

BOARD OF COUNTY COMMISSIONERS, SARPY COUNTY, NEBRASKA 12/000610

A RESOLUTION AUTHORIZING CHAIR TO SIGN THE STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CONTRACT NO. 11-ED-004 WITH SERGEANT'S PET CARE PRODUCTS, INC. AS THE BENEFITED BUSINESS

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), 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 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Resolution No. 2012-23 on behalf of Sergeant's Pet Care Products, Inc., Sarpy County signed a Memorandum of Understanding and applied for use of \$505,000 of Community Development Block Grant (CDBG) Economic Development funds in order to fund installation of machinery and equipment for Sergeant's Pet Care Products, Inc. in Sarpy County; and,

WHEREAS, the Department of Economic Development has approved said application for funding and Memorandum or Understanding and further wishes to accomplish the next steps of implementation by entering into a contract with Sarpy County regarding the use and payment of the CDBG funds; and,

WHEREAS, it is the decision of this board that the execution of the attached Contract No.11-ED-004 with the State of Nebraska Department of Economic Development wherein Sergeant's Pet Care Products, Inc. is the benefited business in Sarpy County, is in the best interests of the citizens of Sarpy County.

NOW THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the attached Contract No.11-ED-004 with the State of Nebraska Department of Economic Development is hereby approved, and that the Chairman is hereby authorized to sign the Contract and such other documents as may be necessary to accomplish its purpose.

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 27th day of March, 2012.

Attest

SEAL



Debra Houghtaling
County Clerk

Russell
Sarpy County Board Chairman



Dave Heineman
Governor

STATE OF NEBRASKA

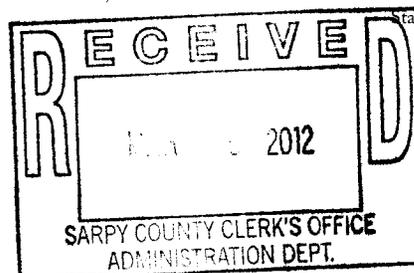
DEPARTMENT OF ECONOMIC DEVELOPMENT

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Statewide Relay (800) 833-0920 (voice)
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March 1, 2012

Tom Richards, Chairperson
Sarpy County
1210 Golden Gate Drive
Papillion, NE 68046-2895



RE: **Community Development Block Grant #11-ED-004, Sergeant's Pet Care Products, Inc.**
Notice of Approval/Transmittal of Contract

Dear Mr. Richards:

On behalf of Governor Dave Heineman and Catherine Lang, Director of the Department of Economic Development, it is a pleasure to inform you that your application has been approved in the amount of \$505,000. The grant will be used to assist Sergeant's Pet Care Products, Inc. with the purchase of machinery and equipment at their Sarpy County location. Please review the enclosed Contract, if you agree to the terms and conditions sign, date and return to us both Contract originals within 30 days from the date of this letter. When signed by the Department, we will return one of the Contract originals, which you should keep in your files.

The contract also includes a recently added Section 4.19 Verification of Work Eligibility Status for New Employees. Section 4.19 has been added in response to recently enacted Neb. Rev. Stat. §4-114, which in general terms requires public employers and public contractors to register with and use the E-Verify Program authorized by the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. 1324a to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Additional information about the E-verify program is located on the United States Citizenship and Immigration Services website: <http://www.uscis.gov/portal/site/uscis>.

You are required to designate an employee of your governmental entity to have principal day-to-day responsibility for the administration of this grant. In addition, a CDBG Certified Grant Administrator must be employed or contracted by you, the grantee, to oversee the administration of the grant. This individual, who may be your designated employee responsible for day-to-day administration or a contracted professional, must be recognized by the Department as having successfully completed the entire CDBG Certification Workshop and passed the exam.

The next step towards implementation of the funded project is to satisfy the Special Conditions for Release of Funds as stated in Part II of the Contract. You must complete all Special Conditions within the time specified in Part II before the Department will grant an official release of funds. Forms and instructions to assist you in satisfying the Special Conditions are available at <http://www.neded.org/content/view/107/239/>.

The county and the benefited business were previously authorized, in an authorization letter with an effective date of November 10, 2011 to incur costs for the project. Costs incurred on and after that effective date will be considered part of this project and reimbursable under the administrative contract for the project—provided such costs were for eligible activities, and, were undertaken in compliance with the requirements of 24 C.F.R. Part 58 (which HUD regulation addresses compliance with the National Environmental Policy Act of 1969). Costs incurred are, and will remain, the sole responsibility of the county, or the benefited business, respectively, unless and until the county achieves a Release of Funds from the Department.

The county will be eligible to draw down CDBG funds after signing and returning the enclosed contracts, and submitting all Special Conditions' documents. Our department will issue a Release of Funds letter to the county after all required documents are received.

