RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN THE SECOND AMENDMENT TO SEWER CONNECTION AND WASTEWATER SERVICE WITH RAVEN NORTH BROOK LLC FOR THE SARPY COUNTY POWER PARK WEST

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104(6), 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, Sarpy County operates a sanitary sewer system pursuant to County Industrial Sewer Act, found at Neb. Rev. Stat. § 23-3601, et seq; and,

WHEREAS, Sarpy County and Raven Northbrook LLC have previously executed a Sewer Connection and Wastewater Service Agreement dated the 11th day of January, 2017 via Resolution 2016-452, and a First Amendment to Agreement for Sewer Connection and Wastewater Service between County of Sarpy, Nebraska and Raven Northbrook LLC dated March 6, 2017 via Resolution 2017-49 for the Sarpy County Power Park West generally located at Highway 50 and Capehart Road; and,

WHEREAS, Developer desires to construct and use a tunnel the Developer Tunnel in order to provide connection from the Sarpy Power Park West to the Sarpy Power Park East. The construction and operation of such tunnel requires County to redesign and construct the Sarpy Sewer in a different location than is contemplated under County’s contractual agreement with the sanitary sewer construction contractor.

WHEREAS, a Second Amendment to the Sewer Connection and Wastewater Service Agreement between Sarpy County and Raven Northbrook LLC (Second Amendment) has been proposed in order to allocate the costs and outline certain terms and conditions associated with the redesign and construction of the Sarpy Sewer made necessary due to Developer’s desire to construct and use the tunnel.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Second Amendment to the Sewer Connection and Wastewater Service between Sarpy County and Raven Northbrook LLC, a copy which is attached hereto, is hereby approved. The above and foregoing Resolution was duly approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on this 6th day of March, 2018.

Chairman, Sarpy County Board

Sarpy County Clerk
SECOND AMENDMENT TO AGREEMENT FOR SEWER CONNECTION AND WASTEWATER SERVICE BETWEEN COUNTY OF SARPY, NEBRASKA AND RAVEN NORTHBROOK LLC (SARPY COUNTY POWER PARK WEST)

THIS SECOND AMENDMENT ("Second Amendment") is made and entered into as of March 6, 2018 ("Effective Date") by and between Raven Northbrook LLC, a Delaware limited liability company ("Developer"), and the County of Sarpy, a Political Subdivision of the State of Nebraska ("County"). Developer and County may individually be referred to as a "Party", and, collectively, as the "Parties".

RECITALS

WHEREAS, County and Developer entered into that certain Agreement for Sewer Connection and Wastewater Service between County of Sarpy, Nebraska and Raven Northbrook LLC (Sarpy County Power Park West) dated the 11th day of January, 2017, as amended by that certain First Amendment to Agreement for Sewer Connection and Wastewater Service between County of Sarpy, Nebraska and Raven Northbrook LLC (Sarpy County Power Park West) dated March 6, 2017 (hereinafter collectively referred to as the “Agreement”);

WHEREAS, County is constructing the Sarpy Sewer in order to provide wastewater service to the Project in accordance with the Agreement. The construction of said Sarpy Sewer line travels north and south within the right of way of Highway 50 and adjacent to the Development Area.

WHEREAS, Developer desires to construct and use the Developer Tunnel (as hereinafter defined) in order to provide connection from the Development Area to property located on the east side of Highway 50 also owned by Developer. The construction and operation of such tunnel requires County to redesign and construct the Sarpy Sewer in a different location than is contemplated under County’s contractual agreement with the sanitary sewer construction contractor (the “Contractor”) engaged by County to construct the Sarpy Sewer.

WHEREAS, County and Developer wish to amend the Agreement in order to allocate the costs and outline certain terms and conditions associated with the redesign and construction of the Sarpy Sewer made necessary due to Developer’s desire to construct and use the Developer Tunnel.

