

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JANUARY 7, 2025 AGENDA

Subject:	Type:	Submitted By:
ENCROACHMENT EASEMENT AGREEMENT— LOT 1 B & T ADDITION	◆ RESOLUTION ORDINANCE RECEIVE/FILE	CALE BRODERSEN ASSOCIATE CITY PLANNER

SYNOPSIS

A resolution has been prepared to approve and authorize execution of an encroachment easement agreement to allow the property owners of Lot 1 B & T Addition located at 7801 Park View Blvd to maintain and utilize private storm water improvements within the 15' drainage and utility easement located on their property.

FISCAL IMPACT

None.

RECOMMENDATION

Approval.

BACKGROUND

After vacating an unused portion of 78th Street ROW, the City issued a quitclaim deed for a portion of the property to Wyatt and Elizabeth Buls, at which time the property was replatted to incorporate the vacated right of way. The property owners constructed a garage and home addition on their property located at 7801 Park View Blvd that was built up to the easement line on their property. To assist in the conveyance of stormwater on their property, a drain box and 4" PVC pipe were installed adjacent to the new driveway and alongside the addition, and are located 2 feet inside of the 15 foot drainage and utility easement located on the property, as established by the replat for B & T Addition recorded on February 1, 2024.

The attached encroachment easement agreement will authorize the drainage system to remain in place within 2 feet of the easement, and releases the City of liability in the event that the drainage system were to be damaged due to the City or its agents accessing the easement for maintenance of the sanitary sewer line for which the easement was dedicated.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AN ENCROACHMENT EASEMENT AGREEMENT IN CONNECTION WITH STORMWATER IMPROVEMENTS ON LOT 1 B & T ADDITION.

WHEREAS, A 15' drainage and utility easement exists along the eastern edge of Lot 1 B & T Addition as dedicated through the Final Plat for B & T Addition recorded with the Sarpy County Register of Deeds on February 2, 2024 (Sarpy County Instrument Number 2024-01761); and

WHEREAS, Property owners of Lot 1 B & T Addition constructed and installed a drain box and 4" PVC pipe to transport storm water within and about Lot 1 B & T Addition as part of a home addition project, part of which encroaches onto the Public Utilities Easement Area; and

WHEREAS, The Chief Building Official and City Engineer have reviewed and are amenable to the request to maintain the drain box and 4" PVC pipe where they were installed and are located within 2 feet of the easement area; and

WHEREAS, a proposed Encroachment Easement Agreement is presented with this Resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, do hereby approve the Encroachment Easement Agreement as presented, subject to any additions, subtractions, or modifications as the City Administrator, City Engineer, or any designee of the City Administrator or City Engineer determines necessary or appropriate ("Easement").

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the Easement and to take all other actions as he determines necessary or appropriate to carry out this Resolution or the Easement.

PASSED AND APPROVED THIS 7TH DAY OF JANUARY 2025.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Rachel D. Carl, CMC
City Clerk

Upon Recording Return to:
Community Development
City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (this "Encroachment Easement Agreement") is made effective as of the last date executed below by and between the City of La Vista, a Nebraska municipality ("Grantor") and Wyatt and Elizabeth Buls, husband and wife, ("Grantees").

WHEREAS, Grantor owns or is the beneficiary of such rights, conditions and limitations ("Public Utilities Easement") within such areas ("Public Utilities Easement Area") and for such purposes, including without limitation public utilities, telecommunications, and other infrastructure, improvements or purposes, as described or depicted in City of La Vista Ordinance No. 1431 dated November 16, 2021 (Sarpy County Instrument Number 2024-01757) or the Quitclaim Deed dated January 31, 2024 (Sarpy County Instrument Number 2024-01760) (such Ordinance No. 1431 and Quitclaim Deed together "Public Utilities Easement Instruments")

WHEREAS, Grantees are the fee owners of Lot 1 B & T Addition that is subject to the Public Utilities Easement, as surveyed, platted, and recorded in Sarpy County, Nebraska (Sarpy County Instrument Number 2024-01761), that contains the Public Utilities Easement Area ("Grantee Parcels").

