RESOLUTION APPROVING AGREEMENT FOR SEWER CONNECTION AND WASTEWATER SERVICE WITH WERNER ENTERPRISES, INC.

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Sarpy County operates a sanitary sewer system pursuant to County Industrial Sewer Act, found at Neb. Rev. Stat. §23-3601, et seq;

WHEREAS, an agreement has been proposed with Werner Enterprises, Inc. for the payment of connection fees for the proposed Prairie Corners Five Replat, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Agreement for Sewer Connection and Wastewater Service between Sarpy County and Werner Enterprises, a copy which is attached hereto, is hereby approved.

The above and foregoing Resolution was duly approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on this 19th day of April, 2016.

[Signatures]
Chairman, Sarpy County Board
County Clerk
AGREEMENT FOR SEWER CONNECTION AND WASTEWATER SERVICE BETWEEN COUNTY OF SARPY, NEBRASKA, WERNER ENTERPRISES, INC.

THIS AGREEMENT, made this 20th day of April, 2016 by and between the County of Sarpy, a Political Subdivision of the State of Nebraska (hereinafter called “County”), Werner Enterprises, Inc., (hereinafter called “Werner”).

WITNESSETH THAT:

WHEREAS, Werner has constructed or is contemplating the platting of a subdivision in Sarpy County, Nebraska to be known as Prairie Corners Five, as shown on Exhibit “A” hereto; 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; and,

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, Werner desires to provide for the flow, transportation, and handling of sewage collected in or flowing into the sanitary sewer system 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, Werner desires to have County convey sewage from the Prairie Corners Five Subdivision; and,

WHEREAS, it is to the mutual advantage of the Parties hereto and in the general public interest for the sewage from Prairie Corners Five to flow into the Sarpy Sewer and be treated by the Omaha Wastewater Treatment System; and,

WHEREAS, the accomplishment of such an arrangement is authorized by law and by Interlocal Agreements with the City of Omaha.

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. **Werner Sewer System**: For the purposes of this Agreement, the term “sewer system of the Werner” shall include, whether now in existence or hereafter constructed, all sanitary sewers, sanitary sewer systems and appurtenances thereto which are contained within the boundaries of the proposed Prairie Corners Five subdivision, and such extensions outside of said area that may be required in order to connect to the sanitary sewer system of the County.

2. **Sarpy Sewer**: For the purposes of this Agreement, the following, whether now in existence or hereafter constructed, shall be deemed a part of the Sarpy Sewer or the sewer system of County:
   a. Any sanitary sewer or system of sanitary sewers owned by County;
   b. Any sanitary sewer or system of sanitary sewers not a part of the Werner sewer system and not owned by County, but through which County has an easement, license or other right or other license to transport sanitary sewage;

3. **Permission to Connect**: Subject to the conditions and provisions hereinafter specified, the County hereby grants permission to Werner to connect the sanitary sewer system of Werner to the Sarpy Sewer that each such connection shall be made in such a manner shown on plans to be submitted by Werner and approved by County
   a. This Agreement covers only the area included in the Prairie Corners Subdivision as shown on Exhibit A. Development and connection to the Sarpy Sewer of any additional area outside of the connection(s) shown on Exhibit A must be provided for by amending this Agreement or by execution of a new wastewater service agreement.
   b. Connections shall be subject to additional conditions and fees as may be provided for by other rules and regulations applicable to users of the Sarpy Sewer.