NOW, THEREFORE, in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are expressly acknowledged, the Parties hereto, each intending to be legally bound, do hereby mutually agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are, by this reference, incorporated into and deemed part of this Second Amendment.
2. **Definitions.**

   a. **Actual Total Cost or Cost.** The term “Actual Total Cost” or “Cost” being used interchangeably, shall be deemed to include the complete final cost of construction of the Sewer Realignment (as hereinafter defined) contemplated herein, and shall include all third-party engineering fees, design fees, testing expenses, grading, drainage, sewer pipes, valves and related appurtenances, property acquisition costs, construction costs, construction administration, utility relocation costs and expenses and any related fees and expenses. The Actual Total Cost of the Sewer Realignment shall not include any internal costs for attorney’s fees, publication costs, accounting, financing or acquisition of financing incurred by either Party.

   b. **Certificate of Substantial Completion.** The term “Certificate of Substantial Completion” shall be deemed to mean the certificate issued by County’s sanitary sewer design engineer, issuance of which indicates that construction is substantially complete and fully available to use for its intended purpose.

   c. **Contractor Completion Date.** The term “Contractor Completion Date” shall be deemed to mean the date which County has obligated its Contractor to complete construction of that portion of the Sarpy Sewer providing sanitary sewer service to the Project.

   d. **Developer Tunnel.** The term “Developer Tunnel” shall be deemed to mean a single underground tunnel, whether now in existence or hereinafter constructed, traveling east and west from the Development Area and under and across Highway 50 to a parcel of land located on the east side of Highway 50 also owned by Developer.

   e. **Sewer Service Date.** The term “Sewer Service Date” shall be deemed to mean the date County is required to cause the Project to be served by the Sarpy Sewer pursuant to the Agreement, as modified herein.

   f. **Sewer Realignment.** The term “Sewer Realignment” shall be deemed to mean the realignment and construction of that portion of the Sarpy Sewer accommodating the Developer Tunnel pursuant to the Sewer Realignment Plans and Specifications.

   g. **Temporary Easement.** The term “Temporary Easement” shall be deemed to mean a temporary construction easement located on that portion of the Development Area approximately 40 foot wide and located from approximately 1,750 LF north of Capehart Road to 2,220 LF north of Capehart Road as shown on the attached Exhibit “A”.

3. **Sewer Realignment Plans and Specifications.** County has directed its sanitary sewer design engineer, Olsson Associates, to prepare designs, plans, and specifications in order accommodate the incorporation of the Developer Tunnel with the Sarpy Sewer construction
along Highway 50. The Parties acknowledge that the designs, plans, and specifications referenced on Exhibit “B” attached hereto (the “Sewer Realignment Plans and Specifications”) have been mutually reviewed and approved.

4. **Construction of the Sewer Realignment and Sewer Service Date.** Upon both Parties signing this Second Amendment, County will direct the Contractor to proceed with the construction of the Sewer Realignment consistent with the Sewer Realignment Plans and Specifications. Developer acknowledges that the Sewer Realignment has made it necessary to modify the Contractor Completion Date from May 5, 2018 to May 12, 2018. Accordingly, the Sewer Service Date is hereby extended to June 27, 2018. Notwithstanding the extension of the Sewer Service Date, County agrees to use good faith efforts to provide sanitary sewer service to the Project with the Sewer Realignment completed on or before May 12, 2018. County acknowledges and agrees that Developer shall have the right to connect to the Sarpy Sewer when a Certificate of Substantial Completion has been issued by the sanitary sewer design engineer for that portion of the Sarpy Sewer providing sanitary sewer service to the Project. If said Certificate of Substantial Completion is issued prior to May 12, 2018, Developer shall be allowed to connect to Sarpy Sewer on said earlier date.

5. **Impact of Unforeseen Changes to Sewer Realignment Plans and Specifications on Sewer Service Date.** Pursuant to the Agreements, County is required to provide sanitary sewer service to the Project on or before the Sewer Service Date. The Parties acknowledge that, as of the Effective Date, County is actively constructing that portion of the Sarpy Sewer designed to provide sanitary sewer service to the Project, and, further, that County and Developer have coordinated to develop the Sewer Realignment Plans and Specifications. If during construction of the portion of the Sarpy Sewer related to the Sewer Realignment (and only with respect to such construction) (a) the Contractor encounters conditions that are subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Sewer Realignment Plans and Specifications, or (b) the Nebraska Department of Transportation requires certain revisions to the design and construction of the Developer Tunnel, occurs, then any change in the construction method or materials, design, or location of the Developer Tunnel which require or result in adjustment or redesign of the Sewer Realignment Plans and Specifications may delay County’s Sewer Service Date. Any delay in County’s Sewer Service Date caused by any such change, adjustment, or redesign of the Sewer Realignment Plans and Specifications solely for the reasons set forth in this Section 5 shall cause the Sewer Service Date, as modified herein, to increase in an equal number of days.

