

BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA**RESOLUTION AUTHORIZING SETTLEMENT OF EMINENT DOMAIN MATTER
WITH HORSE CREEK FARMS**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2012), 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 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Sarpy County constructed an outfall sewer pursuant to the County Industrial Sewer Act, found at Neb. Rev. Stat. §23-3601, *et seq.* (Reissue 2012); and

WHEREAS, pursuant to Resolution 2013-385, approved by the County Board on October 29, 2013, the Sarpy County Industrial Sewer was extended for the future needs of planned commercial and industrial uses in the area of Highway 50 and Schram Road; and,

WHEREAS, pursuant to Resolution 2014-104, approved on March 18, 2014, the County Board authorized the use of eminent domain power for the taking of temporary and permanent easements of land within the extension area; and,

WHEREAS, an eminent domain case was filed in the County Court of Sarpy County at case number, CI14-1083 for the taking of portions of Tax lot G, 36-14-11—Parcel No. 010465669 and Pt Tax lot H, 36-14-11—Parcel No.010432035; and,

WHEREAS, the appointed appraisers set a value for the condemnation award, and pursuant to Resolution 2014-135, approved on April 8, 2014, \$25,043, the amount of the condemnation award was deposited with the County Court as payment thereof; and,

WHEREAS, the landowner, Horse Creek Farms appealed the condemnation award to the District Court at CI14-0691, asserting that the condemnation award does not reflect the true market value of the property and does not consider the property's highest and best use. Additionally, the placement of the permanent easement in some cases actually results in a larger taking of land; and,

WHEREAS, after weighing the prospective evidence in the matters described herein, and understanding the expense and risks of litigation, the parties wish to settle said matters and a Settlement Agreement has been proposed for the amount of \$55,361.25 whereby \$25,043.00 deposited with the County Court would be released to Horse Creek Farms and the remainder, \$30,318.25 would be paid by Sarpy County to Horse Creek Farms; and,

WHEREAS, in consideration of the \$55,361.25, Horse Creek Farms will dismiss the District Court case and release Sarpy County from any and all claims or causes of action related to the eminent domain matter.

NOW, THEREFORE BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Settlement Agreement with Horse Creek Farms, a copy of which is attached hereto, is hereby approved and the Chair and the Clerk are hereby authorized to execute said Settlement Agreement on behalf of Sarpy County.

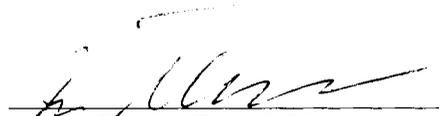
BE IT FURTHER RESOLVED that the Chair, Fiscal Administrator, and County Attorney are authorized to take such actions as may be necessary to fully perform said Agreement.

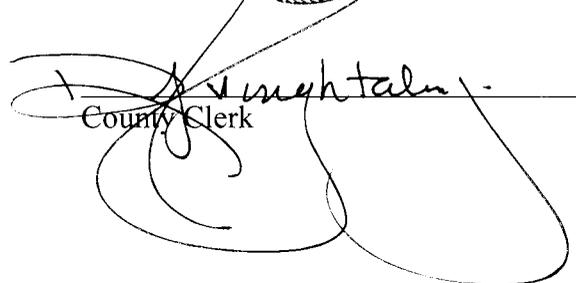
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 5th day of August 2014.

Attest

SEAL




Sarpy County Board Chairman


County Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter, "Agreement") is made as of the dates indicated at the signatures below by and between Horse Creek Farms, a Colorado General Partnership (hereinafter, "Horse Creek Farms") and the County of Sarpy, a political subdivision in the state of Nebraska, (hereinafter, "County"). Collectively, Horse Creek Farms and County are hereinafter sometimes referred to as the "Parties."

WITNESSETH:

WHEREAS, Horse Creek Farms, has appealed and maintained an action against County for the taking of certain real property using the power of eminent domain, as further described in an action found in the records of the District Court of Sarpy County, Nebraska as CI 14-0000691 (hereinafter, "the Taking"); and,

WHEREAS, the Parties are desirous of settling the dispute between them; and,

NOW, THEREFORE, in consideration of the covenants set forth herein, Horse Creek Farms and County do hereby agree and contract with each other as follows:

1. County will pay the total sum of \$55,361.25, to Horse Creek Farms in full and complete settlement of any and all claims Horse Creek Farms now has or which may arise out of any actions by County or County's employees or representatives in connection with the Taking.
2. County previously deposited \$25,043.00 with the Sarpy County Court as awarded in the case found in the records of the Sarpy County Court at CI14-1083. Said sum remains on deposit with the County Court, who will release the deposit when the District Court issues an Order of Dismissal for the Taking as partial payment thereof. The balance of \$30,318.25 will be paid by separate check to Horse Creek Farms with the signing of this Agreement.
3. In consideration of the sum of \$55,361.25, payable as described above, Horse Creek Farms will dismiss the Taking matter with the District Court. Additionally, Horse Creek Farms, its successors, attorneys, agents and assigns do hereby release, hold harmless and discharge County, its commissioners, elected officials, officers, agents, employees, representatives, attorneys, and assigns, from any and all claims or causes of action, whether constitutional, contractual, tort, or otherwise, known, or unknown, foreseen or unforeseen, which relates in any way to or arises in any way from the Taking as described herein.
4. It is the intention of the Parties hereto that this Agreement will completely predetermine and resolve all claims, disputes, and/or causes of action, and that, after execution of this Agreement, there will be no remaining claims or demands which any person or party can or may make upon the County, its commissioners, elected officials, officers, agents, employees, representatives, attorneys, and assigns, as a result of the Taking described herein.

[The next page is the signature page.]

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 5th day of August, 2014.

SARPY COUNTY, NEBRASKA,
A Political Subdivision



Attest:


Sarpy County Clerk


Chairperson, Board of Commissioners

Approved as to form:


Sarpy County Attorney

Executed by Horse Creek Farms this 18 day of July, 2014.

HORSE CREEK FARMS, A Colorado
General Partnership


Dennis Esch, Managing Partner