

BILL NO. S-14-12-15

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT - RIDGEWOOD PHASE I STORMWATER MANAGEMENT INFRASTRUCTURE DEVELOPER REIMBURSEMENT AGREEMENT between LONG TERM CARE INVESTMENTS IV, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONSTRUCTION CONTRACT - RIDGEWOOD PHASE I STORMWATER MANAGEMENT INFRASTRUCTURE DEVELOPER REIMBURSEMENT AGREEMENT by and between LONG TERM CARE INVESTMENTS IV, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the reconstruction of the Warren Drain within the Ridgewood EDA and a replacement of piping crossing under Rosewood Drive. The developer shall be reimbursed from TIF proceeds of the Ridgewood EDA:

involving a total cost not to exceed TWO HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$260,000.00) . A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

**CONTRACT FOR THE CONSTRUCTION, REIMBURSEMENT AND TRANSFER OF
STORMWATER INFRASTRUCTURE**

**RIDGEWOOD PHASE I STORMWATER MANAGEMENT INFRASTRUCTURE
DEVELOPER REIMBURSEMENT AGREEMENT**

This Contract for the Construction, Reimbursement and Transfer of Stormwater Management Infrastructure and Developer Reimbursement Agreement (the "Agreement") is made by and between the City of Fort Wayne, Indiana, an Indiana municipal corporation by and through the Fort Wayne Board of Stormwater Management, Citizens Square Building, 200 East Berry Street, Fort Wayne, Indiana 46802 (hereinafter referred to as "Board of Stormwater Management"), and Long Term Care Investments IV, LLC, 1620 North Ironwood Road, South Bend, Indiana 46635, an Indiana limited liability company (hereinafter referred to as "Developer"). The Board of Stormwater Management and Developer are also referred to individually as "party" or collectively as "parties" throughout this Agreement.

WITNESSETH:

WHEREAS, growth patterns and development trends indicate that substantial community growth and development can be anticipated within and around an area within the boundaries of the designated Ridgewood Economic Development Area ("EDA"), which is located entirely within the municipal boundaries of the City of Fort Wayne; and

WHEREAS, for such orderly growth and development to occur, essential urban services such as stormwater management facilities must be present to accommodate and promote such growth and development; and

WHEREAS, the most effective way, from an engineering and fiscal perspective, to provide stormwater management services to the anticipated growth area would be to extend stormwater management infrastructure a sufficient distance into the Ridgewood EDA, where new real estate development is anticipated to occur; and

WHEREAS, in addition to providing stormwater management infrastructure to foster and promote growth and development within and around the Ridgewood EDA, the construction of the proposed stormwater management infrastructure will help existing residential developments within and around the Ridgewood EDA; and

WHEREAS, in accordance with the terms and conditions of this Agreement, the Developer agrees to facilitate the construction and then transfer to the Board of Stormwater Management of an addition to the Board of Stormwater Management's existing stormwater management system, and the Board of Stormwater Management desires to acquire same under the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants herein contained, it is agreed between the parties as follows:

1. INFRASTRUCTURE CONSTRUCTION. The Developer shall cause to be constructed certain stormwater management infrastructure, more particularly described as follows:

