

131001334

BOARD OF COUNTY COMMISSIONERS, SARPY COUNTY, NEBRASKA

A RESOLUTION AUTHORIZING CHAIR TO SIGN THE STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT SITE AND BUILDING DEVELOPMENT FUND FIRST PRIORITY PROJECT, CONTRACT NO. 14-01-18

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, pursuant to Resolution No. 2013-248, Sarpy County submitted an application to the Nebraska Department of Economic Development for use of \$750,000 of the Site and Building Development Fund (SBDF) for infrastructure costs and site development of a 140-acre campus located in the SW corner of Highway 50 and Schram Road in Sarpy County; and,

WHEREAS, the Department of Economic Development has approved said application 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 SBDF funds; and,

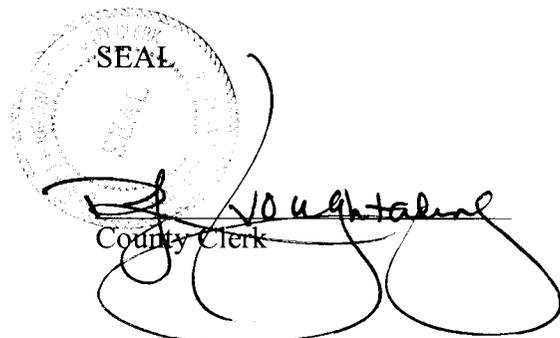
WHEREAS, it is the decision of this board that the execution of the attached Contract No. 14-01-18 with the State of Nebraska Department of Economic Development is in the best interests of the citizens of Sarpy County.

NOW THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the attached Contract No. 14-01-18 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 17th day of September, 2013.

Attest


Sarpy County Board Chairman


SEAL
County Clerk

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
SITE AND BUILDING DEVELOPMENT FUND
FIRST PRIORITY PROJECT
CONTRACT NO. 14-01-18**

This contract is entered into between the State of Nebraska, Department of Economic Development ("Department"), and Sarpy County, Nebraska, 1210 Golden Gate Drive, Papillion, Nebraska 68046-2845 ("Recipient"), upon the date of signature by both parties.

RECITALS:

A. The Site and Building Development Act, codified in Neb. Rev. Stat. §81-12,144 to 81-12,151 ("Act"), was passed by the Nebraska Legislature to enhance economic development in the State of Nebraska through assisting in the provision of industrial-ready sites and buildings in all areas of the State of Nebraska. The requirements of the Act are incorporated herein by this reference.

B. The Act, in Neb. Rev. Stat. §81-12,146 created the Site and Building Development Fund ("SBDF"). The Department has been designated to carry out the Act, and administer the SBDF.

C. The Act directs the Department to give first priority to funding financially viable projects in which a business has agreed to locate a site and/or building for which eligible SBDF activities will occur; provided the business agrees to locate such site and/or building no later than ninety (90) days after execution of a written agreement ("First Priority Project").

D. The Travelers Indemnity Company and Affiliates, a financial service company and subsidiary of The Travelers Companies, Inc., ("Business") has provided the Department with a written commitment, dated July 15, 2013, to locate a site in Sarpy County, Nebraska consisting of 140 acres, located at approximately Highway 50 and Schram Road ("Site"); provided eligible SBDF improvements are made to the Site, as such improvements are more particularly described in §1.01 of this contract ("Project"). References within this contract to the Site include any portions thereof, and not necessarily the entire Site as a whole, as the circumstances may require.

E. The Department has determined that the Project, and the Business's location of the Site, qualifies as a First Priority Project; and the Recipient has submitted an application to the Department, seeking a grant from the SBDF ("Application") to carry out the Project. The Recipient is an eligible entity to receive SBDF funds, and the Project is generally eligible for assistance under the Act.

F. The Application was submitted to the Department pursuant to the requirements as otherwise created by the Department ("Application Guidelines"). The Application and Application Guidelines are incorporated herein by this reference. The Application and the Project have been approved, for purposes and for funding amounts as set forth in this

contract (which may differ from the purposes specified, and the amounts sought, in the Application). This contract (including documents incorporated herein) is intended to govern the Department's administration of SBDF funds disbursed to the Recipient for the Project.