6. **Payment of Sewer Realignment Design Costs.** Developer shall pay for 100% of the Actual Total Cost of the Sewer Realignment Plans and Specifications within 30 days of receipt of an invoice from County. The Parties estimate the cost of the Sewer Realignment Plans and Specifications to be approximately $2,000. If the Actual Total Cost of the Sewer Realignment Plans and Specifications, inclusive of any adjustment, redesign, or change required pursuant to Section 5, is greater than $2,000, Developer shall pay the increased amount.
7. **Allocation and Payment of Costs for Sewer Realignment.** Developer shall pay for 100% of the Actual Total Cost for the construction of the Sewer Realignment within 30 days of receipt of an invoice from County. The cost of the Sewer Realignment is $54,729.85. If the Actual Total Cost for the construction of the Sewer Realignment is greater than $54,729.85 for a reason specified in Section 5 above, Developer shall pay the increased amount.

8. **Temporary Easement.** Developer, at no cost to County, does hereby provide to County, the Contractor, and their subcontractors the Temporary Easement in order to perform the necessary grading for construction of the Sewer Realignment and to address any settling of the topsoil for a period of two (2) years commencing from the date of first use of said Temporary Easement. County, the Contractor, or their subcontractors shall restore the condition of the Temporary Easement to the condition it was in immediately prior to County, the Contractor or their subcontractors’ use of the Temporary Easement.

9. **Developer Tunnel: Design, Review of Plans and Construction.** Developer shall design and construct the Developer Tunnel in such a way as to not interrupt service or use of the Sarpy Sewer. Developer shall provide plans and specifications for the Developer Tunnel to County for review and comment prior to Developer’s submission of an application for a Permit to Occupy Right of Way to the Nebraska Department of Transportation. County will provide comments to Developer within five (5) business days.

10. **Developer Tunnel and Interruption of Service of Sarpy Sewer.** If the construction or use of the Developer Tunnel results in interruption of service of the Sarpy Sewer, Developer shall immediately work with County to mitigate any additional damage to, or interruption of service of, the Sarpy Sewer. Developer shall reimburse County for any and all reasonable and necessary expenses of County related to (1) repairing any damage caused to the Sarpy Sewer by construction or use of the Developer Tunnel, (2) pumping, hauling, or conveyance of waste to accommodate users of the Sarpy Sewer impacted by such damage, or (3) any construction, traffic control, or permitting related to (1) and (2) herein. The provisions of this Section shall not obligate Developer to pay for any special damages or lost profits to County or any other third party for interruption of service of the Sarpy Sewer.

11. **Sarpy Sewer and Interruption of Use of Developer Tunnel.** If the use, operation or maintenance of the Sarpy Sewer results in interruption of use of the Developer Tunnel and/or damage to the Developer Tunnel, County shall immediately work with Developer to mitigate any additional damage to, or interruption of use of, the Developer Tunnel. County shall reimburse Developer for any and all reasonable and necessary expenses of Developer related to repairing any damage caused to the Developer Tunnel by the use, operation or maintenance of the Sarpy Sewer. The provisions of this Section shall not obligate County to pay for any special damages or lost profits to Developer for interruption of service of the Developer Tunnel.

12. **Ratification of the Agreement.** Except as hereinabove specifically provided, all other terms, covenants, and conditions of the Agreement shall remain in full force and effect. To the
extent of any conflict between the terms of this Second Amendment and the terms of the Agreement, the terms of this Second Amendment shall prevail.

13. **Counterparts.** This Second Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall constitute one and the same instrument.

[Signature pages follow.]
IN WITNESS WHEREOF, the County, by its respective duly authorized agents, hereby enters into this Second Amendment, effective on the day and year affixed above. Executed on the date indicated with the signatures below.

Executed by the County of Sarpy, Nebraska, this 6th day of March, 2018.

SARPY COUNTY, NEBRASKA

ATTEST:

___________________________   By:______________________________
County Clerk           Chairman of Board of Commissioners

APPROVED AS TO FORM:

______________________________
County Attorney
IN WITNESS WHEREOF, the Developer, by its duly authorized agent, hereby enters into this Second Amendment, effective on the day and year affixed above. Executed on the date indicated with the signature below.

Executed by Developer this 5 day of March, 2018.

RAVEN NORTH BROOK, LLC, a Delaware limited liability company

By: [Signature]
Name: Matthew VanderJorden
Its: [Signature]
Exhibit A - Temporary Easement
Exhibit B - Sewer Realignment Plans and Specifications - Page 1 of 2.