

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING CHAIR TO SIGN THE SITE AND BUILDING
DEVELOPMENT FUND CONTRACT BETWEEN SARPY COUNTY AND GRAEPEL
NORTH AMERICA, INC.

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,

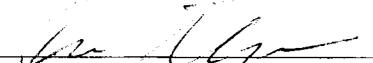
WHEREAS, pursuant to Resolution No. 2014-133, Sarpy County submitted an application to the Nebraska Department of Economic Development for use of \$150,000 of the Site and Building Development Fund (SBDF) for the expansion of Graepel North America, Inc. (Graepel) within Sarpy County. Specifically, Graepel will purchase 7 acres of property at 132nd & Cornhusker (Hilltop Industrial Park) and construct of a 40,000 sq. ft. facility with plans to increase its staff by 9 employees in 2015; and,

WHEREAS, the Department of Economic Development has approved said application and the County of Sarpy and Graepel desire to implement the next steps by entering into a Site and Building Development Fund Contract, a copy of which is attached hereto, regarding the use and payment of the SBDF funds; and,

WHEREAS, it is the decision of this board that the execution of the attached Site and Building Development Fund Contract with Graepel 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 Site and Building Development Fund Contract between the County of Sarpy and Graepel is hereby approved and the Chairperson and the Clerk are hereby authorized to execute the same, a copy of said Site and Building Development Fund Contract is attached hereto, and such other documents as may be necessary to accomplish its purpose.

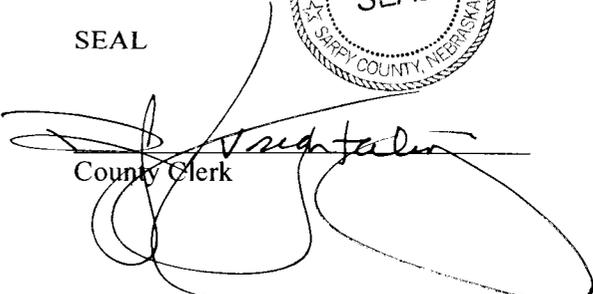
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 5th day of August, 2014.


 Sarpy County Board Chairman

Attest

SEAL




 County Clerk

SITE AND BUILDING DEVELOPMENT FUND CONTRACT

This Site and Building Development Fund Contract (hereinafter "Contract") is made and entered into by and between GRAEPEL NORTH AMERICA, INC., (hereinafter "Developer"), and the COUNTY OF SARPY, STATE OF NEBRASKA, (hereinafter "County"). Collectively, Developer and County are hereinafter sometimes referred to as the "Parties."

WITNESSETH:

WHEREAS, Developer, either directly or through an affiliated entity, owns a parcel of land consisting of approximately 7 acres located at 13220 Lynam Drive in Sarpy County, ("Development Area") and desires to expand its business and construct a new 40,000 sq. ft. manufacturing facility according to the provisions of the Sarpy County Zoning Regulations (hereinafter, the "Project"). The Development Area is legally described as follows:

Lot 2 Hilltop Industrial Park Replat 9

WHEREAS, Developer and County wish to agree upon the manner, method and the extent to which public funds may be expended in connection with the installation and construction of the Project, and;

WHEREAS, Developer and County agree that the terms and conditions hereof shall govern the expenditure of public funds and development of the entire Development Area.

NOW, THEREFORE, in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are expressly acknowledged, the Parties hereto, each intending to be legally bound, do hereby mutually agree as follows:

I. DEFINITIONS

For the purposes of this Contract, the following words and phrases shall have the following meanings:

- A. "County Board" shall mean the County Board of Commissioners of Sarpy County, Nebraska.
- B. "Department" shall mean the Nebraska Department of Economic Development.
- C. "Development Area" shall mean approximately 7 acres located at 13220 Lynam Drive in Sarpy County and legally described as Lot 2 Hilltop Industrial Park Replat 9
- D. "Eligible Expenses" shall mean those necessary, reasonable, and customary costs, fees, or other expenses that are incurred by Developer in completing the Project..
- E. The "Project" shall mean the construction of a new 40,000 sq. ft. manufacturing facility by Developer for the expansion of its business in the Development Area within Sarpy County.

