RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN THE AGREEMENT FOR SANITARY SEWER DESIGN COSTS WITH CENTER POINTE BUSINESS PARK, LLC AND AURORA BUSINESS PARK II, LLC

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 (Sarpy Sewer) pursuant to County Industrial Sewer Act, found at Neb. Rev. Stat. § 23-3601, et seq; and,

WHEREAS, Center Pointe Business Park, LLC and Aurora Business Park II, LLC (hereinafter collectively the “Developers”) are currently negotiating purchase of land through which a portion of the Sarpy Sewer is designed to be constructed; and,

WHEREAS, Developers desire to utilize said land in such a way that would require County to redesign the Sarpy Sewer and construct it in a different location on said property than currently planned; and,

WHEREAS, County and Developers have proposed to enter into a contract outlining the responsibility of the preliminary costs for such redesign, (hereinafter the “Agreement for Sanitary Sewer Design Costs”) a copy of which is attached hereto; and,

WHEREAS, if County and Developers find it mutually agreeable to construct the Sarpy Sewer according to the proposed redesign, the Agreement for Sanitary Sewer Design Costs anticipates a separate future agreement between County and Developers which will outline the construction of said proposed redesign.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Agreement for Sanitary Sewer Design Costs between Sarpy County and Center Pointe Business Park, LLC and Aurora Business Park II, 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.

Attest

Chairman, Sarpy County Board

Sarpy County Clerk
AGREEMENT FOR SANITARY SEWER DESIGN COSTS

This Agreement is made and entered into as of the dates indicated at the signatures below by and between the County of Sarpy, Nebraska (hereinafter referred to as “County”) and Center Pointe Business Park, LLC, and Aurora Business Park II, LLC (collectively, hereinafter referred to as “Developer”). Sarpy County and Developer are sometimes referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, County is a duly existing body, corporate and politic, in accordance with and by virtue of the laws of the State of Nebraska. Developers are each Iowa limited liability companies.

WHEREAS, Developer, either directly or through an affiliated entity, intends to acquire, certain real estate consisting of approximately 84.207 acres, more or less, in Sarpy County, Nebraska, legally described on Exhibit A attached hereto and incorporated herein (hereinafter referred to as the “Development Area”).

WHEREAS, County has contracted with a construction contractor who is presently building a sanitary sewer through the Development Area as part of a large infrastructure project.

WHEREAS, Developer, upon its purchase of the Development Area (which purchase should occur on or before March 30, 2018), wishes to utilize the land in such a way that would require County to redesign its sanitary sewer and construct it in a different location on the Development Area than currently planned.

WHEREAS, County and Developer wish to allocate the responsibility of the preliminary costs for such redesign.

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, 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 Agreement.

2. **County Direction to Construction Contractor.** Upon the signing of this Agreement, County will direct County’s construction contractor to stop work in the area which would be affected by Developer’s request for a redesign of the sanitary sewer.
3. **Sanitary Sewer Redesign.** County will direct its sanitary sewer design engineer, Olsson Associates to begin redesign of the sanitary sewer in accordance with the Conceptual Site Layout Plan attached hereto as Exhibit B.

4. **Payment of Sanitary Sewer Redesign Costs.** Developer shall pay for the total cost of the sanitary sewer redesign within 30 days after the County approves the redesign plans thereof; provided that, the County shall provide written notice to Developer regarding the completion and approval of such plans. The Parties estimate the cost of the proposed redesign to be approximately $3,000, and to the extent the County’s engineer fees exceed such amount the County agrees to obtain Developer’s prior written consent to such increase in fees, which consent shall not be unreasonable withheld, conditioned or delayed.

5. **No Commitment to Altered Construction.** Developer makes no commitment to purchase the Development Area nor build structures in accordance with the Conceptual Site Layout Plan. Notwithstanding the foregoing, the County’s obligations to construct the sanitary sewer as provided for in the redesign plans shall be conditioned upon Developer and the County entering into a mutually agreeable Agreement for Sanitary Sewer Construction.

6. **Governing 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.

7. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended, modified or altered unless by written agreement signed by all Parties to this Agreement.

8. **Severability.** It is understood and agreed by the Parties hereto that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law of Nebraska or of the United States, the validity of the remaining terms and conditions, provision or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be invalid.

9. **New Employee Work Eligibility Status.** The Parties agree to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114, as applicable. 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 for a public employer, as defined in the above-cited statutes. 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.

