

BILL NO. S-14-12-16

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION
CONTRACT FOR RIDGEWOOD PHASE I
SANITARY SEWER 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 FOR
RIDGEWOOD PHASE I SANITARY SEWER 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
a new sanitary sewer lift station, approximately 4,000 feet of
directional-bored force main from the lift station to the
existing sanitary sewer connection point of City Utilities:

involving a total cost of not to exceed SEVEN HUNDRED FIVE THOUSAND
AND 00/100 DOLLARS - (\$705,000.00). 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
SANITARY SEWER INFRASTRUCTURE**

**RIDGEWOOD PHASE I SANITARY SEWER INFRASTRUCTURE
DEVELOPER REIMBURSEMENT AGREEMENT**

This Contract for the Construction, Reimbursement and Transfer of Sanitary Sewer 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 Public Works, Citizens Square Building, 200 East Berry Street, Fort Wayne, Indiana 46802 (hereinafter referred to as "Board of Public Works"), 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 Public Works 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 sanitary sewer infrastructure, 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 sanitary sewer service to the anticipated growth area would be to extend the Board of Public Works's existing sanitary sewer system a sufficient distance into the Ridgewood EDA, which is where new real estate development is anticipated to occur; and

WHEREAS, in addition to providing sanitary sewer infrastructure to foster and promote growth and development within and around the Ridgewood EDA, the construction of the proposed sanitary sewer infrastructure will help to provide future septic system relief to 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 Public Works of an extension of the Board of Public Works' existing sanitary sewer system, and Board of Public Works 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 AND TRANSFER DATE. The Developer shall cause to be constructed certain sanitary sewer infrastructure, more particularly described as follows:
 - A. Phase I Sanitary Sewer Infrastructure Construction. The Phase I sanitary sewer infrastructure shall consist of a new sanitary sewer lift station, approximately nine manholes, approximately 1,600 feet of sanitary sewer pipe, approximately 4,000 feet of directional-bored force main from the lift station to the existing sanitary sewer connection point located at the end of Hazelhurst Drive.

- B. The above described infrastructure shall be designated and referred to herein as the "Sanitary Sewer Infrastructure" or the "Project". A map showing the general location of the Sanitary Sewer Infrastructure is included and incorporated herein as Exhibit A.
- C. The Board of Public Works and Developer anticipate that transfer of ownership from Developer to the Board of Public Works shall be completed on or before December 31, 2014. The actual date of the acceptance of the Sanitary Sewer Infrastructure by the Board of Public Works shall be designated and referred to herein as the "Acceptance Date". The Board of Public Works agrees that it will not unreasonably withhold or delay its acceptance of the Sanitary Sewer Infrastructure.
2. ADMINISTRATION, ENGINEERING, AND EASEMENTS. Board of Public Works shall facilitate and pay for all necessary easements to accomplish the construction and installation of the Sanitary Sewer Infrastructure. Developer shall grant easements on land areas owned by the Developer at no cost. Board of Public Works shall facilitate and pay for Board of Public Works-related administration.
3. COST OF SANITARY SEWER FACILITY CONSTRUCTION. The cost of the Sanitary Sewer 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 Sanitary Sewer Infrastructure (collectively the "Construction Costs") and shall hold Board of Public Works harmless from any liability for claims for the Construction Costs. Upon completion of the Sanitary Sewer Infrastructure, Developer or its contractors shall file a Completion Affidavit and a Maintenance Bond with the Board of Public Works. The Maintenance Bond shall run for a minimum of one year from the Acceptance Date of the Sanitary Sewer Infrastructure and shall be in the minimum amount of twenty-five percent (25%) of the construction, restoration and change orders of the Sanitary Sewer Infrastructure.
4. REIMBURSEMENT BY BOARD OF PUBLIC WORKS TO DEVELOPER. The eligible reimbursement to be paid by the Board of Public Works 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 Public Works to the Developer for the Sanitary Sewer 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 Public Works to the Developer shall not exceed \$705,000 (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 Sanitary Sewer 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 Public Works representative and 2) any change orders approved in writing by both parties which may include the cost of temporary pumping, hauling and disposal of sanitary sewage.
2. Administrative Costs. The eligible administration costs incurred by the Developer for the Sanitary Sewer Infrastructure shall be no more than an amount of four percent (4.0%) of the actual costs of the Construction Costs.