- A. Phase I Stormwater Infrastructure Construction. The Phase I stormwater infrastructure shall consist of the reconstruction of the Warren Drain within the Ridgewood EDA and a replacement of the piping crossing under Rosewood Drive.
 - B. The above described infrastructure shall be designated and referred to herein as the "Stormwater Management Infrastructure" or the "Project". A map showing the general location of the Stormwater Management Infrastructure is included and incorporated herein as Exhibit A.
 - C. The Board of Stormwater Management and Developer anticipate that the project shall be completed on or before December 31, 2014. The actual date of the approval or acceptance of the infrastructure by the Board of Stormwater Management shall be designated and referred to herein respectively as the "Approval Date." The actual date of acceptance of the infrastructure by the Board of Stormwater Management shall be designated and referred to herein as the "Acceptance Date." The Board of Stormwater Management covenants and agrees that it will not unreasonably withhold or delay its approval or acceptance of the Stormwater Management Infrastructure.
2. ADMINISTRATION, ENGINEERING, AND EASEMENTS. The Board of Stormwater Management shall facilitate and pay for all necessary easements to accomplish the construction and installation of the Stormwater Management Infrastructure. Developer shall grant easements on land areas owned by the Developer at no cost. The Board of Stormwater Management shall facilitate and pay for any Board of Stormwater Management-related administration.
3. COST OF STORMWATER MANAGEMENT INFRASTRUCTURE CONSTRUCTION. The cost of the Stormwater Management Infrastructure for the purpose of this Agreement shall be paid by the Developer. The Developer or the Developer's contractors shall furnish and pay for all engineering, material, contractual labor, equipment, permits, restoration, fees, charges and or licenses required for construction of the Stormwater Management Infrastructure (collectively, the "Construction Costs") and shall hold the Board of Stormwater Management harmless from any liability for claims for the Construction Costs. Upon completion of the Stormwater Management Infrastructure, Developer or its contractors shall file a Completion Affidavit and a Maintenance Bond with the Board of Stormwater Management. The Maintenance Bond shall run for a minimum of one year from the Approval Date or Acceptance Date, whichever is later. The Maintenance Bond shall be in the minimum amount of twenty-five percent (25%) of the construction, restoration and change orders of the Stormwater Management Infrastructure that is accepted by the Board of Stormwater Management.
4. REIMBURSEMENT BY BOARD OF STORM WATER MANAGEMENT TO DEVELOPER. The eligible reimbursement, to be paid by the Board of Stormwater Management to the Developer in accordance with this Agreement, shall be called the "Reimbursement Amount". It is agreed that the Reimbursement Amount paid by the Board of Stormwater Management to the Developer for the Stormwater Management Infrastructure shall be calculated and paid as follows:
- A. Except as otherwise provided in this Agreement, the total amount of cost eligible to be included within the Reimbursement Amount from the Board of Stormwater Management to the Developer shall not exceed \$260,000 (hereinafter referred to as the "Reimbursement Cap") and shall be limited to the qualifications listed in this paragraph.
 - 1. Construction Costs. The eligible construction costs ("Construction Costs") for the Stormwater Management Infrastructure shall be: 1) no more than the lowest and most

responsive of at least three (3) competitive bids with bid openings witnessed by a Board of Stormwater Management representative and 2) any change orders approved in writing by both parties.

2. Administrative Costs. The eligible administration costs incurred by the Developer for the Stormwater Management Infrastructure shall be no more than an amount of four percent (4.0%) of the actual cost of the Construction Costs.
3. Engineering Costs. The eligible engineering costs incurred by the Developer for the Stormwater Management Infrastructure shall be no more than an amount of seven percent (7.0%) of the actual cost of the Construction Costs. Developer shall submit and provide to the Board of Stormwater Management copies of invoices paid by Developer for such engineering costs.

B. In the event the total eligible costs to be include in the Reimbursement Amount of the Stormwater Management Infrastructure exceeds the Reimbursement Cap, the Developer may either: (i) terminate this Agreement by written notice to the Board of Stormwater Management, or (ii) submit an addendum to the Board of Stormwater Management increasing the Reimbursement Cap or reducing the scope of work to be completed in connection with the Stormwater Management Infrastructure. In no case shall the Developer be expected, required or obligated to pay costs for the Stormwater Management Infrastructure that exceed the Reimbursement Cap.

5. INTEREST ON REIMBURSEMENT AMOUNT. The Board of Stormwater Management shall not be obligated to pay Developer any interest on the unpaid portion of the Reimbursement Amount.
6. CUMULATIVE FUND FOR REIMBURSEMENT AMOUNT OF COST OF INFRASTRUCTURE CONSTRUCTION. The Board of Stormwater Management shall establish a cumulative fund titled or designated as "Ridgewood Cumulative Fund," from which the Board of Stormwater Management will pay the Reimbursement Amount. The Ridgewood Cumulative Fund shall be the primary source of payment to Developer for the Reimbursement Amount. The Ridgewood Cumulative Fund shall be funded with proceeds from the Fort Wayne Redevelopment Commission through a certain Phase I Stormwater Reimbursement Intergovernmental Agreement by and between the Board of Stormwater Management and the Fort Wayne Redevelopment Commission and collected from the Ridgewood Economic Development Area and may also include funds from the Board of Stormwater Management. The Board of Stormwater Management acknowledges and agrees that the Board of Stormwater Management is not entitled to any funds, reimbursement or other payments under the Phase I Stormwater Reimbursement Intergovernmental Agreement until the Fort Wayne Redevelopment Commission has made full and complete payment under that certain Ridgewood Economic Development Area Developer Reimbursement Agreement, as amended, by and between the Developer and the Fort Wayne Redevelopment Commission.
7. PAYMENT TO DEVELOPER FROM BOARD OF STORMWATER MANAGEMENT. The Board of Stormwater Management shall reimburse Developer for the Reimbursement Amount from the Ridgewood Cumulative Fund and make payments to the Developer as follows:
 - A. An initial payment shall be made by the Board of Stormwater Management to the Developer in the amount of \$50,000.00 within thirty (30) days after the Acceptance Date.

