

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
FEBRUARY 2, 2021 AGENDA

Subject:	Type:	Submitted By:
IMPROVEMENT AND EASEMENT AGREEMENT – GRADE CONTROL IMPROVEMENTS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing execution of an Improvement and Easement Agreement with La Vista City Centre, LLC, and City Centre I, LLC to construct Grade Control Improvements near the northeast corner of Lot 14, City Centre in an amount not to exceed \$112,233.28..

FISCAL IMPACT

The FY 21/22 Biennial Budget provided funding for the proposed project.

RECOMMENDATION

Approval

BACKGROUND

City Centre, LLC and its affiliate City Centre I, LLC, are in the process of constructing buildings and other improvements on or serving Lot 14 to be used for mixed use multi-family residential and commercial purposes. This construction requires grade control improvements near the northeast corner of Lot 14 in City Centre. The grade control improvements will need to extend onto adjacent City property in order to facilitate the extension of the dual purpose fire lane and construction of a pedestrian walkway connected to said fire lane. These improvements are necessary in order to provide emergency and other access to future buildings and amenities and the City is responsible for those improvements.

This agreement will allow all grade control improvements to be done as one project with City Centre I, LLC as the lead. Estimated total costs of the improvements are \$264,012.10 of which the City share is anticipated to be \$112,233.28. A cost breakdown is provided in Exhibit C of the agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AN IMPROVEMENT AND EASEMENT AGREEMENT WITH LA VISTA CITY CENTRE, LLC AND CITY CENTRE I, LLC TO CONSTRUCT GRADE CONTROL IMPROVEMENTS NEAR THE NORTHEAST CORNER OF LOT 14, CITY CENTRE.

WHEREAS, the Mayor and City Council of the City of La Vista find it necessary to do grade control improvements near the northeast corner of Lot 14, City Centre; and

WHEREAS, these grade control improvements are necessary to build a dual purpose fire land and pedestrian walkway to access future buildings and amenities; and

WHEREAS, this agreement would allow all grade control improvements to be done as one project with City Centre I, LLC as the lead; and

WHEREAS, anticipated total costs of the project are \$264,012.10 of which the City of La Vista share is anticipated to be \$112,233.28. The cost breakdown is included in the agreement.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution of an Improvement and Easement Agreement with La Vista City Centre, LLC and City Centre I, LLC to construct grade control improvements near the northeast corner of Lot 14, City Centre in a form satisfactory to the City Administrator or designee.

PASSED AND APPROVED THIS 2ND DAY OF FEBRUARY 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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IMPROVEMENT AND EASEMENT AGREEMENT
Grade Control Improvements

THIS AGREEMENT is made and entered into this _____ day of _____, 202_____, by and among La Vista City Centre, LLC (hereinafter referred to as "City Centre"), City Centre I, LLC, a Nebraska limited liability company, (hereinafter referred to as "City Centre I,) (City Centre and City Centre I together are hereinafter referred to as "Reveloper"), and the CITY OF LA VISTA, NEBRASKA (hereinafter referred to as "City").

WHEREAS, La Vista City Centre in 2016 acquired and replatted as La Vista City Centre a tract of real property and improvements for redevelopment pursuant to the Redevelopment Plan for the 84th Street Redevelopment Area, as amended ("Plan"), which included Lot 14, La Vista City Centre, ("Lot 14") as depicted on the Plat attached hereto as Exhibit A (Lot 14) hereinafter is referred to as the "Lot 14"). City Centre conveyed Lot 14 to its affiliate, City Centre I, for redevelopment pursuant to the Plan; and

WHEREAS, City Centre I at its cost shall construct buildings and other improvements on or serving Lot 14 to be used for mixed used multifamily residential and commercial purposes, including without limitation required grade control improvements in the vicinity of the northeast boundary of Lot 14 as described or depicted in Exhibit "B" ("Grade Control Improvements"); and

WHEREAS, Grade Control Improvements also will serve a dual purpose fire lane and pedestrian walkway City will construct on adjacent City property; and

WHEREAS, Redeveloper and City desire to agree with respect to Grade Control Improvements.

