RESOLUTION APPROVING AGREEMENT AND AUTHORIZING CHAIRMAN TO SIGN THE AGREEMENT FOR WASTEWATER CONNECTION AND SERVICE AND REIMBURSEMENT FOR IMPROVEMENTS TO 150TH STREET WITH OBC, LLC (Oxbow Way Phase 2)

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, OBC, LLC is developing land generally located along the west side of 150th Street between Schram and Capehart Roads and desires to provide for the flow, transportation and handling of wastewater collected in or flowing into the OBC, 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 OBC, LLC outlining the requirements, responsibilities, and payment of sewer connection fees and sewer use fees for the proposed connection to the Sarpy Sewer. Additionally, County previously made certain improvements to 150th Street, which benefit the development, and OBC, LLC and County wish to agree on the extent to which OBC, LLC will financially contribute to the cost of such 150th Street improvements. A copy of said Wastewater Connection and Service and Reimbursement for 150th Street Improvements 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 Wastewater Connection and Service and Reimbursement for 150th Street Improvements Agreement with OBC, LLC.

BE IT FURTHER RESOLVED that the Chair of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board 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 7th day of August, 2018.

Sarpy County Board Chairman

Attest

SEAL

County Clerk
AGREEMENT FOR WASTEWATER CONNECTION AND SERVICE AND REIMBURSEMENT FOR IMPROVEMENTS TO 150TH STREET BETWEEN COUNTY OF SARPY AND OBC, LLC

THIS AGREEMENT, made this 7 day of August, 2018 by and between OBC, LLC, a Minnesota limited liability company (hereinafter the “Developer”), and the County of Sarpy, a Political Subdivision of the State of Nebraska (hereinafter the “County”). Collectively, Developer and County, are hereinafter sometimes referred to as the “Parties.”

RECITALS

WITNESSETH THAT:

WHEREAS, Developer is contemplating constructing interior sanitary sewers within the boundaries of the development known as Oxbow Way Phase 2, 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 Platte River Watershed pursuant to the Nebraska County Industrial Sewer Construction Act (Neb. Rev. Stat. Sect. 23-3601, et seq.) (hereinafter “the Act”); and,

WHEREAS, wastewater 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 wastewater flowing from the Sarpy Sewer to the Omaha Wastewater Treatment System; and,

WHEREAS, Developer, either directly or through an affiliated entity, intends to purchase, but is not obligated to purchase, the Development Area; and,

WHEREAS, Developer desires to provide for the flow, transportation and handling of wastewater 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; and,

WHEREAS, Developer desires to have County convey Developer’s wastewater 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 wastewater of Developer to flow into the Sarpy Sewer; and,
WHEREAS, the accomplishment of such an arrangement is authorized by law and by Interlocal Agreements with the City of Omaha, including without limitation the Omaha Sewer Agreement; and

WHEREAS, pursuant to that certain Development Agreement dated July 14, 2015 between County and Oxbow Enterprises, Inc., as amended by that certain First Amendment to Development Agreement dated May 24, 2016 (collectively referred to as the “Oxbow Development Agreement”), County performed the 150th Street Improvements; and,

WHEREAS, certain of the 150th Street Improvements benefit the Development Area, and Developer and County wish to agree upon the extent to which Developer will financially contribute to the cost of such 150th Street Improvements.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, it is agreed by and between the Parties, each intending to be legally bound, as follows:

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

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

   b. **Connection Point.** The Developer Sewer shall connect to the Sarpy Sewer at the connection point identified and shown on Exhibit B.

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

   d. **Developer Sewer.** The term “Developer Sewer” shall include, whether now in existence or hereafter constructed, all private, sanitary sewers and appurtenances thereto as shown on Exhibit B attached hereto, constructed by Developer on the Development Area, or adjacent thereto and serving the improvements, if any, constructed by Developer on the Development Area.

   e. **Development Area.** The term “Development Area” shall mean approximately 23.316 acres of land as described on Exhibit A attached hereto.

   f. **Oxbow Development Agreement.** The term “Oxbow Development Agreement” shall mean the collective agreements described in the Recitals.

   g. **150th Street Improvements.** The term “150th Street Improvements” shall mean the 150th Street Improvements as defined in the Oxbow Development Agreement.
h. **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 wastewater.