- B. Thereafter, payments shall be made by the Board of Stormwater Management to the Developer within thirty (30) days of the Board of Stormwater Management's receipt of funds received from the Redevelopment Commission and deposited into the Ridgewood Cumulative Fund, until the Reimbursement Amount is paid in full.
 - C. The Board of Stormwater Management may continue to direct collections to the Ridgewood Cumulative Fund after such time the Reimbursement Amount is paid in full to Developer.
 - D. In the event the payments contemplated in Section 7(B) above from the Redevelopment Commission to the Board of Stormwater Management cease or otherwise terminate prior to full and complete payment of the Reimbursement Amount to the Developer, the Board of Stormwater Management shall remain obligated to the Developer for any remaining balance of the Reimbursement Amount until such amount is paid in full to the Developer.
 - E. The Board of Stormwater Management may pre-pay any part of the Reimbursement Amount with no pre-payment penalty.
- 8. STORMWATER MANAGEMENT INFRASTRUCTURE TRANSFER OF OWNERSHIP AND MAINTENANCE. Upon the Acceptance Date, the Board of Stormwater Management shall receive ownership of any portion of the Stormwater Management Infrastructure from Developer that the Board of Stormwater Management accepts and thereafter the Board of Stormwater Management shall control, service, maintain and operate the portion of the Stormwater Management Infrastructure that the Board of Stormwater Management accepts.
 - 9. COMPLIANCE WITH LAW. All actions associated with and in support of this Agreement will be done in compliance with applicable federal, state, and local laws and regulations.
 - 10. JURISDICTION AND VENUE. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Indiana, and proper venue for any dispute arising under this Agreement shall be in any federal or state court of competent jurisdiction located in Allen County, Indiana.
 - 11. MODIFICATION. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if made in writing and accepted in writing by each party or an authorized representative of each party.
 - 12. WAIVER. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
 - 13. SAVINGS CLAUSE. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
 - 14. ATTORNEY FEES. In the event that any action is filed in relation to compliance with this Agreement, or any form of alternative dispute resolution is pursued, the unsuccessful party shall

pay to the successful party, in addition to all the sums that either party may be called on to pay, the successful party's reasonable attorneys' fees, court costs, and costs of litigation.

15. HEADINGS. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
16. NOTICES. Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement, or at any subsequent address either party may designate to the other in writing.
17. FORCE MAJEURE. Neither party to this Agreement shall be liable to the other for any lost cost or monetary damages arising out of, or resulting from, any failure to perform in accordance with the terms of this Agreement where such failure is unforeseeable and beyond the reasonable control of such party, which, as employed herein, shall mean, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockages, insurrections, riots, governmental actions, explosions, fire, floods, or any other cause not within the reasonable control of either party.
18. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement and understanding between the parties, and supersedes all prior written and/or oral discussions or agreements between them. Neither party shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein, or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized officer or representative of the party to be bound thereby.
19. E-Verify Affidavit. Pursuant to Indiana Code 22-5-1.7, Contributor agrees and shall enroll in and verify the work eligibility status of all newly hired employees of the Contributor through the E-Verify program. E-Verify means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contributor is not required to verify the work eligibility status of all newly hired employees of Contributor through the E-verify program if the E-Verify program no longer exists.
20. EFFECTIVE DATE. This Agreement shall not be effective until approved by the Common Council of the City of Fort Wayne as required by Indiana Code § 36-9-23-6(b).
21. DEVELOPER RIGHT OF ASSIGNMENT. Developer may assign any portion or all of its rights in this Agreement including for reimbursement or its allocation rights. The Developer must notify the Board of Stormwater Management in writing, as outlined in Section 16, of any assignment.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed at Fort Wayne, Indiana, on the date indicated below.

Dated this ____ day of _____, 2014.