AGREEMENT:

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

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of SBDF Funds; Matching Funds; and Other Requirements.

Upon satisfaction by the Recipient of the requirements of the Act, the Application Guidelines and this contract; the Department will disburse SBDF funds to the Recipient for the Project in a total amount not to exceed \$750,000.

The SBDF funds will be used to fund the Project which, as described in Paragraph D of the Recitals above, generally involves infrastructure improvements. The Project infrastructure improvements activities which will occur on the Site are described in more detail (indented) below.

The Project infrastructure improvements include paving Schram Road from Highway 50 west to 150th Street and water extensions to the Site (primary and redundant mains).

Other improvements to the Site include a sewer extension and a new power substation, which will make the Site more accessible to business and industry.

Disbursements of SBDF funds will not be made as advances to the Recipient, but rather, will only be made for reimbursing the Recipient, after-the-fact of the Recipient having incurred Eligible Expenses. Eligible Expenses (and ineligible expenses) for reimbursement are defined and detailed in §3.02 of this contract. Requests for reimbursement of expenses incurred which are outside the limitations contained in this contract will not be honored. Recipient, by agreement with other entities including Business, may (1) cause Project costs to be incurred by other entities and reimburse other entities from SBDF funds, (2) fulfill the minimum matching funds requirement under the Act through said other entities, and (3) submit documentation from other entities in order to fulfill Recipient's reporting and documentation requirements.

The minimum matching funds required by the Act must be documented by Recipient as having been already contributed by the Recipient, as a condition of being reimbursed with requested SBDF funds. The minimum matching funds requirement applies to, and will be assessed as to sufficiency at the time of, each and every request for SBDF funds.

The minimum amount of matching funds (in money) required is equal to one hundred percent (100%) of the SBDF funds Recipient is requesting. Under no circumstances may the amount of matching funds be less than 100% of the amount of SBDF funds provided by the Department to the Recipient. Only certain types of expenses will count towards Recipient's matching funds requirement, as detailed in §3.03 of this contract.

The Sources and Uses of Funds Table in §3.01 of this contract provides information on the anticipated total costs of the Project, and the total amount of matching funds anticipated to be provided by Recipient. In addition to satisfying the minimum matching funds contribution requirement, as stated in §3.01 of this contract, the Recipient is responsible for any and all costs incurred in completion of the Project that exceed the amount of SBDF funds provided to Recipient for the Project, and any and all costs that exceed the total anticipated Project costs set forth in the Sources and Uses Funds Table in §3.01 of this contract.

Requirements regarding the form, manner, and timing of requests for reimbursement are specified in §4.01 of this contract.

§1.02 Term of the Contract and Expenses Incurred Prior to Contract Term.

The term of the contract is [twenty-four (24) months from August 8, 2013 ("Contract Term"). The termination date of the contract is August 8, 2015 ("Termination Date"). All expenses for which reimbursement is sought must be incurred during Contract Term, and all Project activities must be completed, and all requests for reimbursement must be made, by or before the Termination Date.

§1.03 Status Reports and Final Performance Report Required.

To assist the Department in obtaining information on the outcome/impact of grant funded projects, the Recipient will prepare, and submit to the Department (in a form and manner acceptable to the Department), semi-annual status reports on the Project and a final performance report on the Project, which reports are to include a narrative, and data (if applicable), reflecting the progress and/or outcome of the Project, and any other information the Department may require. The semi-annual status reports are due to the Department on each January 1st and July 1st that occurs during the Contract Term. The final performance report is due no later than thirty (30) days prior to the Termination Date of this contract.

If requested by the Department, the Recipient will also submit interim status reports on the Project to the Department during the Contract Term, subject to reasonable requirements and due dates, as determined by the Department.

Failure to provide required status reports, or a final performance report, to the Department by the required due date(s), may result in the Department declaring the Recipient to be in substantial breach of this contract, for which the Department may

immediately terminate this contract and/or require repayment of all SBDF funds disbursed to the Recipient.

