RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN THE INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN SARPY COUNTY AND THE CITY OF PAPILLION, NEBRASKA FOR COLLECTION OF ARTERIAL STREET IMPROVEMENT PROGRAM FEES FOR THE DEVELOPMENT OF SARPY COUNTY POWER PARK WEST

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, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402; and,

WHEREAS, pursuant to Neb. Rev. Stat. §13-801, et seq., an Interlocal Cooperation Act Agreement has been proposed between the City of Papillion, Nebraska and Sarpy County for collection and allocation of Arterial Street Improvement Program fees to portions of Capehart Road, and 150th Street, and for the collection and allocation of sanitary and wastewater sewer connection fees as further outlined in said Agreement; and,

WHEREAS, it is in the best interests of the residents of Sarpy County to participate in said Interlocal Cooperation Agreement, a copy of which is attached hereto and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board hereby approves and adopts the attached Interlocal Cooperation Agreement for the collection and allocation of Arterial Street Improvement Program fees.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to execute said Agreement on behalf of Sarpy County, Nebraska and they in addition to the County Public Works Director (or his designee) are authorized to take such other actions as may be necessary under the terms of said 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 20th day of December, 2016.

Attest

SEAL

Sarpy County Board Chairman

County Clerk
INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT (the “Agreement”) is made by and between the City of Papillion, Nebraska (“City”), and the County of Sarpy, Nebraska (the “County”) (singularly, the “Party” or collectively, the “Parties”).

WHEREAS, the Parties are political subdivisions, duly created and validly existing under the laws of the State of Nebraska;

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801, et seq. (Reissue 2007) (the “Act”), authorizes cities and counties to cooperate on the basis of mutual advantage to thereby provide for services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of the local communities;

WHEREAS, the Parties hereto desire to enter into an agreement which encourages and promotes economic development within County and City;

WHEREAS, a developer (“Developer”) intends to improve certain real estate generally located on the west side of the intersection of Highway 50 and Capehart Road, to be platted as Sarpy County Power Park West, (the “Project”) which parcel, as depicted and described in the Legal Description exhibit attached as Exhibit A, is within City’s platting and zoning jurisdiction by virtue of its location within City’s extraterritorial jurisdiction (“ETJ”);

WHEREAS, the Project has significant public infrastructure needs within or abutting the Project, and the Parties desire to provide certain assurances to Developer with respect to Developer’s significant investment within County and City;

WHEREAS, the Parties desire to set forth their agreements herein regarding certain fees and processes which shall be used for the public infrastructure needs adjacent to or abutting the Project; and

WHEREAS, the Parties now wish to enter into this Agreement to coordinate with respect to their obligations to one another in relation to the development of the Project.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN CITY AND COUNTY AS FOLLOWS:

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

2. Duration and termination of the Agreement. This Agreement shall become effective upon approval by both of the Parties’ governing bodies and shall remain in full force and effect until such time as any of the following occurs: (1) The Sarpy County Power Park West Final Plat expires before it is recorded; (2) the Project terminates; (3) Developer, or its assignee(s), as specifically approved by City, formally suspend(s) plans to develop the Project, including all related road improvements; (4) the Project is fully developed as
contemplated by the Parties in their respective agreements with Developer; or (5) as otherwise agreed to by the Parties.

3. **No Separate Legal or Administrative Entity.** No separate legal or administrative entity will be created hereunder. Existing agents of the respective Parties will complete the terms of this Agreement.

4. **Purpose and Corresponding Terms.** The purpose of this Agreement is to encourage and promote economic development within County and City, provide certain assurances to Developer with respect to its significant investment within County and City, and to clarify the respective obligations of the Parties to one another regarding the Project. Accordingly, the following provisions shall apply to the Project:

   a. **Project Fees:**

      i. **Arterial Street Improvement Program (“ASIP”) Fees.**

         (1) **Collection.** Upon Developer’s application for a building permit for the Project for which ASIP fees are collected, City shall collect such ASIP fees at City’s “New Civic, Office and Commercial Construction” rate as set out in City’s Master Fee Schedule at the time of building permit application and further defined in City’s Arterial Street Improvement Program policy. Said rate shall be calculated on a “per Development Acre” basis. Pursuant to City regulations, a Development Acre is defined as each individual acre of land located within the lot lines of the lot or tax lot for which the permit is sought and excludes any land located within any public street right-of-way or other dedicated land such as public parks and outlots.

         (2) **Use of Fees.** So long as County is the applicable “Lead Agency”, as defined herein, ASIP fees collected by City, pursuant to Section 4(a)(i)(1), shall be remitted by City to County within 45 days of collection and shall be used by County solely and exclusively to fund any road improvements performed by County to Capehart Road and 150th Street abutting the Project area (the “Authorized ASIP Road Improvements”). Such remitted ASIP fees shall not be used to fund any improvements to Highway 50 or any other public or private improvements. In the event County relinquishes Lead Agency to another entity prior to expending all of the remitted ASIP fees on the Authorized ASIP Road Improvements, then such unexpended ASIP fees shall be returned to City. “Lead Agency” shall refer to the entity, or entities, responsible for designing, preparing plans for, bidding, installing, or constructing said particular public improvement or, alternatively, responsible for engaging a qualified contractor or subcontractor to perform such responsibilities.
(3) Scope. The terms and agreements set forth herein with respect to the collection and contribution of ASIP fees to the Authorized ASIP Road Improvements shall not obligate City to contribute ASIP fees in a similar manner for any other project contemplated now or in the future unless otherwise agreed to in writing by Parties. Furthermore, City’s contribution of collected ASIP fees, as set out herein, shall constitute City’s sole contribution obligation to the construction of the Project.

ii. Sanitary and Wastewater Sewer Connection Fees. As part of any building permit application for the Project for which connection to the sanitary sewer system is required, City shall require the building permit applicant to provide written documentation from County verifying that either: (1) all requisite Sanitary and Wastewater Sewer Connection Fees have been remitted to County or (2) County authorizes City to issue such building permit prior to the remittance of Sanitary and Wastewater Sewer Connection Fees to County.

iii. Review Fees. The Parties acknowledge that both County and City typically charge developers within their respective zoning and platting jurisdictions a standard fee of one percent (1%) of the construction cost of an applicable public improvement (“Review Fee”) to cover engineering, legal, and other miscellaneous expenses incurred by the Parties in connection with the review of said public improvement when Developer is the applicable Lead Agency. In the event that either County or City is the Lead Agency for an applicable public improvement related to the Project, however, the Parties agree that the Review Fee shall not be charged by the Party reviewing said applicable public improvement related to the Project.

b. Review of Public Improvements.

i. Right to Review: City shall have the right to review and provide timely comments to County on the plans, design, and materials for the following public improvements over which County has authority, jurisdiction, or construction obligations (the “Reviewable Public Improvements”) prior to the construction, or authorization of construction, of said Reviewable Public Improvements:

(1) All installations, modifications, or improvements of public streets, including curbing and turn lanes, to be constructed, modified, or improved within: (i) that portion of the Project area designated as “DEDICATED RIGHT OF WAY” in Exhibit B; (ii) any abutting right(s)-of-way, including Highway 50, 150th Street, and Capehart Road, and (iii) any other areas to be dedicated as right-of-way pursuant to any future replat(s) of the Project;

(2) All public street signage and traffic control signage;
(3) All sanitary and wastewater sewers to be constructed and installed within the boundaries of the Project area or other areas specifically approved by County. Sanitary and wastewater sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes, and related appurtenances; and

(4) All storm sewers to be constructed within the boundaries of the Project area or within other areas specifically approved by County, including all necessary storm sewers, inlets, manholes, lines, pipes, and related appurtenances.

ii. **Electronic Files.** County shall require the Lead Agency for the Reviewable Public Improvements to timely submit its proposed construction documents to City’s Engineering Department as electronic files so that City may conduct its review and provide comments to County pursuant to Section 4(b)(i). This provision shall apply regardless of whether County, Developer, or some other entity is the applicable Lead Agency.

c. **Grading for Sidewalks.** In the event County is the Lead Agency for either 150th Street or Capehart Road, County agrees to grade a bench for the corresponding sidewalk improvement(s) to be installed adjacent to 150th Street and Capehart Road, if feasible. The feasibility of any such grading shall be determined solely by County’s Engineering and Public Works Departments. County agrees to provide the corresponding grading plans to City for review and comment prior to grading a bench for the applicable sidewalk improvement(s).

d. **Changes in Jurisdiction.** The Parties’ respective obligations for the Authorized ASIP Road Improvements, which shall include, but not necessarily be limited to, construction, installation, and contribution obligations, as set forth herein and in the Parties’ separate agreements with Developer, shall not, by virtue of any change in authority or jurisdiction over the right-of-way, be extinguished or otherwise modified unless otherwise agreed to by City and County.