You may withdraw from this award prior to receiving a written Notice of Release of Funds from the Department. In such an event, the Department reserves the right to determine the amount of funds to reimburse or recapture from you for incurred eligible administrative costs.

If you have any questions regarding this information contact your Program Representative, Dave Honz at (402) 471-3763 or by email at dave.honz@nebraska.gov. The principal contact for all grant related matters is your Program Representative.

Individuals who are hearing and/or speech impaired and have a TDD, may contact the Department through the Statewide Relay System by calling (800) 833-7352 (TDD) or (800) 833-0902 (voice). The relay operator should be asked to call DED at (800) 426-6505 or (402) 471-3119.

We congratulate the county on successfully obtaining CDBG funds. We look forward to actively working with you in carrying out your CDBG project.

Sincerely,



Steve Charleston
CDBG Program Manager
Community and Rural Development Division

Enclosures

Copies w/o enclosures:

Mark Wayne, County Administrator
Joseph Connealy
Jake Hansen, MAPA
Jennifer Long, DED
CDBG file #11-ED-004

Sarpy County Board of Commissioners

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593-4155

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ADMINISTRATOR Mark Wayne

DEPUTY ADMINISTRATOR Scott Bovick

FISCAL ADMIN./PURCHASING AGT. Brian Hanson



COMMISSIONERS

Rusty Hike District 1
Jim Thompson District 2
Tom Richards District 3
Jim Nekuda District 4
Jim Warren District 5

MEMO

March 27, 2012

TO: Sarpy County Board of Commissioners

FROM: Scott Bovick, Deputy County Administrator

RE: Resolution to Approve \$505,000 Community Development Block Grant (CDBG)
Contract with Nebraska Department of Economic Development (DED) for Sergeant's
Pet Care Products

In January 2012 the County Board approved an application to DED for a \$505,000 CDBG economic development grant for Sergeant's Pet Care Products to establish a pet care product manufacturing and office operation in an existing facility near 134th and Cornhusker Road.

DED has approved the award of the grant funds and now it is necessary for the County Board to enter into a contract with DED to accept the terms of the grant.

The County also typically enters into a contract with MAPA to administer our CDBG grants, which we will present to the County Board for approval at a future meeting.

Sergeant's Pet Care recently held a Ribbon Cutting and Open House Event at their facility to announce the additional jobs and investment.

Please feel free to contact me if you have any questions. Thank you.


Scott Bovick, Deputy County Administrator

Cc: Deb Houghtaling
Mark Wayne
Brian Hanson
Jake Hansen
Lisa Haire
Nicole O'Keefe

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT NO. 11-ED-004
(involving a special economic development activity with
Sergeant's Pet Care Products, Inc. as the benefited business)
[CFDA #14.228]**

This contract is entered into between the State of Nebraska Department of Economic Development ("Department"), and Sarpy County, Nebraska ("Grantee"), upon the date of signature by both parties.

RECITALS:

A. The Department has been designated by the United States Department of Housing and Urban Development ("HUD") to administer; and HUD has awarded the Department funds for; the Community Development Block Grant Program ("CDBG").

B. The Grantee has submitted, and the Department has approved, Grantee's application which will undertake community development activities authorized under the Housing and Community Development Act of 1974, as amended ("HCDA" or "Act"), and as authorized under the federal regulations governing CDBG at 24 C.F.R. Part 570.

C. The Grantee; the Department; and Sergeant's Pet Care Products, Inc., 2625 South 158th Plaza, Omaha, NE 68130 ("Business"); and Bank of the West, 13220 California Street, Omaha, NE 68154 ("Bank"); have executed a Memorandum of Understanding ("MOU") dated variously by the parties in November 2011, and February 2012, which MOU is incorporated by this reference, agreeing to the terms and conditions provided in the MOU.

D. In approving the application the Department has relied upon the information submitted by the Grantee (and the Business) as material and as full and accurate representations of:

1. the nature and scope of the project activities.
2. the number of Full Time Equivalent ("FTE") positions to be created or retained, and maintained, by the Business as a result of the project.
3. the commitment of the Business to achieve the required CDBG national objective by having the FTE positions created or retained principally benefit low-to-moderate income ("LMI") persons.
4. the management abilities of those involved with; the marketing potential of; the existing financial condition of; and the projected financial viability of; the Business.
5. the commitments of others to invest funds in the project.

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AGREEMENT:

Premised on the Recitals above, and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of CDBG Funds.

The total amount of CDBG funds paid by the Department to the Grantee for allowable expenses incurred will not exceed \$505,000. Of that amount, approved administrative and audit expenses will not exceed \$5,000.