All status reports, and the final performance report, must be submitted to the Department via mail to the Nebraska SBDF Program Representative, Nebraska Department of Economic Development, 301 Centennial Mall South, PO Box 94666, Lincoln, NE 68509-4666 or via email to dave.honz@nebraska.gov, or such other email address as may be designated by the Department.

§1.04 Location of the Site by Business and Related Requirements; Failure of Business to Locate Site; Marketing Plan.

The Business committed, in writing, to locate the Site, as described in the Recitals at Paragraph D and in §1.01 of this contract; and the owner of the Site will execute a written agreement with the Business regarding the Business's purchase of the Site. Recipient will provide written documentation of the Site purchase to the Department, upon the Department's request.

In the event the Business does not fulfill its commitment to locate the Site, or ceases to occupy the Site during the Contract Term, the Recipient will be required by the Department to create and implement a marketing plan to assist in marketing the Site, and in identifying and securing a business to locate operations onto the Site ("Marketing Plan"). The Recipient will submit the Marketing Plan to the Department for review and approval. Once the Marketing Plan is approved by the Department, the Recipient will implement the marketing actions identified in the Marketing Plan. The Recipient must continue marketing efforts until such time as an eligible business locates operations onto the Site. In other words, the marketing efforts requirement survives the Termination Date and continues in effect until such time as an eligible business locates operations onto the Site. Such business must be approved, in writing, as to eligibility by the Department in its sole discretion.

The costs incurred by Recipient in developing and implementing the Marketing Plan are not eligible for reimbursement with SBDF funds, but may be eligible as matching funds expenses, as provided in §3.03 of this contract.

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

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

PART II: [RESERVED].

PART III: SOURCES AND ELIGIBLE USES OF FUNDS.

§3.01 Sources and Uses of Project Funds.

The Sources of Funds table below reflects:

- The anticipated total costs of the Project.
- The sources and amounts of other matching funds required for the Project.
- The maximum amount of SBDF funds authorized for the Project.

SOURCES→	SBDF Funds	RECIPIENT	BUSINESS	TOTAL
USES (Project Activities)↓				
Streets	\$267,000	\$534,000		\$801,000
Sanitary Sewers		\$651,000		\$651,000
Water	\$483,000		\$1,248,400	\$1,731,400
Electrical			\$1,206,000	\$1,206,000
TOTAL	\$750,000	\$1,185,000	\$2,454,400	\$4,389,400

The Recipient is responsible for any and all costs incurred in completion of the Project that exceed the amount of SBDF funds provided to Recipient for the Project, and any and all costs that exceed the total anticipated Project costs set forth in the Sources and Uses of Funds Table above.

§3.02 Expenses Reimbursable with SBDF Funds.

Recipient may only request reimbursement for necessary, reasonable, and customary costs, fees, or other expenses that are incurred by the Recipient in completing the Project (“Eligible Expenses”). The Department shall have sole discretion as to the designation of Recipient’s expenses as Eligible Expenses.

Expenses which are generally ineligible include, but are not limited to, refinancing of existing debt, costs incurred in marketing the Site, and costs incurred in development of the Marketing Plan.

§3.03 Eligible Matching Funds Expenses.

As provided in §1.01 of this contract, the Recipient is required to contribute matching funds to the Project in an amount at least equal to 100% of the amount of SBDF funds provided by the Department to the Recipient for the Project. With the exception of the marketing-related expenses described in the following paragraph of this §3.03, only

Eligible Expenses will count towards Recipient's matching funds requirement. The Department shall have sole discretion as to the designation of Recipient's expenses as eligible matching funds contributions.

Although not Eligible Expenses, costs incurred by Recipient in development of the Marketing Plan or other marketing-related expenses may be determined by the Department to be eligible matching funds contributions.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Form, Manner, and Timing for Disbursements of SBDF Funds; and Related Requirements.

