

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 19, 2017 AGENDA**

Subject:	Type:	Submitted By:
AGREEMENT AUTHORIZATION STORM SEWER REPAIR WORK 108 TH & CHANDLER	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing an Agreement with Redz, LLC, a Nebraska Limited Liability Company to undertake storm sewer improvements in conjunction with the development of the Brook Valley Business Park Replat Five subdivision.

FISCAL IMPACT

The majority of the funding for construction of repairs will be \$105,000 provided by Sarpy County through an interlocal agreement. The balance of the funding for engineering and Corps permit efforts will be compensated by waiving City grading permit and administrative fees of approximately \$1,300 and directing the tract sewer connection fees that will result from the development of this property in the amount of \$29,356 towards the project.

RECOMMENDATION

Approval subject to review by the City Attorney.

BACKGROUND

Redz, LLC has submitted a plat and subdivision agreement for Brook Valley Business Park Replat Five industrial development located west of the intersection of 108th Street and Chandler Road. This property has a public storm sewer outlet that has created erosion damage. The storm sewer outlet was installed as part of the reconstruction of 108th Street by Sarpy County. This property and 108th Street have since been annexed into the City. Sarpy County has agreed to participate in making modifications to the storm sewer outlet. As part of its plans to create buildable industrial lots, Redz, LLC will be responsible to undertake the improvements. Upon satisfactory completion of the modifications, the City and County will make reimbursements consistent with their plan to repair the storm sewer prior to Redz, LLC making a development proposal.

The City will provide financial assistance as storm sewer repairs were previously required and scheduled as a Capital Improvement Project at this location. Contributions under this agreement are contingent on the completion of an interlocal agreement between Sarpy County and the City.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING AN AGREEMENT WITH REDZ, LLC TO UNDERTAKE STORM SEWER IMPROVEMENTS IN CONJUNCTION WITH THE DEVELOPMENT OF THE BROOK VALLEY BUSINESS PARK REPLAT FIVE SUBDIVISION

WHEREAS, the Mayor and City Council of the City of La Vista have determined that sewer improvements in the area west of the intersection of 108th Street and Chandler Road are necessary; and

WHEREAS, the majority of the funding for construction of repairs will be \$105,000 provided by Sarpy County through an interlocal agreement. The balance of the funding for engineering and Corps permit efforts will be compensated by waiving City grading permit and administrative fees of approximately \$1,300 and directing the tract sewer connection fees that will result from the development of this property in the amount of \$29,356 towards the project; and

WHEREAS, Contributions are contingent on the completion of an Interlocal agreement between City of La Vista and Sarpy County; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00,

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska do hereby authorize an agreement with Redz, LLC to undertake storm sewer improvements in conjunction with the development of the Brook Valley Business Park Replat Five Subdivision in form and content approved by the City Administrator and City Attorney.

PASSED AND APPROVED THIS 19TH DAY OF DECEMBER, 2017.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

AGREEMENT
(Brook Valley Business Park Replat Five)

THIS AGREEMENT is made this 19th day of December, 2017, among Redz, LLC, a Nebraska limited liability company, ("Redz"), a Nebraska limited liability company, and the City of La Vista, a Municipal Corporation in the State of Nebraska (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, Redz owns the property contained within the platting of Brook Valley Business Park Replat Five, attached hereto as Exhibit "A" (hereinafter referred to as the "final plat" or the "Final Plat"; and

WHEREAS, City owns 108th Street and adjacent right of way abutting the east boundary of the property; and

WHEREAS, Redz has agreed to enter into a subdivision agreement with the City setting forth terms and conditions to develop and construct certain public and private infrastructure improvements, including without limitation, public storm sewer improvements to repair erosion damage caused by storm water at a public storm sewer discharge from 108th Street ("Repair Work") as illustrated on Exhibit "B"; and

WHEREAS, the Repair Work will repair and prevent further erosion of the embankment and potential risks to 108th Street and the traveling public; and

WHEREAS, the City and Sarpy County, intend to enter into an interlocal agreement that will provide County funds for some of the Repair Work benefiting 108th Street. This Agreement is contingent upon City and Sarpy County entering an interlocal agreement in form and content satisfactory to each of them ("Interlocal Agreement").