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I. SITE AND BULDING DEVELOPMENT FUND

A. County has applied for \$150,000 of Site and Building Development Funds ("SBDF") from the Nebraska Department of Economic Development ("Department") to be used for the Project. The Parties anticipate that the Department will approve the SBDF application and that County will enter into a contract with the Department, ("Department Contract"), which outlines the expectations and limitations of the SBDF monies from the Department.

B. Developer and County shall comply with the Site and Building Development Fund Act set out at Neb. Rev. Stat. Sect. 81-12,144 to 81-12,151 (the Act).

C. Developer may only receive SBDF funds as reimbursement of monies previously spent by Developer on Eligible Expenses for the Project. The maximum amount of reimbursement of Eligible Expenses is \$150,000. Expenses which are generally ineligible include, but are not limited to, refinancing of existing debt. Additionally, Developer is required to contribute matching funds (in money) to the Project in an amount at least equal to 100% of the amount of SBDF funds provided by the Department for the Project. Only Eligible Expenses will count toward the Project matching funds requirement. The matching funds shall be documented as having already been contributed to the Project before any funds can be disbursed to Developer. The Department shall have sole discretion as to the designation of expenses as Eligible Expenses and the designation of eligible matching funds contributions.

D. Developer shall only incur Eligible Expenses from April 17, 2014 to April 17, 2015. All requests for reimbursement are required to be only once per month, in amounts of \$10,000 or greater, and include adequate documentation substantiating the expenses incurred. A reimbursement request for less than \$10,000 may only be honored if such request is the final request for reimbursement. Upon receipt, County shall submit said reimbursement requests and documentation to Department for reimbursement.

E. Developer shall assist County in the documentation and reporting requirements related to the SBDF Funds. Semi-annual status reports are due to Department each January 1st and July 1st during the Contract Term with a final status report due to Department no later than March 18, 2015. County shall deliver to Developer copies of all interim and final reports and requests for disbursements of the SBDF Funds, at the time such reports and requests are delivered to Department under the Department Contract. Upon request, each Party shall make contracts and subcontracts, payment records, disbursements, lien waivers, and other materials pertaining to construction costs and performance available for the other Party's inspection and copying.

II. 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 Project activities must be completed by or before the Termination Date.

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III. DEFAULT FOR FAILURE TO COMPLETE PROJECT

Developer is required to complete the Project within the Contract Term. If Developer does not complete the Project within the Contract Term, the County may immediately terminate this Contract, and may require all disbursements of SBDF funds made to the Developer to be immediately due for repayment to the County.

IV. NON-PERFORMANCE OR OTHER BREACH BY THE DEVELOPER/TERMINATION FOR CAUSE

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

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

V. 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 of the SBDF program. In such an event, the County will provide the Developer written notice setting forth the effective date of full or partial termination.

VI. 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.

VII. WAIVERS IN WRITING

No conditions or provisions of this Contract can be waived unless approved by the County in writing. The County'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.

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A failure by the Developer 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 County declaring Developer to be in default on the Contract.

XI. NON-DISCRIMINATION

Developer shall not discriminate against any parties on account of race, national origin, sex, age, political or religious affiliations, or disabilities in violation of federal or state or local ordinances.

XII. SEVERABILITY

It is understood and agreed by the Parties hereto that if any part, term or provision of this Contract is held to be illegal or in conflict with any law of Nebraska or of the United States, the validity of the remaining terms and conditions, provision or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provisions held to be invalid.

XIII. MISCELLANEOUS

Except as specifically provided in this Contract, Developer shall, without cost to County, conform to the requirements of the applicable County regulations and ordinances and any change in those regulations and ordinances, including any permits, licenses and approvals necessary for the execution of this Contract, and completion of the Project.

XIV. HOLD HARMLESS

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

XV. NOTICE

Each Party agrees to provide the other Party with as much advance notice as is reasonably possible when this Contract calls for the approval of a Party before an action can be taken. The Parties agree to cooperate in the undertakings contemplated by this Contract and shall share and exchange necessary reports and other documents as required and when reasonably requested by the other Party to this Contract. Any notice required under this Contract shall be in writing and shall be sent by certified mail, return receipt requested, to the addresses as noted below. Any Party to this Contract may change its address for notice specified hereunder by sending written confirmation of such change by certified mail, return receipt requested, to the

ME

VIII. ACCOUNTING FOR SBDF FUNDS, RECORD KEEPING, MONITORING AND RECORDS ACCESS

The Developer 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 Developer will keep such other records as the County may specifically require for compliance with the SBDF program. The other records required by the County include, but are not limited to the following: 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 County will have full access to; and the right to examine, audit, excerpt or transcribe, any of the Developer's records pertaining to the Project. The County 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 County.

