

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is entered into as of this ____ day of _____, 2020, by and between Dodge County ("County") and the City of Fremont ("City") hereafter individually called the "Party" and collectively called the "Parties."

WHEREAS, The Interlocal Cooperation Act of the State of Nebraska, being specifically Neb. Rev. Stat. §13-801 et. seq., allows separate political subdivisions to cooperate on the basis of mutual advantage to provide for joint undertakings, services and facilities, in a manner and pursuant to forms of governmental organization that will accord with best geographic, economic, population, and other factors influencing the needs and developments of local communities;

WHEREAS, the State of Nebraska Department of Transportation (NDOT) requested the City, as well as local public/private partners contribute \$10 million towards the \$20 million cost overrun so the SE Beltway, south of Fremont, could be completed;

WHEREAS, the Dodge County Supervisors agreed that the completion of the SE Beltway is in the best interest of the County and thus approved a contribution of \$1 million towards the cost overrun of the SE Beltway;

WHEREAS, the Fremont City Council agreed that the completion of the SE Beltway is in the best interest of the City and thus approved a contribution of up to \$1.5 million towards the cost overrun of the SE Beltway;

WHEREAS, the Parties agree that by contributing to cost overrun for the SE Beltway, the State of Nebraska will proceed to award the bid to build and construct the beltway to satisfy the interests of the Parties and to meet a three-year completion target;

WHEREAS, it is necessary for the Parties to enter into an agreement to set forth their respective rights, duties and obligations, and:

NOW, THEREFORE, IT IS AGREED AS FOLLOWS;

I. Purpose.

A. To contribute to the cost of the SE Beltway, it is the intent of the Parties, individually, that:

1. Each Party, at their own expense, will obtain approval from its governing body of this certain Interlocal Cooperation Agreement; and
2. Each Party will obtain authorization from its governing body for an appropriation of funds (as stated below) to contribute to the cost of the SE Beltway.

B. To contribute to the cost overrun of the SE Beltway, it is the intent of the County to pay the City \$1 million over a three-year period, as follows:

- i. The first payment of \$333,333.33 by July 31, 2020,

- ii. The second payment of \$333,333.33 by July 31, 2021, and
 - iii. The third and final payment of \$333,333.34 by July 31, 2022.
 - C. To contribute to the cost overrun of the SE Beltway, it is the intent of the City to pay up to \$1.5 million over a three-year period, as follows:
 - i. The first payment of up to \$500,000.00 by June 30, 2020,
 - ii. The second payment of up to \$500,000.00 by June 30, 2021, and
 - iii. The third and final payment of up to \$500,000.00 by June 30, 2022.
 - D. The City and the NDOT will amend the current Municipality Preliminary Financial Agreement between the City and the NDOT, so the City will be responsible to collect annual payments from the County (as stated above) and submit each payment as contributions to the cost of the SE Beltway on behalf of the County to NDOT.
- II. Authority: The authority for this Agreement is that authority granted by law, including without limitation the general powers of each Party, the Nebraska Interlocal Cooperation Act, Article 8 of Chapter 13, Neb. Rev. Stat § (1943);
- III. Terms of Agreement. This Agreement shall be effective beginning on _____, 2020, and shall expire after the July 31, 2022 third and final payment from the County has been received, submitted, and paid by the City to the NDOT. Prior to the expiration of this Agreement, any Party may give the other Parties thirty (30) days written notice of the notifying Party's desire to renegotiate this Agreement. During the pendency of these negotiations this Agreement will remain in full force and effect.
- IV. Withdraw and/or Termination:
 - A. A party may terminate this Agreement for convenience at any time for any reason by giving the other Party one year's written notice. Each party shall be liable for its share of contribution to the cost of the SE Beltway specified herein until the effective date of the termination.
 - B. This Agreement may be terminated for a material breach not cured within a reasonable time following written notice. Such notice, to be effective must describe the breach or breaches complained of and provide a reasonable time to cure, not less than 45 days from receipt of notice, only the payment of money, in which case such time may be 30 days. Following a failure to cure the non-breaching Party may notify the remaining Parties in writing that the Agreement is terminated as to the breaching Party effective in ninety (90) days following the receipt of such notice. Each Party shall be liable for its share of all costs specified herein until the effective date of the termination.
 - C. The Parties herein reserve the right, by written request sent by certified mail from the notifying Party to the other parties, to amend as provided herein any provision of this Agreement. If on or after 180 days of such amendment notice, amendment negotiations fail, then a Party may notify the others in writing of that Party's intent to withdraw and that the notifying Party's participation in this agreement is

terminated following ninety (90) days after the withdrawal notice. All such notices provided for in this section shall be sent by certified mail as identified in Paragraph XIX.

- V. Entire Agreement. This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any Party other than those that are expressly set forth herein. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. No agent, employee or other representative of any Party is empowered to alter any of the terms hereof except as provided herein.
- VI. Amendments/Modification. This Agreement may be modified for any reason, including but not limited to adding another Party. Said modification shall be made by written addendum, approved and executed by the Parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made pursuant to an addendum. Every addendum shall specify the date on which its provisions shall be effective.
- VII. Assignment. None of the Parties may assign its rights under this Agreement.
- VIII. Successors and Assigns Bound by Covenants. All covenants, stipulations, and agreements herein shall inure to the benefit of the Parties and extend to and bind the legal representatives, successors, and assigns of the Parties
- IX. Waiver. The failure of a Party to insist on strict performance of any covenants or conditions, or to exercise any option herein conferred on any one or more instances, shall not be construed as a waiver or relinquishment of any such covenant, condition, right, or option, but the same shall remain in full force and effect. For a waiver of a right or power to be effective, it must be in writing signed by the waiving Party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power. In addition, any act by a Party which it is not obligated to do hereunder shall not be deemed to impose any obligation upon that Party to do any similar act in the future or in any way change or alter any of the provisions of this Agreement.
- X. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.
- XI. Indemnification/Liability. To the extent permitted by law, each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless each of the other Parties (as "indemnitee(s)") from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees (hereinafter collectively referred to as "claims") arising out of bodily injury, including death, or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee(s), are caused by the act, omission, negligence, misconduct, or other

fault of the indemnitor, its officers, officials, agents, employees, or volunteers. These indemnification provisions are not intended to waive a Party's sovereign immunity. A Party's liability is governed by and limited to the extent provided by the Nebraska Political Subdivisions Tort Claims Act or other applicable provisions of law.