\$500,000 of the CDBG funds will be loaned by the Grantee to the Business to assist the Business in acquiring machinery/equipment for the Business facility site in Sarpy County, Nebraska. The terms of the loan are specified in the MOU and referenced later in this contract.

The payment of CDBG funds requires adherence to the various requirements, conditions, and limitations as set forth and explained in §3.01 and in §3.08.

Part V (Compliance with Applicable Laws and Regulations) of this contract incorporates, as being applicable to this contract, all of the Department's administrative requirements which are contained in the *Nebraska Community Development Block Grant Program Administration Manual*. Those administrative requirements contain many restrictions governing the receipt of CDBG funds from the Department. Included among those restrictions are limitations on the amount of administration expenses the Grantee is allowed, dependent on the Project's status.

Requests by the Grantee for reimbursement of project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the project, at the time of each request for reimbursement of administration expenses, with this requirement applicable at all times through project completion (including final project reports). As a cross-reference, note that §2.07 requires a CDBG Certified Administrator to achieve the initial Release of Funds for the project.

To request payment of allowable expenses, the Grantee must submit a request for payment to the Department, in the manner and form prescribed from time to time by the Department, mailed to the Community and Rural Development Division, Department of Economic Development, 301 Centennial Mall South, P.O. Box 94666, Lincoln, Nebraska 68509-4666.

§1.02 Incorporation of RECITALS Paragraphs as Agreed Terms of Contract.

All provisions of paragraphs A, B, C, and D of the RECITALS above are incorporated as agreed provisions of the contract.

§1.03 Reimbursement of Pre-Agreement Costs Incurred.

As previously authorized by the Department in a separate letter dated November 10, 2011, costs incurred on and after November 10, 2011, will be considered part of this project and reimbursable under this contract—provided such costs were for eligible activities, and, were undertaken in compliance with the requirements of 24 C.F.R. Part 58 (which HUD regulation addresses compliance with the National Environmental Policy Act of 1969).

§1.04 Time of Performance.

The period covered under this contract will be 24 months from March 1, 2012. The termination date of this contract will be March 1, 2014. All of the activities and services required of the Grantee, except for administration and audit, will be completed on or before this date.

§1.05 Program Income.

Program income is regulated by the provisions of 24 C.F.R. §570.489(e). The text of this regulation should be consulted for definitions and for other guidance concerning program income.

All CDBG economic development ("ED") category program income received by the Grantee (including program income from other CDBG ED projects) must be the first funds to be disbursed to pay for project activities prior to requesting ("drawing down") additional CDBG funds from the Department. In other words, program income must be the "first out" and must be fully depleted before the Grantee requests "new" CDBG funds from the Department.

Notice of Intent. If the Grantee intends to keep program income (normally generated from loan repayments by a benefited business, and normally kept in a revolving loan fund) to carry out CDBG ED activities in the future, the community must notify the Department of this intent within three months of the date of the Notice of Approval for a project which is to generate the program income. Note the three-month time limit for this notification. More details and other time limitations associated with establishing and administering a revolving loan fund are set forth below.

In the absence of such timely notice of intent being received by the Department, the default position is that all program income must be returned to the Department.

Also note that certain program provisions in the CDBG ED category may limit the amount of program income the Grantee may be allowed to keep for a particular project, requiring amounts over certain limits to be returned to the Department.

Program income generally means gross income received by the Grantee, or by a subrecipient of the Grantee, that was generated from the use of CDBG funds. Some exceptions to this general rule are detailed in 24 C.F.R. §570.489(e)(2). Program income includes, but is not limited to, the following:

- payments of principal and interest on loans made using CDBG funds.
- proceeds from the disposition (by sale or long-term lease) of real property purchased or improved with CDBG funds.
- proceeds from the disposition of equipment purchased with CDBG funds.
- interest earned on program income pending its disposition.
- interest earned on CDBG funds held in a revolving loan fund's cash balance interest-bearing account.

All program income is and remains subject to all requirements of the HCDA and CDBG regulations. Program income which may become a part of a Department approved community CDBG revolving loan fund remains subject to all requirements of the HCDA and CDBG regulations. This means all loans made from such a fund, including second and subsequent generation loans, are, and continue to be, subject to all CDBG requirements.

Notice of Intent and more about reuse plans. Program income cannot be committed to a revolving loan fund until the Grantee submits a written notice of its intent to propose a reuse plan for the program income. This notice must state whether the Grantee intends to retain program income at the local level, or intends to join a regional organization's plan. The notice must be submitted to the Department within three months of the date of the Notice of Approval for a project which is to generate the program income. If not submitted by that date, program income will be required to be returned to the Department.

