RESOLUTION APPROVING AGREEMENT AND AUTHORIZING CHAIRMAN TO SIGN THE AGREEMENT
FOR SANITARY SEWER CONSTRUCTION WITH OBC, LLC
(Near Schram Road and 150th Street, Lot 2 Oxbow Way)

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, OBC, LLC is developing land on Lot 2 Oxbow Way, generally located along the west side of 150th Street between Schram and Capehart Roads. Sarpy County and OBC, LLC previously entered into a contract at Resolution # 2018-233 which outlined the requirements, responsibilities, and payment of sewer connection fees and sewer use fees for the OBC, LLC connection to the Sarpy Industrial Sewer. In order for OBC, LLC to connect their development to the Sarpy Industrial Sewer, it is necessary to construct a forty foot (40') sanitary sewer stub line.

WHEREAS, as part of the Southern Ridge Sanitary Sewer Phase 1 expansion construction, approved at Resolutions 2017-140 and 2017-252, Sarpy County is presently building a portion of the sanitary sewer line on a property adjacent to Lot 2 Oxbow Way. It is mutually beneficial to Sarpy County and OBC, LLC for the Sarpy County contractor, Graham Construction Inc. to build the stub sewer line.

WHEREAS, an agreement has been proposed with OBC, LLC which outlines the construction and ownership of the stub line as well as the OBC, LLC payment for the construction costs. A copy of said Agreement for Sanitary Sewer Construction is attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the attached Agreement for Sanitary Sewer Construction with OBC, LLC.

BE IT FURTHER RESOLVED that the Chair of this Board, together with the County Clerk, is hereby authorized to sign the attached Agreement on behalf of this Board as well as take other actions deemed necessary to fulfill the terms of the 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 11th day of December, 2018.
MEMORANDUM
December 3, 2018

TO: Sarpy County Board of Commissioners
FROM: Nicole L. Spitzenberger, Deputy Sarpy County Attorney
RE: Sarpy County – OBC, LLC Agreement for Sanitary Sewer Construction

OBC, LLC is developing land on Lot 2 Oxbow Way, generally located along the west side of 150th Street between Schram and Capehart Roads. Sarpy County and OBC, LLC previously entered into a contract at Resolution # 2018-233 which outlined the requirements, responsibilities, and payment of sewer connection fees and sewer use fees for the OBC, LLC connection to the Sarpy Industrial Sewer. In order for OBC, LLC to connect their development to the Sarpy Industrial Sewer, it is necessary to construct a forty foot (40’) sanitary sewer stub line.

As part of the Southern Ridge Sanitary Sewer Phase 1 expansion construction, approved at Resolutions 2017-140 and 2017-252, Sarpy County is presently building a portion of the sanitary sewer line on a property adjacent to Lot 2 Oxbow Way. It is mutually beneficial to Sarpy County and OBC, LLC for the Sarpy County contractor, Graham Construction Inc. to build the stub sewer line. The cost of construction for the stub line is approximately $3,340, which was approved at Resolution 2018-323. The attached Agreement for Sanitary Sewer Construction outlines the construction and ownership of the stub line as well as the OBC, LLC payment for the construction costs. OBC, LLC is required to pay within thirty (30) days of receipt of an invoice from Sarpy County.

Please contact me with any questions.

Nicole L. Spitzenberger

CC: Dan Hoins
Scott Bovick
Brian Hanson
Art Beccard
AGREEMENT FOR SANITARY SEWER CONSTRUCTION
(Near Schram Road and 150th Street; Lot 2 Oxbow Way)

This Agreement is made and entered into as of the dates indicated at the signatures below by and between the County of Sarpy, a political subdivision in the State of Nebraska (hereinafter referred to as “County”) and OBC, LLC, a Minnesota limited liability company (hereinafter referred to as “Developer”). Sarpy County and Developer are sometimes referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Developer is owner of Lot 2 Oxbow Way in Sarpy County, (hereinafter referred to as the “Development Area”) and is presently constructing, among other things, a sanitary sewer connection to serve buildings within the boundaries of the Development Area (hereinafter referred to as “Developer Sewer”).

WHEREAS, County owns and operates the Sarpy County Industrial Sewer (hereinafter “Sarpy Sewer”).