NOW, THEREFORE, IT IS AGREED by Redz and City as follows:

1. Easements. Redz, at no additional cost or expense, will grant a permanent sewer and drainage easement to the City as shown on the final plat (Exhibit "A"). The instrument granting such permanent easement shall be recorded with the Sarpy County Register of Deeds prior to obtaining approval of the plans for the Repair Work.
2. Plans and Permits. Redz shall obtain environmental permits required for the proposed Repair Work and shall provide drainage calculations and construction plans for review and approval by the City Engineer prior to construction. Because of the substantial benefits of the Repair Work to the City and its property, administrative review and permit fees shall not apply with respect to the Repair Work.

3. Construction Certification. Redz shall cause the Repair Work to be observed by a professional engineer licensed in Nebraska and shall have the professional engineer issue to the City a Certificate of Compliance with the approved plans, satisfactory to the City Engineer, prior to obtaining payment or reimbursement pursuant to this Agreement.
4. Construction Bond. Redz shall obtain bids, select the lowest responsible bidder, and require the contractor engaged to perform the Repair Work to provide a performance bond including a minimum two-year warranty period which shall run in favor of Redz and the City.
5. Compensation for Repair Work. Redz has proposed to install an extension to the public storm sewer discharge from 108th Street as shown on the plan for Repair Work (Exhibit "B"). The portion of the Repair Work required to stabilize the storm sewer outlet shall be paid or reimbursed as follows:
 - (A) City, using funds provided by the County pursuant to the Interlocal Agreement, will make payment in the amount of \$105,000.00 to reimburse Redz costs of the Repair Work, subject to receipt of this amount from Sarpy County under the terms of the Interlocal Agreement.
 - (B) The sewer tract connection fees for Lot 1 and Lot 2 of Brook Valley Business Park Replat Five in the amounts of \$15,186.30 and \$14,169.42, respectively, shall be applied to pay costs of the Repair Work. If the Repair Work is completed prior to obtaining a building permit for a lot, then the fee applicable to such lot will not be payable to the City. If the Repair Work is not completed at the time of application for a building permit, then Redz will deliver to the City a certified check in the amount of the applicable fee that will be held by the City until satisfactory completion of the Repair Work, after which the certified check will be returned Redz.
6. City Engineer to be Determiner. The City Engineer shall have the right, but not any obligation, to inspect any work on, or relating to, the improvements described in this Agreement. If the City Engineer exercises such right, the work shall be completed to the City Engineer's satisfaction. All specifications and contracts relating to the Repair Work shall be subject to prior review and approval of the City Engineer.
7. Exhibit Summary. The Exhibits attached hereto and incorporated herein by this reference and made a part hereof, are as follows:

Exhibit "A":	Final Plat of Brook Valley Business Park Replat Five
Exhibit "B":	Repair Work
8. Right to Enforce. Provisions of this Agreement may be enforced at law, or in equity by the owners of land within the Final Plat and may be enforced by the City at law, in equity or such other remedy as City determines appropriate. All rights and remedies of a party, whether specified in this Agreement or otherwise provided, are cumulative.

