneficial to make improvements to the City's Storm Sewer Infrastructure for development in the basin and capacity improvements; located west of Aspen Avenue and a quarter mile south of Kenosha Street in Broken Arrow, Oklahoma; and

Whereas, Developer agrees to engineer, design, construct and pay for a portion of the storm sewer infrastructure improvements that would serve the Developer's Property and adjacent properties; and the City agrees to reimbursement the Developer for a portion of the constructed storm sewer infrastructure improvements that will serve the overall drainage basin (channel and regional detention facility); located within a channel drainage easement and overland drainage easement west of Aspen Avenue and a quarter mile south of Kenosha Street; and

Whereas, the City agrees to participate in the cost sharing of the storm sewer infrastructure improvements with the Developer that improve storm sewer capacity serving the entire drainage basin; and

Whereas, the City desires to support residential, multi-family and commercial development in the upper branch of Haikey Creek basin, immediate church and Aspen business park, downstream areas; and

Whereas, construction of the storm sewer infrastructure improvements is critical to successful development in the basin; and

Whereas, the cost to Developer and City is based on an equal participation share; City portion to be equal to half the actual approved bid amount or not to exceed one-hundred thousand dollars and no cents (\$100,000), whichever is less; and

Whereas, the construction of the storm sewer infrastructure improvements will create and enhance the image of the area for the community within the basin and provide financial return to the City and the community, both directly and indirectly; and

Whereas, the City believes it would be beneficial to the City and the Public for the City to contract with the Developer for the construction of the storm sewer infrastructure improvements; and

Whereas, the City seeks to promote development of the residential and commercial areas along Aspen around the Kenosha and Elm intersection corridor within the upper branch of Haikey Creek basin in order to retain and expand employment, attract major commercial, industrial, retail, entertainment and restaurant investment, enhance the tax base, stimulate economic growth, improve the quality of life in the

City, and strengthen the community; and

Whereas, the proposed storm sewer infrastructure improvements will serve to provide storm drainage capacity, diminish flooding and erosion of adjacent business property, developed and undeveloped, downstream developments and assist as a catalyst for retaining and expanding employment in the area, attracting major investment in the area, enhancing the tax base and making possible investment, development and economic growth which would otherwise be difficult; and

Whereas, the Broken Arrow City Council, as the governing body of the City of Broken Arrow, is empowered to approve economic development projects in Broken Arrow; and

Whereas, this agreement will unquestionably contribute to the overall health, safety and welfare of the City of Broken Arrow by creating an opportunity for business development; and

Whereas, it is the goal of the City to encourage and facilitate Economic Development in the community by attracting new industry and commercial businesses to the Broken Arrow area, and by promoting the economic health and expansion of existing industry and commercial businesses within Broken Arrow; and

Whereas, the City wishes to promote Economic Development in Broken Arrow for the specific purpose of allowing the City to expand the type and scope of its services, including enhanced public improvements, police and fire protection, and recreational facilities; and

Whereas, Economic Development is determined to be for the public purpose of promoting the general health, safety and welfare of the citizens of Broken Arrow; and

Whereas, the City of Broken Arrow is directly adjacent to the City of Tulsa and competes with the City of Tulsa for business economic development, that it is in the best interest of the citizens of the City of Broken Arrow to promote and encourage business within the City of Broken Arrow; and

Whereas, the terms and conditions of this Agreement are in compliance with the City of Broken Arrow's Ordinances, storm drainage capacity improvements; direct reimbursement contract with developer; and

Whereas, after the completion and acceptance of the storm sewer infrastructure improvements and payment of all amounts required by the City's ordinances, the improved channel and detention facility will enhance the drainage system in the basin, with control and operation and derived on the existing plats and filed easements; and

Now therefore, in consideration of the mutual promises, covenants and conditions herein contained and the mutual benefits that will inure to each of the parties herein, City and Developer agree as follows:

AGREEMENTS:

1. Recitals: The above Recitals are incorporated herein by reference as if set forth in full.
2. Developer's Obligations: Developer agrees to:
 - a. Contract for all necessary engineering of the Storm Sewer Infrastructure improvements, as generally depicted within attached Exhibit A, and the approved engineering plans, including design plans and construction in accordance with federal, state and local laws, codes and/or

ordinances. The improvements shall be sent out for bid by the Developer in compliance with the Oklahoma Competitive Bidding Act. The City reserves the right to approve the contract amount from the lowest responsible bidder prior to the start of the contracted work or reject all bids if in the best interest of the City.