WHEREAS, Grantees constructed and installed an approximately 4 inch PVC pipe to transport storm water (collectively "Storm Water Improvements") within and about the Grantee Parcels, part of which encroaches on the Public Utilities Easement Area as described or depicted in Exhibit "A" attached hereto and incorporated herein by reference ("Encroachment")

WHEREAS, Grantees request that Grantor grant, and Grantor is willing to grant, Grantees an easement for the Encroachment on the terms and conditions provided in this Encroachment Easement Agreement.

NOW, THEREFORE, incorporating all recitals above, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. Grant of Easement. Grantor hereby grants and conveys unto Grantees a nonexclusive easement for the Encroachment ("Encroachment Easement"), subject to the following terms and conditions:

- a. Use. Use of the Encroachment Easement shall be subject to, and not adversely affect, interfere with, impair or limit any current or future use by Grantor of any part of the Public Utilities Easement Area for any purpose provided in the Public Utilities Easement Instruments, as Grantor from time to time in its sole discretion determines necessary or appropriate. Not in limitation of the foregoing, Grantor or its designee may enter upon the Grantee Parcels for the express purpose of maintaining, inspecting, repairing, constructing, extending, operating or replacing any improvements within the Public Utilities Easement Area.
- b. Maintenance. Grantees at all times at their sole cost and expense shall maintain the Storm Water Improvements in good and working condition and repair.
- c. Removal, Relocation or Safeguarding. If Grantor in the exercise of Grantor's rights under the Public Utilities Easement at any time determines that the Storm Water Improvements must be removed, relocated or safeguarded, Grantees, at the sole cost and expense of Grantees, shall remove, relocate or safeguard the Storm Water Improvements within the time and to the satisfaction of the City Engineer of Grantor. If Grantees fail to remove, relocate or safeguard same within the time specified in such request, then the Grantor shall have the right to carry out such work and to collect from Grantees the reasonable and documented cost of such work or to file a lien against Grantee Parcels for the amount of such cost.
- d. Liability. Grantees acknowledge and agree that the Grantor made, and in connection with this Encroachment Easement Agreement make, no representations to Grantees regarding the Storm Water Improvements or Grantees' use of the Public Utilities Easement, including without limitation the sufficiency of the Storm Water Improvements to convey storm water upon or about the Grantee Parcels, or effects of such Storm Water Improvements on Grantee Parcels or any other property. Grantees, at their sole cost and expense, shall be solely responsible and liable for (i) such Storm Water Improvements and use of the Public Utilities Easement Area pursuant to this Encroachment Easement Agreement, (ii) any effects on Grantee Parcels, the Public Utilities Easement Area or other property in connection with such use or improvements, and (iii) all claims, liabilities, costs and expenses arising out of or resulting from such Storm Water Improvements, use of the Public Utilities Easement Area, or any actions or omissions of Grantees or any employees or agents of Grantees.
- e. Notification. Grantees shall notify the City Engineer in writing at least 30 days before beginning any work on the Storm Water Improvements or within the Public Utilities Easement Area, and at the sole cost and expense of Grantees take such actions as the City Engineer determines necessary or appropriate to safeguard improvements of Grantor or others within the Public Utilities Easement Area.
- f. Duration. This Encroachment Easement Agreement shall remain in effect so long as the Storm Water Improvements remain in substantially the same form

and location as initially constructed or replaced, and upon removal, demolition, abandonment or destruction thereof, this Encroachment Easement Agreement shall terminate.

- g. Indemnification. Grantees, at their sole cost and expense, agree to defend, protect, indemnify, and hold harmless the Grantor and all officers, officials, employees and agents of the Grantor, from and against any and all claims, liabilities, costs, and expenses whatsoever (including, without limitation, all interest attorneys fees and court costs) arising out of or resulting from actions or omissions of Grantees or any employee or agent of Grantees, or any of them, in connection with the Storm Water Improvements or this Encroachment Easement Agreement.
- h. Joint and Several. By signing below, each of the Grantees agrees that he or she shall be jointly and severally liable for all obligations of Grantees under this Encroachment Easement Agreement.
- i. Binding Effect. This Encroachment Easement Agreement is and shall be deemed to constitute covenants running with the land and shall be binding upon the Grantee Parcels, the Parties and all successors and/or assigns of the Grantee Parcels or Parties, and each of them, until terminated as set forth herein.