3. Engineering Costs. The eligible engineering costs incurred by the Developer for the Sanitary Sewer 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 Board of Public Works copies of invoices paid by Developer for such engineering costs.
 - B. Interest due on the unpaid portion of the Reimbursement Amount shall not be included in the Reimbursement Cap.
 - C. In the event the total eligible costs to be included in the Reimbursement Amount of the Sanitary Sewer Infrastructure exceeds the Reimbursement Cap, the Developer may either: (i) terminate this Agreement by written notice to the Board of Public Works, or (ii) submit an addendum to the Board of Public Works increasing the Reimbursement Cap or reducing the scope of work to be completed in connection with the Sanitary Sewer Infrastructure. In no case shall the Developer be expected, required or obligated to pay costs for the Sanitary Sewer Infrastructure that exceed the Reimbursement Cap.
5. PAYMENT OF INTEREST ON REIMBURSEMENT AMOUNT. The Board of Public Works shall pay Developer interest on the unpaid portion of the Reimbursement Amount as follows:
 - A. Interest shall begin accruing on January 1, 2015.
 - B. The interest rate shall be four and seventeen one hundredths percent (4.17%) per year.
6. CUMULATIVE FUND FOR REIMBURSEMENT AMOUNT OF COST OF FACILITY CONSTRUCTION. The Board of Public Works shall establish a cumulative fund titled or designated as "Ridgewood Cumulative Fund" from which the Board of Public Works will pay the Reimbursement Amount and all accrued interest. The Ridgewood Cumulative Fund shall be the primary source of payment to Developer for the Reimbursement Amount and all accrued interest. The Ridgewood Cumulative Fund shall be funded with proceeds from the Fort Wayne Redevelopment Commission through a certain Phase I Sanitary Sewer Reimbursement Intergovernmental Agreement by and between the Board of Public Works and the Fort Wayne Redevelopment Commission and collected from the Ridgewood Economic Development Area and may also include funds from Board of Public Works Sewer Utility general fund. The Board of Public Works acknowledges and agrees that the Board of Public Works is not entitled to any funds, reimbursements or other payments under the Phase I Sanitary Sewer 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 and that certain Phase I Stormwater Reimbursement Intergovernmental Agreement by and between the City of Fort Wayne Board of Stormwater Management and the Fort Wayne Redevelopment Commission.
7. PAYMENT TO DEVELOPER FROM BOARD OF PUBLIC WORKS. The Board of Public Works shall reimburse Developer for the Reimbursement Amount and make payments to the Developer as follows:
 - A. An initial payment shall be made by the Board of Public Works to the Developer in the amount of \$250,000.00 within thirty (30) days after the Acceptance Date.

B. Thereafter, payments shall be made by the Board of Public Works to the Developer within thirty (30) days of the Board of Public Works' receipt of deposits in the Ridgewood Cumulative Fund until the Reimbursement Amount is paid in full.

C. In the event the payments contemplated in Section 7(B) above from the Redevelopment Commission to the Board of Public Works cease or otherwise terminate prior to full and complete payment of the Reimbursement Amount to the Developer, the Board of Public Works shall remain obligated to the Developer for any remaining balance of the Reimbursement Amount until such amount is paid in full to the Developer.

D. The Board of Public Works may continue to direct collections to the Ridgewood Cumulative Fund after such time the Reimbursement Amount is paid in full to Developer.

E. The Board of Public Works may only pre-pay any part of the Reimbursement Amount upon the receipt by the Developer of all funds, reimbursements and obligations owed to Developer under that certain Ridgewood Economic Development Area Developer Reimbursement Agreement by and between the Developer and the Fort Wayne Redevelopment Commission and that certain Ridgewood Phase I Stormwater Management Infrastructure Developer Reimbursement Agreement by and between the Developer and the Fort Wayne Board of Stormwater Management.

