RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN THE INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN SARPY COUNTY AND SANITARY AND IMPROVEMENT DISTRICT (SID) 330 FOR ROAD IMPROVEMENTS TO A PORTION OF GOLD COAST ROAD (Gold Coast Rd & Hwy 50, R & R Commerce Park Development)

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104, the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402; and,

WHEREAS, pursuant to Neb. Rev. Stat. §13-801, et seq., an Interlocal Cooperation Act Agreement has been proposed between the Sanitary and Improvement District (SID) 330 and Sarpy County for allocation of the cost of certain road improvements to a portion of Gold Coast Road, approximately Gold Coast Road and Highway 50 as further outlined in said Agreement; and,

WHEREAS, it is in the best interests of the residents of Sarpy County to participate in said Interlocal Cooperation Agreement, a copy of which is attached hereto and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board hereby approves and adopts the attached Interlocal Cooperation Agreement.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to execute said Agreement on behalf of Sarpy County, Nebraska and they in addition to the County Public Works Director (or his designee) are authorized to take such other actions as may be necessary under the terms of said Agreement.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 9th day of January, 2018.

Sarpy County Board Chairman

County Clerk
INTERLOCAL COOPERATION AGREEMENT  
(R&R Commerce Park)

This Agreement is made as of the dates indicated at the signatures below by and between Sanitary and Improvement District No. 330 of Sarpy County, Nebraska (hereinafter “District”), and the County of Sarpy, State of Nebraska (hereinafter “County”). Collectively, District, and County are hereinafter sometimes referred to as the “Parties”.

RECITALS

The County is a duly existing body, corporate and politic in accordance with and by virtue of the laws of the State of Nebraska.

District is a duly existing body corporate and politic in accordance with and under the laws of the State of Nebraska as more particularly set forth in Article 7 of Chapter 31 of the Revised Statutes of Nebraska, 1943, and any applicable amendments thereto, and the Decree of the District Court of Sarpy County, Nebraska.

District is presently undertaking the development of real property generally located on the northwest corner of Highway 50 and Gold Coast Road as shown on the Final Plat of R&R Commerce Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference.

The District is within the extraterritorial zoning jurisdiction of the City of Papillion and County has the jurisdiction of all roads outside of a city’s jurisdiction, including the proposed Gold Coast Road.

The Parties wish to outline certain terms and conditions associated with the proposed improvements to Gold Coast Road.

In order to promote the health, safety, and welfare of the residents of all of the parties to this Agreement and pursuant to the authority granted to the parties per the Interlocal Cooperation Act, Section 13-801, et. seq., Sarpy County and District are authorized to enter into this Agreement with each other so as to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of such political subdivisions.

It is in the best interests and would be mutually advantageous to the County and District to improve at this time, pursuant to this Agreement, a portion of Gold Coast Road, specifically, “Phase 1 Paving” as shown on Exhibit "B" attached hereto and incorporated herein by this reference and hereinafter referred to as the “Improvement Plan”. The road improvements may
include, without limitation, design, plans, specifications, acquisition of additional right of way and easements, a change of grade, P.C. concrete pavement, relocation of utilities, grading installation of storm sewers and other drainage facilities, paving and other related improvements to include three (3) lanes of road paving for that portion of Gold Coast Road identified as “Phase 1 Paving” on Exhibit B, (hereinafter collectively referred to as the "Improvements").

Said Improvements are further described within the Estimated Construction Costs, a copy of which is attached hereto as Exhibit “C” and incorporated herein by this reference, hereinafter referred to as the “Estimated Construction Costs”. Said attachments are intended to show only a basic description of the work and the costs presently estimated and may be revised from time to time.

NOW, THEREFORE, in consideration of the covenants herein set forth, the County and DISTRICT do hereby agree and contract with each other as follows:

1. **Incorporation of Recitals.** The Recitals set out above are hereby incorporated within and part of this Agreement.

2. **No Administrative Entity.** There shall be no separate legal or administrative entity created to administer this Agreement and, therefore, no separate budget established for such an entity.

3. **Plans and Design.** The District will contract with an engineering firm registered in the State of Nebraska (the "Engineering Contractor"), for the preparation of plans and specifications for the construction of the Improvements to be constructed pursuant to the Improvement Plan with the District being the lead agency. As the Lead Agency, the District shall have control and responsibility for the construction of the Improvements. The final plans and specifications for the Improvements set forth in the Improvement Plan may be reviewed by the County. Construction administration, construction management, staking and the public bidding of the Improvements set forth in the Improvement Plan shall be performed by the District.