- Local Administration.
 - If the notice of intent is submitted within the specified period and the Grantee intends to retain program income at the local level, the Grantee will have six months from the date of the Notice of Approval for the project to submit to the Department a plan for the administration of the program income. If the plan is not submitted by the six-month deadline, program income will be required to be returned to the Department.
 - The plan must include either: (a) a detailed description of the organization, administration, and priorities of the program income projects to be approved by the Grantee; or (b) a detailed description of the organization and administration plans, together with an incorporation of the Department's CDBG ED category objectives, including an agreement to incorporate all future changes made by the Department.
 - If the Grantee timely submits a plan, and if the plan is approved by the

Department, the Grantee then must, within 24 months from the date of their initial receipt of any program income via loan repayment to them, obligate program income to another project, and seek and obtain the Department's approval for such new project.

- During this 24-month period, program income must be placed in an interest-bearing account controlled by the Grantee (which account must be deposit insured/secured as required by state law). If no new project is approved within this 24-month period, program income will be required to be returned to the Department.
- Regional Administration.
 - If the notice of intent is submitted within the specified period and the Grantee intends to retain program income at the regional level, the Grantee will have six months from the date of the Notice of Approval for the project to submit to the Department evidence of: (a) the Grantee having entered into an agreement with other local governments which newly establishes a regional plan for the administration of the program income; or, (b) having entered into an agreement with an existing regional plan for administration of the program income. If this evidence of a regional plan is not submitted by the six-month deadline, program income will be required to be returned to the Department.
 - The regional plan must include either: (a) a detailed description of the organization, administration, and priorities of the program income projects to be approved under the authority of the regional plan; or (b) a detailed description of the organization and administration plans, together with an incorporation of the Department's CDBG ED category objectives, including an agreement to incorporate all future changes made by the Department.
 - If a newly established regional plan is timely submitted, and if the plan is approved by the Department, the regional administrator of the plan then must, within 36 months from the date of their initial receipt of any program income via loan repayment to them, obligate program income to another project, and seek and obtain the Department's approval for such new project.
 - During this 36-month period, program income must be placed in an interest-bearing account controlled by the regional administrator (which account must be deposit insured/secured). If no new project is approved within this 36-month period, program income will be required to be returned to the Department.

Allocation of program income (when such program income is in the form of loan repayments by the benefited business)—between the Department and the Grantee. If the terms specified in the MOU for this project involve loan repayments by the benefited business, such repayments must be allocated between the Department and the Grantee as agreed in the MOU. In the absence of an express provision in the MOU addressing such allocation, such repayments shall be all repaid to the

Department unless the Department agrees otherwise, in writing. The timing and logistics for handling such loan repayments shall be: after each payment is received by the Grantee from the benefited business, the appropriate portion of the amount received by the Grantee for each payment on the loan will be repaid to the Department, by check from the Grantee to the Department, within a reasonably contemporaneous time.

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

Funding of the amount stipulated in §1.01 of this contract will not be released to the Grantee by the Department until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than June 1, 2012. The Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

§2.01 Grantee Information Sheet.

Completion, and submission to the Department, of the Department's Grantee Information Sheet.

§2.02 Authorization to Request Funds Form.

Completion by the appropriate chief elected official of the Grantee, and submission to the Department, of the Department's Authorization to Request Funds form.

§2.03 Environmental Review.

Documentation evidencing the Grantee's completion of its responsibilities for environmental review and decision-making pertaining to the project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA.

§2.04 Procurement Standards.

Documentation evidencing adoption of procurement standards equivalent to those established in 24 C.F.R. §85.36 and in 24 C.F.R. §570.489. Procurement standards are explained in the CDBG Administration Manual published by the Department which can be found on the Department's website.

§2.05 Fair Housing.

Documentation identifying the local fair housing representative for the Grantee, including the representative's name and contact information. The Grantee must also submit a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing, and submit documentation demonstrating the actions that were actually taken. The requirement to submit documentation demonstrating the actions that were actually taken need not be submitted within the time frame for completion of the special conditions, but as required

in §4.06, such documentation must be submitted prior to closeout of the grant. The Department's *Nebraska Community Development Block Grant Program Administration Manual* contains additional detail about affirmatively furthering fair housing.

§2.06 Excessive Force Certification.

Documentation that the Grantee has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

§2.07 CDBG Certified Administrator Required.

Documentation must be submitted to the Department identifying the CDBG Certified Administrator the Grantee will use for the project. The Department's *Nebraska Community Development Block Grant Program Administration Manual* contains details about the certification process.

In addition to satisfying this special condition as a prerequisite for receiving a Notice of Release of Funds, Grantee should note as a cross-reference the contract provision in §1.01 providing that requests by the Grantee for reimbursement of project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the project at the time of the request(s) for reimbursement.

PART III: SOURCES AND USES OF FUNDS; AND OTHER REQUIREMENTS.

