BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING AGREEMENT AND AUTHORIZING CHAIRMAN TO SIGN THE SEWER CONNECTION AND WASTEWATER SERVICE AGREEMENT WITH PRAIRIE QUEEN, LLC

(Prairie Queen 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, 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 has an agreement for wastewater service with City of Omaha at Resolution 2013-345, as amended, in which City of Omaha has agreed to treat wastewater which flows through the Sarpy Interceptor Sewer (“Sarpy Sewer”) from the Sarpy County Service Area; and,

WHEREAS, Prairie Queen, LLC desires to provide for the flow, transportation and handling of sewage collected in or flowing into the Prairie Queen, LLC sewer to be constructed and has requested connection to the Sarpy Sewer and to permit flowage thereof into the Sarpy Sewer; and,

WHEREAS, an agreement has been proposed with Prairie Queen, LLC outlining the requirements, responsibilities, and payment of sewer connection fees and sewer use fees for the proposed Prairie Queen, LLC sewer connection to the Sarpy Sewer. A copy of said Sewer Connection and Wastewater Service Agreement is attached hereto; and,

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the attached Sewer Connection and Use Agreement with Prairie Queen, LLC.

BE IT FURTHER RESOLVED that the Chair of this Board, together with the County Clerk, are hereby authorized on behalf of this Board to sign the attached 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 20th day of March 2018.

Attest

Sarpy County Board Chairman

County Clerk

2018-084
Hi,

Can you please file this email and the attachment with Resolution 2018-084?

The pertinent facts are that the County Industrial Sewer Act requires a city’s approval for any residential connections to the County Industrial Sewer. As such, the City of Papillion, pursuant to the City’s Resolution document, R18-0006, attached hereto, did hold a public hearing and voted to approve the Prairie Queen residential sewer connection to the Sarpy County Industrial Sewer.

Please let me know if you have any questions.

Regards,

Nicole L. Spitzenberger
Deputy Sarpy County Attorney
1210 Golden Gate Drive
Papillion, NE 68046
Phone: 402-593-2230
Fax: 402-593-4359

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RESOLUTION NO. R18-0006

WHEREAS, Hilltop Outfall Sewer were constructed in accordance with the County Industrial Sewer Construction Act (Neb. Rev. Stat. §§23-3601 – 23-3637);

WHEREAS, Sarpy County received an application from Prairie Queen, LLC (hereinafter referred to as "Developer") to connect the residential uses within the Prairie Queen Mixed Use District to the Hilltop Outfall Sewer on August 24, 2017 (the "Application");

WHEREAS, Neb Rev. Stat § 23-3635 requires that Sarpy County provide a copy of the Application to the City of Papillion within five days of receipt of said application to allow the Mayor and City Council to hold a public hearing no sooner than 15 days after its receipt of the Application to recommend that Sarpy County approve or disapprove the Application;

WHEREAS, the Application was received by the Papillion City Clerk on August 24, 2017 and the required public hearing was held no sooner than 15 days after receipt of the application from Sarpy County;

WHEREAS, the Mayor and the City Council of the City of Papillion find that:

1) Prairie Queen will be developed in a location and in a manner that conforms to the City of Papillion’s Comprehensive Plan, titled “The Papillion Plan” and the subsequent amendments to such plan.

2) Prairie Queen is located within the City of Papillion’s city limits. As such, Developer will enter into a Subdivision Agreement to ensure that the public improvements within Prairie Queen are consistent with the standards of the City of Papillion.

3) Pursuant to Neb Rev. Stat. 16-901, the City of Papillion’s subdivision, zoning, and building ordinances apply within Prairie Queen by virtue of Prairie Queen being within the City of Papillion’s city limits. As such, Prairie Queen is not subject the subdivision, zoning, and building ordinances adopted by Sarpy County.

4) Pursuant to the Statement provided by County Administrator Dan Hoins, dated August 24, 2017, the Sarpy County Industrial Sewer System has sufficient capacity, in light of current and projected future needs for commercial and industrial users, to serve the residential connections within Prairie Queen to the Hilltop Outfall Sewer.

5) Pursuant to the Statement provided by County Administrator Dan Hoins, dated August 24, 2017, the Sarpy County Fiscal Administrator has reviewed the financial status of the County Industrial Sewer System, specifically including the debt structure, cash flow, and operational and maintenance financing requirements. Sarpy County concluded that the proposed Prairie Queen residential connection will not negatively impact the financial status of the County Industrial Sewer System.
(6) The use of septic tanks or any other practical alternative form of sewerage disposal in Prairie Queen is not feasible and will pose present or future threats to public health and safety and the purity of local water supplies used for human consumption or recreational purposes.