4. **Construction.** Subject to the conditions and provisions hereinafter specified, the District agrees to cause the Improvements to be constructed in accordance with the final plans and specifications. During the course of the construction of the Improvements set forth in the Improvement Plan, the County may at any time cause inspection of the work to insure compliance with the final plans and specifications. The Parties hereto agree that the County will own, operate and, at its cost, maintain all of the Improvements constructed or installed within the right-of-way upon expiration of the two (2) year period of guarantee referenced below until such time as these obligations are passed to another entity by operation of law, except for any sidewalk or bike trail. District shall maintain all sidewalks and bike trails. County will perform snow removal until such obligation is passed to another entity through annexation or by other operation of law.
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a. All construction work occasioned by this Agreement shall be performed by the contractors furnishing the lowest and best bid as determined pursuant to formal bidding requirements in accordance with the laws of the State of Nebraska and as thereafter approved by the Parties.

b. All contractors performing work on the Improvements pursuant to this Agreement shall furnish a performance bond to the Lead Agency, which shall remain in full force and effect and until acceptance of the construction and which, in part, shall provide for the good and faithful performance of the construction contract, plans and specifications by contractor, for compliance by contractor with all applicable laws, for payment of material, labor and rentals, and for the payment of the unemployment payment to the Department of Labor of the State of Nebraska as provided by law. Additionally, all contractors performing work on the Improvements discussed herein shall expressly guarantee the work and materials described herein for a full period of two (2) years from the acceptance of the construction by the District. Further, the District shall require contractor to agree to correct and repair promptly during that two year period of guarantee all failures of any description and shall deliver the work or materials in all respects in good condition and repair.

c. All contracts with third parties pertaining to the construction of Improvements shall, in part, provide full and faithful adherence to the plans and specifications for the work, partial payments during construction based upon work completed and certified by the Lead Agency’s engineers for final payment upon completion and certification by the Parties in accordance with this Agreement.

5. **SARPY COUNTY ENGINEER SIGNATURE REQUIRED:** THE SARPY COUNTY ENGINEER OR HIS DESIGNEE IS REQUIRED TO SIGN THE FINAL CONSTRUCTION PLANS PRIOR TO THE CONSTRUCTION PLANS BEING ADVERTISED FOR BID. IF THE SARPY COUNTY ENGINEER OR HIS DESIGNEE’S SIGNATURE IS NOT ON SAID CONSTRUCTION PLANS PRIOR TO BIDDING, THE PARTIES AGREE THAT COUNTY SHALL HAVE NO FINANCIAL OBLIGATIONS FOR THE IMPROVEMENTS ADDRESSED WITHIN THIS AGREEMENT.

6. **Improvements Cost Estimates.** The estimated costs for the Improvements are set forth in Estimated Construction Cost, Exhibit "C". In the event that the actual low bid for the Improvements received by the District is 20% or greater than the costs set forth in the Estimated Construction Cost, the Parties may reevaluate and review the proposed Improvements and perform a cost analysis on the Improvements. Notwithstanding any other provision herein, if the actual low bid for the Improvements is 20% or greater than the Estimated Construction Cost, no Party shall be required to contribute to, pay, or participate in the cost of the Improvements or any portion thereof without further written agreement.

7. **Allocation and Payment of Design and Construction Costs.** Payment for the Actual Total
Costs of the Improvements shall be made by each of the Parties hereto in accordance with the terms of this Agreement. Parties will allocate appropriate funds in accordance with the estimates and pro-rata shares. Actual Total Costs of the Improvements shall be the complete final cost of construction of the Improvements and shall include design, engineering, grading, drainage, paving, any environmental studies or documentation, testing expenses, construction administration, and related fees and expenses. The Actual Total Costs of the Improvements shall not include any costs for attorney’s fees, publication costs, accounting, financing or acquisition of financing incurred by any Party. Any Actual Total Costs of the Improvements exceeding the estimated construction costs shall be treated and proportionally paid the same as those costs depicted on the Estimated Construction Cost exhibit, unless otherwise provided for herein. The Actual Total Costs of the Improvements shall be split between the Parties as follows:

a. District Share: District shall initially pay for the Actual Total Cost of the Improvements. District may seek reimbursement for 2/3 of the Actual Total Cost of the Improvements as set out below.

b. County 1/3 Share: Notwithstanding any other provision within this Agreement, the County shall reimburse the District for 1/3 of the Actual Total Cost of an equivalent rural roadway section only. The County shall not contribute nor pay for the costs associated with curbs, gutters, sidewalks or trails. Once the Improvements have been completed and the Actual Total Cost of said Improvements is known, after July 1, 2019, the District will bill the County for its respective share of the Actual Total Cost of the Improvements of a rural roadway section only. The County shall pay within thirty (30) days after receipt of such statement.

c. South Property 1/3 Share: Parties anticipate that the District will be reimbursed for the remaining one-third (1/3) of the Actual Total Costs associated with the Improvements from the adjacent property owner or sanitary and improvement district to the south of Gold Coast Road at the time the property to the south is developed. The County does not guarantee reimbursement to District for the 1/3 share of the Actual Total Cost of Improvements as described herein.