§3.01 Sources and Uses of Funds.

The Sources and Uses of Funds table below reflects:

- The anticipated total costs of the CDBG-assisted project.
- The CDBG-assisted activities being funded.
- The sources and amounts of other matching funds required for each activity.
- The maximum authorized CDBG funds for each CDBG-assisted activity.
- The ratio (derived by computation, not expressly shown) of CDBG funds to other matching funds for each CDBG-assisted activity, which ratio is a further limitation upon the maximum authorized CDBG funds which may be paid for each activity. The ratio is invoked as a limitation if the actual total costs of the activity are less than anticipated.

[An example illustrates this point: If the anticipated cost of an activity such as the acquisition of equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the benefited business as the source—but the actual cost of the machinery turned out to be \$90,000—then the 40% ratio limits CDBG funding to \$36,000, rather than the \$40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources, for each activity and for the project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources, for each activity and for the project in total. CDBG funds will not be the first funds

invested in the project—but rather—CDBG funds will flow into the project in proportion to all other funding sources.

- The timing (of CDBG funds flowing into the project on a pro rata basis) is that CDBG funding is reimbursement funding. If contrary, specific provisions have been made in the MOU regarding reimbursement funding for the project, then those MOU provisions will prevail. Absent such contrary, specific provisions in the MOU, reimbursement after-the-fact of the expense having been incurred is what will be done. This timing may well result in the benefited business having to temporarily carry the costs which are then later reimbursed through CDBG funding.

[An example illustrates this point: If the actual cost of an activity such as the acquisition of equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the benefited business as the source—then the benefited business would have to first pay the entire \$100,000 cost of acquisition, and then seek reimbursement of \$40,000 from CDBG funding.]

SOURCES→	CDBG	BANK	BUSINESS	TOTAL
USES (Activities)↓				
0700 Direct financial assistance to for-profit business	\$0	\$3,920,000	\$480,000	\$4,400,000
0750 Fixed Assets/Machinery/Equipment	\$500,000	\$2,600,000	\$0	\$3,100,000
0181 General Administration	\$5,000	\$0	\$0	\$5,000
TOTAL	\$505,000	\$6,520,000	\$480,000	\$7,505,000

§3.02 Use of CDBG Proceeds.

The use of the CDBG proceeds will be as stated in §1.01.

§3.03 Terms of the Loan to the Business.

The terms of the loan to be made to the Business by the Grantee using CDBG funds, are specified in the MOU.

§3.04 Job Creation or Retention, and Job Maintenance Requirements.

The job creation requirements, and the job maintenance requirements, for the benefited Business are specified in the MOU, and for emphasis will be repeated here. These requirements must be satisfied in order for the project to meet the CDBG national objective, which requires that of all the jobs created as a result of the project activities, 51% or more of those jobs (on an FTE basis) must be held by (or if not actually *held by*, then the Business must meet the required regulatory standards so as to be considered to have made the jobs *available to*) LMI persons. The 51% LMI requirement applies to all jobs created—the 51% LMI requirement does not just apply to the number of jobs to be created which was agreed by the Department in the MOU as the minimum number of jobs required to be created.

Thus, the Business is to:

- (a) create at least 58, new, permanent jobs (on an FTE basis), in the Business' facility in Sarpy County, Nebraska, over and above the agreed (so agreed in the MOU) baseline of employment at the Sarpy County and Douglas County facilities which agreed baseline is 72 FTEs:
 - (1) within the time specified in the MOU which is within 24 months of the date on the Notice of Approval letter from the Department.
 - (2) meeting the requirement that 51% or more (on an FTE basis) of those new, permanent jobs must be held by (or if not actually "held by", then the Business must meet the required regulatory standards so as to be considered to have made the jobs "available to") LMI persons.
- (b) maintain the 58 FTE positions for the time specified in the MOU which is 24 months measured from the date of hire for each respective job.
- (c) maintain the 72 FTE positions which represent the agreed baseline of employment for 24 months measured from the date on the Notice of Approval letter from the Department.
- (d) adhere to any and all other specific requirements associated with the jobs as set forth in the MOU, e.g., the need to pay a minimum wage of \$10.00 per hour and provide an appropriate package of benefits to employees.

§3.05 Due on Sale Clause.

A so-called "due on sale" clause has been included in the MOU, binding the Business to repayment requirements in the event of the sale or transfer of assets acquired with CDBG funds, or upon a material change in the majority ownership of the Business. This provision exists to protect the interests of the Department and of the Grantee in the event of such a sale of assets or a sale of the Business.

§3.06 Maintain Location of Project.

The Business has agreed in the MOU to maintain the project Business facility in Sarpy County, Nebraska, and has agreed to not relocate to any other location in Nebraska, or out-of-state, under penalty as specified in the MOU.

