
STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION / DODGE COUNTY
ECONOMIC OPPORTUNITY PROGRAM AGREEMENT

THIS AGREEMENT, is entered into by and between the State of Nebraska, Department of Transportation, hereinafter referred to as the "State", and Dodge County, 435 N Park, Fremont, NE 68025, hereinafter referred to as the "LA", and who together will be collectively referred to as the "Parties".

The purpose of this Agreement is to define the terms and conditions applicable to the Parties for utilizing State Economic Opportunity Program Funds (hereinafter "EOP Funds"), in a manner consistent with Neb. Rev. Stat. §39-2806. Nebraska law provides for the expenditure of EOP Funds to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network, and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state.

In consideration of the mutual promises and understandings of the Parties specifically set forth herein, the State and the LA jointly agree to the following:

I. Project Description/Objective:

- 1.1 **Project Location:** NW of N Yager RD and County RD T
Current Jurisdictional Authority: Dodge County
Key Project Features and Project Description/Objective:

The project will include paving 1500 ft of N Yager RD from County RD T north to the SE corner of the Business property. The paved surface will be 9" of concrete. The road project is essential for the Business to support truck traffic that will be bringing raw materials and protein products to the site as well as employee traffic. The road project is anticipated to include all activities associated with paving a roadway, including but not limited to design, grading, paving, culvert work, guardrail and ROW.

The project meets the criteria of the EOP because it will allow the Business to import necessary raw materials/products and export finished protein products efficiently. It is anticipated that the Business' development and future expansion plans will create high quality jobs and spur private capital investment within the state. The road surfacing is also projected to support further development of land east of N Yager RD.

- 1.2 Individual/Entity with whom Local Authority will partner to complete project referred to herein as the "Business":

Platform VCS Operations, LLC
C/O Curt Mastbergen, President, Platform VCS LLC
1511 Baltimore Ave, Ste. 300
Kansas City, MO 64108

- 1.3 Estimated Positive Economic Impact resulting from the Project:

Anticipated number of new jobs	51
Anticipated number of retained jobs	-
Anticipated private capital investment	\$50,000,000.00
Village/City/MPO/area impacted by improvement	Dodge County/City of Fremont

II. Division and Reimbursement of Costs:

Type of Work	EOP Funds	LA Funds	Total
Preliminary Engineering and Property Acquisition	\$70,000.00	\$130,000.00	\$200,000.00
Construction	\$245,000.00	\$455,000.00	\$700,000.00
Project Closeout	\$35,000.00	\$65,000.00	\$100,000.00
TOTAL:	\$350,000.00	\$650,000.00	\$1,000,000.00

Note: These are estimated costs. Actual costs and payments will be determined based on final project costs.

- 2.1 Eligible construction and engineering expenses (hereinafter "Eligible Expenses") include the necessary, reasonable, and customary costs, fees and other expenses that are incurred to complete a transportation project and are determined solely at the discretion of the State. Expenses which are generally eligible include, but are not limited to, the usual and customary design, engineering, construction, inspection, and right of way expenditures. Expenses which are generally ineligible include, but are not limited to, utility placement and/or established utility relocation, refinancing or payment of existing debt, and betterments or improvements which are above and beyond the original scope and objective of the transportation project.
- 2.2 The State will reimburse the LA for Eligible Expenses incurred upon the project **subject to a maximum reimbursement amount of 75% of transportation project costs up to \$350,000.00**. Any remaining balance shall be the sole responsibility of the LA. The LA is responsible for ensuring that funds are available to meet its obligations as set forth in this Program Agreement, including the availability of funds necessary to complete the project if the State's maximum reimbursement amount is exceeded.
- 2.3 The State will disburse EOP Funds to the LA in accordance with the following Phasing schedule:
- a. **Phase I: Preliminary Engineering and Property Acquisition:** 20% of the State's EOP Funding will be disbursed to the LA upon:
- documentation that the LA governing body has formally approved and set aside all matching funds identified herein to be utilized for the completion of this project;
 - documentation that the Business has officially and formally committed to the project in a writing received by the LA (the LA/Business Program Agreement may suffice);
 - verification of compliance with all right-of-way requirements and completion of final design plans consistent with provisions 3.1, 3.2.a and 3.2.b below; and
 - receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
- b. **Phase II: Construction:** An additional 70% of the State's EOP Funding will be disbursed to the LA according to the following schedule:
- Initial 30% upon:**

- A. documentation of a properly awarded construction contract for the project consistent with provisions 3.1 and 3.2.c below, such that construction is ready to commence; and
- B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.

ii. **Additional 40% upon:**

- A. completion of approximately one-half of project construction in a manner consistent with provisions 3.1 and 3.2.d.
- B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.

c. **Phase III: Project Closeout**: The final disbursement of EOP Funds, up to the final 10% of the original EOP funding amount, but in no event in excess of the total expenses eligible for reimbursement, will be paid to the LA upon receipt of:

- i. a final billing invoice/request for reimbursement which sets forth a complete and final accounting of all Eligible Expenses incurred to complete the project, as more specifically set forth in provision 2.4.b below; and
- ii. a full and complete copy of the as-built plans.