(7) Sarpy County is a party to a Wastewater Service Agreement with the City of Omaha that establishes: a) the rules and regulations governing the sewerage disposal system and procedures to enforce the same so as to ensure the safe, sanitary, and environmentally sound connection of lots or structures to the county sewerage disposal system and b) procedures to maintain such standards during its operations.

(8) Pursuant to the Statement provided by County Administrator Dan Hoins, dated August 24, 2017, the Sarpy County Industrial Sewer System remains presently compliant with all appropriate state and federal statutes, rules, and regulations related to the County Industrial Sewer System.

BE IT RESOLVED by the Mayor and City Council of the City of Papillion that the Mayor and City Council of the City of Papillion recommend that Sarpy County approve the Application from Prairie Queen, LLC to connect residential lots within the Prairie Queen Mixed Use District to the Hilltop Outfall Sewer pursuant to the County Industrial Sewer Connection Act, contingent upon City Council approval of:

- Prairie Queen Change of Zone, ORD. #1779
- Prairie Queen Final Plat, RES. #R178-0007
- Prairie Queen Subdivision Agreement, RES. #R18-0008
- Prairie Queen Mixed Use Agreement, RES. #R18-0009
- Prairie Queen Construction and Reimbursement Agreement, RES. #R18-0010

PASSED AND APPROVED THIS _2_ DAY OF _January_, 2018.

CITY OF PAPILLION, NEBRASKA

Attest:

Christine L. Myers, Deputy City Clerk

(SEAL)
AGREEMENT FOR SEWER CONNECTION AND WASTEWATER SERVICE BETWEEN COUNTY OF SARPY, NEBRASKA AND PRAIRIE QUEEN, LLC.

THIS AGREEMENT, made this 20th day of March 2018 by and between Prairie Queen, LLC, a Nebraska Limited Liability Company (hereinafter called “Developer”), the County of Sarpy, a Political Subdivision of the State of Nebraska (hereinafter called “County”). Collectively, Developer and County, are hereinafter sometimes referred to as the “Parties.”

RECITALS

WITNESSETH THAT:

WHEREAS, Developer has constructed or is contemplating constructing interior sanitary sewers within its boundaries in the development known as Prairie Queen, as legally described and shown on Exhibit A, attached hereto and incorporated by reference herein; and,

WHEREAS, County owns and operates Sarpy County Industrial Sewer (hereinafter “Sarpy Sewer”) in the Papillion Creek Watershed pursuant to the Nebraska County Industrial Sewer Construction Act (Neb. Rev. Stat. Sect. 23-3601, et seq.) (hereinafter “the Act”); and,

WHEREAS, sewage from the Sarpy Sewer flows into the City of Omaha Wastewater Treatment System pursuant to the Act.

WHEREAS, County has an agreement with the City of Omaha, titled “Agreement for Wastewater Service Between the City of Omaha, Nebraska, Sarpy County, Nebraska and the City of Gretna, Nebraska” approved by County Resolution 2013-345 (hereinafter “the Omaha Sewer Agreement”), which said Omaha Sewer Agreement provides the terms for wastewater treatment of sewage flowing from the Sarpy Sewer to the Omaha Wastewater Treatment System; and,

WHEREAS, Developer desires to provide for the flow, transportation and handling of sewage collected in or flowing into the Developer Sewer constructed or to be constructed by it, and has requested to connect to the Sarpy Sewer and permit flowage thereof into the Sarpy Sewer within the meaning of the Act; and,

WHEREAS, Developer desires to have County convey Developer’s sewage from each of the various connection points; and,

WHEREAS, it is to the mutual advantage of the Parties hereto and in the general public interest for the sewage of Developer to flow into the Sarpy Sewer; and,

WHEREAS, the accomplishment of such an arrangement is authorized by law.
NOW, THEREFORE, in consideration of the mutual agreements and covenants of the Parties hereto, it is agreed by and between the Parties as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

a. **Agreement.** The term “Agreement” shall mean this Sewer Connection and Wastewater Service Agreement and all Exhibits to this Agreement.

b. **County Board.** The term “County Board” shall mean the County Board of Commissioners of Sarpy County, Nebraska.

c. **Development Area.** The term “Development Area” shall mean approximately 7.566 acres of land as described on Exhibit A attached hereto.

d. **Developer Sewer.** The term “Developer Sewer” shall include, whether now in existence or hereafter constructed, all sanitary sewers, Developer Sewers and appurtenances thereto as shown on Exhibit B attached hereto.

e. **Sarpy Sewer.** The term “Sarpy Sewer” shall be deemed to include, whether now in existence or hereafter constructed, any wastewater or sanitary sewer or system of sewers owned by County and any wastewater or sanitary sewer or system of sanitary sewers not a part of the sewer system of Developer and not owned by County, but through which County has an easement, license or other right or other license to transport wastewater and sanitary sewage.

f. **Wastewater.** The term “Wastewater” shall include, but not be limited to, wastewater and sanitary sewage.

g. **Prairie Queen Subdivision.** Lots 1-9.

h. **Connection Point.** The Developer Sewer shall connect to the Sarpy Sewer at the connection point(s) identified and shown on Exhibit C.