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

2. **Permission to Connect.** Subject to the conditions and provisions hereinafter specified in this Agreement, 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 shown on Exhibit B attached hereto, contingent upon the following: (1) upon formal approval of the proposed plans and specifications for Developer’s Sewer 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 wastewater from 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 B. 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 amending this Agreement or by execution of a new wastewater connection and 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, acting reasonably.

3. **Connection Restrictions.** Developer expressly promises, covenants, and agrees that no connection shall be made to the Developer Sewer or Sarpy Sewer until: (1) the proposed plans and specifications for Developer Sewer have been formally approved by County in writing, and (2) as-built plans and specifications for Developer Sewer have been formally approved by County in writing. Upon reasonable notice by County, Developer shall cause to be disconnected any connection to the Sarpy Sewer which has been made without the required permission from County or which is in contravention of the ordinances, regulations, rules, or specifications of the County pertaining to sewer connections.

4. **Developer Covenants:** Developer expressly promises, covenants and agrees:

   a. The Developer Sewer, if constructed, 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 of such additions or modifications 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, if constructed, shall be designed and constructed, and as reasonably required reconstructed, at the expense of Developer and the property therein, and at no expense to County.

d. 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.

e. 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 (“DEQ”) regulations pertaining to sewers or wastewater 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.

f. Developer, upon reasonable notice (which in no event shall be less than two (2) business days, except in the case of an emergency threatening imminent danger of physical harm to persons or property), shall allow any duly authorized representative of the County to enter upon the Development Area during normal business hours (9:00 a.m. to 4:00 p.m., Monday through Friday, and excluding state and federal holidays) for the purpose of inspection, observation, measurement, sampling, or testing of sewage. Any such entry shall be subject to Developer’s regular safety and security measures, including without limitation to a requirement that all parties entering the Development Area execute Developer’s standard confidentiality agreement, if any, and such entry shall be further subject to the rights of any other parties in possession of all or any portion of the Development Area.

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.

h. In the event that County discovers anything in the construction, maintenance, or operation of the Developer Sewer which is not in conformance with plans approved by the County and will, in the reasonable opinion of the County, be detrimental to the proper operation of the Sarpy Sewer, or any part thereof, Developer shall, upon written notice thereof, promptly correct said defects.
i. In the event Developer for any reason fails in any respect as to its covenants contained in this Paragraph 4, then, subject to the notice and cure periods set forth in Paragraph 19 below, 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.

j. 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 entity making unauthorized connections prior to completion of the referenced agreements shall be subject to payment to the City of Omaha inspection fees ten (10) times the current fees for interceptor connection inspections.

k. 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.

l. 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 wastewater into the County Sewer. Any and all resulting fees and/or penalties imposed by DEQ shall be the full responsibility of Developer.

m. 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 7, infra, hereinafter made and adopted by County. In no event shall Developer be charged connection or other sewer related fees by the County in excess of the lowest rates paid by other similarly situated non-governmental commercial users of the Sarpy Sewer.

n. 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.

o. Developer cannot predict if, when or at what rate development of the Developer’s contemplated project will occur. The timing and rate for development of the Development Area will depend upon numerous factors outside of the control of Developer, such as market orientation and demand, competition, availability of qualified laborers to construct, and/or weather conditions. Developer may develop its contemplated project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and absolute discretion. Nothing in this Agreement shall be construed to require Developer to proceed with developing the Development Area or any portion thereof. County hereby acknowledges Developer, as of the time of this Agreement’s execution, does not own fee title to the Development Area. Once executed, the effectiveness of this Agreement to bind Developer and the Development Area is contingent solely and exclusively upon the Developer acquiring fee simple title to the Development Area and recording of the Final Plat; provided, that nothing in this Agreement shall be deemed to obligate Developer to so acquire the Development Area.