Disbursements of SBDF funds will be made to the Recipient as reimbursements for Eligible Expenses, in the form and manner determined by the Department, and will be made in accordance with the requirements in Part I of this contract.

Prior to making any request for reimbursement, the Recipient must submit all of the following to the Department:

- 1) The State of Nebraska ACH Enrollment Form (provided by the Department);
- 2) An IRS Form W-9, and any other required state or federal tax documentation required by the Department;
- 3) A document, signed by Recipient's authorized official, which specifically designates the names, addresses, and telephone numbers of any individuals authorized to submit requests for reimbursement on behalf of Recipient; and
- 4) Recipient's Certificate of Good Standing from the State of Nebraska Secretary of State's Office (if Recipient is an entity required by Nebraska law to establish its formation through filings with the Nebraska Secretary of State's Office or otherwise required to register to transact business in Nebraska with the Nebraska Secretary of State's Office).

After receipt and acceptance by the Department of the required documentation detailed above in this §4.01, the Recipient may submit requests for reimbursement of Eligible Expenses incurred in carrying out the Project.

The Recipient will submit requests for reimbursement no more frequently than once per month, unless this limitation is waived by the Department in writing, in a particular instance.

The Department will not honor a request for reimbursement that is less than \$10,000, unless such request is the final request made by the Recipient under this contract.

All requests for reimbursement must be submitted to the Department, in the form and manner specified by the Department, along with adequate documentation substantiating

the expenses incurred (such adequacy will be determined by the Department), via mail to the Nebraska SBDF Program Coordinator, Nebraska Department of Economic Development, 301 Centennial Mall South, PO Box 94666, Lincoln, NE 68509-4666 or via email to dave.honz@nebraska.gov, or such other email address as may be designated by the Department. The requests will be reviewed by the Department to determine compliance with the requirements of the Act, the Application Guidelines, and this contract. Upon satisfactory compliance, payments may be authorized by the Department and, upon authorization, will be processed through the Department's office in Lincoln, Nebraska.

Reimbursements of SBDF funds will be made by electronic deposit to the account designated by the Recipient on the State of Nebraska ACH Enrollment Form (or such other method as deemed appropriate by the Department), and in accordance with the requirements of this contract.

§4.02 Default for Failure to Complete Project.

The Department has relied on the information submitted by the Recipient in the Application as material, and as full and accurate representations of the intent and ability of the Recipient to complete the Project.

If the Recipient does not complete the Project, the Department may immediately terminate this contract, and may require all disbursements of SBDF funds made to the Recipient to be immediately due for repayment to the Department.

§4.03 Non-performance or Other Breach by the Recipient/Termination for Cause.

In the event of a substantial breach of the provisions of this contract, the Department will be entitled to declare such substantial breach a default and be entitled to withhold disbursements of SBDF funds to the Recipient, seek repayment of disbursements made to the Recipient, and terminate this contract in whole or in part.

The Department may allow the Recipient to cure a breach of this contract, but allowing the Recipient time to cure a breach does not waive the Department's right to terminate the contract for the same or different breach which may occur at a different time.

In the event of termination, the Recipient will not incur new obligations after the effective date of the termination.

§4.04 Termination Due to Loss of Funds.

This contract will terminate in full or in part, in the event the Department suffers a loss of funding which permits it to fund this contract. In such an event, the Department will provide the Recipient written notice setting forth the effective date of full or partial termination.

§4.05 Termination by Mutual Agreement.

This contract may be terminated, in whole or in part, prior to the completion of the contract activities, if and 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 the effective date of the termination, the portion (if in part) to be terminated, and any allocation of payments under the contract.

§4.06 Accounting for SBDF Funds by the Recipient; Recordkeeping; Monitoring and Records Access.

The Recipient will account for Project expenses in a manner consistent with generally accepted accounting principles, including maintenance of records. All Project expenses will be supported by documentation evidencing such expenditures. In addition to maintaining records required to be consistent with generally accepted accounting principles, the Recipient will keep such other records as the Department may specifically require for compliance with the SBDF program. The other records required by the Department include, but are not limited to the following: the Application, this contract, any contract amendments, requests for reimbursement along with supporting documentation of expenses incurred, and correspondence pertaining to this SBDF program grant award. The records will be retained for at least three years after expiration of this contract. If any claim, litigation, or audit is started before the expiration of the three (3) year period, the records must be retained until all claims, litigation, or audit findings are resolved.