2. **Permission to Connect.** Subject to the conditions and provisions hereinafter specified, the County hereby grants permission to the Developer to connect the Developer Sewer to the Sarpy Sewer in such manner and at such place or places as designated on plans submitted by the Developer and approved by County, all as shown on Exhibit C, contingent upon the following: (1) the proposed plans and specifications for Developer’s Sewer have been formally approved by County in writing, and (2) the as-built plans and specifications for Developer’s Sewer have been formally approved by County in writing. County further agrees to accept and process the resulting sanitary sewage from that portion of the Development Area in
accordance with the rules and regulations of County. County’s approval is limited to the Development Area and those connection points shown on Exhibit C.

Development and connection to the Sarpy Sewer for Developer’s benefit with respect to any additional area outside of the Development Area must be provided for by execution of a new sewer connection and wastewater service agreement. A manhole shall be constructed at each connection point; such that the first six (6) feet of riser above the floor of the manhole is a minimum of fifty-four inches in diameter. The location of each manhole shall be approved in writing by the County engineer.

3. **Replacement of a portion of County Sewer Line.** As a condition of connection to Sarpy Sewer, Developer shall remove that portion of 8 inch Sarpy Sewer line commencing at Prairie Queen manhole #1 (PQ MH1) ending at existing Wood Hollow manhole #9 (WH MH9), and replace said 8 inch line with new 12 inch line (hereinafter referred to as “Replacement Line”) as detailed on Exhibit D. Said removal and replacement shall be according to same standards as construction of Developer Sewer as set out within this Agreement.

4. **Conditions of County Acceptance of Replacement Line.** Prior to County acceptance of Replacement Line, Developer shall:

   a. Provide the following documents relative to the Replacement Line to County Engineer or his designee:
      i. Copy of project specifications with all addendums / change orders.
      ii. Copy of as-built plans.
      iii. Copy of sewer pipe trench backfill compaction tests that show passing results in all locations.
      iv. Copy of sewer pipe air pressure test for all pipe sections between manholes that show passing results.
      v. Copy of documentation that show passing mandrel test result.
      vi. Copy of documentation, including video files that show interior condition.
      vii. Copy of vacuum test results of all manholes that show passing results.
      viii. Copy of correspondence to NDEQ with Engineer’s Statement of Completion in conformance with NDEQ approved plans.
      ix. Copy of Engineer’s Certification of Substantial Completion to Developer.

   b. Guarantee the workmanship of the Replacement Line and warrant against defects and the cost of repairs to the Replacement Line for the period of two (2) years, hereinafter referred to as the “Period of Guaranty”. If at any time within the Period of Guaranty the work shall, in the reasonable judgment of the County, require repairs or reconstruction, County shall notify the Developer. Should the Developer refuse or neglect to begin to make such repairs within twenty (20) days from the date of serving such notice, the County shall have the right to
cause such repairs or reconstruction to be made in such a manner as County shall
deem best, and the cost thereof shall be paid by the Developer.

5. **Connection Restrictions.** Developer agrees that no connection shall be made to the
Developer Sewer until: (1) the proposed plans and specifications for Developer Sewer have
been formally approved by County in writing, (2) as-built plans and specifications for
Developer Sewer have been formally approved by County in writing.

6. **Developer Warranty:** Developer expressly promises, warrants, covenants and agrees:

   a. The Developer Sewer shall be constructed in strict accordance with plans and
      specifications and in the location approved in writing by the County.

   b. County has the right to review the designs, specifications and criteria for additions or
      modifications to any portion of the Developer Sewer prior to construction and
      connection to the Sarpy Sewer. The design criteria used by Developer shall meet or
      exceed the standards of the City of Omaha Standard Specification for Public Works
      Construction, 2014 Edition and the applicable 2014 City of Omaha sewer construction
      standard plates.

   c. The Developer Sewer shall be designed and constructed, and as required
      reconstructed, at the expense of Developer and the property therein, and at no
      expense to County.

   d. In the event that County discovers anything in the construction or operation of the
      Developer Sewer which is not in conformance with plans approved by the County, and
      in the reasonable opinion of the County, is determined to be detrimental to the proper
      operation of the Sarpy Sewer, or any part thereof, Developer shall, upon written
      notice thereof, promptly correct said defects.

   e. The Developer Sewer shall comply with all applicable Federal, State, and local laws,
      ordinances, and regulations concerning: (1) use, operation, and maintenance, and (2)
      wastewater discharges, including limitations and prohibitions, monitoring, and
      reporting within the Developer Sewer.