8. SANITARY SEWER FACILITY TRANSFER OF OWNERSHIP AND MAINTENANCE. Upon the Acceptance Date, the Board of Public Works shall receive ownership of the Sanitary Sewer Infrastructure from Developer and thereafter the Board of Public Works shall control, service, maintain and operate Sanitary Sewer Infrastructure.
9. FURTHER EXTENSION OF SANITARY SEWER FACILITIES. The Board of Public Works may approve the extension of additional sanitary sewer lines from the Sanitary Sewer Improvements without any financial obligations charged to, or incurred by, the Developer under this Agreement.
10. PROHIBITED DISCHARGES. The Sanitary Sewer Improvements shall be constructed for disposal of sanitary sewage only and neither the parties hereto shall knowingly and intentionally, at any time, direct or cause discharge into the Sanitary Sewer Improvements any water runoff caused by natural precipitation, or anything other than sanitary sewage in accordance with the Fort Wayne Code of Ordinances.
11. 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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 to 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.
20. 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.
21. 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.

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.

22. 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).
23. 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 Public Works in writing, as outlined in Section 18, 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 9th day of DECEMBER 2014.

"CITY"

CITY OF FORT WAYNE, INDIANA
an Indiana municipal corporation and
through the Fort Wayne Board of Public Works

By: _____
Chair

By: [Signature]
Member

By: [Signature]
Member

Attest: [Signature]
Clerk

"DEVELOPER"

LONG TERM CARE INVESTMENTS IV, LLC
an Indiana limited liability company

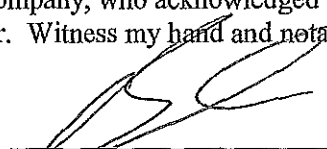
By: [Signature]
Andrew W. Place
Its Authorized Agent

STATE OF INDIANA)
) SS:
COUNTY OF ~~ALLEN~~)
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

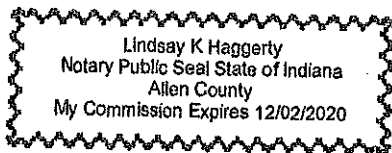
STATE OF INDIANA)

) 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 charmen 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 Public Works of the City of Fort Wayne. Witness my hand and notarial seal.