IX. NO ASSIGNMENT OF INTEREST

The Developer will not assign any interest in this Contract without the written consent of the County.

X. VERIFICATION OF WORK ELIGIBILITY STATUS FOR NEW EMPLOYEES

The Developer 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 Developer in performing this Contract. As such, in all Project contracts, the Developer shall include a provision, similar to the language in this Section X, 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.

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other Party to this Contract. The addresses for the purpose of notice and other communications are as follows:

For Developer:

Graciel North America Inc.
13205 Centennial Road
Omaha, NE 68138

For County:

County Clerk, County of Sarpy
1210 Golden Gate Dr., Box 1250
Papillion, NE 68046

XVI. COUNTERPARTS

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

XVII. GOVERNING LAW

The laws of the State of Nebraska shall govern as to the interpretation, validity, and effect of this Contract.

XVIII. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Contract. This Contract may not be amended, modified, or altered unless by written agreement signed by all Parties to this Contract.

XIX. GOOD FAITH

Every representation, covenant, warranty, or other obligation within this Contract shall carry with it an obligation of good faith in its performance and enforcement.

XX. AUTHORITY

ME

Each party represents, covenants, and warrants to the other Party that the making and execution of this Contract, and all other documents and instruments required hereunder, have been duly authorized by the necessary corporate action of such Party and are valid, binding, and enforceable obligations of such Party in accordance with their respective terms.

XXI. ENFORCEMENT AND REMEDIES

The Parties hereto may at law or in equity enforce and compel the performance of this Contract and shall otherwise have all remedies provided by applicable United States of America, State of Nebraska, and local laws, ordinance, rules and regulations.

IN WITNESS WHEREOF, we, the contracting Parties, by our respective duly authorized agents, hereby enter into this Contract, effective on the day and year affixed hereon. Executed on the dates indicated with the signatures below.

Executed by Sarpy County this 5th day of August, 2014.

SARPY COUNTY, NEBRASKA,
A Political Subdivision



[Signature]
Chairperson, Board of Commissioners

Attest:

Approved as to form:

[Signature]
Sarpy County Clerk

[Signature]
Sarpy County Attorney

Executed by Developer this 23 day of June, 2014.

Developer:
Graepel North America, Inc.

Mark Edger (PRESIDENT)
Principal

ME

Kendra Koehler

From: Nicole O'Keefe
Sent: Wednesday, August 06, 2014 11:04 AM
To: Kendra Koehler
Subject: 8 5 14 Agenda item 13

Hi Kendra,

Thanks for sending the documents!

1. Agenda item 13: Please send 1 copy to the following:

Graepel North America Inc.

Mark Zumdohme
13205 Centennial Road
Omaha, NE 68138 USA

#2014-298

Thanks,

Nicole L. O'Keefe
Deputy Sarpy County Attorney
1210 Golden Gate Drive
Papillion, NE 68046
Phone: 402-593-2230
Fax: 402-593-4359

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Deb Houghtaling

Sarpy County Clerk

Renee Lansman
Chief Deputy

1210 Golden Gate Drive #1250 • Papillion, Nebraska 68046-2842
Phone: 402-593-2105 • Fax: 402-593-4471 • Website www.Sarpy.com • Email: Clerk@sarpy.com

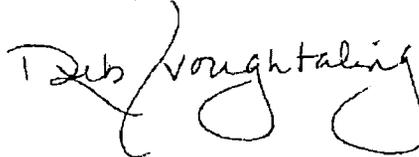
August 6, 2014

Mark Zumdohme
Graepel North America Inc.
13205 Centennial Road
Omaha, NE 68138

RE: Site and Building Development Fund Contract

Enclosed is the original above referenced agreement signed by the Sarpy County Board Chairman on August 5, 2014.

Sincerely,

A handwritten signature in black ink that reads "Deb Houghtaling". The signature is written in a cursive style with a large, looping initial "D".

Deb Houghtaling
Sarpy County Clerk

Enclosure
DH/sm