   f. Wastewater flowing into, passing through, or emptied into the Sarpy Sewer from the
      Developer Sewer shall be in conformity with current Nebraska Department of
      Environmental Quality regulations pertaining to sewers or sewage within County
      and/or in accordance with all State and Federal laws, rules and regulations, whichever
      is the most restrictive. Wastewater not in conformity with such rules and regulations
      shall not be permitted to flow through the sewers of the wastewater system of
      Developer into the Sarpy Sewer.
g. The County shall not be responsible for the maintenance and repair of the Developer Sewer. Developer shall properly maintain Developer Sewer in good operating order at no cost to County. Pursuant to the Prairie Queen Subdivision Agreement (Section 2 Item J) entered into between Prairie Queen, LLC, a Nebraska limited liability company, and the City of Papillion, a municipal corporation, the Developer Sewer shall become an unencumbered asset of the City of Papillion.

h. In the event Developer for any reason fails in any respect as to its covenants contained in this Paragraph 4, then County may, at its option, with notice to Developer, perform such maintenance and repair or correct such defects. The Developer, upon written demand by County, shall promptly reimburse County for all work, services, materials and other expenses incurred or expended by County in connection therewith.

i. Except as set forth herein, Developer shall not, directly or indirectly, permit connection to the sewer owned by the City of Omaha, the Sarpy Sewer, or any future extension thereof, of any property, lot, or structure used or to be used for any purposes whatsoever without the express permission of County or the City of Omaha by execution of an Interceptor Connection Agreement and a wastewater service agreement. Any unauthorized connections prior to completion of the referenced agreements shall be subject to inspection fees ten times the current fees for interceptor connection inspections.

j. Developer shall defend, indemnify, and hold harmless the County, its officers, employees and agents, from and against any and all construction costs, loss, damage, claims, suits demands, penalties, court costs, attorneys’ fees, judgments, or liability of whatsoever kind or character due to or arising out of any acts, conduct, omissions, or negligence of the Developer, its officers, agents, employees, contractors, subcontractors, and anyone acting under the direction of the Developer, in doing any work or construction of the Developer Sewer, or by or in consequence of any performance of this Agreement.

k. Developer shall defend, indemnify, and hold County, its respective employees, agents, and assigns harmless from and against any and all claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, resulting or arising from, out of, or otherwise occurring in relation to any unlawful connection and/or disbursement of sewage into the County Sewer. Any and all resulting fees and/or penalties imposed by DEQ shall be the full responsibility of Developer.
I. Developer is and shall be bound to and by any provisions of any ordinance, rule, or regulation relating to sewer use fees provided for under Paragraph 8, infra, hereinafter made and adopted by County.

m. Developer shall promptly file all reports, pay all connection fees, and perform all other obligations of the Developer provided for in this Agreement or otherwise required by state statutes or the County’s ordinances, regulations, or rules as amended and supplemented from time to time.

7. **Connection Fees.** The Development Area shall be subject to the Sarpy County Sewer Connection Fee Regulations and Sewer Connection Fee Schedule (hereinafter “Sewer Regulations”) except as to the timing of the payments which are modified herein. A copy of the current Sewer Regulations approved by the Sarpy County Board of Commissioners at Resolution 2016-268 is attached hereto as Exhibit E and incorporated herein by reference.

Developer shall pay Sarpy County a fee for each living unit in order to connect to the Sarpy Sewer (hereinafter the “Sewer Connection Fee”). This payment process is detailed as follows:

a) **The Sewer Connection Fee Amount and Due Date:** Developer shall pay a Sewer Connection Fee for each living unit which shall be calculated under the designation “All other residential (per living unit)” under the Sewer Regulations. Parties recognize that the current rate identified for the designation “All other residential (per living unit)” within the current Sewer Regulations, is $1,080 total/unit. Upon application for a building permit for a lot, Developer shall pay the Sewer Connection Fee for all of the units on said lot as identified and detailed on Exhibit F, (hereinafter the “Site Plan”) or future changes to the Site Plan as discussed within this “All other residential (per living unit)” Agreement. It is the express intent of the Parties that the first application for building permit on a lot triggers the payment in full for all units to be built on said lot. EXAMPLE: If Lot 1 contains 17 units in 3 buildings, then the application for the first building permit on Lot 1 will require the payment of $1,080.00 x 17 units for a total of $18,360.00.

b) **Additional Platting.** Any additional platting and/or development of the Development Area (including, any conversion of unbuildable outlots or portions thereof to buildable lots) shall be subject to such Sewer Regulations, including fees therein or contained elsewhere in County regulations, as are in effect and generally applicable at the time of such further platting and/or development with exception to the due date of said fees. Due date of the applicable fees shall follow the same basis as stipulated above in section “The Sewer Connection Fee Amount and Due Date”, which is upon application for a building permit for a lot.