5. **Capacity.** To ensure that the Sarpy Sewer will have sufficient capacity to receive Wastewater from the Development Area, County hereby guarantees and reserves 53 gpm at peak flow for Wastewater discharge capacity of the Development Area (hereinafter “Sewer Capacity”). Developer shall not exceed the Sewer Capacity. If discharge of Wastewater in excess of the Sewer Capacity is desired, Developer shall submit a written request to County describing its proposed increase in the Sewer Capacity. If Parties determine that Sewer Capacity may be increased, Parties will amend this Agreement.

6. **Connection Fees.** The Development Area shall be subject to the Sarpy County Sewer Connection Fee Regulations and Sewer Connection Fee Schedule (hereinafter “Sewer Regulations”). The current (August 2018) Sewer Regulations require payment to the County of a sewer connection fee at the time of the filing of the Final Plat (hereinafter the “Sewer Connection-Plat Fee”) in the amount of $8,750 per platted acre and payment to the county of a sewer connection fee at the time of the building permit application (hereinafter the “Sewer Connection-Building Permit Fee”) in the amount of $8,750 per gross acre on the buildable lot. Prior to filing the Final Plat with the Sarpy County Register of Deeds, Developer shall pay to County all Sewer Connection-Plat Fees pursuant to the applicable Sewer Regulations in place at the time of the filing of the final plat. 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 as are in effect and generally applicable at the time of such further platting and/or development. It is expressly understood that County reserves the right to collect all connection charges and fees as required by County regulations, ordinances, or rules. The Parties acknowledge that additional Sewer Connection-Building Permit Fees shall be due to the County at the time of
the issuance of building permits for structures within the Development Area, pursuant to the Sewer Regulations applicable at that time.

7. **Service Fees.** Charges for retail flow and customer charges (treatment and maintenance) for all customers within the Development Area shall be based upon MUD water consumption at the same flow charges as other similarly situated entities now and hereafter established by County. In no event shall Developer be charged service or other sewer related fees by the County in excess of the lowest rates paid by other similarly situated non-governmental commercial users of the Sarpy Sewer. Parties, without amendment to this Agreement, may enter into a separate meter reading and billing agreement for Wastewater service (hereinafter the “Meter and Billings Agreement”) which addresses charges for retail flow and customer charges (treatment and maintenance) based upon metering by devices, installed and maintained by Developer and acceptable to engineers for County and Developer, that will be used to determine the flow of Wastewater into Sarpy Sewer. Until such time as Parties enter into a Meter and Billings Agreement, charges for retail flow as described above will be billed and collected by MUD.

8. **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.

9. **Term and Termination.** This Agreement shall be effective as of the date first written above and shall remain in effect until terminated pursuant to the terms of this Agreement. 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, 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.

10. **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 the Developer Sewer connected to the Sarpy Sewer for a period in excess of two (2) years or should Developer provide written notice to County of its election to cease to use the Developer Sewer 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 reasonable expense of Developer. County acknowledges that the Sarpy Sewer
is a public utility available without discrimination to members of specified classes. Termination of wastewater treatment will not be made without the approval of the appropriate State or Federal agencies having jurisdiction over wastewater pollution and treatment. Termination of wastewater 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 wastewater 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 wastewater service and the appropriate rates pertaining thereto. Developer may elect to terminate this Agreement at any time without penalty or payment of any kind, other than paying the reasonable expense of disconnect from the Sarpy Sewer and any remaining sewer use fees due and owing the County.

