

**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 BUSINESS RECRUITMENT AND EXPANSION PROJECT, CONTRACT NO. 14-01-166**

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. 2014-133, Sarpy County submitted an application to the Nebraska Department of Economic Development for use of \$150,000 of the Site and Building Development Fund (SBDF) for the expansion of Graepel North America, Inc. (Graepel) within Sarpy County with a 7 acre property purchase at 132<sup>nd</sup> & Cornhusker (Hilltop Industrial Park). Graepel plans construction of a 40,000 sq. ft. facility and plans to increase its staff by 9 employees in 2015; 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. 14-01-166 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. 14-01-166 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 5<sup>th</sup> day of August, 2014.

Attest

SEAL



*[Signature]*  
Sarpy County Board Chairman

*[Signature]*  
County Clerk



**Dave Heineman**  
Governor

# STATE OF NEBRASKA

## DEPARTMENT OF ECONOMIC DEVELOPMENT

301 Centennial Mall South  
P.O. Box 94666  
Lincoln, Nebraska 68509-4666 USA

Phone (402) 471-3111  
Toll Free (800) 426-6505  
Fax (402) 471-3778  
Statewide Relay (800) 833-0920 (voice)  
[www.neded.org](http://www.neded.org)

August 11, 2014

Christine Vance  
Sarpy County Clerk  
1210 Golden Gate Drive, #1250  
Papillion, NE 68046-2842

RE: SBDF Contract, #14-01-166, Sarpy County

Dear Ms. Vance:

Enclosed is the signed the Site and Building Development Fund (SBDF) contract between the Sarpy County and the Department of Economic Development. Please keep this SBDF contract for your records.

The County is now eligible to draw down SBDF funds as referenced in the contract. If you have any questions, please contact me at (402) 471-3763, or [dave.honz@nebraska.gov](mailto:dave.honz@nebraska.gov).

Sincerely,

Dave Honz  
Economic Development Manager  
Nebraska Department of Economic Development

Enclosures

copy: Mark Wayne, Sarpy County

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT  
SITE AND BUILDING DEVELOPMENT FUND  
BUSINESS RECRUITMENT AND EXPANSION PROJECT  
CONTRACT NO. 14-01-166**

This contract is entered into between the State of Nebraska, Department of Economic Development ("Department"), and Sarpy County, Nebraska, 1210 Golden Gate Drive, Papillion, NE 68046 ("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.** Graepel North America, Inc., ("Business") has provided the Department with a written commitment, dated March 27, 2014 to construct a 40,000 sq. ft. facility in Sarpy County, Nebraska, consisting of approximately 7.3 acres, located at NE1/4 SECTION 25-14-11 HILLTOP INDUSTRIAL PARK LOT 2 REPLAT 9, Sarpy County, Nebraska ("Site"). The Business will locate a manufacturing facility on the Site, as described in §1.01 of this contract ("Project").

**D.** The Recipient has submitted an application to the Department, seeking a grant from the SBDF ("Application") to carry out the Project for the benefit of the Business. The Recipient is an eligible entity to receive SBDF funds, and the Project is generally eligible for assistance under the Act.

**E.** The Application was submitted to the Department pursuant to the requirements as otherwise created by the Department ("Application Guidelines"). 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 \$150,000.

The SBDF funds will be used to fund the Project which, as described in Paragraph C. of the Recitals above, generally involves the construction of a 40,000 square feet manufacturing facility at approximately 132<sup>nd</sup> and Cornhusker (Hilltop Industrial Park) in Sarpy County, Nebraska for the Business. The Project activities are described in more detail (indented) below.

A building will be constructed on the Site that will consist of approximately 40,000 square feet ("Building"), and the Business will locate a manufacturing facility in the Building, and expand production on the Site.

Disbursements of SBDF funds will not be made as advances to the Recipient, but rather, will only be made, after-the-fact of Eligible Expenses having been incurred. 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.