4. **Werner warranty**: Werner expressly promises, warrants, covenants, and agrees:
   a. The sewer system of Werner shall be constructed in strict accordance with the plans and specifications and 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 sewer system of Werner connected directly or indirectly to the Sarpy Sewer prior to the work being so connected to the Sarpy Sewer. The design criteria used by Werner shall meet or exceed the standards of the following: City of Omaha Standard Specification for Public Works Construction, 2003 3rd Addition and the City of Omaha sewer construction standard plates.
   c. The sewer system of Werner 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 wastewater system of Werner.
d. Wastewater flowing into, passing through, or emptied into the Sarpy Sewer from the wastewater system of Werner 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 Werner into the Sarpy Sewer.

e. Werner, upon reasonable notice, shall allow any duly authorized representative of the County to enter upon such property at reasonable times for the purpose of inspection, observation, measurement, sampling, or testing of sewage.

f. The sewer system of Werner shall at all times be properly maintained and kept in good operating order and repair without cost to County.

g. In the event that County discovers anything in the construction, maintenance, or operation of the sewer system of Werner which will, in the opinion of the County, be detrimental to the proper operation of the Sarpy Sewer, or any part thereof, Werner will, on notice thereof, promptly correct said defects.

h. In the event Werner 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 Werner, perform such maintenance and repair or correct such defects. Werner, 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. Werner shall not, directly or indirectly, permit connection to the Sarpy Sewer, to the sewer owned by the City of Omaha, 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. Werner 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 6 and 7, infra, hereinafter made and adopted by County.

k. Werner shall convey to County all right, title and interest to the sewer line contained within the proposed Lot 4 of Prairie Corners Five that currently serves other parcels nearby. Said conveyance shall occur within 30 days of the date of the execution of this Agreement.
5. Parties acknowledge that the sewer system of Werner and County sewer system 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.

6. **Connection Fees**: The current applicable connection fee charged by County at time of final plat is $5,500 per acre. However, portions of the area of the Prairie Corners Five Plat were the subject of a prior plat for which connection fees were paid. The Parties hereby agree that 114.757 acres of the Prairie Corners Five subdivision were not previously subject to connection fees that were paid. The Parties therefore agree that the connection fee due to County for the Prairie Corners Five plat is $631,163.50. Said fee shall be paid within 30 days of the time of the filing with the Sarpy County Register of Deeds of the approved final plat for Prairie Corners Five. The Parties acknowledge that additional sewer connection fees shall be due to the County at the time of the issuance of building permits for structures within the Prairie Corners Five subdivision, pursuant to the sanitary sewer fee schedule applicable at that time.

7. **Service Fees**: Charges for retail flow and customer charges (treatment and maintenance) for all customers within Prairie Corners Five shall be based upon MUD water consumption in the same manner as other sewer connections within SID 52.

8. **Permit required**: Werner further expressly promises, warrants, covenants, and agrees that no connection shall be made to the Sarpy Sewer until a permit shall have been obtained from County. Werner shall:

   a. Upon reasonable notice by County, Werner 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.

9. **Amendments, Federal and State Regulations**: Except as precluded by any Federal law or regulation, Werner agrees to abide by any changes in this Agreement made necessary by revisions or additions to State or Federal regulations.

10. **Term and Termination**: The term of this Agreement shall be ten (10) years from the date noted on the first page of this Agreement; provided, however, that unless one of the Parties hereto shall advise the other Party in writing of its desire not to do so, this Agreement shall be automatically renewed on the same terms and conditions as herein set forth for additional successive terms of ten (10) years each. Said written advice shall be given at least six (6) months prior to the end of the original terms or additional term(s), as the case may be, which said Party giving such notices desires to be the final term of this Agreement. If the Parties agree to terminate this Agreement, Parties agree to negotiate in good faith, the final terms as related to disconnection, removal, reconstruction or modification of the sewer system of Werner.
11. **Disconnections and Termination**: County shall have the right to make any disconnections and make a claim for the expenses thereof from Werner should Werner neglect or refuse to disconnect or fail to negotiate a new contract following termination as herein provided. Should Werner cease to use any wastewater system connected to the Sarpy Sewer, Werner shall disconnect the same at its expense or failing that, County may disconnect the same and make a claim for the expense of Werner. 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.