11. Unified South Sarpy Wastewater System. The Parties recognize that a sewer system servicing the Platte River Basin will be developed and constructed in the future, hereinafter referred to as the “Unified South Sarpy Wastewater System”. At County’s exclusive option, County may choose to connect the Sarpy Sewer to the future Unified South Sarpy Wastewater System, provided County shall impose no additional connection fees to users who are already connected to the Sarpy Sewer and have paid applicable sewer connection fees that were in effect prior to the date County connects to the Unified South Sarpy Wastewater System. The County or other governing political subdivision may enact charges and restrictions uniformly applicable to all other users of the Unified South Sarpy Wastewater System, provided that: (i) County will not charge fees also charged by the other governing political subdivision, (ii) none of Developer’s rights and obligations under this Agreement shall be adversely affected by County’s election to connect to the Unified South Sarpy Wastewater System, and (iii) this Agreement shall remain in full force and effect.

12. Reimbursement for 150th Street Improvements. County and Developer agree that Developer shall pay the sum of $148,187.75 as its proportionate share (the “Developer’s Share”) of the 150th Street Improvements. Developer shall pay the Developer’s Share in a one-time lump sum payment at the time of building permit application. County and Developer agree that payment of the Developer’s Share shall constitute Developer’s sole obligation with respect to the 150th Street Improvements and that Developer shall not have any further obligations or liabilities in respect to the same.

13. Sampling and Testing Costs. Any sampling or testing by any Party shall be done at the testing Party’s expense; provided, however, that if sampling or testing is required due to the failure of a Party to maintain, in default of this Agreement, the Sarpy Sewer, or the Developer Sewer, as the case may be, such sampling or testing shall at the defaulting Party’s expense.

14. 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
or intentional misconduct, shall be free of any liability to Developer, or to any owners or lessees of the Developer’s property or premises.

15. **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 a Force Majeure Event 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.

16. **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 Development Area. 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.

17. **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.

18. **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.

19. **Breach by Developer.** 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 thirty (30) 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 reasonably possible to the reasonable satisfaction of County. In no event shall Developer be deemed to be in breach for delay if the delay is the result of a delay by County.

b. In case of any other type of breach by Developer, Developer shall propose a cure for said breach to the reasonable satisfaction of County within thirty (30) days from receipt of County’s notice of such breach, County shall give Developer its response to said proposal within thirty (30) days thereafter, and the Parties shall endeavor in good faith to resolve any differences within fifteen (15) days thereafter, whereupon Developer shall diligently proceed with effecting the agreed upon cure.

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 reasonable 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 reasonable expense incurred by County in connection therewith.

2. Developer shall indemnify and hold harmless County, its officers, employees and agents, from any reasonable 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 enforce 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.

20. **Breach by County.** In the event of County’s breach of any of the terms and conditions hereof or any warranty or covenant herein made by County, 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 Sarpy Sewer, County shall, within thirty (30) days from receipt of Developer’s written notice of such breach, commence to take corrective measures or such measures as may be reasonably requested by Developer, and County shall pursue with due diligence such corrective measures to completion as soon thereafter as reasonably possible to the reasonable satisfaction of Developer.

   b. In case of any other type of breach by County, County shall propose a cure for said breach to the reasonable satisfaction of Developer within thirty (30) days from receipt of Developer’s notice of such breach, Developer shall give County its response to said proposal within thirty (30) days thereafter, and the parties shall endeavor in good faith to resolve any differences within fifteen (15) days thereafter, whereupon County shall diligently proceed with effecting the agreed upon cure.

   c. In addition to whatever other remedies are granted to Developer herein, Developer may avail itself of all other rights and remedies that Developer may have, including, but not limited to the right to specifically enforce full compliance by County of the terms and conditions of this Agreement, including all warranties and covenants and agreements herein made by County 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 wastewater 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:**
- OBC, LLC c/o Liberty Diversified International
  - 5600 North Highway 169
  - Minneapolis, MN  55428
  - Attention:  Ronda Bayer

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.