§3.07 Default in Meeting Job Creation or Retention Requirements, or Default in Meeting Job Maintenance Requirements.

If the Business does not meet the Job Creation or Retention Requirements, or the Job Maintenance Requirements, in the MOU and §3.04 above, CDBG funds will be disallowed, and the repayment consequences to the Business specified in the MOU and this contract will follow. In the absence of such repayment consequences to the Business being specified in the MOU, the general penalty invoked will be immediate and full repayment by the Business of all drawn CDBG funds, together with interest at 8% per annum computed on the amounts drawn as of the dates drawn.

When the CDBG assistance provided to the Business is in the form of a repayable loan,

then full repayment of that loan is required in any event. If the Business with a repayable loan obligation fails to achieve a national objective, the consequence is that immediate acceleration of the note obligation will be declared, requiring immediate, full repayment of the note.

When the CDBG assistance provided to the Business is wholly, or partly, in the form of a forgivable loan or a job training grant, then if the Business fails to achieve a national objective, or otherwise fails to achieve related job creation or job maintenance requirements of the project award, the consequences vary depending on the nature of the failure and upon the agreed provisions of the MOU. CDBG federal statutes and regulations require CDBG funded projects to meet the national objective of principally benefiting low-to-moderate income (LMI) persons. These statutes and regulations require that at least 51% of the created jobs benefit LMI persons; with such benefit achieved by having at least 51% of the created jobs either held by, or made available to, LMI persons. If the benefited Business fails to meet the national objective by not having at least 51% of the created jobs benefit LMI persons (as a result of not having at least 51% of the created jobs either held by, or made available to, LMI persons), then the loan is not forgiven or the job training grant is not made unconditional, and immediate, full repayment of the CDBG funding is required.

Proration of the Repayment Obligation:

- (a) CDBG statutes and regulations require CDBG-assisted projects to meet the national objective of principally benefiting low-to-moderate income (LMI) persons. These statutes and regulations require that at least 51% of the created/retained jobs benefit LMI persons. If Business fails to meet the national objective by not having at least 51% of the created/retained jobs benefiting LMI persons, then full repayment of the CDBG funding is required, and no proration is allowed.
- (b) If the national objective (51% LMI benefit) is met, but the job creation/retention requirement (58 jobs in this instance) is not achieved, then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to the ratio of → jobs not created, divided by the number of jobs required to be created.
- (c) If the national objective (51% LMI benefit) is met, but the jobs are not maintained for the required job maintenance period (24 months in this instance), then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to the ratio of → the required maintenance period in months, less the number of months the jobs were maintained, divided by the required maintenance period in months.
- (d) If the national objective (51% LMI benefit) is met, but there is a failure as to both the job creation/retention requirement and the job maintenance period, then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to → using the number of jobs required to be created, multiplied by the number of months the jobs were to be maintained, resulting in a computational factor of "required job-months"—then using the number of jobs actually created multiplied

by the number of months the jobs were actually maintained, resulting in a computational factor of "achieved job-months"—and then subtracting the "achieved job-months" factor from the "required job-months" factor to calculate a "failed job-months" factor—and then establishing the ratio of:

$$\frac{\text{"failed job-months"}}{\text{"required job-months"}}$$

with such ratio (with "failed job-months" as the numerator, and "required job-months" as the denominator), being the required pro rata portion of CDBG funds to be repaid.

An example to illustrate application of this requirement is:

CDBG assistance total	= \$250,000
# of jobs to be created	= 20
# of months the jobs were to be maintained	= 24
# of jobs actually created	= 15
# of months the jobs were actually maintained	= 16

20 x 24	= 480 "required job-months"
15 x 16	= 240 "achieved job-months"
480 – 240	= 240 "failed job-months"
240 "failed job-months"	
-----	= .50
480 "required job-months"	

$\$250,000 \times .50 = \$125,000$ to be repaid.

The Grantee is responsible for, and will bear the expenses of, pursuing all reasonable and necessary collection actions (including legal enforcement through the courts) against the Business to enforce and collect such default penalties from the Business.

§3.08 Conditions Precedent to Drawdown of CDBG Funds.

The Grantee must meet all of the following conditions prior to drawdown of CDBG funds:

- (a) All drawdowns require adherence to the various requirements, conditions, and limitations as set forth and explained in §3.01.
- (b) Documentation, in such form as the Department may prescribe, showing disbursement by other funding sources, will be required by the Department.
- (c) Documentation, in such form as the Department may prescribe, substantiating that qualified expenses having been incurred by the benefited Business, will be required by the Department.