WHEREAS, Parties have previously entered into an Agreement for Wastewater Connection and Service and Reimbursement for improvements to 150th Street, dated August 7, 2018, which outlines the Parties’ rights and responsibilities related to the connection of the Developer Sewer to the Sarpy Sewer (as defined below) and flow of wastewater from the Development Area.

WHEREAS, County has contracted with Graham Construction Inc., to build a large sanitary sewer infrastructure project. Graham Construction Inc. is presently building a portion of the sanitary sewer line on property adjacent to the Development Area.

WHEREAS, it would be mutually beneficial to the Parties for Graham Construction Inc. to build a stub sewer line, approximately (40’) forty feet in length, beginning at the Sarpy Sewer and traveling east to the property line of the Development Area.

WHEREAS, County and Developer wish to outline certain terms and conditions and allocate the costs associated with the construction of the stub sewer line.

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

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

a. Actual Total Costs or Costs. The term “Actual Total Costs” or “Costs” being used interchangeably, shall be deemed to include the complete final cost of construction of the Developer Stub Improvements pursuant to the Final Plans, and shall include, without limitation, all third-party engineering fees, testing expenses, property acquisition costs, construction costs, construction administration, utility relocation costs and expenses and any related fees and expenses. The Actual Total Costs shall not include any internal costs for attorney’s fees, publication costs, accounting, financing or acquisition of financing incurred by either Party.

b. Agreement. The term “Agreement” shall mean this Agreement for Sanitary Sewer Construction and all Exhibits to this Agreement.

c. Development Area. The term “Development Area” shall mean Lot 2 Oxbow Way, approximately 23.316 acres of land.

d. 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.

e. Developer Stub Improvements. The term “Developer Stub Improvements” shall be deemed to be that portion of 8” sanitary sewer line measuring approximately 40 feet which begins at Manhole 123 on the Sarpy Sewer and extends easterly into the Development Area, as shown on Exhibit 1.

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

3. Plans and Specifications. Developer has provided final designs, plans, and specifications for the construction of the Developer Stub Improvements (“Final Plans”), which County has reviewed and approved.

4. Construction and Guarantee Period. County agrees to cause the Developer Stub Improvements to be constructed in accordance with the Final Plans. During the course of construction, Developer may at any time cause inspection of the work to insure compliance with the Final Plans and shall promptly, in good faith, notify County of any issues which must be corrected because the construction does not conform to the Final Plans. After completion of construction, the County guarantees the workmanship of the Developer Stub Improvements and agrees to warrant against defects and the cost of
repairs for the period of two (2) years, hereinafter referred to as the “Guarantee Period”. If at any time within the Guarantee Period the work shall, in the reasonable judgment of the Developer, require repairs or reconstruction, Developer shall immediately notify the County. Except as provided herein with respect to the Guarantee Period, the Parties hereto agree that upon completion of construction the Developer will own, operate and, at its cost, maintain the Developer Stub Improvements. Furthermore, Developer shall be responsible for and pay any and all sales tax and personal property taxes due and owing on the Developer Stub Improvements.

5. **Easements.** Developer, has acquired a permanent easement for the Developer Stub Improvements at no cost to County and has filed said permanent easement with the Sarpy County Register of Deeds, Instrument Number 2018-19286 (the “Sewer Connection Easement”). County shall at all times observe the terms and requirements of the Sewer Connection Easement that relate to the initial construction of the Developer Stub Improvements.

6. **Allocation and Payment of Costs for Sewer Improvement.** Developer shall pay for 100% of the Actual Total Costs which are estimated to be $3,340.00. Developer shall pay for all costs for the acquisition of any additional temporary construction easements located outside of the Development Area. If County reasonably determines that the Actual Costs will exceed more than 20% of the estimated cost, County will inform Developer promptly. Upon completion, County will submit an invoice to Developer and Developer shall pay within thirty (30) days of receipt.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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

13. **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.

14. **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.

15. **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.

16. **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.

17. **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 formal inquiry 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.

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

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

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

Executed by the County of Sarpy, Nebraska, this 11th day of December, 2018.

ATTEST:

County Clerk

Chairman

APPROVED AS TO FORM:

County Attorney
Executed by Developer this 30 day of November, 2018.

OBC, LLC

By: [Signature]

Name: Byron Wieberdink

Its: VP, CEO & Treasurer
8" Sanitary Sewer from MH 123 easterly to the location where the Developer will connect onto the Developer Stub Improvements.

Connection Point at MH 123

Exhibit 1