

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
MARCH 18, 2025 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPROVE MAINTENANCE AGREEMENT – LOTS 1 THROUGH 3 AD INDUSTRIAL PARK	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

**SYNOPSIS**

A resolution has been prepared to approve the Maintenance Agreement between the owners of Lots 1 through 3 of AD Industrial Park, and the City of La Vista, Nebraska as to provide for maintenance of the outfall sanitary sewer between Lots 1, 2 and 3 of AD Industrial Park and Manhole 9859 near 144<sup>th</sup> Street and Chandler Road.

**FISCAL IMPACT**

Amendment does not impact the current FY25/FY26 Budget. Future maintenance and operations costs of the outfall sewer after this area is annexed will be factored into the Public Works Operating Budget.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The Subdivision Agreement for AD Industrial Park Lots 1 through 6 was approved on May 7, 2024, to which the public sewer connection of Lots 1, 2 and 3 to the SID 68 (Echo Hills) sanitary sewer system requires a shared Maintenance Agreement to be able to serve the three (3) lots. The Maintenance Agreement establishes the owner of each individual lot maintain said common sewer line (approximately 130 linear feet of 8-inch diameter pipe) up and until said Lots 1 through 3 of AD Industrial Park are annexed into the City of La Vista.

Upon approval of the Maintenance Agreement, aforementioned agreement is to be filed with the Sarpy County Register of Deeds.

A copy of the Maintenance Agreement is attached.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING A SANITARY SEWER MAINTENANCE AGREEMENT WITH RESPECT TO LOTS 1-3, AD INDUSTRIAL PARK, AND AUTHORIZING FURTHER ACTIONS.

WHEREAS, a Subdivision Agreement, filed with the Sarpy County Register of Deeds as Instrument Number 2024-0923, ("Subdivision Agreement") was entered between the City of La Vista and owner of real property within the City's extraterritorial zoning jurisdiction of the City, currently platted as Lots 1-6, AD Industrial Park, Sarpy County, Nebraska (together "Lots" or individually "Lot"), which Subdivision Agreement is binding on the owner, its successors and assigns (each an "Owner"); and

WHEREAS, the Owners of Lots 1-3 will connect such Lots to the City of Omaha sanitary sewer by constructing a sanitary sewer line from AD Industrial Park to a manhole located north across Chandler Road ("Sanitary Sewer"); and

WHEREAS, the Subdivision Agreement and applicable Sewer Connection Agreement require the Owners of Lots 1-3 to maintain the Sanitary Sewer until such time as the City annexes such Lots; and

WHEREAS, a Maintenance Agreement in form and content presented with this Resolution is proposed with respect to maintenance of such Sanitary Sewer ("Proposed Agreement").

NOW, THEREFORE, BE IT RESOLVED, that the above recitals are incorporated into this Resolution by reference.

BE IT FURTHER RESOLVED, that the Proposed Agreement is approved, subject to any additions, subtractions or modifications as the Mayor, City Administrator or his or designee determines necessary or appropriate, ("Approved Agreement").

BE IT FURTHER RESOLVED, that the Mayor shall be authorized to execute the Approved Agreement and to take all actions on behalf of the City to carry out this Resolution or the Approved Agreement, or to authorize or direct any designee to take such actions.

PASSED AND APPROVED THIS 18TH DAY OF MARCH 2025.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Rachel D. Carl, CMC  
City Clerk

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**THE ABOVE SPACE IS FOR REGISTER OF DEEDS RECORDING DATE**

**THIS PAGE ADDED FOR RECORDING INFORMATION.**

**DOCUMENT STARTS ON NEXT PAGE.**

RETURN: Martin P. Pelster, Esq.  
Croker Huck Law Firm  
2120 South 72nd Street, Suite 1200  
Omaha, Nebraska 68124

COVER PAGE FOR MAINTENANCE AGREEMENT

## **MAINTENANCE AGREEMENT**

(Lots 1 through 3, inclusive, AD Industrial Park, Sarpy County, Nebraska)

**THIS MAINTENANCE AGREEMENT** is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between Fenton Construction, Inc., an Iowa corporation (“Developer”), TC Accommodator 348, LLC, a Nebraska limited liability company (“TC 348”), TC Accommodator 349, LLC, a Nebraska limited liability company (“TC 349”), Ccman Enterprise, LLC, a Nebraska limited liability company (“Ccman”, and together with Developer, TC 348, and TC 349, the “Lot 1-3 Owners”) and the City of La Vista, a municipal corporation in the State of Nebraska (“City”).