c) **Site Plan Amendment.** In the event Developer changes the Site Plan and thus changes the number of units on each lot, after the payment of Sewer Connection Fees as detailed herein, Parties agree that a new site plan shall be filed with the Sarpy County
Planning Office, a copy of which shall serve as Exhibit F-1 and be attached to this agreement, with each subsequent Site Plan change being numbered consecutively as F-2, F-3 etc. Sewer Connection Fees for each subsequently filed Site Plan shall then be recalculated according to then current Sewer Regulations. Any additional fees due to County as a result of the change in Site Plan shall be payable at the rate of “All other residential (per living unit)” as identified on then current Sewer Connection Fee Schedule. Any refund to Developer shall be in the form of a credit against future Sewer Connection Fees.

d) **County Update to Sewer Regulations.** Notwithstanding any other provision herein, Parties recognize the Sewer Regulations identify the “All other residential (per living unit)” rate at $1080 total/unit. Parties further recognize County’s sole discretion to update and amend its Sewer Regulations and the “All other residential (per living unit)” rate. At such time when County updates its Sewer Regulations, the Sewer Connection Fees charged to Developer shall be charged at the updated rate for building permit applications filed after the effective date of the updated Sewer Regulations.

e) **County Reservation.** It is expressly understood that County reserves the right to collect all connection charges and fees as required by County regulations, ordinances, rules and/or pursuant to this agreement.

8. **Sewer Use Fees.** Charges for retail flow and customer charges (treatment and maintenance) for all customers within Developer shall be based upon MUD water consumption. Payments for wastewater service shall be made within thirty (30) days following receipt of invoice and shall thereafter be delinquent.

9. **Permit Required.** Developer further expressly promises covenants and agrees that no connection shall be made to the Sarpy Sewer until a sewer permit shall have been obtained from County. Upon reasonable notice by County, Developer shall cause to be disconnected any connection to the Sarpy Sewer which has been made without the required permit from County or which is in contravention of the ordinances, regulations, rules, or specifications of the County pertaining to sewer connections.

10. **Other Connections at County Request.** Upon the written request of County, and (a) a Sanitary and Improvement District, (b) a sewer Developer, or (c) any other person or entity, for permission to connect to Developer’s Sewer, Developer shall allow such connection to be made without charge.

11. **Amendments, Federal and State Regulations.** Except as precluded by any Federal law or regulation, County and Developer shall promptly meet to discuss and implement in good faith changes to this Agreement that are necessary to timely comply with revisions or additions to State or Federal regulations.
12. **Term and Termination.** This Agreement shall be effective as of the date first written above and shall be for a term of ten (10) years from the date the Developer Sewer is first connected to and put in service on the Sarpy Sewer, and shall automatically renew on the same terms and conditions as herein set forth for additional successive terms of ten (10) years each. If there is a change in circumstances that a party believes in good faith will require an amendment to this Agreement to deal with, that party shall give notice to the other party of its desire to amend, which notice shall specify the terms of the amendment desired and the reasons for same. The parties then shall promptly engage in good faith discussions as to what changes are needed and neither party shall unreasonably withhold approval of an amendment which addresses and resolves the changed circumstances identified in the notice, provided no such amendment shall be effective unless it is in writing and duly executed by both parties.

13. **Disconnections and Termination.** County shall have the right to make any disconnections and make a claim for the expenses thereof from Developer should Developer neglect or refuse to disconnect or fail to negotiate a new contract following termination as herein provided. Should Developer cease to use any wastewater system connected to the Sarpy Sewer, Developer shall disconnect the same at its expense or failing that, County may disconnect the same and make a claim for the expense of Developer. County acknowledges that the Sarpy Sewer is a public utility available without discrimination to members of specified classes. Termination of sewage treatment will not be made without the approval of the appropriate State or Federal agencies having jurisdiction over wastewater pollution and treatment. Termination of sewage treatment service will not be made before ninety (90) days following written notice of such termination. It is acknowledged that during said period, if negotiations produce no new agreement, the parties, or any one of them, may file an action in any court having jurisdiction over the matter to provide equitable relief concerning the issue of continued sewage treatment and the conditions and charges appropriate thereto. Nothing in this paragraph will be construed as a limitation on the authority of the governing body of County to set reasonable rules and regulations concerning sewage service and the appropriate rates pertaining thereto.

14. **Sampling and Testing Costs.** Any sampling or testing by any Party shall be done at the testing Party’s expense.

15. **Interruption of Service.** In the event of an interruption of service by County, it is understood and agreed that County, its officers, employees and agents, in the absence of gross negligence, shall be indemnified and held harmless and absolutely free of any liability to Developer, or to any owners or lessees of the Developer’s property or premises.

