RESOLUTION APPROVING AND AUTHORIZING CHAIR TO SIGN THE SECOND AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN SARPY COUNTY AND OXBOW ENTERPRISES, INC.

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, pursuant to Neb. Rev. Stat. § 23-114 a County Board of Commissioners shall have the authority to adopt a Zoning Regulation, which shall have the force and effect of law; and,

WHEREAS, Oxbow Enterprises, Inc. (Oxbow) has developed portions of the approximate 70.65 acres of land generally located in the SW corner of 150th and Schram Road in Sarpy County; and,

WHEREAS, the County Board approved a Development Agreement with Oxbow Enterprises, Inc. (Oxbow) by Resolution No. 2015-263 on July 14, 2015 as amended by that certain First Amendment to Development Agreement at Resolution 2016-168 which outlines the responsibilities of the Parties for the land development and the road improvements of the Property, (collectively the “Agreement”); and

WHEREAS, the City of Papillion (the “City”) extended its zoning and platting jurisdiction to include the Property pursuant to the Papillion City Council’s adoption of Ordinance No. 1716 on July 2, 2015, effective July 17, 2015; and,

WHEREAS, Oxbow has sold, or intends to sell in the near future, a portion of the Property to OBC, LLC; and,

WHEREAS, Oxbow and County desire to amend the Agreement with the proposed “Second Amendment to Development Agreement” which is attached hereto and outlines the release of the portions of the Property from the Agreement (Released Property); and,

WHEREAS, County and OBC, LLC entered into the Agreement for Wastewater Connection and Service and Reimbursement for Improvements to 150th Street Between County of Sarpy and OBC, LLC dated August 7, 2018 (the “Sewer Connection and Reimbursement Agreement”), pursuant to which OBC will, subject to the terms of the Sewer Connection and Reimbursement Agreement, reimburse County for the Released Property’s proportionate share of the cost of the 150th Street Improvements.
NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Second Amendment to Development Agreement between the County of Sarpy and Oxbow Enterprises, Inc. is hereby approved subject to the following condition:

1. Because the Second Amendment to Development Agreement is contingent upon the Oxbow sale and transfer of the Released Property to OBC, LLC, Oxbow shall submit a copy of the deed transferring the title to the Sarpy County Clerk’s Office for filing with this Resolution.

BE IT FURTHER RESOLVED that if Oxbow has not transferred the Released Property to OBC, LLC within 6 months of the date of this approval, this Second Amendment Development Agreement, with no additional action by the County Board, shall automatically become void after 6 months from the date of such approval.

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 14th day of August, 2018.

Attest

SEAL

Sarpy County Board Chairman

County Clerk
SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement ("Second Amendment") is made and entered into as of the 14th day of August, 2018 (the “Effective Date”) by and between OXBOW ENTERPRISES, INC. ("Developer") and the COUNTY OF SARPY, STATE OF NEBRASKA ("County"). Collectively, Developer and County are hereinafter sometimes referred to as the “Parties”.

WHEREAS, County and Developer are the parties to that certain Development Agreement dated as of July 14, 2015, as amended by that certain First Amendment to Development Agreement dated as of May 24, 2016 (collectively, the “Agreement”);

WHEREAS, the City of Papillion (the “City”) extended its zoning and platting jurisdiction to include the Property pursuant to the Papillion City Council's adoption of Ordinance No. 1716 on July 2, 2015, effective July 17, 2015;

WHEREAS, Developer has sold, or intends to sell in the near future, a portion of the Property as more particularly described on Exhibit “A” attached hereto and incorporated by reference herein (the “Released Property”) to OBC, LLC, a Minnesota limited liability company (“OBC”);

WHEREAS, OBC intends to, but is not obligated to, develop the Released Property;

WHEREAS, any development of the Released Property will be governed by a Subdivision Agreement dated August 7, 2018 between the City and OBC (the “Subdivision Agreement”);

WHEREAS, OBC and County have entered into that certain Agreement for Wastewater Connection and Service and Reimbursement for Improvements to 150th Street Between County of Sarpy and OBC, LLC dated August 7, 2018 (the “Sewer Connection and Reimbursement Agreement”), pursuant to which OBC will, subject to the terms of the Sewer Connection and Reimbursement Agreement, reimburse County for the Released Property’s proportionate share of the cost of the 150th Street Improvements; and

WHEREAS, Developer and County desire to amend the Agreement to release the Released Property from the obligations imposed under the Agreement.

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

1. **Capitalized Terms.** Capitalized terms used in this Second Amendment but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

2. **Release of Released Property.** The Released Property is hereby released from any and all covenants, obligations, requirements and liabilities under the Agreement. County acknowledges and agrees that the Released Property shall be developed subject to the terms and conditions of the Subdivision Agreement exclusively.

3. **Project Area.** Section 1F of the Agreement is hereby amended and restated in its entirety as follows:
“F. The “Project Area” shall mean that portion of land within the Property constituting Lot 1, Oxbow Way Replat 1, as subdivided and platted by Developer, and Outlot A.”

4. **Contingent Upon Closing.** The effectiveness of this Second Amendment to bind Developer, County and the Property (including the Released Property) is contingent solely and exclusively upon Developer conveying fee simple title to the Released Property to OBC. Upon execution and filing with the Sarpy County Register of Deeds, Developer shall submit a copy of the deed transferring such fee simple title, with the Sarpy County Register of Deeds’ file stamp, to the Sarpy County Clerk’s Office.

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

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

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

Executed by County this 14th day of August, 2018.

SARPY COUNTY, NEBRASKA

By: [Signature]
Chairman of Board of Commissioners

Attest: [Signature]
County Clerk

Approved as to form:

[Signature]
Sarpy County Attorney
Executed by Developer this 14th day of August, 2018.

OXBOW ENTERPRISES, INC.

By: ____________________________
Name: Deborah J Buhre
Its: CEO
EXHIBIT “A”

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, 166.10 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2; THENCE CONTINUING ON SAID WEST RIGHT-OF-WAY LINE OF 150TH STREET S03°38'27"E, 1246.50 FEET TO THE POINT OF BEGINNING.