The minimum matching funds required by the Act must be documented by Recipient as having been already contributed to the Project, as a condition of the Department disbursing 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 the 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 contributed to the Project. In addition to satisfying the minimum matching funds contribution requirement (or otherwise ensuring the matching funds requirement is met), as stated in §3.01 of this contract, the Recipient is responsible for ensuring that funds are available for any and all costs incurred in completion of the Project that exceed the amount of SBDF funds provided for the Project, that any and all such costs are paid, and that the Project is completed. 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 twelve (12) months from April 17, 2014 ("Contract Term"). The termination date of the contract is April 17, 2015 ("Termination Date"). All expenses for which reimbursement is sought must be incurred during the 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 1<sup>st</sup> and July 1<sup>st</sup> 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](mailto:dave.honz@nebraska.gov), or such other email address as may be designated by the Department.

### **§1.04 Business Commitment; Separate Agreement Advised; Failure of Business to Fulfill Commitment; Failure Requiring Repayment by Recipient.**

The Business committed, in writing, to locate operations on the Site and in the Building, as described in the Recitals at Paragraph C and in §1.01 of this contract. The Business provided such written commitment to the Department, but the Department is required pursuant to the Act to provide SBDF funds to an eligible recipient (e.g. Recipient). Therefore, completion of the Project will require coordination and agreement between the Recipient and the Business.

The Recipient is advised to enter into a written agreement with the Business that addresses all areas of concern between the Recipient and the Business regarding the Project. As examples only, and not intended to be comprehensive of all areas to be addressed by such a separate agreement would be: addressing responsibility for adhering to SBDF Program requirements, sharing of information to meet reporting requirements, handling payment of and documentation of Project expenses, documenting fulfillment of matching funds requirements, and consequences of failure of the Business to fulfill its written commitment. Recipient will provide a copy of any such written agreement to the Department, upon the Department's request.

In the event the Business does not fulfill its commitment to locate operations on the Site and in the Building, or ceases operations on the Site or in the Building during the Contract Term, 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.

If the Recipient is required to repay all or any portion of the SBDF funds to the Department, the Recipient may, of course, pursue reimbursement of such funds (the funds the Recipient pays to the Department) from the Business through enforcement of whatever contractual arrangements for repayment from the Business the Recipient may have.

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

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

**PART II: [RESERVED]**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**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.

<b>SOURCES→</b>	<b>SBDF FUNDS</b>	<b>MATCHING FUNDS</b>	<b>TOTAL</b>
<b>USES (Project Activities)↓</b>			
<b>Building Construction</b>	<b>\$150,000</b>	<b>\$2,995,600</b>	<b>\$3,145,600</b>
<b>TOTAL</b>	<b>\$150,000</b>	<b>\$2,995,600</b>	<b>\$3,145,600</b>

The Recipient is responsible for ensuring that funds are available for any and all costs incurred in completion of the Project that exceed the amount of SBDF funds provided for the Project, that any and all such costs are paid, and that the Project is completed.

**§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 in completing the Project (“Eligible Expenses”). The Department shall have sole discretion as to the designation of expenses as Eligible Expenses.

Expenses which are generally ineligible include, but are not limited to, refinancing of existing debt.

**§3.03 Eligible Matching Funds Expenses.**

As provided in §1.01 of this contract, the Recipient is required to contribute matching funds (and/or is required to ensure such funds are contributed) 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. Only Eligible Expenses will count towards the Project matching funds requirement. The Department shall have sole discretion as to the designation of expenses as 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) 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

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](mailto: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 (or otherwise ensure that such permits, licenses, and approvals are procured and paid for, for 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 of use of a federal immigration verification system 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. As such, in all Project contracts, the Recipient shall include a provision, similar to the language in this Section 4.13, which requires all contractors and subcontractors to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the state of Nebraska.

A failure by the Recipient to include such provision in all Project contracts 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.

<b>NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</b>	<b>RECIPIENT → Sarpy County, Nebraska</b>
By: <u><i>Steve Charleston</i></u> (Signature of Director or Designee)	By: <u><i>Jim Thompson</i></u> (Signature of Authorized Official)
<u>Steve Charleston (CEO) Director</u> (Typed or Printed Name/Title)	<u>Jim Thompson</u> (Typed or Printed Name/Title)
<u>8-11-14</u> (Date)	<u>August 5, 2014</u> (Date)
	<u>47-6006504</u> (Federal Identification Number)

RECEIVED  
AUG - 7 2014  
BY: