RESOLUTION APPROVING AND AUTHORIZING CHAIR TO SIGN THE FIRST 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) plans to develop the property 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 which outlines the responsibilities of the Parties for the land development and the road improvements; and

WHEREAS, Oxbow and the County desire to amend said Development Agreement which proposed “First Amendment to Development Agreement” is attached hereto; which said First Amendment to Development Agreement is in the best interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the First Amendment to Development Agreement between the County of Sarpy and Oxbow Enterprises, Inc. is hereby approved and the Chairperson and the Clerk are hereby authorized to execute the same, a copy of said Development Agreement is attached hereto.

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 24th day of May, 2016.

Attest

Sarpy County Board Chairman

County Clerk
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to the Development Agreement (First Amendment) is made and entered into as of 24th day of May, 2016 (Effective Date) by and between OXBOW ENTERPRISES, INC. (the “Company”) (hereinafter “Developer”), and the COUNTY OF SARPY, STATE OF NEBRASKA (hereinafter “County”). Collectively, Developer and County are hereinafter sometimes referred to as the “Parties.”

WHEREAS, County and Developer have entered into a Development Agreement dated as of July 14, 2015, (the “Agreement”).

WHEREAS, the Parties desire to amend the Agreement pursuant to the terms and conditions set forth herein.

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, County and Developer, each intending to be legally bound, do hereby mutually agree as follows:

1. 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 with the Property, approximately 32.83 acres, constituting Lots 1 and 2, Oxbow Way Replat 1, as subdivided and platted by Developer, and Outlot A, as shown on Exhibit A-3.”

2. Exhibit A-3. Exhibit A-3 is hereby attached to this First Amendment.

3. Schram Road Improvements. Section IV.A. of the Agreement is hereby amended and restated in its entirety as follows:

“A. County will design and construct road improvements to Schram Road to improve Schram Road to a 2 lane road in all areas directly abutting the Property, i.e., approximately 1,228 feet in length, (the “Schram Road Improvements”). Developer shall financially contribute to the Actual Cost of the Schram Road Improvements as provided herein. County may seek contributions to the Actual Cost of the Schram Road Improvements from subdivisions or developments outside of the Property. Developer’s share of such Actual Cost shall be determined as follows:

1. The Schram Road Improvements include relocation of a water main. Developer shall pay for 1/3 of the Actual Cost associated with the water main relocation and County shall pay for 1/3 of the Actual Cost associated with the water main relocation for Schram Road. The County shall initially pay for the remaining 1/3 Actual Cost of the water main relocation for Schram Road and may seek contribution for same from subdivisions or developments outside of the Project Area.
2. Developer shall pay for 1/3 of the Actual Cost of the design work and 1/3 of the Actual Cost of grading and drainage improvements associated with Developer’s frontage along Schram Road; provided, however, that any design costs incurred because of the redesign of the Schram Road Improvements from a 3 lane road to a 2 lane road shall not be included as part of the Actual Cost to be contributed by Developer, and Developer shall have no obligation to pay any of such redesign costs, such redesign being requested and undertaken solely by and at County’s request and direction. Developer shall pay for the Actual Cost of one lane of paving along Developer’s frontage. County shall pay for 1/3 of the Actual Cost of the design work (plus all of the Actual Cost of the redesign work) and 1/3 of the Actual Cost of the grading and drainage improvements associated with Developer’s frontage along Schram Road. The County shall initially pay for the remaining 1/3 Actual Cost for design work and all redesign work and 1/3 of the Actual Cost of the grading and drainage improvements associated with Developer’s frontage along Schram Road and may seek contribution for same from subdivisions or developments outside of the Property.

3. County shall pay for the Actual Cost of one lane of paving along Developer’s frontage. When the property to the north of Schram Road develops, County will seek an additional lane of paving making Schram a 3 lane road, and County may seek reimbursement of the Actual Cost thereof from subdivisions or developments outside of the Property; provided that Developer shall not be required to contribute any amount toward the Actual Cost of adding such third lane.

4. Developer shall have the right to review the records of County to confirm and verify the Actual Cost of the Schram Road Improvements.

5. County shall achieve Substantial Completion (as defined above) of the Schram Road Improvements on or before November 1, 2016.

6. County shall achieve Final Completion (as defined above) of the Schram Road Improvements on or before June 1, 2017.

7. Developer’s payment of the Developer’s share of the Actual Cost shall be made in a one-time lump sum payment upon Final Completion of the Schram Road Improvements.

8. Developer reserves all rights and remedies available at law or in equity in the event County fails to achieve Substantial Completion or Final Completion as required above.”

4. **150th Street Improvements.** Section IV.B. of the Agreement will be amended and restated in its entirety as follows:

“B. County will design and construct road improvements to 150th Street, beginning at the intersection with Schram Road on the north and ending at approximately the south property
line of the Lot 2 of the Project Area, such improvements to include a turn lane at the intersection of Schram Road and 150<sup>th</sup> Street and a paved 3 lane road to terminate at the approximate southern property line of Lot 2 of the Project Area, (the “150<sup>th</sup> Street Improvements”). Developer shall financially contribute to the Actual Cost of the 150<sup>th</sup> Street Improvements bordering Lot 1 and Lot 2 of the Project Area as provided herein. County may seek contributions to the Actual Cost of the 150<sup>th</sup> Street Improvements from subdivisions or developments outside of the Project Area. Developer’s share of such Actual Cost shall be determined as follows:

1. The 150<sup>th</sup> Street Improvements include relocation of a water main along the length of the Property. Developer shall pay for 1/3 of the Actual Cost associated with the water main relocation bordering the Project Area and County shall pay for 1/3 of the Actual Cost associated with the water main relocation bordering the Project Area. The County shall initially pay for the remaining 1/3 of the Actual Cost associated with the water main relocation and may seek contribution for same from subdivisions or developments outside of the Project Area.

2. Developer shall pay for 1/3 and County shall pay for 1/3 of the Actual Cost associated with the turn lane improvements beginning at the intersection of Schram Road and 150<sup>th</sup> Street. The County shall initially pay for the remaining 1/3 of the Actual Cost associated with the turn lane beginning at the intersection of Schram Road and 150<sup>th</sup> Street and may seek contribution for same from subdivisions or developments outside of the Project Area.

3. Developer shall pay for 1/3 of the Actual Cost of the design work and 1/3 of the Actual Cost of the grading and drainage improvements for the remaining 150<sup>th</sup> Street Improvements beginning at the south end of the turn lane. County shall pay for the remaining 1/3 of the Actual Cost of the design work and 1/3 of the Actual Cost of the grading and drainage improvements for the remaining 150<sup>th</sup> Street Improvements beginning at the south end of the turn lane. The County shall initially pay for the remaining 1/3 of the Actual Cost of the design work and 1/3 of the Actual Cost of the grading and drainage improvements of the remaining 150<sup>th</sup> Street Improvements and may seek contribution for same from subdivisions or developments outside of the Project Area.

4. Developer shall pay for 1/3 of the Actual Cost of the paving of the remaining 150<sup>th</sup> Street Improvements. County shall pay for 1/3 of the Actual Cost of the paving of the remaining 150<sup>th</sup> Street Improvements. The County shall initially pay for the remaining 1/3 of the Actual Cost of the paving of the remaining 150<sup>th</sup> Street Improvements and may seek contribution for same from subdivisions or developments outside of the Project Area.

5. Due to the decrease in the elevation of 150<sup>th</sup> Street profile, it is necessary to remove approximately 30-35,000 cubic yards of additional dirt from the right-of-way. The costs for the dirt removal shall be added to the Actual Cost of the 150<sup>th</sup> Street Improvements. Developer has contracted with an excavator to remove such excess dirt in May of 2016 at the rate of $3.65 per cubic yard of dirt removed from the 150<sup>th</sup> Street right-of-way. Said costs shall be paid by Developer and shall be added
to the Actual Cost of the 150th Street Improvements. Developer shall be credited for payments made towards said additional dirt removal at the rate of $3.65 per cubic yard of dirt removed. Said credit shall be used to reduce Developer’s share of the Actual Cost of the 150th Street Improvements.

6. Developer’s payment of such costs shall be made in a one-time lump sum payment upon Final Completion of the 150th Street Improvements. County agrees to acquire, at its sole cost and expense, any necessary right-of-way for properties adjacent to 150th Street other than the Property as necessary to construct the 150th Street Improvements.

7. Developer shall have the right to review the records of County to confirm and verify the Actual Cost of the 150th Street Improvements.

8. So long as Developer completes the dirt removal described above, before June 1, 2016, County shall achieve Substantial Completion (as defined above) of the 150th Street Improvements on or before November 1, 2016. However, if Developer completes the dirt removal described above, on or later than June 1, 2016, the County shall be unable to guarantee Substantial Completion on or before November 1, 2016.

9. County shall achieve Final Completion (as defined above) of the 150th Street Improvements on or before June 1, 2017.

10. Developer reserves all rights and remedies available at law or in equity in the event County fails to achieve Substantial Completion or Final Completion as required above.”

5. **Conflict.** In the event there is a conflict between this First Amendment and any other document referred to herein, this First Amendment shall control.

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

7. **No Other Amendment.** All references in this First Amendment and in the Agreement to “the Agreement” shall be deemed to be references to the Agreement as amended by this First Amendment. Except as set forth herein, all other provisions in said Agreement shall remain in full force and effect and unchanged in said Agreement.

[The next page is the signature page.]
IN WITNESS WHEREOF, this First Amendment has been executed by a duly authorized official of Developer and County, each of whom hereby represents and warrants that he has the full power and authority to execute this First Amendment in such capacity, all as of the day and year first above written.

Executed by Sarpy County this 24th date of May, 2016.

Attest:

Sarpy County Clerk

SARPY COUNTY, NEBRASKA,
A Political Subdivision

Chairperson, Board of Commissioners

Approved as to form:

Sarpy County Attorney
Executed by Oxbow Enterprises, Inc. this 20th day of May, 2016.

Developer:
Oxbow Enterprises, Inc.

BY:  
Name: John R. Miller
Its: President/Owner
OXBOW WAY REPLAT 1
LOTS 1 AND 2

BEING A REPLATTING OF LOT 1, OXBOW WAY, A SUBDIVISION LOCATED IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 13 NORTH, RANGE 11 EAST, OF THE 6TH P.M., CITY OF PAPILLON, SARPY COUNTY NEBRASKA.

ACKNOWLEDGEMENT OF REVIEW BY SARPY COUNTY ENGINEER

APPROVAL OF PAPILLON SURVEYOR'S CERTIFICATE

APPROVAL BY PAPILLON

SURVEYOR'S CERTIFICATE

LEGAL DESCRIPTION:

BEING A REPLATTING OF LOT 1, OXBOW WAY, A SUBDIVISION LOCATED IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 13 NORTH, RANGE 11 EAST, OF THE 6TH P.M., CITY OF PAPILLON, SARPY COUNTY NEBRASKA.

EXHIBIT 4-3