16. **Force Majeure Event.** A Force Majeure Event means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and the observance of Good Utility Practice, cannot be, or be caused to be, prevented, avoided or removed by such Party, and (ii) such circumstance materially and adversely affects the ability of the Party to perform its
obligations under this Agreement, and such Party has taken all reasonable precautions, due
care and reasonable alternative measures in order to avoid the effect of such event on the
Party’s ability to perform its obligations under this Agreement and to mitigate the
consequences thereof. Either Party shall be excused from performance and shall not be in
default in respect of any obligation hereunder to the extent that the failure to perform such
obligation is due to a Force Majeure Event, provided the party claiming excuse because of
Force Majeure has given the other party written notice of the Force Majeure event on which
it is relying and a reasonable estimate of its likely impact on performance under this
Agreement within five (5) business days following the Force Majeure event.

17. **Agreement Binding.** The provisions of this Agreement, and all exhibits and documents
attached or referenced herein, shall run with the land and shall be binding upon, and shall
inure to the benefit of, the Parties, their respective representatives, successors, assigns, heirs,
and estates, including all successor owners of the real estate described in the attached Exhibit
“A”. Every time the phrase “successors and assigns”, or similar language, is used throughout
this Agreement, it is to be attributed the same meaning as this “Agreement Binding”
 provision. No special meaning shall be attributed to any instance herein in which the name
of a Party is used without the phrase “successors and assigns” following immediately
thereafter, unless expressly stated otherwise.

18. **Hazardous Wastes.** It is agreed and understood that the Parties to this Agreement are, or
may be subject to Section 311 of the Water Pollution Control Act, as it applies to oil and
hazardous wastes, and to any applicable State Law or Legislation, under the authority
preserved by Section 510 of the Water Pollution Control Act.

19. **Change in Ownership.** In the event of any change in the control or ownership of the
Developer Sewer from which authorized discharges are emitted, the permittee user shall
notify the succeeding owner or controller of the existence of this Agreement and the permit
by means of a letter, a copy of which shall be forwarded to County.

20. **Breach:** In the event of Developer’s breach of any of the terms and conditions hereof or any
warranty or covenant herein made by Developer, then:

   a. In the case of a breach of any term or condition, warranty, or covenant pertaining to
      the actual construction, reconstruction, repair, maintenance or operation of the
      Developer Sewer, Developer shall, within five (5) days from receipt of County’s notice
      of such breach, commence to take corrective measures or such measures as may be
      reasonably requested by County, and Developer shall pursue with due diligence such
      corrective measures to completion as soon thereafter as possible to the reasonable
      satisfaction of County.
b. In case of any other type of breach by Developer, Developer shall cure said breach to the reasonable satisfaction of County within thirty (30) days from receipt of County’s notice of such breach.

c. In the event Developer shall fail to cure any breach within the applicable time and manner set out above, County may:

   i. Upon giving Developer sixty (60) days’ notice of County’s intent to do so, County may require Developer to disconnect the Developer Sewer from the Sarpy Sewer or County may itself cause such disconnection to be made, if at the expiration of the sixty (60) day period the breach is not cured to the reasonable satisfaction of County. Any such disconnection shall be made at the expense of Developer.

   ii. In the event the breach pertains to the actual construction, reconstruction, repair, maintenance or operation of the Developer Sewer, County shall have the absolute right, at its option to itself perform the work necessary for the requested corrective measures, or to complete the corrective measures commenced by Developer, as the case may be, in either of which case the Developer agrees:

       1. Developer shall immediately reimburse County for any and all expense incurred by County in connection therewith.

       2. Developer shall indemnify and hold harmless County, its officers, employees and agents, from any expenses, costs, claim, action, cause of action, or demand arising out of County’s taking or completing corrective measures.

   iii. In addition to whatever other remedies are granted to County herein, County may avail itself of all other rights and remedies that County may have pursuant to any statute, law, or rule of law or equity, including, but not limited to the right to specifically enforces full compliance by the Developer of the terms and conditions of this Agreement, including all warranties and covenants and agreements herein made by the Developer, by both mandatory and prohibitory injunction.

21. No Waiver or Breach: The failure of either Party to exercise its rights upon any default or breach by the other Party shall not constitute a waiver of such rights as to any subsequent default or breach.

22. Emergency Measures. If there is a breach by Developer of any term or condition, warranty, or covenant pertaining to the actual construction, reconstruction, repair, maintenance or operation of the Developer Sewer, resulting in discharge of raw sewage or other environmental hazard which is harmful to the public health and safety that Developer is not
already implementing effective measures to remedy, County may take immediate remedial measure to fix the harm and Developer shall reimburse County for cost of same on demand.

23. **Acknowledgment.** Parties acknowledge that the Developer Sewer and the Sarpy Sewer are subject to the prohibitions and limitations of the Omaha Municipal Code, Chapter 31, Article III, as on file with the City Clerk of the City of Omaha, Nebraska.

24. **Nondiscrimination.** County and Developer shall not discriminate against any parties on account of race, national origin, sex, age, political or religious affiliations or disabilities in violation of federal or state or local ordinances.