NOW, THEREFORE, the parties agree as follows:

1. City Centre I as Lead. City Centre I, as primary beneficiary of Grade Control Improvements in connection with its ownership of Lot 14, shall take the lead and provide for design, construction, and payment of costs of Grade Control Improvements, including without limitation the following. Upon execution of this Agreement, City Centre I at its cost shall take all actions as necessary or appropriate to design, construct, and install all Grade Control Improvements in a timely and orderly manner in accordance with this Agreement and Redevelopment Plan, including without limitation obtaining all applicable permits, construction plans, and contracts ("Applicable Documents"). City Centre I shall cause construction and completion of the Grade Control Improvements to be observed by a professional engineer licensed in Nebraska, and upon completion shall have the professional engineer submit to City as-built records and issue to the City a certificate of compliance of the improvements with the approved plans, in form and content satisfactory to the City Engineer ("Certificate of Compliance"). Each party shall own the portion of Grade Control Improvements located on real property it owns. Redeveloper and each contractor or subcontractor performing work with respect to the Grade Control Improvements shall warrant to City, for a period of two years following completion of such construction, that such work has been performed using first quality materials, as approved by Redeveloper and the City Engineer, in a good and workmanlike manner, in accordance with all applicable plans and specifications, and is free of any defects. In the event of any defect, Redeveloper shall be permitted to correct such defect as follows ("Cure"). Cure shall be commenced and completed as soon as possible and in all cases within 30 days after City provides notice of defect. In any case that Cure cannot be completed within 30 days, additional time will be allowed so long as Cure is commenced within the time required by the preceding sentence and diligently pursued and completed as soon as possible, and allowing additional time does not present an increased risk of harm to persons or property.

2. Payment of Costs. Upon completion of the Grade Control Improvements, City shall pay City Centre I an amount equal to the sum of the following amounts: The share of each line item of cost allocable to the City as set forth in Exhibit "C" that is actually incurred, not to exceed the dollar amount estimated as the City share for such line item in Exhibit "C" ("Applicable Share"). City Centre I shall pay all costs in excess of the Applicable Share. The City's obligation to pay the Applicable Share shall be subject to City receipt of the Certificate of Compliance satisfactory to City Engineer.

3. Financial Guarantee: As a condition of the City's Applicable Share, Redeveloper concurrent with its execution of this Agreement shall provide to City bank letters of credit or other financial guarantees (such bank letters of credit or other financial guarantees hereinafter referred to as "Financial Guarantees") as required by, and in form and content satisfactory to, the City Engineer in the amount of 110% of the total estimated cost to design and construct the Grade Control Improvements, as set forth on "Exhibit C". Redeveloper in contracts for the work shall require the contractor performing the Grade Control Improvements to provide to Redeveloper and City such surety bonds, including without limitation performance, payment, and maintenance bonds, as the City Engineer determines necessary or appropriate, with Redeveloper and City to be named as co-obligees on such bonds. Such bonds shall be in forms, amounts, and content satisfactory to City and shall have one or more sureties thereon who are authorized to write such bonds in the State of Nebraska.

4. Maintenance of Improvements. Redeveloper, upon completion of Grade Control Improvements shall be responsible for maintaining Grade Control Improvements in good and working condition and repair, ordinary wear and tear excepted, which shall include without limitation providing all applicable maintenance, repairs and replacements of said Grade Control Improvements (“Maintenance”). Each party shall pay the cost of any Maintenance provided on Grade Control Improvements located on such party’s property, provided, however, (i) any Maintenance of Grade Control Improvements located on City property shall be subject to prior review and approval of the City, and (ii) any Maintenance necessitated by the negligence of any party shall be provided by such party at its sole cost.

5. City Determinations. Except as otherwise expressly provided to the contrary in this Agreement: the City Engineer on behalf of the City shall administer and be the determiner of any matter under this Agreement, and any review or approval required of the City under this Agreement shall mean the particular item, issue, solution, or manner of proceeding must be satisfactory to the City Engineer as indicated by the City Engineer in writing. Not in limitation of the immediately preceding sentence, the City Engineer shall have the right, but shall not have any obligation, to periodically inspect the Grade Control Improvements or any work on or relating to such Grade Control Improvements, or otherwise pursuant to this Agreement, and to require modification, replacement, maintenance or repair of any Grade Control Improvements, work or improvements the City Engineer determines are defective, unsatisfactory or in need of repair, maintenance or replacement, and Redeveloper shall comply with said requirements. Any such review by the City Engineer, or City Engineer’s designee, shall not constitute an assumption of responsibility by the City, or a waiver or release by the City of any claim or any other party from its responsibility, for any plans, specifications, designs, addenda, work, or any performance. In the event City Engineer determines construction, replacement, repair or maintenance is defective or not progressing or not being performed satisfactorily or in a timely manner, City (upon Redeveloper’s failure to Cure pursuant to Section 1 above) may, at its sole option and without obligation to do so, decide to undertake construction, replacement, repair and/or maintenance and assess the cost against City Centre I and Lot 14, including without limitation engineering costs and legal costs together with interest at the rate permitted for special assessments under applicable law until paid, and City shall have a lien for the cost therefor, which lien City may file of record against Lot 14 and shall be subject to foreclosure if not timely paid in full with interest. City’s and/or City Engineer’s exercise of any or all of the authority pursuant to this Section 5 shall be at City’s sole and absolute discretion and for the sole benefit of the City and City’s interests and not for the benefit or interests of Redeveloper or any other party; and City, City Engineer and City officials, officers, employees, or agents shall have no responsibility or liability by reason of either the exercise or nonexercise of any such authority.