8. Abandonment of Development. The District is willing to begin the process for the development of the Improvements, which includes the designs, plans and specifications for the Improvements, acquiring right-of-way and easements and bid letting; provided, however, in the event District or the developer of District abandons development plans, by written notice to County, has completed or is in the process of having designs, plans and/or specifications drawn up, acquiring right-of-way or easements, or performing any other necessary work prior to the completion of bid letting, District shall be solely responsible for the entirety of all such costs incurred by District. “Abandons development plans” shall be defined as District or the developer of District electing to no longer
construct its primary development project or District’s and/or the developer of District’s failure to execute and record the final plat and enter into all of the necessary development agreements within one year of County’s execution of this Agreement. In the event District or the developer of District abandons the development plans for the Subdivision or for the Improvements after District has completed the bid awards for the Improvements, then County and District will promptly determine a reasonable and logical termination point for such construction (each a “Termination Point”) and the applicable District General Contractor will complete construction to such Termination Point. County and District agree to use good faith efforts to (i) establish a Termination Point that requires the least amount of additional construction as possible and (ii) cause the applicable District General Contractor to return any unused materials which are not required to complete construction to the Termination Point(s) and are allowed to be returned to the supplier for a refund for the same. The Parties agree to remain proportionally responsible for the costs of the Improvements, unless otherwise provided for herein. District shall be solely responsible and pay for any restocking and/or shipping fees or other costs related to such returns. After July 1, 2019, County shall reimburse District for its proportionate share of the construction costs less any restocking or shipping fees within thirty (30) calendar days after receiving copies of the final pay request for the completion of construction to the Termination Point.

9. **Timing of Work:** It is the mutual desire and intention of the Parties that the Improvements set forth in the Improvement Plan shall be commenced within 270 days after Final Plat for the Subdivision has been recorded in the Office of the Sarpy County Register of Deeds, approximately no later than June 1, 2018). Accordingly, the Parties hereby agree to cooperate with each other and make reasonable, good faith efforts to perform their obligations hereunder in a timely manner. Construction of Improvements shall commence within three years of the date of the County signature. If construction of Improvements has not commenced within three years of said signature, County shall not have any obligation to participate in any way, financially or otherwise in the construction of the Improvements described in this Agreement. For the purposes of this Section 9, Construction of Improvements shall mean the District contractor has physically started to construct the Improvements of Gold Coast Road as described herein.

10. **Land Acquisition and Utility Relocation:** The District shall be responsible for acquiring all public right-of-way and temporary construction easements necessary for the grading and construction of the Improvements, at no expense to County. If the final costs for right of ways or easements are 20% or greater than the estimated right of way/easement acquisition costs as identified in the Estimated Construction Cost, then prior to finalizing the land acquisition, the District shall obtain County’s written approval for the increased right of way/easement acquisition cost. In the event either Party must initiate eminent domain proceedings to obtain any additional right-of-way or easements, the Parties agree to pay in the same proportion as the Right-of-Way Acquisition costs shown on Estimated Construction Costs and in accordance with Section 7. All costs for the right-of-way and/or easement acquisition include, but are not limited to, litigation incurred by District or
County in order to obtain a condemnation appraisal award from the Sarpy County Court, attorney’s fees, appraiser’s fees, expert’s fees, and court costs. In the event the condemnee appeals such condemnation award, the Parties agree to proportionally pay all costs of such appeal to any court, including, but not limited to, the court’s condemnation award, interest, expert’s fees, appraisal fees, and court costs. District shall immediately notify County of any eminent domain/condemnation or appeal proceedings related to land acquisition. District shall obtain County’s written approval for any settlement of any eminent domain/condemnation proceedings or appeal thereof. There are no utility relocations necessary or required for the construction of the Improvements.

11. **Records.** The Engineering Contractor, as agent for District, shall maintain records of all Construction Costs incurred by District in connection with the Improvements, and County shall have the right to audit and review such records at any time to assure that such records are accurate.

12. **Duration.** This Agreement shall continue until such time as the obligations of the Parties under this Agreement have been completed, unless this Agreement is terminated sooner by the written agreement of all Parties hereto.

13. **Appointment of Administrators.** The District shall be the lead agency for this Agreement. The Sarpy County Engineer shall administer this Agreement on behalf of the County, Olsson Associates shall administer this Agreement on behalf of District.