25. **Incorporation of Recitals.** The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

31. 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:
   Prairie Queen, LLC
   Jerry Reimer
   4880 S. 131st Street Suite 3
   Omaha, NE 68137

32. 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.

33. 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.

34. 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.

35. **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.

36. **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.

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

38. **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.

[signature pages to follow]
IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by the property officials thereunto duly authorized as of the dates below indicated.

Executed by County this 20th day of March, 2018.

SARPY COUNTY, NEBRASKA,
A Political Subdivision

Chairperson, Board of Commissioners

Attest:

Sarpy County Clerk

Approved as to form:

Sarpy County Attorney
Executed by Developer this 15th day of March, 2018.

Prairie Queen, LLC, a Nebraska Limited Liability Company

By: __________________________

Title: __________________________
BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA
RESOLUTION REVISING SEWER CONNECTION FEE REGULATIONS AND SEWER CONNECTION FEE SCHEDULE

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, Sarpy County owns and operates sanitary sewers located within the County and charges and collects certain connection fees for construction, acquisition, retirement of debt, and other costs related to said sanitary sewers; and,

WHEREAS, a Resolution revising the Sewer Connection Fee Regulations and the Sewer Connection Fees was previously approved by the County Board via Resolution 2013-259; and,

WHEREAS, said Sewer Connection Fee Regulations and Sewer Connection Fees require modification from time to time to ensure that policies are clear and updated; and,

WHEREAS, the Sarpy County Planning and Building Department has proposed that Sarpy County amend the Sewer Connection Fee Regulations and the Sewer Connection Fees as specifically outlined in the Planning Department report, which is attached hereto and includes a red-line version in legislative format to specifically show the proposed changes, said Planning Department report and all attachments to same are attached hereto and known as Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board after due deliberation and consideration, adopts the proposed amendments to the Sarpy County Sewer Connection Fee Regulations and the Sarpy County Sewer Connection Fees and directs the Planning Department to amend the same, which amended documents are attached hereto as Exhibit “B” and that the same have full force and effect of law, the effective date of the aforementioned Sewer Connection Regulations and the Sewer Connection Fees shall be the 26th day of July, 2016.

FURTHER BE IT RESOLVED THAT the regulations enacted by this Resolution are intended to be a complete revision of the existing Sarpy County Sewer Connection Fee Regulations and the Sarpy County Sewer Connection Fees, and all previous Resolutions or parts of Resolutions of the Sarpy County Board of Commissioners on said subjects or in conflict with the provisions of this Resolution are hereby repealed.

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 26th day of July, 2016.

Sarpy County Board Chairman

Attest

County Clerk
MEMORANDUM
July 21, 2016

TO: Sarpy County Board of Commissioners & Sarpy County Clerk

FROM: Nicole O’Keefe, Deputy Sarpy County Attorney

RE: Proposed Text Amendments to the Sarpy County Sewer Connection Fee Regulations

There are proposed text amendments to the Sarpy County Sewer Connection Fee Regulations on the July 26, 2016 County Board agenda. The Resolution for the text amendments references an “Exhibit B”. Should the County Board approve any text amendments to the Sarpy County Sewer Connection Fee Regulations, Exhibit B shall be the Sarpy County Sewer Connection Fee Regulations as amended. Thus Exhibit B is not currently attached to the Resolution, but will be the complete Sarpy County Sewer Connection Fee Regulations with any and all amendments made by the County Board at the July 26, 2016 meeting. Please contact me with any questions.
EXHIBIT A
Planning Department Report
County Board Date: July 26, 2016

<table>
<thead>
<tr>
<th>Subject</th>
<th>Type</th>
<th>By</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment to the Sarpy County Sewer Connection Fee Regulations - implementing fee structure for sewer connections within southern Sarpy County in the Platte River Watershed (south of the ridgeline) and revising the Planning and Building Department Master Fee Schedule.</td>
<td>Resolution</td>
<td>Bruce Fountain, AICP, EDFP Director, Planning &amp; Building Dept.</td>
</tr>
</tbody>
</table>

**Background and Analysis:**

Staff is recommending an amendment to the Sarpy County Sewer Connection Fee Regulations in order to implement a fee structure for sewer connections within the southern Sarpy County in the Platte River Watershed. The amendment provides a separate fee chart for this area based on the recommendations in the Southern Ridge Wastewater Treatment Study Phases 1A and 1B completed by HDR. These fees would be assessed to any developments taking place south of the ridgeline as of the effective date of this Resolution.

Redlined copies of the regulations are attached to the proposed Resolution. If approved, the amended Sewer Connection Fee Regulations would become part of the Sarpy County Planning and Building Department Master Fee Schedule.