6. Continuation of Grade Control Improvements. Grade Control Improvements shall be continued in effect in accordance with this Agreement unless the parties agree to terminate, relocate, remove, add to, subtract from, or otherwise modify all or any part of such Grade Control Improvements, or the location thereof. Any agreement to terminate, relocate, remove, add to, subtract from, or otherwise modify all or any part of such Grade Control Improvements, or the location thereof, shall be in a written amendment to this Agreement and require approval of the City Council of the City.

7. City Requirements. Nothing in this Agreement shall be deemed approval, waiver or lessening of any approval, or satisfaction of any requirement of this Agreement or any laws, rules, or regulations, including without limitation requirements of any provisions of the La Vista Municipal Code or any building, planning, subdivision, or zoning laws, rules or regulations. Notwithstanding anything in this Agreement to the contrary, City reserves the right to take any other actions as it determines necessary or appropriate if any requirement is not satisfied, including without limitation withholding issuance of a certificate of occupancy for Lot 14 until Grade Control Improvements are satisfactorily completed.

8. Easements. City Centre I and City each shall have a perpetual easement in that part of the premises of the other on which the Grade Control Improvements are located as reasonably necessary to construct or maintain the Grade Control Improvements or otherwise carry out this Agreement.

9. Exhibit Summary. The Exhibits attached hereto and incorporated herein by this reference and made a part hereof, are as follows:

Exhibit "A":	Final Plat – La Vista City Centre
Exhibit "B":	Grade Control Improvements
Exhibit "C":	Applicable Share

10. Right to Enforce. Provisions of this Agreement may be enforced by the parties at law, or in equity. All rights and remedies of a party, whether specified in this Agreement or otherwise provided, are cumulative.

11. Incorporation of Recitals. Recitals at the beginning of this Agreement are incorporated into this Agreement by reference.

12. 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.

13. Assignment. This Agreement may not be assigned by any party without the express written consent of all parties.

14. 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.

15. Deeds of Trust; Mortgages. Lot 14 is subject to certain mortgages, deeds of trust,

liens, or other encumbrances ("Mortgages") that require City Centre I to obtain approval of this Agreement by the owner(s) or holder(s) of such Mortgages ("Mortgagees") before City Centre I enters or subjects Lot 14 to some or all of this Agreement. This Agreement shall be subject to approval of all such Mortgagees as indicated by execution of this Agreement by such Mortgagees below. City Centre I represents and warrants to City that consent of any other Mortgagees is not required under any Mortgage before City Centre I enters this Agreement. City represents and warrants that City property adjacent to Lot 14 is not subject to any mortgages or deeds of trust.

16. Recording: This Agreement, upon execution by the parties and Mortgagees, shall be recorded with the Register of Deeds of Sarpy County, Nebraska and all terms and conditions of this Agreement shall constitute covenants running with the land that are binding on each of City, La Vista City Centre, City Centre I, and Mortgagees, and all successors and assigns of the City, La Vista City Centre, City Centre I, or any Mortgagees, or any person claiming under or through any such party, Mortgagee, successor or assign. City shall have the right, but not the obligation, to enforce any and all such covenants.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the undersigned and their respective successors and assigns; and shall be subject to Redeveloper's compliance with the terms and conditions of the Redevelopment Plan for the 84th Street Redevelopment Area and the Redevelopment Agreement and Subdivision Agreement applicable to the Redeveloper Property, as such plan or either agreement may be amended from time to time.