5. **No Financing or Establishing of a Budget.** No financing or establishing of a budget will be created by either of the Parties under this Agreement.

6. **Duties of Governmental Subdivisions.** Pursuant to Neb. Rev. Stat. §13-804(5), the Parties acknowledge, stipulate, and agree that this Agreement shall not relieve either Party of any obligation or responsibility imposed upon it by law.

7. **Conflicts.** Pursuant to Neb. Rev. Stat. §23-3113, the Parties hereto declare and affirm that no officer, member, employee, or member of their governing bodies, and no other public official of parties 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 interests, partnerships, or associations in
which he or she is directly or indirectly interested; nor shall any employee, or any member of said employee’s governing bodies, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

8. **Nondiscrimination.** The Parties agree that neither they nor any of their subcontractors shall discriminate against any employee, or applicant for employment to be employed in performance of this Agreement, with respect to the employee’s or applicant’s hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin.

9. **Severability.** If any part, term, condition or provision of this agreement is held to be illegal, void, or in conflict with any law of this State or the United States, the validity of the remaining parts, terms, conditions, or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, condition, or provisions held to be illegal or invalid.

10. **Modifications.** No modification, termination, or amendment of this Agreement may be made except by written agreement signed by both Parties.

11. **Entire Agreement.** The entire understandings and agreements between the Parties hereto are contained in this Agreement, and this Agreement supersedes all previous understandings and agreements, written and oral, with respect to this transaction.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each and all of which shall constitute an original and all of which when taken together shall constitute the same agreement.

[END OF AGREEMENT]
IN WITNESS WHEREOF, the Parties have caused this Interlocal Cooperation Agreement to be executed by the duly authorized officers on the last date and year written below.

CITY OF PAPILLION, NEBRASKA

Date: January 19, 2017 BY: ____________________________

David P. Black, Mayor

Attest:

__________________________

Elizabeth Butler, City Clerk
SARPY COUNTY, NEBRASKA

Date: 12-20-16

By: [Signature]
Chairman of Board of Commissioners

Approved as to form:

[Signature]
Sarpy County Attorney

Attest: [Signature]
LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 13 NORTH, RANGE 11 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER; THENCE EASTERLY ON THE NORTH LINE OF SAID SOUTHEAST QUARTER ON AN ASSUMED BEARING OF N86°56'11"E, 2420.88 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 144TH STREET/HIGHWAY 50; THENCE SOUTHERLY ON SAID WEST RIGHT-OF-WAY LINE OF 144TH STREET/HIGHWAY 50 FOR THE FOLLOWING FOUR (4) DESCRIBED COURSES; (1) S02°55'51"E, 629.13 FEET; (2) S00°40'59"W, 475.95 FEET; (3) S01°44'30"E, 522.25 FEET; (4) S03°29'38"E, 948.58 FEET TO A POINT INTERSECTING SAID WEST RIGHT-OF-WAY LINE AND THE NORTH RIGHT-OF-WAY LINE OF CAPEHART ROAD; THENCE S87°15'14"W ON SAID NORTH RIGHT-OF-WAY LINE, 263.07 FEET; THENCE S50°51'24"W ON SAID NORTH RIGHT-OF-WAY LINE, 62.35 FEET; THENCE S02°47'03"E ON SAID NORTH RIGHT-OF-WAY LINE, 33.00 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER; THENCE S86°59'04"W ON SAID SOUTH LINE, 2043.06 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER; THENCE N03°38'35"W ON THE WEST LINE OF SAID SOUTHEAST QUARTER, 2641.41 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS A CALCULATED AREA OF 6,270,357.68 SQ. FT. OR 143.948 ACRES MORE OR LESS.

Exhibit A