**Please Note:** The proposed changes include striking a sentence within regulation #4. The removal of the sentence was approved at Resolution 2013-259, but due to an editing error, it was mistakenly added back into the official document. It appears there were no complications due to the editing error, however, it will now be removed.

**Staff Recommendation:**

Staff believes that the proposed amendment is necessary in order to begin collecting sewer connection fees from development south of the ridgeline. These fees will be required in order to begin design and construction of future sanitary sewer systems to serve the area.

Therefore, staff recommends **APPROVAL** of the amendment to the Sarpy County Sewer Connection Fee Regulations as proposed.
The attached fee schedule shall apply for the issuance of a permit to connect to the Sarpy County Interceptor Sewer, subject to the following rules of interpretations.

1. A structure or parcel of property acquires the right to connect to the Sarpy County Interceptor Sewer upon payment of the applicable fee, and the signing and approval of applicable agreements with the appropriate governmental entities. This right is subject to any specific conditions of the permit for such connection. The right to connect runs with the realty and/or the structure for which the permit is issued and fee paid. Fees may be due prior to the filing of the final plat, prior to issuance of the building permit, prior to physically connecting to the sewer, or any combination of these three events, as detailed in the attached schedules.

2. An additional fee shall be required for the expansion of existing facilities requiring a building permit for commercial, industrial and institutional properties if the expansion will take place outside the area that the original building permit connection fees were paid for, even if additional sewer connection is not required.

3. For existing development with existing structures, fees are payable only for actual connection with the Sarpy County Interceptor Sewer.

4. All payments shall be made through the Planning and Building Department of Sarpy County.

5. Commercial, industrial and institutional fees are paid on a per acre basis for the entire parcel. If applicant does not desire to pay a sewer fee on the entire parcel, said area may be replatted into smaller parcels, if done in a manner which complies with the then existing and applicable zoning and subdivision regulations. For parcels that are not platted, the entire sewer connection fee shall be due at the time of issuance of the permit.

6. Physical connection to the Sarpy County Interceptor Sewer, or to any sewer line that drains into the Sarpy County Interceptor Sewer, will not be allowed until: 1) the payment of any fees due to Sarpy County and/or any other governmental entity have been paid, and; 2) any and all required connection agreements have been signed by all parties. The required connection agreements may include waste water sewer agreements with Sarpy County, the City of Omaha, and other applicable governmental entities. Any connection that violates this provision shall be subject to a penalty of 10% of the applicable fee, and will be disconnected until brought into compliance.

7. Connection to the Sarpy County Interceptor Sewer obligates the connecting party to pay ongoing flow charges for the treatment of the sewage entering the sewer, and for the ongoing maintenance of the Sarpy County Interceptor Sewer. Failure to pay flow charges on a timely basis shall subject the offending party to disconnection, as well as any other lawful remedies necessary to recover past due charges.
### SEWER CONNECTION FEES
PAPIO-MISSOURI RIVER WATERSHED
(NORTHERN SARPY CO.)
JULY 26, 2016

<table>
<thead>
<tr>
<th></th>
<th>Plat Fee</th>
<th>Building Permit Fee</th>
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<tbody>
<tr>
<td><em><em>A. Residential: Single, Duplex</em>, Mobile Home</em>*</td>
<td>$800</td>
<td>$800 if platted and plat fee has been paid $1,600 if property has not been platted</td>
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<td><strong>B. All other residential (per living unit)</strong></td>
<td>$540</td>
<td>$540 if platted and plat fee has been paid $1,080 if property has not been platted</td>
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<td><strong>C. Commercial, Industrial, Institutional (per acre)</strong></td>
<td>$5,500</td>
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*Fee is for each living unit

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### SEWER CONNECTION FEES
PLATTE RIVER WATERSHED
(SOUTHERN SARPY CO.)
JULY 26, 2016

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<td><strong>B. All other residential (per living unit)</strong></td>
<td>$1,490</td>
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<tr>
<td><strong>C. Commercial, Industrial, Institutional (per acre)</strong></td>
<td>$8,750</td>
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3. For existing development with existing structures, fees are payable only for actual connection with the Sarpy County Interceptor Sewer.

4. All payments shall be made through the Planning and Building Department of Sarpy County. The fees shall then be remitted either to Sarpy County or the appropriate governmental entity pursuant to any applicable interlocal agreements.

5. Commercial, industrial and institutional fees are paid on a per acre basis for the entire parcel. If applicant does not desire to pay a sewer fee on the entire parcel, said area may be replatted into smaller parcels, if done in a manner which complies with the then existing and applicable zoning and subdivision regulations. For parcels that are not platted, the entire sewer connection fee shall be due at the time of issuance of the permit.

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### Papio-Missouri River Watershed (Northern Sarpy Co.)

**August 6, July 26, 2013**

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### Platte River Watershed (Southern Sarpy Co.)

**July 26, 2016**

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EXHIBIT F: Site Plan