- XII. Notification of Claims and Lawsuits. In the event that a claim or lawsuit is brought against a Party for any matters related to this Agreement, it shall be the duty of that Party to notify the other Parties of said claim or lawsuit.
- XIII. Sovereign Immunity. Nothing in this Agreement shall be construed as an express or implied waiver of the sovereign immunity of any Party in any forum or jurisdiction.
- XIV. No Third Party Rights. This Agreement is not intended to, nor shall it provide third parties, excluding any assignment as provided herein, with any remedy, claim, liability, reimbursement, cause of action or other right or privilege; except that this Agreement's indemnification provision shall also inure to the benefit of a Party's employees, officers, agents and servants.
- XV. Applicable Law/Venue. This Agreement shall be construed and all of the rights, powers and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of Nebraska. Venue for any action under this Agreement shall be in Fremont, Nebraska, Dodge County District Court or for any federal action, it shall be in United States District Court for the State of Nebraska.
- XVI. Nondiscrimination. The Parties, in the performance of this Agreement, shall not discriminate in violation of the Federal or State law or local ordinances. In accordance with state and federal law, the Parties shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, age, religion, sex, disability, national origin or similar protected status of the employee or applicant.
- XVII. Notice and Authorized Representatives. Notice, required under this Agreement, shall be delivered in writing and shall be effective upon receipt by the authorized representative. Delivery shall be made by certified mail, return receipt requested. For purposes of Notice, following individuals are the authorized representatives of the Parties:

DODGE COUNTY
County Clerk
725 N Park Ave
Fremont, NE 68025
(402) 727-2767

CITY OF FREMONT
City Clerk

400 E Military Ave
Fremont, NE 68025
(402) 727-2630

- XVIII. Joint Work Product. This Agreement is the joint work product of the Parties; accordingly, in the event of any ambiguity, no presumption shall be imposed against or in favor of any Party by reason of document preparation.
- XIX. Authority. Each of the persons signing below warrant and represent that they have the authority to enter into this Agreement and to bind the parties hereto.
- XX. No Separate Legal Entity. This Agreement does not create a separate legal entity under the Interlocal Cooperation Act. For purposes of that Act, this Agreement shall be administered jointly by the Parties, in the event of a conflict, the majority decision of the Parties shall govern.
- XXI. Independent Contractor. It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the Parties. Any and all acts that the parties or their personnel, employees, agents, contractors or servants, perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. The Parties shall, except as provided herein, act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or constructed to be the employee or agent of the other for any purpose whatsoever. None of the Parties nor its personnel, employees, agents, contractors or servants shall be entitled to any benefits of the other. The Parties shall not provide any insurance coverage to the other or their employees including, but not limited to, workers' compensation insurance. Each Party shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Neither Party shall have any authority to bind the other by or with any contract or agreement nor to impose any liability upon the other. All acts and contracts of each shall be in its own name and not in the name of the other.
- XXII. Multiple Counterparts: This agreement, involving numerous parties, may be executed in multiple counterparts each of which may bear the signatures of less than all of the parties hereto, and it shall be in full force and effect even if so executed.
- XXIII. Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience, and in no way define or limit the scope of any section.
- XXIV. Dispute Resolution. Any Dispute which, in the judgement of a Party to his Agreement, may affect the performance of such Party shall be reduced to writing

and delivered to the other Parties. As soon as possible thereafter, the Parties authorized representatives shall schedule a face to face meeting to resolve the dispute in a mutually satisfactory manner. Prior to the institution of any formal legal proceeding, the Parties must meet in this manner to resolve the dispute. This meeting shall take place within ten (10) business days after service of the written statement of dispute. During the pendency of negotiations, the Parties shall act in good faith to perform their respective duties described herein. If the Parties are unable to resolve their dispute using the process described above, the Parties may commence a legal action against the other Party.

XXV. Public Employer Contract Provision (Ne Rev. Stat. 4-114(2)). Pursuant to and in order to be in compliance with Neb. Rev. Stat. §4-114(2), each Party 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. 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 physically performing services within the State of Nebraska.

XXVI. Public Benefits – Neb. Rev. Stat. §§4-108 – 113. No party is an individual or sole proprietorship. Therefore, no Party is subject to the public benefits attestation and related requirements of Neb. Rev. Stat. §§4-108 – 113.

COUNTY OF DODGE, FREMONT NEBRASKA,
A Nebraska Political Subdivision

By: _____
Bob Missel, Dodge County Board Chairman

Date: _____

Attest:

Fred Mytty, County Clerk

Approved as to Form:

Dodge County Attorney

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CITY OF FREMONT, FREMONT NEBRASKA,
A Nebraska Political Subdivision

By: _____
Scott Getzschman, Mayor

Date: _____

Attest:

Tyler Ficken, City Clerk

Approved as to Form:

City Attorney

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