9. Incorporation of Recitals. Recitals at the beginning of this Agreement are incorporated into this Agreement by reference.
10. Nondiscrimination. Notwithstanding anything in this Agreement to the contrary, (i) each party agrees that neither it nor any subcontractor of the party shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, age, sex, disability, or national origin; and (ii) the City is a recipient of federal funds; and as a result, all required contractual provisions related to such federal funds shall be deemed incorporated into this Agreement by this reference and binding upon the parties.
11. Assignment. This Agreement may not be assigned by any party without the express written consent of all parties.
12. Entire Agreement. This Agreement represents the entire agreement and understanding, and supersedes all prior understandings and agreements, written or oral, of the parties with respect to the matters contained herein, except for the subdivision agreement between the parties, provided, however, that this Agreement shall control if there is any conflict between terms and conditions of this Agreement and the subdivision agreement. The Agreement only may be amended by a written amendment executed by all parties.
13. Severability. If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the illegality or unenforceability shall not affect the remainder of this Agreement, and this Agreement shall be construed as if such illegal or unenforceable provision had never been included herein.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

Redz, LLC a Nebraska limited liability company

By: _____
Zachary Daub, Manager

ATTEST:

CITY OF LA VISTA

City Clerk

By: _____
Mayor

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Zachary Daub, Manager of Redz, LLC a Nebraska limited liability company.

Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this day of _____ day of _____, 2017, before me a Notary Public, duly commissioned and qualified in and for said County, appeared _____, personally known by me to be the Mayor of the City of La Vista and _____, to be personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Subdivision Agreement, and acknowledged the execution thereof to be their voluntary act and deed, and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

EXHIBIT A
FINAL PLAT

Final plat of Brook Valley Business Park Replat Five

EXHIBIT B
REPAIR WORK

Illustration of public storm sewer construction to repair erosion at 108th Street storm sewer outlet.

Russ Daub

Storm Sewer Plan

Drawn By: RYM
Job No.: 1542-120
Reviewed By: AAK
Date: 8-30-11

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LEGAL DESCRIPTION	ACRES	OWNER	PROPERTY CLASS	ASSESSMENT YEAR	ASSESSED VALUE	TAXES PAID	EXEMPTIONS
1/4 SECTION 36, T12N, R10E, S1E, DEER CREEK TWP, HANCOCK CO, MO	39.96	JOHN & JILLIAN WILSON	RESIDENTIAL	2024	100,000	1,200	None

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BOONICK JEFF, A MINNEAPOLIS IN DEPT. COLONY, MINNEAPOLIS.

BENCHMARK

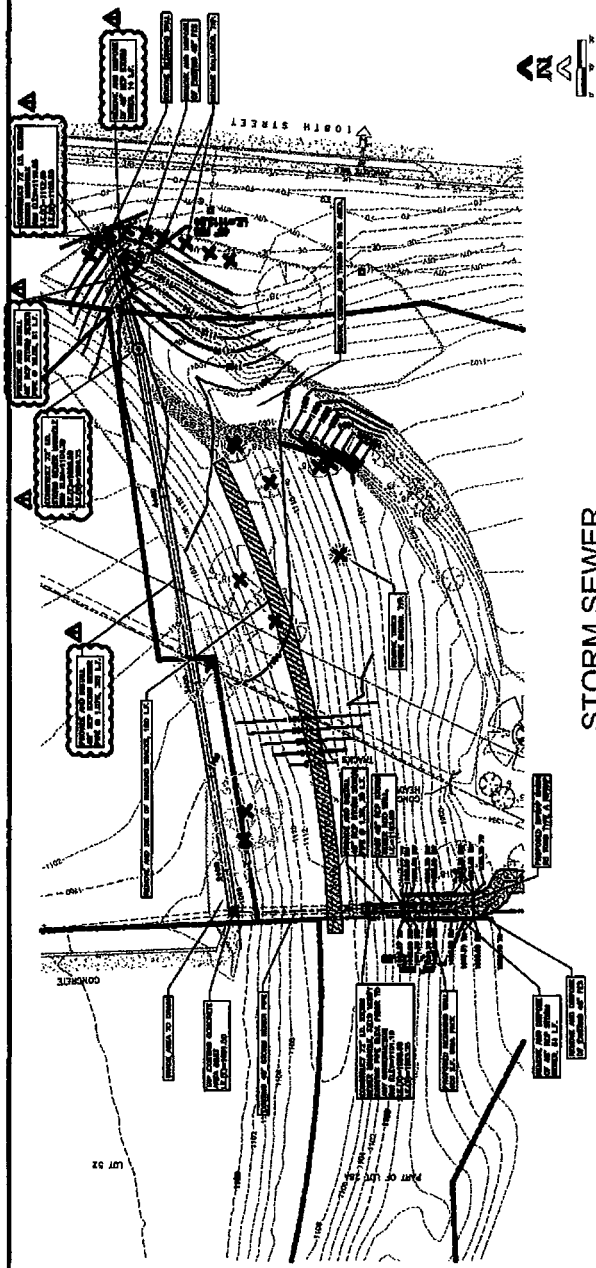
DESCRIPTION: THE SON OF THE AREA BUILT WEST OF
THE CORNER OF NORTH STREET AND 6TH AVENUE IN
CONTAINS OF FOUR ROOMS