### **W I T N E S S E T H:**

**WHEREAS**, Lot 1-3 Owners are the record owners of Lots 1-3, inclusive, AD Industrial Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (the “Development Lots”)

**WHEREAS**, the City did, on May 23, 2024, enter into a Subdivision Agreement together with Fenton Construction, Inc., an Iowa corporation (“Developer”), which allowed for the Developer to subdivide and develop a parcel of land outside the corporate limits of the City but within the City’s zoning and platting jurisdiction known as the AD Industrial Park Subdivision Lots 1-6, Sarpy County, Nebraska (the “Subdivision”); and

**WHEREAS**, pursuant to the Subdivision Agreement, the Development Lots are to be connected to the City of Omaha sanitary sewer at manhole 9859 located north across Chandler Road from Lots 1 and 2, AD Industrial Park which requires the installation and maintenance of a sanitary sewer line from Lots 1 and 2, AD Industrial to manhole 9859 (the “Sanitary Sewer line”); and

**WHEREAS**, pursuant to the Subdivision Agreement, Developer granted a permanent easement to the City for that portion of the Sanitary Sewer Line located on Lots 1 and 2, AD Industrial Park, which permanent easement was recorded with the Sarpy County Register of Deeds on May 23, 2024 as Instrument No. 2024-09295; and

**WHEREAS**, pursuant to the Subdivision Agreement, Developer has installed the Sanitary Sewer Line; and

**WHEREAS**, because the Sanitary Sewer Line is located outside the corporate limits of the City, City requires Lot 1-3 Owners to maintain the Sanitary Sewer Line until such time as the City annexes the Development Lots; and

**WHEREAS**, City and Lot 1-3 Owners desire to memorialize the agreement regarding installation and maintenance of the Sanitary Sewer Line as set forth herein.

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE, THE PARTIES HERETO AGREE AS FOLLOWS:**

1. Except as otherwise provided in Section 3 below, Lot 1-3 Owners at their sole cost and expense shall maintain the Sanitary Sewer Line in good, working and operating condition and repair in accordance with applicable standards of the Nebraska Department of Environment and Energy and/or governing wastewater service agreement of the City and City of Omaha, as in effect from time to time (“Applicable Standards”), to include without limitation providing and maintaining sampling locations, and sampling, cleaning and removing grit on a regular schedule. (“Owners’ Maintenance Obligations”). Lot 1-3 Owners agree that any and all expenses incurred in satisfying Owner’s Maintenance Obligations shall be shared equally by the Lot 1-3 Owners and their respective successors and assigns.

2. Lot 1-3 Owners may elect to form a property owners association to carry out the Owners’ Maintenance Obligations. If so elected, within thirty (30) days after execution of this Agreement by all parties, Lot 1-3 Owners shall form a property owner’s association to be named “AD Industrial Park Lot 1-3 Owner’s Association”, the members of which shall be the owners of the Development Lots. Upon formation, the Association shall be responsible for carrying out and performing the Owners’ Maintenance Obligations, including without limitation the proper and continuous maintenance, inspection and upkeep of the Sanitary Sewer Line, and assessing the costs thereof to be paid by the Lot 1-3 Owners. Provided, however, formation of the Association shall not release any of the Lot 1-3 Owners from responsibility for Owners’ Maintenance Obligations. If at any time any Owners’ Maintenance Obligations are not performed as required in accordance with the Applicable Standards (“Performance Failures”), the City Engineer shall provide the Lot 1-3 Owners with written notice describing such Performance Failures in reasonable detail and setting a reasonable deadline to cure such Performance Failures

("Correction Deadline"). If any such Performance Failures are not corrected by the Correction Deadline, the City shall be authorized, but not obligated, to take such actions as the City Engineer determines reasonably appropriate to correct such Performance Failures, the Lot 1-3 Owners shall be jointly and severally liable for all costs and expenses of such actions and correction, and the City shall be authorized to file a lien against any or all of the Development Lots in the amount of any such costs or expenses not paid within thirty (30) days after receipt of an invoice for such costs and expenses from the City Engineer.

3. Upon annexation of the Development Lots by the City, the City shall assume ownership of the Sanitary Sewer Line and shall assume responsibility of any obligations for maintenance, inspections or upkeep of the Sanitary Sewer Line.