The Department and other duly authorized officials of the State of Nebraska will have full access to; and the right to examine, audit, excerpt or transcribe, any of the Recipient's records pertaining to the Project. The Department may monitor the progress of the Project at any or all of the following times: (1) at the start of the Project, (2) upon each request for reimbursement, (3) at closeout or termination of the Project, or (4) at such other times deemed necessary by the Department.

§4.07 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 (in the case of a unit of general local government as Recipient); or the Executive Officer (in the case of a Recipient which is not a unit of general local government); of the Recipient is the official authorized to execute this contract and any amendments to this contract, on behalf of the Recipient.

Either party may request an amendment to this contract. Amendments will not be effective until mutually agreed to, in writing, by both parties.

§4.08 Waivers in Writing; No Assignment of Interest; Severability.

No conditions or provisions of this contract can be waived unless approved by the Department in writing. 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.

The Recipient will not assign any interest in this contract without the written consent of the Department.

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

§4.09 Entire Agreement; Binding Effect; Counterparts; Governing Law.

This instrument, along with any attachments, the approved Application, and those items incorporated by reference, contain the entire agreement between 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).

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

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

The Recipient will hold the State of Nebraska and the Department harmless from any and all claims, demands, actions based upon or arising out of the negligent or willful acts or omissions of the Recipient and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this contract.

§4.11 Relationship of the Parties.

Nothing in this contract should be construed in any manner as creating or establishing the relationship of partners between the parties, nor shall either party have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other party.

Any and all claims; on behalf of any person arising out of employment or alleged employment (including, but not limited to, claims of discrimination); against the Recipient, its officers, or its agents; will in no way be the responsibility of the Department. Recipient will hold the Department harmless from any and all such claims.

§4.12 Permits and Licenses; Compliance with Applicable Law.

The Recipient will procure and pay for all permits, licenses, and approvals necessary for the execution of this contract, and completion of the Project.

In addition to compliance with law as may be specifically provided in this contract, the Recipient will comply with all applicable federal and state laws, ordinances, rules and regulations relating to the activities carried out by Recipient under this contract.

§4.13 Verification of Work Eligibility Status for New Employees.

The Recipient 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 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 Recipient in performing this contract. The Recipient will be responsible to the Department for enforcing this requirement with Recipient's subcontractors.

A failure by the Recipient to adhere to these requirements is in violation 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 Recipient to be in default on the contract.

PART V: SPECIAL CONTRACTUAL CONDITIONS.

§5.01 Americans With Disabilities Act (ADA).

The Recipient agrees to comply with all provisions of the Americans With Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices; and in assuring access by persons with disabilities to facilities and services provided by the Recipient to the general public.

§5.02 Civil Rights Law and Equal Opportunity Employment.

The Recipient agrees to comply with all applicable local, state and federal statutes and regulations regarding civil rights law and equal opportunity employment. The Recipient shall not discriminate against any employee or applicant for employment with respect to

the employee or applicant's hire, tenure, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, disability, or national origin.

§5.03 Drug Free Workplace Policy.

The Recipient acknowledges the State of Nebraska requires a Drug Free Workplace Policy on the part of the Recipient as a term and condition of contracting with the Department.

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.

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT	RECIPIENT → Sarpy County, Nebraska
By: <u>[Signature]</u> (Signature of Director or Designee)	By: <u>[Signature]</u> (Signature of Elected Official)
<u>Gary Hansen</u> (Typed or Printed Name/Title)	<u>Jim Warren / Chairman</u> (Typed or Printed Name/Title)
<u>9/19/13</u> (Date)	<u>9/17/13</u> (Date)
	<u>47-6006504</u> (Federal Identification Number)

RECEIVED
SEP 19 2013
BY: _____