GENERAL NOTES

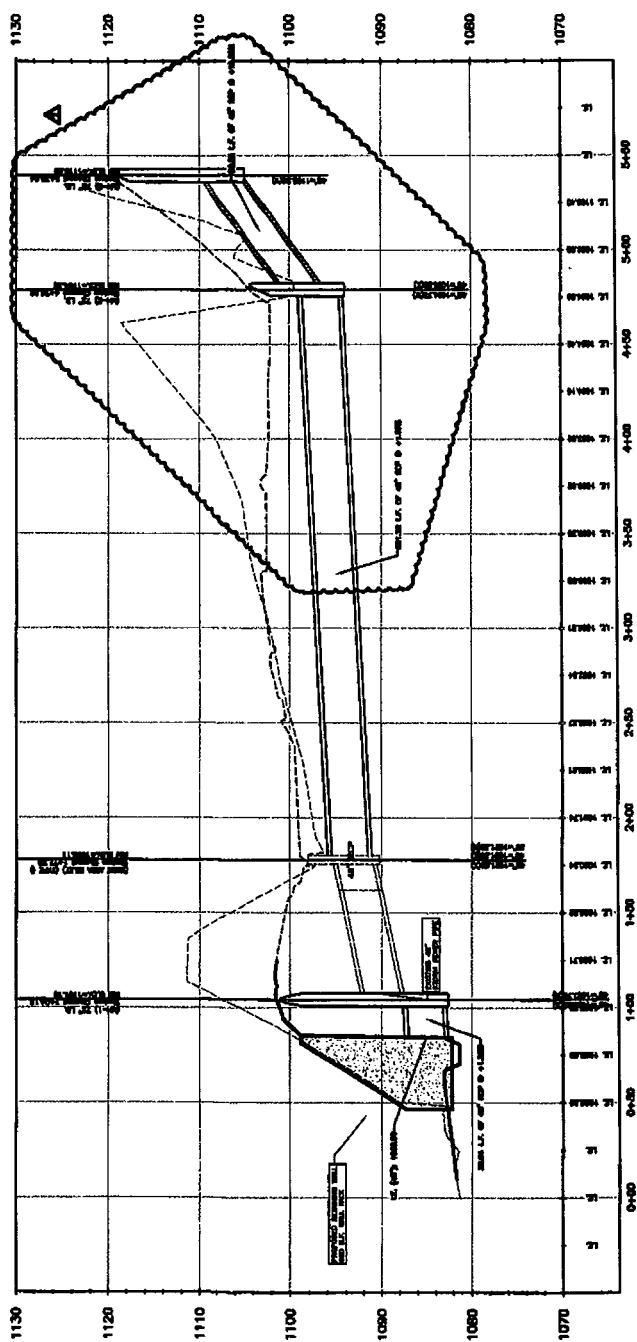
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APPROXIMATE QUANTITIES

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STORM SEWER



4/15 PM JACKSON KLEINER 981806N 15442E DUBB LK 51 GROUND VORBY MONITORING PORT DUBB 10000/1542-120 2N (4-1)

EXHIBIT "B"

EXHIBIT C
INTERLOCAL AGREEMENT

Copy of interlocal agreement as submitted to Sarpy County on October 27, 2017.