   a. Encumbrances on the Development Area. The Parties hereto agree that this Agreement shall not prevent or limit Developer from encumbering the Development Area or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing (“Mortgage”) with respect to the construction, development, use or operation of the Project and parts thereof. County acknowledges that the lender(s) providing such Mortgages may require certain Agreement interpretations and modifications and agrees, upon request, from time to time, to meet with Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. County will not unreasonably withhold its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

   b. Mortgagee Not Obligated. Notwithstanding the provisions of this Paragraph 39, the holder of a Mortgage (a "Mortgagee") shall not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance.
c. Mortgagee’s Notice and Cure Rights. The Mortgagee of any Mortgage or deed of trust encumbering the Development Area, or any part or interest thereof, that has submitted a request in writing to County in the manner specified herein for giving notices shall be entitled to receive written notification from County of any notice of non-compliance by Developer in the performance of Developer’s obligations under this Agreement. If County timely receives a request from a Mortgagee requesting a copy of any notice of non-compliance given to Developer under the terms of this Agreement, County shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of non-compliance to Developer. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance for a period of one hundred twenty (120) days after the Mortgagee receives such written notice.

d. Disaffirmation. If this Agreement is terminated as to any portion of the Development Area by reason of (i) any default or (ii) as a result of a bankruptcy proceeding of Developer, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for Developer or its property, County, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new agreement with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or County to enter into a new development agreement pursuant to this subparagraph.

e. Estoppel Certificate. Upon request by Developer or Mortgagee, County shall deliver a signed estoppel certificate in form and substance reasonably satisfactory to the requesting party certifying that to the best of County’s knowledge Developer is in compliance with the terms of this Agreement or, if not, state the particulars in which Developer has failed to comply along with other factual information requested by Developer, and deliver the same to the requesting party (and Developer, if Developer did not make the request) within ten (10) business days following the request.

[SIGNATURE PAGES TO FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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 7th day of August, 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 31 day of July, 2018.

DEVELOPER:

OBC, LLC

Michael Fiterman
President and Chief Executive Officer
LEGAL DESCRIPTION

A TRACT OF LAND CONTAINING ALL OF LOT 2, OXBOW WAY REPLAT 1, A PLATTED AND RECORDED SUBDIVISION IN SARPY COUNTY, NEBRASKA, AND A PART OF TAX LOT 2, ALL LOCATED IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 13 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE ON THE SOUTH LINE OF SAID NORTHWEST QUARTER ON AN ASSUMED BEARING OF S86°52'13"W, 50.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ON SAID SOUTH LINE OF THE NORTHWEST QUARTER S86°52'13"W, 653.74 FEET; THENCE N14°19'44"W, 342.17 FEET; THENCE N05°03'57"W, 904.71 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE ON THE WEST LINE OF SAID LOT 2 N10°14'34"W, 167.21 FEET TO THE NORTHWEST CORNER OF SAID LOT 2; THENCE ON THE NORTH LINE OF SAID LOT 2 N86°21'33"E, 758.90 FEET TO THE NORTHEAST CORNER OF SAID LOT 2, SAID CORNER ALSO BEING THE WEST RIGHT-OF-WAY LINE OF 150TH STREET; THENCE ON SAID WEST RIGHT-OF-WAY LINE OF 150TH STREET S03°38'27"E, 1412.60 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS A CALCULATED AREA OF 1,015,645.01 SQUARE FEET OR 23.316 ACRES MORE OR LESS.
PRIVATE SANITARY TIE-IN AT MH-123 OF COUNTY PROJECT SOUTHERN RIDGE PHASE 1.

30.00' SANITARY SEWER EASEMENT

CONNECTION POINT: SANITARY SEWER CONNECTION

DATE: 07/30/18

SCALE IN FEET

0' 100' 200' 400'

PROJECT NO: 018-0751
DRAWN BY: KRH
DATE: 07/30/18

S86°52'13"W 653.74'(M)
N05°39'57"W 904.71'(M)
N14°18'44"W 342.17'(M)
N10°14'34"W 167.21'(P)
N86°21'33"E 758.90'(P)
S03°38'27"E 166.10'(P)