- 2.4 a. All billing invoices/requests for reimbursement must be submitted by the LA in a manner consistent with the State's billing processing system so that timely payment may be made, and must include all necessary state and federal tax documentation required by the State to process payment. Billing invoices/requests for reimbursement shall only be submitted to the State after amounts due exceed \$1,000.00 and shall be submitted to the State no more frequently than monthly. Billing invoices/requests for reimbursement by the LA must contain adequate documentation to substantiate the expenses incurred, and to determine compliance with the EOP program application and this Program Agreement. Noncompliant invoices or requests for reimbursement will not be paid; notice and explanation of a noncompliant invoice or request for reimbursement will be returned to the LA within thirty (30) days of receipt by the State.
- b. The final billing invoice/request for reimbursement to the State must reflect the total final amount due, the total incurred cost of the improvement, less previous payments made to the LA, and less funds applied to the cost of the improvement by the LA. The final billing invoice/request for reimbursement must be received no later than one year from the date of completion of the project; if a final invoice is not received within one year of completion of the improvement, the most recent billing invoice/request for reimbursement received by the State will be considered the final invoice submitted upon the improvement, and any and all obligation by the State to pay additional funds will terminate.
- 2.5 All obligations set forth in this Program Agreement, including all obligations of the State to reimburse costs as set forth herein, shall terminate immediately without penalty or further payment required if, in any fiscal year, the Nebraska Legislature fails to appropriate or otherwise make available funds for the work contemplated herein. In such an event, the State will provide the LA with written notice setting forth the effective date of termination.

III. Additional Obligations, Declarations, and Certifications:

- 3.1 The LA agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations relating to the activities carried out by the LA under this Program Agreement, including but not limited to the requirements of Neb. Rev. Stat. §4-108 to 4-114 to utilize a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska; Neb. Rev. Stat. §§48-1101 through 48-1126, known as the Nebraska Fair Employment Practices Act; Neb. Rev. Stat. §81-3445, governing the use of professional architects or engineers for projects which exceed \$100,000; and Neb.Rev.Stat.§81-3437.02 requiring designation of a coordinating professional.
- 3.2 The LA shall be responsible for all aspects of this project, including management, planning, design, right-of-way activities, bid letting, construction, construction engineering and future operation and maintenance of this project. The LA agrees that its failure to comply with the terms of this Program Agreement may lead to the State, in its sole discretion, withdrawing funding for the project as more specifically set forth in provision 3.5 below. The LA agrees to supervise and oversee all engineering and construction of the project in a manner consistent with the terms of this Program Agreement, and in a manner which meets all criteria applicable to the project as determined by the State, including but not limited to:
- a. Prior to advertising for bids for the project, the LA must certify to the State that all necessary right-of-way, temporary and permanent easements, and temporary use permits have been properly obtained by the LA and that the project is legally prepared to proceed. The State may, in some circumstances, require that a dedication of property be made to the ownership of the LA to ensure that funds utilized upon the project result in a meaningful contribution to a purpose generally beneficial to the citizens of the State of Nebraska.
 - b. The LA must provide plans which have been prepared and signed by a licensed professional engineer for the State's review, and the State must review all plans and specifications prepared by the LA prior to letting. In the event the project connects to, physically touches or impacts a portion of the state highway system, the LA must provide plans for review which meet the higher NDOT standard highway design and construction requirements applicable to State highway projects.
 - c. After the State's review, the LA will advertise the project, accept bids, and award the contract for construction of the project in a manner consistent with applicable state and local law. The State shall be entitled to terminate this Program Agreement in the event no contract has been awarded by December 31, 2022 and recovery of EOP funds disbursed thus far to the LA may commence as more specifically set forth in provision 3.5 below.
 - d. The LA is required to oversee construction to ensure the project is constructed as described or shown upon the approved plans, specifications, and estimates, or as amended by any approved change orders.
 - e. Review of any kind by the State pursuant to this Program Agreement shall not be considered a full and comprehensive review or examination of the work product of the LA and/or its consultants, and shall not be construed to be an undertaking or assumption of the LA's and/or its consultants' duties to provide appropriate design plans for the Project, to appropriately advertise the project for bids and let the project, and to accurately construct the project according to plans. The State makes no representations nor warranties, neither express nor implied, to any person or entity concerning the performance of the terms of this Program Agreement by the LA,

its consultants, and/or contractors, or the performance of the Program Agreement between the LA and the Business.