INTERLOCAL AGREEMENT

108TH & CHANDLER

This Interlocal Agreement ("Agreement") is made and entered into effective as of the ____ day of _____, 2017 by and between the CITY OF LA VISTA, a Municipal Corporation of the State of Nebraska, hereinafter referred to as "La Vista"; and SARPY COUNTY of the State of Nebraska, hereinafter referred to as "Sarpy County" or "County" (hereinafter collectively referred to as "Agencies").

PRELIMINARY STATEMENT

WHEREAS, La Vista and Sarpy County are both duly existing bodies, corporate and politic in accordance with and by virtue of the laws of the State of Nebraska; and

WHEREAS, the Agencies are desirous of entering into mutually beneficial endeavors to improve a public storm sewer located at the west side of the intersection of 108th Street and Chandler Road, hereinafter referred to as the "Project". The location of the project is in Sarpy County, and in the city limits of La Vista as illustrated on Exhibit "A"; and

WHEREAS, Sarpy County previously reconstructed 108th Street between Giles Road and Harrison Street, including the public storm sewer at the intersection of 108th Street and Chandler Road, as part of County Project No. C-77(37); and

WHEREAS, the discharge of the public storm sewer constructed under Project No. C-77(37) has resulted in significant erosion requiring reconstruction and modification of the storm sewer outlet; and

WHEREAS, the property owner of the adjacent property has submitted a development plan to La Vista that requires the erosion problem to be addressed; and

WHEREAS, the property owner of the adjacent property has agreed to undertake certain actions to facilitate the improvements to the storm sewer outlet subject to participation by La Vista pursuant to a subdivision agreement with La Vista; and

WHEREAS, the Agencies desire to describe and define the Project, contributions, work and responsibilities of the Project to enable them to jointly undertake the Project in the manner described as follows.

NOW: THEREFORE, in consideration of, and based on, the foregoing Preliminary Statement and the mutual promises and agreements set forth below, the Agencies agree as follows:

1. Authority. This Agreement is made pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801, et seq.
2. Duration. This Agreement shall remain in effect until the reconstruction and modification of the storm sewer has been satisfactorily completed, paid for, and accepted, unless otherwise terminated by the written agreement of all Agencies; provided, however that any provision hereof requiring any document or any other performance beyond the end of this Agreement, shall

continue in effect and survive after this Agreement terminates. Amendments hereto shall be made in writing adopted and executed by all Agencies.

3. No Administrative Entity. There shall be no separate legal or administrative entity created to administer this Agreement. Accordingly, no separate budget needs to be established.
4. County Responsibilities. The County shall have the following responsibilities:
 - a. County agrees to pay \$105,000 towards the costs of the reconstruction and modification of the storm sewer outlet.
 - b. The County's share of the cost of the work is based on the construction costs of the minimum required storm sewer outlet modification which is illustrated on Exhibit "B". Extent of work shown on said exhibit is substituted and exceeded by the work proposed as part of Brook Valley Business Park Replat Five development.
 - c. The County agrees to make payment to the City for \$105,000 of construction costs after inspection and approval of the work by County's Engineer and subsequent City request for payment. County will pay City upon the later date of (1) thirty days after request for payment from City, or (2) July 30, 2018.
5. City Responsibilities. The City shall have the following responsibilities:
 - a. The City shall enter in a subdivision agreement for the development of Brook Valley Business Park Replat Five that includes the storm sewer construction set forth on Exhibit "C".
 - b. Require the developer of Brook Valley Business Park Replat Five to obtain the required environmental permits and grant public sewer and drainage easements to convey runoff from 100-year storm runoff events across the property.
 - c. Review plans and specifications for the proposed storm sewer construction and provide a copy of said plans and specifications to the County for review.
 - d. Require the proposed storm sewer construction to be covered by a performance bond including a minimum two-year warranty on the construction work.
 - e. Observe, or cause to be observed by a professional engineer licensed in Nebraska, the storm sewer construction for compliance with the approved plans and specifications.
 - f. In the event that the development of Brook Valley Business Park Replat Five does not proceed by July 1, 2018, the City shall provide the engineering services to construct the storm sewer outlet modification illustrated on Exhibit "B".
 - g. Maintain all documents, papers, accounting records, agreements and other evidence pertaining to costs incurred and shall make such information available at its office at all