4. Lot 1-3 Owners and the Association each shall indemnify, defend, and hold harmless the City from and against any claims, liabilities, costs or expenses arising out of or resulting from the Sanitary Sewer Line before the City annexes the Development Lots and assumes ownership of the Sanitary Sewer Line.

5. Covenants Running with the Land. This Agreement and the obligations, understandings and agreements contained or incorporated herein constitute perpetual covenants running with the land, shall be recorded with the Register of Deeds of Sarpy County, Nebraska, and shall be binding, jointly and severally, upon the Lot 1-3 Owners and Association, and all of their respective successors, assigns, lenders, mortgagees or others gaining or claiming any interest or lien in, to or against any property within the Development Lots. The covenants herein shall be cumulative to, and not in lieu of, prior covenants running with the land, except to the extent this Agreement requires additional, greater or a higher standard of performance by Lot 1-3 Owners or Association. City shall have the right, but not the obligation, to enforce any and all covenants.

6. Right to Enforce. Provisions of this Agreement may be enforced at law or in equity by the owners of the Development Lots 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.

7. Easement. The City Engineer or City Engineer's designee shall be authorized, but not obligated, to periodically inspect such Sanitary Sewer Line to verify performance of Lot 1-3 Owners pursuant to this Agreement. By executing this Agreement, each of the Lot 1-3

Owners grants to each of the other Lot 1-3 Owners and to the City an easement to enter upon their respective properties within the Development Lots and perform, carry out or exercise any inspections, work or rights under this Agreement. Upon request, each of the Lot 1-3 Owners shall execute a separate easement instrument granting rights provided in this Section 7 in form and content satisfactory to the parties for filing with the Sarpy County Register of Deeds.

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

9. 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.

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

11. 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. The Agreement only may be amended by a written amendment executed by all parties.

12. 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.

13. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original and shall together constitute one and the same instrument. A PDF copy of this Agreement containing a PDF copy of the signatures of any party shall be deemed an original signature and such execution and delivery shall be considered valid, binding and effective for all purposes.

**IN WITNESS WHEREOF**, the parties hereto have executed this Maintenance Agreement the day and year first above written.

[Signature Page Follows]



ATTEST:

CITY OF LA VISTA, NEBRASKA

BY:

\_\_\_\_\_  
City Clerk, Rachel Carl, CMC

BY:

\_\_\_\_\_  
Mayor, Douglas Kindig

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA     )

) ss.

COUNTY OF SARPY     )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas Kindig, personally known by me to be the Mayor of the City of La Vista and Pam Buethe, to me 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

FENTON CONSTRUCTION, INC.,  
an Iowa corporation

BY: Casey Fenton  
Casey Fenton, President

STATE OF Iowa )  
NEBRASKA ) ss.  
COUNTY OF Woodbury

The foregoing instrument was acknowledged before me this 2 day of December  
2024, by Casey Fenton, President of Fenton Construction, INC, on behalf of the company.

Sarah Avery  
NOTARY PUBLIC



5-19-2027

TC Accommodator 348, LLC,  
a Nebraska limited liability company

BY: R. Kent Radke  
R. Kent Radke, Authorized Signatory

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2024,  
by R. Kent Radke, Authorized Signatory of TC Accommodator 348, LLC, on behalf of the  
company.



Elizabeth Bucklin  
NOTARY PUBLIC

TC Accommodator 349, LLC,  
a Nebraska limited liability company

BY:   
R. Kent Radke, Authorized Signatory

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

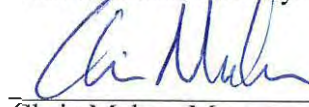
The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2024,  
by R. Kent Radke, Authorized Signatory of TC Accommodator 349, LLC, on behalf of the company.



  
NOTARY PUBLIC

Ccman Enterprise, LLC,  
a Nebraska limited liability company

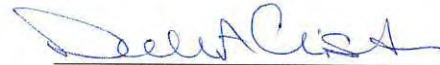
BY:



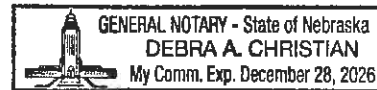
Chris Maher, Manager

STATE OF NEBRASKA     )  
                                          ) ss.  
COUNTY OF Douglas     )

The foregoing instrument was acknowledged before me this 25 day of November, 2024, by Chris Maher, Manager of Ccman Enterprise, LLC, on behalf of the company.



NOTARY PUBLIC



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