"CITY"

CITY OF FORT WAYNE, INDIANA
An Indiana municipal corporation and through
the Fort Wayne Board of Stormwater Management

By: _____

Chair

By: _____

Member

By: _____

Member

Attest: _____

Clerk

"DEVELOPER"

LONG TERM CARE INVESTMENTS IV,
LLC

an Indiana limited liability company

By: _____, agent

Andrew W. Place

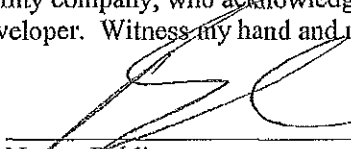
Its Authorized Agent

STATE OF INDIANA)
) SS:
COUNTY OF ~~ADAM~~)
ST. JOSEPH

Before me, the undersigned, a Notary Public in and for said County and State, this 9th day of December, 2014, personally appeared Andrew W. Place, as the authorized agent of Long Term Care Investments IV, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument for and on behalf of said Developer. Witness my hand and notarial seal.

My Commission Expires:

02/12/16



Notary Public

Brent E. Inabnit

Printed Name

County of Residence St. Joseph

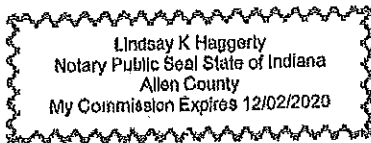
STATE OF INDIANA)

) SS:

COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 10th day of December, 2014, personally appeared Board of Works Chairmen, as Members of the City of Fort Wayne, Indiana, who acknowledged the execution of the foregoing instrument for and on behalf of the Board of Stormwater Management of the City of Fort Wayne. Witness my hand and notarial seal.

My Commission Expires: 12/02/2020



Lindsay K. Haggerty
Notary Public

Lindsay K. Haggerty
Printed Name

County of Residence Allen

Exhibit A.
Stormwater Management Infrastructure

Area Map of Stormwater Management Infrastructure.

EXHIBIT A: PRELIMINARY LAYOUT OF SANITARY SEWER AND STORMWATER PROJECTS IN THE RIDGEWOOD ECONOMIC DEVELOPMENT AREA. DATE: 10/30/2013. TIME: 2:25 PM. SCALE: 1" = 150'.

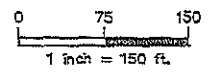
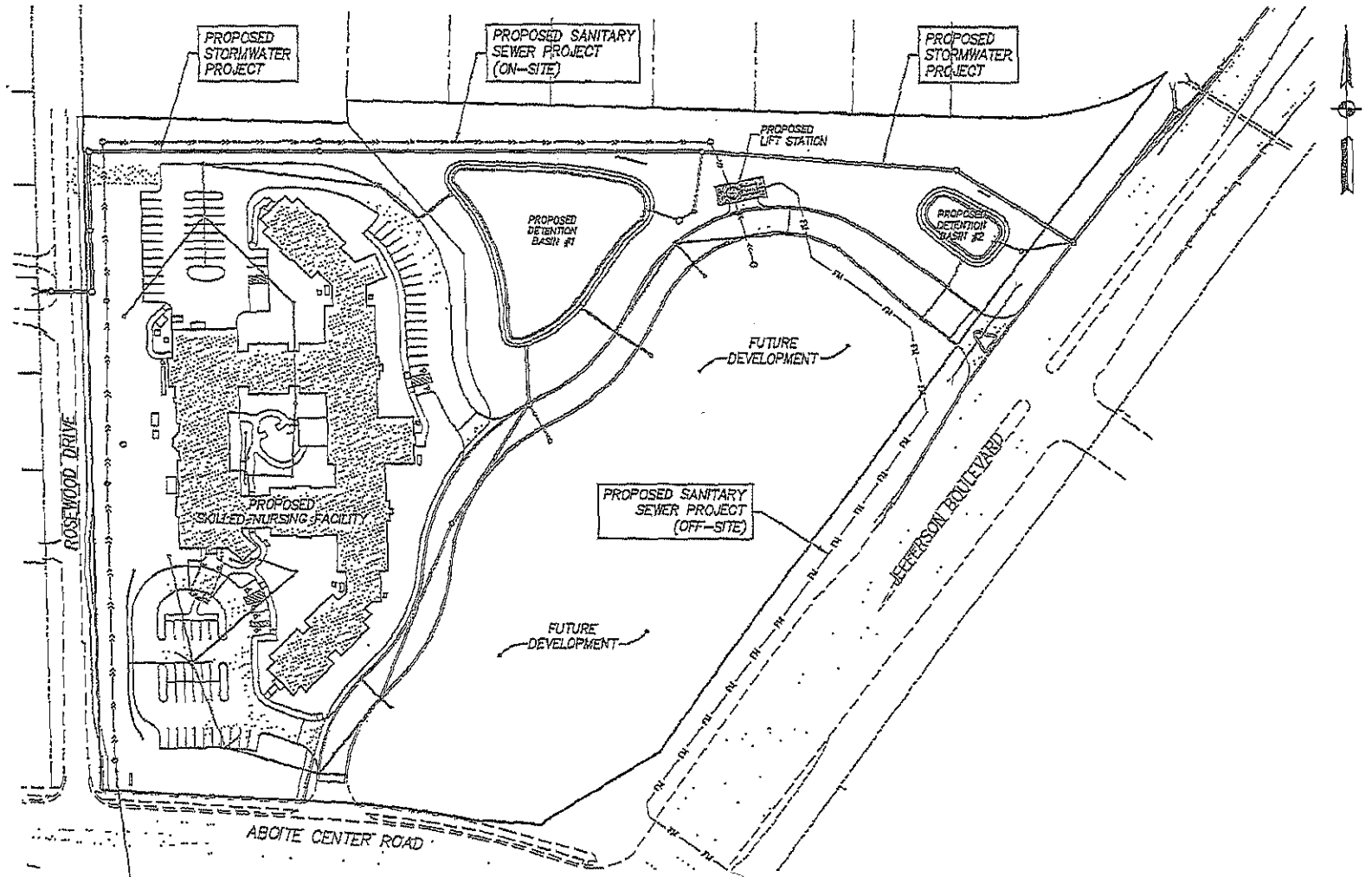