18. Amendments. This Agreement shall not be amended unless set forth in a written amendment that is executed by all parties.

19. Governing Law. It is the intention of the parties that the laws of the State of Nebraska shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the day and year indicated.

[Remainder of page intentionally left blank; signatures to follow]

COUNTERPART SIGNATURE PAGE

CITY OF LA VISTA, NEBRASKA,

Mayor _____ **Date** _____

ATTEST:

City Clerk _____ **Date** _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
.)ss.
COUNTY OF SARPY)

On this _____ date of _____, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Douglas Kindig, Mayor of the City of La Vista, Nebraska, and Pamela A. Buethe, City Clerk of the City of La Vista, Nebraska, and the identical persons whose names are affixed to the foregoing instrument, 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.

My Commission expires _____

Notary Public

COUNTERPART SIGNATURE PAGE

LA VISTA CITY CENTRE, LLC,
a Nebraska limited liability company

By: _____
Christopher L. Erickson, Manager

Date: _____

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, as his voluntary act and deed and the voluntary act and deed of said company.

Notary Public

COUNTERPART SIGNATURE PAGE

CITY CENTRE I, LLC,
a Nebraska limited liability company

By: _____
Christopher L. Erickson, Manager

Date: _____

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by Christopher L. Erickson, Manager of City Centre I, LLC, a Nebraska limited liability company, as his voluntary act and deed and the voluntary act and deed of said company.

Notary Public

COUNTERPART SIGNATURE PAGE

CONSENT OF MORTGAGEE

The undersigned, as the holder of a lien with respect to some or all of the property described in the **IMPROVEMENT AND EASEMENT AGREEMENT** ("Agreement") above hereby consents and agrees to the Agreement and all terms and conditions thereof.

By: _____, a _____

Its: _____

DATE: _____

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, _____, a _____, as his/her voluntary act and deed and the voluntary act and deed of said _____.

Notary Public

EXHIBIT A
FINAL PLAT – LA VISTA CITY CENTRE

(Attached)

EXHIBIT B
GRADE CONTROL IMPROVEMENTS

(Attached)

EXHIBITC
APPLICABLE SHARE

(Attached)

EXHIBIT C

APPLICABLE SHARE

#	Civil Work Description	Total Cost of Work	City+Ventures	City of La Vista
1A	EARTHWORK	\$30,000.00	\$15,000.00	\$15,000.00
1B	FLEXAMAT & SOME CLASS B RIP RAP INSTALLED	\$16,750.00	\$8,375.00	\$8,375.00
1C	INLET STRUCTURES AND PIPING - 30" RCP & 42" last 24'	\$49,000.00	\$24,500.00	\$24,500.00
2	LANDSCAPING - SEED/EROSION NETTING	\$4,000.00	\$2,000.00	\$2,000.00
3	SPRINKLERS	\$2,000.00	\$1,000.00	\$1,000.00
4	RETAINING WALL	\$106,436.00	\$67,056.00	\$39,380.00
5	SURVEYING	\$4,000.00	\$2,000.00	\$2,000.00
6	SPECIAL INSPECTIONS - OLSSON	\$4,000.00	\$2,000.00	\$2,000.00
7	SILT FENCE AND EROSION CONTROL	\$2,000.00	\$1,000.00	\$1,000.00
8	SHORING AT TRANSFORMER	\$2,500.00	\$1,250.00	\$1,250.00
9	FENCING - 220' of black Puppy Picket fencing - 4' tall	\$6,500.00	\$6,500.00	\$0.00
10	ADDITIONAL 6' SWITCHBACK SIDEWALK	\$4,000.00	\$2,000.00	\$2,000.00
11	MISCELLANEOUS FINISH GRADING AND OCI LABOR	\$2,000.00	\$1,000.00	\$1,000.00
12	STAINING OF WALL TO MATCH PREVIOUS WALLS ON SITE	\$3,675.00	\$2,315.25	\$1,359.75
13	INSTALL ANTI-GRAFFITI COATING TO WALL	\$3,150.00	\$1,984.50	\$1,165.50
14	SUTOTAL	\$240,011.00	\$137,980.75	\$102,030.25
15	OCI OVERHEAD - 5%	\$12,000.55	\$6,899.04	\$5,101.51
16	OCI PROFIT - 5%	\$12,000.55	\$6,899.04	\$5,101.51
TOTAL		\$264,012.10	\$151,778.83	\$112,233.28