- 3.3 The LA shall maintain records and documentation of the project for at least five years after termination/expiration of this Program Agreement, including but not limited to: books kept in accordance with generally accepted accounting principles, detailed records of expenditures, recipients and uses of all funds paid and disbursed in conjunction with this Program Agreement, as well as final design plans, as-built plans, and structural material certifications. The LA shall make such documentation available to the State to copy or review upon request, within a reasonable time period, and in particular in a manner sufficient to allow the State to comply with internal or external audit requirements.
- 3.4 The LA must retain an annual economic impact progress report for each subsequent year after completion of the project, for a period of five consecutive years after completion of the project. The LA must share the annual progress report with the State upon request in years one through four, with the report to the State required in year five after completion of the project.
- 3.5. In the event the LA fails to meet the terms of this Program Agreement, or in the event the Business does not fulfill its commitment to locate operations on the site or demonstrate positive economic impact as contemplated or described within provisions 1.1 and 1.3 of this Program Agreement, the State may immediately:
- a. provide the LA with notice of termination of this Program Agreement, and may immediately demand from the LA reimbursement and repayment of all EOP funds disbursed thus far under this Program Agreement; or
 - b. in the alternative, provide the LA with notice of breach of this Program Agreement and allow the LA a reasonable time to cure the breach. However, allowing the LA time to cure a breach does not waive the State's right to terminate this Program Agreement under 3.5.a for the same or a different breach which may occur pending resolution of the initial breach. If breach is due to one of the identified Businesses withdrawing from their commitment to locate operations on the site, LA's cure of the breach may include the substitution of another Business that meets the criteria established by the EOP panel, and which is willing to execute a Program Agreement with the LA as set forth in provision 3.6 below.
- 3.6 The LA is required to enter into a separate Program Agreement with the Business named under provision 1.2, above. Said Agreement must require the Business, at a minimum:
- a. to utilize EOP funds in a manner which complies with this Program Agreement between the State and the LA;
 - b. to indemnify and hold harmless the State from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the Business and/or its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of the Program Agreement between the LA and the Business, or in meeting the terms of this Program Agreement between the LA and the State;
 - c. to retain records consistent with provision 3.3 of this Program Agreement for a period of five consecutive years after completion of the project, and to provide the LA with all information necessary for it to submit its mandatory annual progress report to the State in accordance with provision 3.4 of this Agreement.

- d. to provide for the repayment of EOP Funds to the LA in the event of a default or unmet obligations by the Business.
- 3.7 This Program Agreement commences upon signature by the last of all required signatories and terminates 30 days after the State's receipt of the final annual progress report (provision 3.4) unless terminated sooner pursuant to the terms set forth herein or by the written mutual agreement of the Parties.
- 3.8 This Program Agreement, along with any and all attachments and items incorporated by references herein, contains the entire agreement between the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. The LA shall adopt all necessary ordinances and/or resolutions as may be necessary to give full force and effect to the terms of this Program Agreement.
- 3.9 The LA Agrees to hold the State harmless from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the LA and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this Program Agreement, or the performance of the Program Agreement between the LA and the Business.
- 3.10 Nothing in this Program Agreement should be construed in any manner as creating or establishing a joint relationship or partnership between the parties, nor shall either party have the right, power or authority to create any obligations or duties, express or implied, on behalf of the other party.

IV. Attachments

- 4.1 Application
- 4.2 Related Agreement Number: XL0177 – 000 – 21494 – BETWEEN STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION and COUNTY OF DODGE the terms of which are applicable to this Program Agreement.
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V. Final Affirmation and Signatures

IN WITNESS WHEREOF, the Parties acknowledge they have read and understand this Program Agreement, and that they execute this Program Agreement pursuant to lawful authority granted to them, effective upon the date set forth by the last signatory below:

EXECUTED by the LA this _____ day of _____, 20__.

Bob Missel, Chairman Dodge County Board of Supervisors

EXECUTED by the State this _____ day of _____, 20__.

John Selmer
Director, Nebraska Department of Transportation