14. **Nondiscrimination Clause.** In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. 48-1122, each party agrees that it nor any of its subcontractors or agents shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.

15. **Drug Free Policy.** Each Party hereto represents and warrants to the other that it has established and maintains a drug free workplace policy.

16. **Choice of Law.** This Agreement shall be governed in all respects by the laws of the State of Nebraska and the venue for any litigation with respect hereto shall be in the courts of Sarpy County, Nebraska.

17. **Entire Agreement.** This instrument contains the entire agreement of the Parties and shall be binding upon the successors and assigns of the respective Parties. No amendments, deletions or additions shall be made to this Agreement except in writing signed by all parties. Nebraska law shall govern the terms and performances under this Agreement.

18. **Severability.** In the event any portion of this Agreement may be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not
affect the remainder of this Agreement and the remaining provisions shall remain in full
force and effect, and any court of competent jurisdiction may so modify any objectionable
provision of this Agreement so as to render it valid and enforceable.

19. **New Employee Work Eligibility Status.** The Parties agree to comply with the residency
verification requirements of Neb. Rev. Stat. §4-108 through §4-114. The parties are
required and hereby agree to use a federal immigration verification system to determine
the work eligibility status of new employees physically performing services within the
State of Nebraska. A federal immigration verification system means the electronic
verification of the work authorization program authorized by the Illegal Immigration
Reform and immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify
Program, or an equivalent federal program designated by the United States Department
of Homeland Security or other federal agency authorized to verify the work eligibility
status of a newly hired employee.

20. **Conflict of Interest.** The Parties warrant to each other that they have not employed nor
retained any company or person, other than a bona fide employee working solely for the
Parties to this Agreement to solicit or secure this contract, and that they have not paid or
agreed to pay any company or person other than a bona fide employee working solely for
the parties, any fee, commissions, percentage, brokerage fees, gifts or other
consideration, contingent upon or resulting from the award or making of this contract.

21. **Representations.** Each Party hereto represents and warrants to the other that (i) it has all
necessary right, power and authority to enter into this Agreement, and (ii) the execution
and delivery of this Agreement and the performance and observance of all obligations
and conditions to be performed or observed by such party have been duly authorized by
all necessary action on behalf of such Party.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which will be
deemed an original and all of which together will constitute one Agreement. The
signature page of any counterpart may be detached therefrom without impairing the
legal effect of the signature(s) thereon provided such signature page is attached to any
other counterpart identical thereto.

23. **Indemnification.** Each Party agrees to release, indemnify and hold harmless
(“Indemnifying Member”) each other Member (“Indemnified Member”) and said
Indemnified Member’s officers, officials, employees and agents, and each of them, from
and against all liabilities, claims, costs and expenses whatsoever arising out of or resulting
from the negligent acts or omissions of the Indemnifying Member, or the officers,
officials, employees, agents or contractors of the Indemnifying Member related to or
arising out of the terms and requirements of this Agreement

IN WITNESS WHEREOF, we, the contracting Parties, by our respective duly authorized
agents, hereby enter into this Agreement, effective on the day and year affixed hereon. Executed
on the dates indicated with the signatures below.

Executed by the County of Sarpy, Nebraska, this 9th day of January, 2018.

COUNTY SARPY, NEBRASKA

By: [Signature]
Chairman

ATTEST: [Signature]
County Clerk

APPROVED AS TO FORM: [Signature]
Deputy County Attorney
Executed by Sanitary and Improvement District No. 330 of Sarpy County, Nebraska, this 4th day of January, 2018.

SANITARY AND IMPROVEMENT DISTRICT NO. 330 OF SARPY COUNTY, NEBRASKA,

By: [Signature]
Chairman

ATTEST
[Clerk]

[Signature]
## EXHIBIT "C"

### ESTIMATED CONSTRUCTION COSTS

**Project Name:** R&R Commerce Park  
**Phase 1 - Gold Coast Road**  
**General Obligation**

**Assumptions:**  
- Full ROW Acquisition in Phase 1  
- County Responsibility - one lane equivalent of a rural section  
- Urban Section with curb, gutter and storm sewer - All 3 lanes for Phase 1 (therefore 1/3 cost share)

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<th>Units</th>
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**Contingency:** 10% $23,495.00

**Estimated Construction Costs:** $258,445.00

**Estimated Soft Costs:**

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**Total Estimated Soft Costs:** 39.0% $100,793.55

**Total Estimated Costs:** $359,238.55

**Reimbursements:**

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<tr>
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<td>Sarpy County</td>
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<tr>
<td>Future Development south of Gold Coast Road</td>
<td>33.3%</td>
<td>$119,746.18</td>
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**Total Reimbursements:** $211,354.00