EXHIBIT A
RIDGEWOOD ECONOMIC DEVELOPMENT AREA
SANITARY SEWER AND STORMWATER PROJECTS
(PRELIMINARY LAYOUT)



DATE: 10-30-13 ACI JOB #: 13-0113 SHT: 1 of 1
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DIGEST SHEET

City Utilities

Department: City Utilities Engineering

Title of Ordinance:

Awarded To: Long Term Care Investments IV, LLC

Amount of Contract: Reimbursement of up to \$260,000

Number of Bidders: three bidders for the stormwater management facility construction work.

Description of Project (Be Specific):

The developer shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "Ridgewood Phase I Stormwater Management Infrastructure" as follows: a reconstructed Warren Drain and replaced piping under Rosewood Drive. The developer shall be reimbursed from TIF proceeds of the Ridgewood EDA.

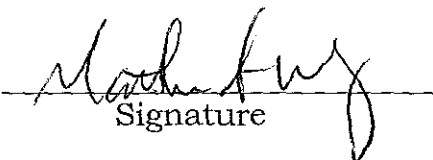
What Are The Implications If Not Approved:

The vacant commercially zoned area located inside the City limits at the intersection of West Jefferson and Aboite Center Road will continue to be undeveloped in part due to lack of adequate drainage. In addition, adjacent and nearby neighborhoods will continue to lack adequate drainage.

If Prior Approval Is Being Requested, Justify: Not Applicable.

Additional Comments:

Please introduce on December 16, 2014 but do not offer for discussion until January 6, 2015 due to the scheduling request of the developer of this project.


Signature


Date

Interoffice Memo

Date: December 10, 2014
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering / ESS
RE: Ridgewood Phase I Stormwater Management Infrastructure Developer Reimbursement Agreement

The developer shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "Ridgewood Phase I Stormwater Management Infrastructure" as follows: the reconstruction of the Warren Drain within the Ridgewood EDA and a replacement of piping crossing under Rosewood Drive. The developer shall be reimbursed from TIF proceeds of the Ridgewood EDA

Implications of not being approved: The vacant commercially zoned area located inside the City limits at the intersection of West Jefferson and Aboite Center Road will continue to be undeveloped in part due to lack of adequate stormwater management facilities. In addition, adjacent and nearby neighborhoods will continue to experience problems and damage due to inadequate drainage.

The construction contract was awarded by the developer to Fleming Excavating who was the lowest most responsive bidder of three bidders and below the developer's Engineer's estimate.

The cost of said project funded by Ridgewood EDA TIF funds, Private funding, City Utilities Stormwater Utility.

Council Introduction Date: December 16, 2014

Council Discussion Date: January 6, 2015 (due to the scheduling needs of the developer who wishes to attend and be available)

CC: Board of Stormwater Management, BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File