reasonable times during the period of this agreement and for three (3) years from the date of final payment under this agreement.

6. Approvals for Project Details. Plans, specifications, cost estimates, right of way plans, and other project information documents shall be presented to each of the Agencies for their review and approval before construction is commenced; which approval and any other approval provided for elsewhere in this Agreement shall not be unreasonably withheld.
7. Exhibits. The following exhibits pertain to this agreement:
 - a. Exhibit "A" – An illustration of the location of the storm sewer outlet problem and current conditions.
 - b. Exhibit "B" – An illustration of the minimum required work to repair the storm sewer outlet problem that the City caused to be prepared including an estimate of the cost of such work.
 - c. Exhibit "C" – An illustration of the storm sewer construction proposed as part of the development of Brook Valley Business Park Replat Five.
8. Maintenance. The maintenance of the storm sewer improvements constructed under this Agreement shall be the responsibility of the Agency where such improvements are located.
9. Discrimination. The Agencies shall not in the performance of the terms of this Agreement discriminate or permit discrimination against any agency on account of race, national origin, sex, age, disability, or political or religious affiliations in violation of federal or state laws or local ordinances.
10. Drug Free Policy. Each Agency provides assurance that it has established and maintains a drug free workplace policy.
11. Approval of Agreement. This Agreement shall be subject to approval of the governing body of each Agency.
12. Notices. Each Agency shall designate a person to be its primary point of contact for purposes of the Agency's administration of this Agreement, in addition to any other designation provided herein. The initial point of contact for each Agency shall be:

For Sarpy County:

Public Works Director
Sarpy County
1210 Golden Gate Dr
Papillion, NE 68046

For La Vista:

Public Works Director
City of La Vista
8116 Park View Blvd
La Vista, NE 68128

13. Entire Agreement. This Agreement contains the entire agreement of the Agencies and shall be binding upon the successors and assigns of the respective Agencies. No amendments, deletions, or additions shall be made to this Agreement except in writing signed by all Agencies.
14. Governing Law. Nebraska law shall govern in this Agreement in all respects.
15. Severability. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.
16. Indemnification. Sarpy County shall indemnify and hold La Vista, its officers, officials, and employees harmless from any and all claims, demands, payments, liabilities, injuries, damages, losses, or suits including attorney fees arising out of or in connection with the activities of Sarpy County, its agents, representatives, and contractors in the performance of this Agreement. This paragraph shall not be construed to require Sarpy County to indemnify La Vista for the negligent or intentional acts of La Vista, its officers, agents or employees.

[End of Agreement]

IN WITNESS WHEREOF, the Agencies, by our respective and duly authorized agents,
hereto affix our signatures below.

Executed by the County of Sarpy, Nebraska, this ____ day of _____, 2017.

COUNTY SARPY, NEBRASKA

By: _____
Chairman

ATTEST:

APPROVED AS TO FORM:

County Clerk

County Attorney

Executed by the City of La Vista, Nebraska, this ____ day of _____, 2017.

ATTEST:

CITY OF LA VISTA, a Nebraska
Municipal Corporation

Pamela A. Buethe, City Clerk

By: _____
Douglas Kindig, Mayor