10. **Conflicts.** Pursuant to Neb. Rev. Stat. §23-3113, County declares and affirms that no officer, member or employee of County, and no member of its governing body and no other public official of County who exercises any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of either Parties’ obligations pursuant to this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or any partnership or association in which he or she is directly or indirectly interested; nor shall any employee of County, nor any member of its governing body have any interest, direct or indirect, in this Agreement or the proceeds thereof.

11. **Notice.** Each Party agrees to provide the other Party with as much advance notice as is reasonably possible when this Agreement calls for the approval of a Party before an action can be taken. The Parties agree to cooperate in the undertakings contemplated by this Agreement and shall share and exchange necessary reports and other documents as required and when reasonably requested by the other Party to this Agreement. Any notice required under this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, to the addresses as noted below. Any Party to this Agreement may change its address for notice specified hereunder by sending written confirmation of such change by certified mail, return receipt requested, to the other Party to this Agreement. The addresses for the purpose of notice and other communications are as follows:

**County:**
- County Clerk, County of Sarpy
- 1210 Golden Gate Drive, #1250
- Papillion, NE 68046

**Developer:**
- Center Pointe Business Park, LLC, &
- Aurora Business Park II, LLC
- 1225 Jordan Creek Parkway, Suite #200
- West Des Moines, IA  50266
- Attn: Steve Gaer

12. **Assignment.** This Agreement shall be binding upon the Parties and their respective successors and assigns. The covenants, warranties and other obligations and benefits of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns. The Parties agree that a Party’s obligation to perform pursuant to this Agreement may only be released to
the extent said obligation is assumed, by written agreement or by operation of law, by such respective heirs, personal representatives, successors and assigns.

13. **Good Faith.** Every representation, covenant, warranty or other obligation within this Agreement shall carry with it an obligation of good faith in its performance or enforcement.

14. **Authority.** Each Party represents, covenants and warrants to the other Party that the making and execution of this Agreement, and all other documents and instruments required hereunder, have been duly authorized by the necessary corporate action of such Party, and are valid, binding and enforceable obligations of such Party in accordance with their respective terms.

15. **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.

16. **No Agency or Partnership.** This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between County and Developer, nor between County and any officer, employee, contractor or representative of Developer. No joint employment is intended or created by this Agreement for any purpose. If enquiry is made, Developer agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Agreement.

17. **Titles.** The titles or headings used in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

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

[Signatures on Following Pages]
IN WITNESS WHEREOF, we, the Parties, by our respective duly authorized agents, hereby enter into this Agreement, effective on the day and year affixed hereon, executed in triplicate on the dates indicated with the signatures below.

Executed by the County of Sarpy, Nebraska, this __th day of ____March____, 2018.

ATTEST:

County Clerk

Chairman

APPROVED AS TO FORM:

County Attorney
Executed by Developer this 21\textsuperscript{st} day of \textit{March} 2018.

CENTER POINTE BUSINESS PARK, LLC, an Iowa limited liability company

By: PMR Realty Holdings, LLC, an Iowa limited Liability company, its Sole Member

By:
Name: Steven K. Gaer
Its: Executive Vice President

AURORA BUSINESS PARK II, LLC, an Iowa limited liability company

By: Aurora Business Park Associates, L.P., an Iowa limited partnership, its Sole Member

By: R&R Investors, Ltd., an Iowa corporation, General Partner

By:
Name: Steven K. Gaer
Its: Chief Operating Officer
EXHIBIT A

The West Tract in the Northwest Quarter (NW¼) of Section Two (2), Township Thirteen (13) North, Range Eleven (11) East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows: Commencing at the Northwest corner of said Section Two (2) as the point of beginning; thence Southerly a distance of 2,630.35 feet to the West Quarter corner of Section Two (2); thence Easterly along the South line of the Northwest Quarter (NW¼) of Section Two (2) a distance of 1,424.39 feet; thence Northerly a distance of 2,617.43 feet to a point on the North line of Section Two (2); thence Westerly along the North line of Section Two (2) a distance of 1,427.29 feet to the point of beginning, subject to road right of way ("Real Estate"). Sometimes the Real Estate is referred to as Tax Lot One (1), Section Two (2), Township Thirteen (13) North, Range Eleven (11) East, of the 6th P.M., Sarpy County, Nebraska.
Exhibit B
Conceptual Site Layout Plan