2. Notice. All notices and correspondence under this Encroachment Easement Agreement shall be given by certified or registered mail or by overnight delivery with a national courier providing confirmation of delivery to the following addresses:

Grantor:

City of La Vista
8116 Park View Blvd
La Vista, NE 68128

Grantees:

Wyatt and Elizabeth Buls
7801 Park View Blvd
La Vista, NE 68128

3. Severability. If a court finds that any provision of this Encroachment Easement Agreement is invalid or unenforceable, but that by limiting such provision the same would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. In all other cases if provisions of this Encroachment Easement Agreement are held to be invalid or unenforceable, the invalid or unenforceable provisions shall be deemed deleted and the remaining provisions shall continue to be valid and enforceable.

4. Waiver. The failure of either Party to enforce any provision of this Encroachment Easement Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with each and every provision of this Encroachment Easement Agreement.

5. Headings. The section headings appearing herein are for convenience of the Parties only and do not affect, define, limit, or construe the contents of the various sections in this Encroachment Easement Agreement.

6. Governing Law; Jurisdiction; and Venue. This Encroachment Easement Agreement is made and delivered in, and shall be governed by the laws of, the State of Nebraska, thereof. Any suit in connection with this Encroachment Easement Agreement shall be filed and maintained in the District Court of Sarpy County. All parties consent to jurisdiction of said court and agree that venue is proper.

7. Entire Agreement; Amendment. Each Party acknowledges that he/she has read and fully understands the contents of this Encroachment Easement Agreement. This Encroachment Easement Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior oral or written negotiations, representations, or agreements, with respect to the subject matter hereof. This Encroachment Easement Agreement may be modified only by written instrument duly authorized and executed by all Parties.

8. Counterparts. This Encroachment Easement Agreement may be executed in two or more counterparts, which when taken together, shall constitute one and the same instrument. The parties may execute this Encroachment Easement Agreement and exchange counterparts by means of electronic transmission and the parties agree that the receipt of such executed counterparts shall be binding on the parties and shall be construed as originals.

IN WITNESS WHEREBY, the Parties have executed this Encroachment Easement Agreement as of the Effective Date.

*[Remainder of Page Intentionally Left Blank.
Signature Pages Follow.]*

CITY OF LA VISTA (GRANTOR)

Douglas Kindig, Mayor
City of La Vista

ATTEST:

Rachel Carl, City Clerk

STATE OF NEBRASKA)
)ss.
COUNTY OF SARPY)

On this ____ day of _____, 2025, before me, a Notary Public duly
commissioned and qualified in and for said County and State, appeared Douglas Kindig and
Rachel Carl, personally known by me to be the Mayor and City Clerk of the City of La Vista, and
the identical persons whose names are affixed to the foregoing Encroachment Easement
Agreement, and acknowledged the execution thereof on behalf of the City to be their voluntary
act and deed and the voluntary act and deed of said City.

[Seal]

Notary Public

WYATT AND ELIZABETH BULS, HUSBAND AND WIFE (GRANTEEES)

WYATT BULS and _____, husband and wife

ELIZABETH BULS

STATE OF NEBRASKA)
)ss.
COUNTY OF SARPY)

On this ___ day of _____, 2025, before me, a Notary Public duly
commissioned and qualified in and for said County and State, appeared Wyatt Buls and
Elizabeth Buls, husband and wife and the identical persons whose name are affixed to the
foregoing Encroachment Easement Agreement, and acknowledged the execution thereof to be
their voluntary act and deed.

[Seal]

Notary Public

EXHIBIT "A"

Depiction of Encroachment into City Easement Area

The encroachment into the 15' drainage and utility easement on Lot 1 B & T Addition includes a drain box at the side of the driveway with a 4" PVC pipe buried 18" deep within 2 feet of the building. This runs to lower elevation and ends at a 45 degree bend and connects to a 500 gallon water storage tank behind the home addition that is outside of the easement area. This connects to a 36" by 45 foot long infiltrator gravelless chamber drainfield to slow the release of water.