- b. Pay for the engineering, design and construction management associated with the storm sewer infrastructure improvements.
- c. Prepare and provide the drainage easement for the regional detention pond for approval by Council and filing at the courthouse.
- d. Accept reimbursement from the City in amount equal to half the actual approved bid amount or not to exceed one-hundred thousand dollars and no cents (\$100,000), whichever is less, through the Storm Sewer Fee-in-lieu of Fund (026).

3. City's Obligations: The City agrees to:

- a. Contract with Developer for the installation of the Storm Sewer Infrastructure improvements along the upper branch of Haikey Creek west of Aspen Avenue and a quarter mile south of Kenosha Street, as generally depicted within attached Exhibit A, and the approved engineering plans.
- b. Reimburse Developer an amount equal to half the actual approved bid amount or not to exceed one-hundred thousand dollars and no cents (\$100,000), whichever is less, through the Storm Sewer Fee-in-lieu of Fund (026). Four periodic reimbursement payments will be made by the City to the Developer based on actual costs incurred and written acceptance by the City to the Developer that improvements completed meet the requirements of the engineering design and construction plans. The timing of these payments will be based on pre-determined project completion points of 25%, 50%, 75% and 100% as agreed to by the City and the Developer based on the engineering design and completion plans.
- c. Approve the contract amount from the lowest responsible bidder prior to the start of the contracted work or reject all bids if in the best interest of the City.

4. This Contract shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and Developer nor between the City and any officer, employee, contractor or representative of Developer. No joint employment relationship is created by this Contract.

5. This Contract shall be construed under the laws of the State of Oklahoma. Exclusive Original Jurisdiction for any action relating to this Contract shall be solely in the Tulsa County District Court of Oklahoma. This Contract constitutes the entire Contract and understanding between the parties, and supersedes all proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Contract. This Contract may be modified only by further written agreement between the parties.

6. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable. The parties shall agree, if reasonably practicable, upon provisions which are equivalent from an economic point of view to replace any provision which is determined to be invalid.

7. Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned, or encumbered.

8. The parties shall conform to and abide by all Federal, State and local laws and regulations, including, but not limited to all laws regarding employment of aliens and others, and that no person shall,

on the grounds of race, creed, color, national origin, political affiliation, sex, age or otherwise qualified disability, be subjected to discrimination under the privileges and use granted by this Agreement or under a project, program or activity supported by this Agreement.

9. Any officers and/or authorized employees of the City may enter the premises at any and all reasonable times for the purpose of determining whether Developer is complying with the terms and conditions hereof, or for any purpose incidental to the rights of the City under this Agreement.


10. Neither this Contract, nor any of the rights hereunder, shall be sold, assigned or encumbered by the parties without written consent.

11. This Contract may be executed in as many counterparts as are deemed necessary or convenient. Each counterpart shall be deemed an original, but all shall be construed together as one and the same instrument. The failure of any party to sign all counterparts shall not affect or limit the liability of any party executing any such counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the dates hereinafter set forth.

Approved as to Form:

City of Broken Arrow




Kim Slinkard
Assistant City Attorney

Michael Spurgeon
City Manager

Attest:

Immanuel Evangelical Lutheran Church, Inc.

City Clerk [Seal]



Aaron Stenslie
Chairman

Date of Execution: _____

Date of Execution: 12/13/2016

VERIFICATION

State of Oklahoma)
) ss.
County of Tulsa)

Before me, a Notary Public, on this 13th day of December 2016, personally appeared Aaron Stenslie, known to me to be the Chairman of the Immanuel Evangelical Lutheran Church, Inc., to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that they executed the same as there free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:
03-15-2017

S. Denise Gibbins
Notary Public



* Stamped twice for
Clarity.
S. Denise Gibbins