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

13. **Notice**: Each Party agrees to provide the other Parties 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 other Parties 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 Parties to this Agreement. The addresses for the purpose of notice and other communications are as follows:

   a. **County**:

   County Clerk, County of Sarpy  
   1210 Golden Gate Dr., #1250  
   Papillion, NE 68046

   b. **Werner**:

   Werner Enterprises, Inc.  
   14507 Frontier Road  
   Omaha, NE 68138
14. **Interruption of Service**: If the Sarpy County sewer is unable to temporarily accept sewage from Werner connections, said temporary interruption of service shall not excuse Werner from the payment of fees as described in paragraph 7.

15. **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.

16. **Change in Ownership**: This Agreement shall be binding on any subsequent purchaser, owner, successor or assign of any real property within the boundaries of the Prairie Corners Five Plat. In the event of any change in the control or ownership of property therein, the owner shall notify the succeeding owner of the existence of this Agreement by means of a letter, a copy of which shall be forwarded to County.

17. **Breach**: In the event of Werner’s breach of any of the terms and conditions hereof or any warranty or covenant herein made by Werner, 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 sewer system of Werner, Werner shall, within sixty (60) 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 Werner 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 Werner, Werner 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.

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

      i. Upon giving Werner sixty (60) days notice of County’s intent to do so, County may require Werner to disconnect the sewer system of Werner 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 Werner.

      ii. In the event the breach pertains to the actual construction, reconstruction, repair, maintenance or operation of the sewer system of Werner, 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 Werner, as the case may be, in either of which events Werner
agrees County may make a claim for any and all expense incurred by County in connection therewith.

18. **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.

19. **Emergency Measures:** If there is a breach of any term or condition, warranty, or covenant pertaining to the actual construction, reconstruction, repair, maintenance or operation of the sewer system of Werner, resulting in discharge of raw sewage or other environmental hazard which is harmful to the public health and safety, County may take immediate remedial measure to fix the harm and make a claim to Werner for cost of same.

20. **Severability:** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

21. **Governing Law:** As to the interpretation, validity, and effect of this Agreement, the laws of the United States of America shall govern and to the extent no applicable Federal law exists then the laws of the State of Nebraska shall govern.

22. **Binding Effect:** This Agreement shall be binding upon the Parties, their respective successors and assigns. The covenants, warranties, and other obligations 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 the respective heirs, personal representatives, successors, and assigns.

23. **Multiple Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterpart copies of this Agreement shall be exchanged between the Parties.

24. **Entire Agreement:** This Agreement and the Exhibits shall constitute the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the Parties with respect to the subject matter of this Agreement. This Agreement may not be altered, modified, or amended, nor any of its Sections waived, unless by written agreement signed by all Parties to this Agreement.

25. **Anti-Discrimination Clause:** Parties shall not discriminate against any parties on account of race, national origin, sex, age, political or religious affiliations, or disabilities in violation of federal, state, or local laws, rules, regulations or ordinances.
26. **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.

27. **Representations**: Each Party hereto represents and warrants to the other that (i) it has all necessary right, power and authority to enter into this Agreement, and (ii) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such Party have been duly authorized by all necessary action on behalf of such Party.

28. **Solicitation**: Werner does hereby state, warrant, and covenant that it has not retained or employed any company or person, other than bona fide employees of Werner to solicit or secure this contract, and it has not paid or agreed to pay any company or person, other than a bona fide employee of Werner, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this statement, warrant, and covenant, the County shall have the right to annul this Agreement without liability.

29. **Titles**: The titles used in these General Provisions are for convenience only and shall not be used in interpreting this Agreement.

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 Sarpy County this 9th day of April, 2016

SARPY COUNTY, NEBRASKA,
A Political Subdivision

[Signature]
Chairperson, Board of Commissioners

Approved as to form:

[Signature]
Sarpy County Attorney
WERNER ENTERPRISES, INC.
A Nebraska Corporation

Title: Senior EVP-Specialized Services