- (d) Proper execution of this contract between the Grantee and the Department.
- (e) Documentation evidencing the Grantee's completion of its responsibilities for environmental review and decision making pertaining to the project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA.
- (f) Proper execution of all required loan documents by the Business.
- (g) Fulfillment of any and all other conditions identified in the MOU.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Matching Requirements.

The Grantee agrees the matching and other funds, as set forth and explained in §3.01, must be provided by the sources shown for the Project to proceed. Matching and other funds must be expended during the grant period.

Grantees are required to certify, with each request for CDBG funds, the amount of matching funds applied to the project. Project costs are to be paid from grant and matching funds as specified in §3.01 of this contract.

§4.02 Legal Authority; and Acceptance of Environmental Review Responsibility.

By signing this contract, the Grantee certifies that it possesses legal authority to accept CDBG funds, and to carry out the project described in this contract; and that the Grantee's chief elected official:

- (a) Consents to assume the status of responsible Federal official and the responsibilities for environmental review and decision making under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA; and,
- (b) Is authorized and consents on behalf of the Grantee that they accept the jurisdiction of the Federal courts for the purpose of enforcement of their responsibilities as such responsible Federal official.

§4.03 Designation of Officials to Execute Contract and Amendments.

The Director of the Department or their designee is the official authorized to execute this contract and any amendments to this contract, on behalf of the Department.

The Chief Elected Official of the Grantee is the official authorized to execute this contract and any amendments to this contract, on behalf of the Grantee.

The Grantee or the Department may request amendments to this contract. Amendments will not take effect until mutually agreed to in writing by both parties.

§4.04 Grantee Compliance with CDBG Regulations Generally, and Particularly Regarding Uniform Administrative Requirements.

The Grantee will comply with 24 C.F.R. Part 570, including particularly the Uniform Administrative Requirements set forth in 24 C.F.R. §570.502, or any reasonably equivalent procedures and requirements that the Department may prescribe.

§4.05 Record Keeping.

The Grantee agrees to keep such records as specified in 24 C.F.R. §570.506, *Records to be Maintained*, and any other records as the Department may reasonably require. The Grantee agrees to keep such records so as to allow the Department to perform a 24 C.F.R. §570.492, *State's review and audits*.

All records pertinent to this grant and work undertaken as part of the project, will be retained by the Grantee for a period of ten (10) years after notification by the Department that the grant has been closed. If any claim, litigation, or audit is initiated before the expiration of the ten-year period, the records must be retained until all claims, litigation, or audits have been resolved.

The Department and duly authorized officials of the state and federal government will have full access to, and the right to examine, audit, excerpt and/or transcribe, any of the Grantee's records pertaining to all matters covered by this contract.

§4.06 Reports.

The Grantee will submit semiannual reports to the Department, in such form as the Department may prescribe, pertaining to the activities undertaken as a result of this contract. The Grantee will also be required to submit a final performance and financial report, in such form and within such times as the Department may prescribe, at the occasion of grant closeout.

Additionally, as referenced in §2.05, prior to grant closeout, the Grantee must submit documentation demonstrating the actions that were taken to affirmatively further fair housing during the course of the grant.

§4.07 Audits.

Audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Office of Management and Budget (OMB) Circular A-133. Generally Accepted Government Auditing Standards (GAGAS) must be followed.

Audit costs are an allowable general administration cost subject to limitations established by the Act and the Department.

§4.08 Conflict of Interest.

The Grantee will comply with the conflict of interest prohibitions set forth for the CDBG program at 24 C.F.R. §570.489. In the event prohibited conflicts of interest arise, exceptions to the prohibition may be granted, on a case-by-case basis, by the Department. The procedures governing such exception requests are set forth in the Department's CDBG Administration Manual.

§4.09 Applicability to Subrecipients and Contractors.

The provisions of the contract will be made binding on any subrecipient or contractor of the Grantee, and the Grantee will remain fully obligated under the provisions of this contract.

§4.10 Waivers; and Assignment of Interest.

No conditions or provisions of this contract can be waived unless approved by the Department in writing. The Grantee will not assign or transfer any interest in this contract to any other party without the written consent of the Department.

§4.11 Non-Waiver of Rights.

The Department's failure to insist upon the strict performance of any provision of this contract, or failure to exercise any right based upon breach, will not constitute a waiver of any rights under this contract.

§4.12 Severability.

If any provision of this contract, or its application to any person or circumstances, is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions of this contract.

§4.13 Termination by Mutual Agreement.

This contract may be terminated in whole or in part, prior to the completion of contract project activities, when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The parties must agree on the termination conditions, including effective date and the portion to be terminated.

The Grantee will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Department will make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

§4.14 Termination for Cause.