My Commission Expires: 12/02/2020



Lindsay K Haggerty
Notary Public

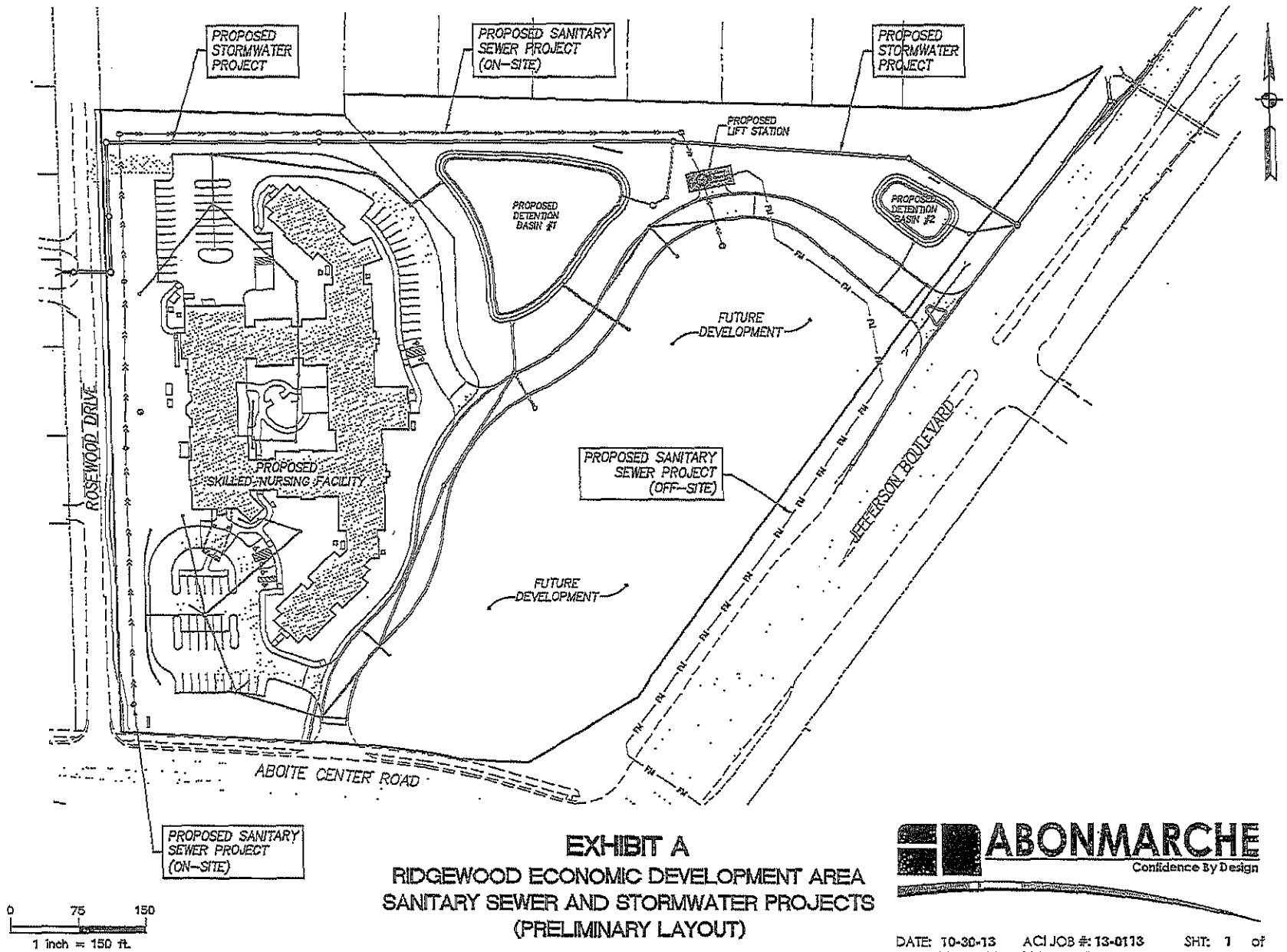
Lindsay K. Haggerty
Printed Name

County of Residence Allen

Exhibit A.
Sanitary Sewer Infrastructure

Area Map of Sanitary Sewer Infrastructure.

ENCLOSURE 30113-0113 FL Wayne Nursing Home - Abolition/Reimbursement Exhibit 130113 Sanitary Sewer.dwg, SANITARY AND WARREN DRAIN, 10/30/2013 2:25:32 PM, 1:1



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 \$705,000

Number of Bidders: three bidders for the sanitary sewer 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 Sanitary Sewer Infrastructure" as follows: a new sanitary sewer lift station, approximately 4,000 feet of directional-bored force main from the lift station to the existing sanitary sewer connection point of City Utilities. The developer shall be reimbursed from TIF proceeds of the Ridgewood EDA.

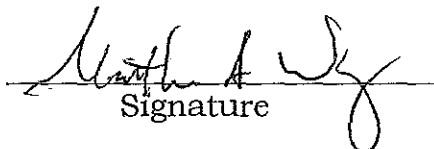
What Are The Implications If Not Approved:

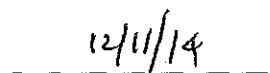
The vacant commercially zoned area located inside the City limits at the intersection of West Jefferson and Aboite Center Road will continue to be undeveloped in part due to lack of sanitary sewer service. In addition, adjacent and nearby neighborhoods will continue to lack affordable access to public sanitary sewers for the relief of failed or failing septic systems that plague the immediate area.

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 Sanitary Sewer Infrastructure Developer Reimbursement Agreement**

The developer shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "Ridgewood Phase I Sanitary Sewer Infrastructure" as follows: a new sanitary sewer lift station, approximately 4,000 feet of directional-bored force main from the lift station to the existing sanitary sewer connection point of City Utilities. 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 sanitary sewer service. In addition, adjacent and nearby neighborhoods will continue to lack affordable access to public sanitary sewers for the relief of failed or failing septic systems that plague the immediate area.

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 Sanitary Sewer 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: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File