In the event of a default or violation of the terms of this contract by the Grantee or failure to use the grant for only those purposes set forth, the Department may take the following actions (which are additional to other default remedies specified elsewhere in this contract):

- (a) Suspension. After notice to the Grantee, suspend the contract and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate.
- (b) Termination. Terminate the contract in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the terms and conditions of the contract. The Department will promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Grantee or recoveries by the Department under contracts terminated for cause will be in accord with the legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to, payments allowed for costs determined to be in compliance with the terms of this contract up to the date of termination. The Grantee will return to the Department all unencumbered funds. Further, any costs previously paid by the Department which are subsequently determined to be unallowable through audit and closeout procedures may be recovered from present grant funds or deducted from future grants.

§4.15 Termination Due to Loss of Funds.

This contract will terminate in full or in part, at the discretion of the Department, in the event the Department suffers a loss of funding or termination of the federal funds which permit it to fund this grant. In the event the Department suffers such a loss of funding, the Department will give the Grantee written notice which will set forth the effective date of full or partial termination, or if a change in funding is required, setting forth the change in funding.

§4.16 State of Nebraska Non-Liability/Hold Harmless.

The Grantee will hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any services performed by the Grantee itself, or by their officials, officers, employees, agents, or associates under this contract.

§4.17 Entire Agreement, Binding Effect, and Counterparts.

This instrument, along with any attachments, the approved grant application, and those items incorporated by reference (such as the MOU), contain the entire agreement between the parties. Any statements, inducements, or promises not contained therein will not be binding upon the parties.

This agreement will be binding upon, and will inure to the benefit of, the successors, assigns, and legal representatives of the parties.

This agreement, or any amendment of this agreement, may be signed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one agreement (or amendment, as the case may be).

§4.18 Governing Law.

This agreement shall be governed by; construed according to the laws and regulations of; and subject to the jurisdiction of; the State of Nebraska.

§4.19 Verification of Work Eligibility Status for New Employees.

The Grantee is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. In this context, "new employees" means employees hired on or after the effective date of this contract. 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.

This contractual obligation to verify work eligibility status for new employees physically performing services within the State of Nebraska also applies to any and all subcontractors utilized by the Grantee in performing this contract. The Grantee will be responsible to the Department for enforcing this requirement with Grantee's subcontractors.

A failure by the Grantee to adhere to these requirements is violative of the statutory requirements in Neb. Rev. Stat. §4-114 and as such will be deemed a substantial breach of this contract which could result in the Department declaring Grantee to be in default on the contract.

PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

The Grantee agrees to comply with the Department's and HUD's administrative requirements for the CDBG program, and with the provisions of the Department's CDBG Economic Development Application Guidelines, and with all federal (and state) laws, regulations, and executive orders applicable to the CDBG-assisted project, **including, but not limited to:**

- Housing and Community Development Act of 1974, as amended ("HCDA").
- 24 C.F.R. Part 570.
- National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.

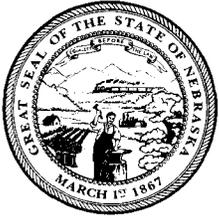
- The Davis-Bacon Act (and related acts).
- Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968.
- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- the requirement in the HCDA to affirmatively further fair housing.

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this contract and agree to its provisions, and that it will be effective on the date when both parties have signed.

<p>NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</p> <p>By: <u><i>Lara Huskey</i></u> (Signature of Director or Designee)</p> <p><u>Lara Huskey / CEO Director</u> (Typed or Printed Name/Title)</p> <p><u>March 29, 2012</u> (Date)</p>	<p>GRANTEE → Sarpy County, Nebraska</p> <p>By: <u><i>Rusty Hike</i></u> (Signature of Chief Elected Official)</p> <p><u>Rusty Hike</u> (Typed or Printed Name/Title)</p> <p><u>3/27/2012</u> (Date)</p> <p><u>47-6006504</u> (Federal Identification Number)</p>
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RECEIVED
 MAR 29 2012
 BY: _____



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ECONOMIC DEVELOPMENT

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P.O. Box 94666
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March 29, 2012

Rusty Hike, Chairperson
Sarpy County
1210 Golden Gate Drive
Papillion, NE 68046-2895

RE: CDBG Contract, #11-ED-004, Sergeant's Pet Care Products, Inc.

Dear Mr. Hike:

Enclosed is the signed Contract between Sarpy County and the Department of Economic Development. Please note this Contract is to be kept in your CDBG files. The County is to be congratulated for completing the initial requirements of the project.

The County will be eligible to draw down CDBG funds after receiving a Release of Funds.

If you have any questions, please contact me at (402) 471-3763, or dave.honz@nebraska.gov.

Sincerely,

Dave Honz
Program Representative
Community and Rural Development Division

Enclosures

copy: Scott Bovick, Deputy Administrator
Jake Hansen, MAPA
CDBG file #11-ED-004