

Agenda Item # 18  
Date 6/2/21

**COUNTY OF DODGE and VCS FREMONT PROPERTY I, LLC  
ECONOMIC OPPORTUNITY PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by and between the County of Dodge, 435 N Park, Fremont, NE 68025, hereinafter the "LA", and the VCS Fremont Property I, LLC, hereinafter the "Business", and who together will be collectively referred to as" the Parties".

**WHEREAS**, the purpose of this Agreement is to define the terms and conditions applicable to the Parties for utilizing State of Nebraska Economic Opportunity Program Funds (hereinafter "EOP" or "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;

**WHEREAS**, the Business has committed to a project that meets the criteria of the State's Economic Opportunity Program;

**WHEREAS**, the LA has committed to entering into a Program Agreement with the Business to implement the project consistent with the State's Economic Opportunity Program guidelines and Neb. Rev. Stat. §39-2806; and

**WHEREAS**, the Parties understand that the LA will also be entering into a separate Program Agreement with the State of Nebraska, Department of Transportation (hereinafter the "State") to implement the project consistent with the State's Economic Opportunity Program guidelines and Neb. Rev. Stat. §39-2806.

**NOW THEREFORE**, in consideration of the mutual promises and understandings specifically set forth herein, the LA and the Business jointly agree to the following:

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**I. Project Description/Objective:**

- 1.1 **Project Location:** NW of N Yager RD and County RD T  
**Current Jurisdictional Authority:** County of Dodge  
**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 **Estimated Positive Economic Impact resulting from the Project:**

Anticipated number of new jobs	51 (over approx. 3 years)
Anticipated number of retained jobs	N/A
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	Anticipated EOP Funds %	LA Funds %	Business Funds %	Total
Preliminary Engineering and Property Acquisition	\$70,000.00	\$100,000	\$30,000	\$200,000.00
Construction	\$245,000.00	\$350,000	\$105,000	\$700,000.00
Project Closeout	\$35,000.00	\$50,000	\$15,000	\$100,000.00
<b>TOTAL:</b>	\$350,000.00	\$500,000	\$150,000	\$1,000,000.00

- 2.1 The Parties understand that construction and engineering expenses which will be approved for reimbursement (hereinafter "Eligible Expenses") may only include the necessary, reasonable, and customary costs, fees and other expenses that are incurred to complete a transportation project, and will be determined solely at the discretion of the State subject to the Program Agreement entered into between the LA and 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 Parties are responsible for ensuring that funds are available to meet their financial obligations to complete this EOP project as contemplated by the Parties and 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 or for any project costs determined by the State to be ineligible for reimbursement. The Parties understand that the State's **maximum reimbursement amount** to the LA for Eligible Expenses incurred upon the project is 75% of transportation project costs up to **\$350,000.00**. The total balance necessary to complete the project as defined in this Program Agreement shall be shared equally by the Parties, with 50% paid by the LA and 50% paid by the Business, and the foregoing reimbursement amount of up to \$350,000.00 shall be used to offset against the 50% share owed by the Business. The LA will

pay all costs of the project costs as they arise and the Business will pay its share of the cost to the LA within forty-five (45) days after the final billing.

2.3 The Parties understand that State EOP Funds will be made available for reimbursement of Eligible Expenses upon receipt by the LA, generally in accordance with the following Phasing schedule:

a. **Phase I: Preliminary Engineering and Property Acquisiton:** 20% of the State's EOP Funding will be disbursed upon:

- i. 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;
- ii. documentation that the Business has officially and formally committed to the project in this LA/Business Program Agreement;
- iii. 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
- iv. receipt by the State of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.

b. **Phase II: Construction:** An additional 70% of State's EOP Funding will be disbursed to the LA according to the following schedule:

- i. **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; and
  - 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, 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 to 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 LA after amounts due exceed \$1,000.00 and shall be submitted to the LA no more frequently than monthly. Billing invoices/requests for reimbursement by the Business must contain adequate documentation to substantiate the expenses incurred, and to determine compliance with the EOP program application and the LA's Program Agreement with the State. 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 Business within thirty (30) days of receipt by the LA.

- b. 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 Business will be considered the final invoice submitted upon the improvement, and any and all obligation by the LA to pay additional funds will terminate.
- 2.5 All obligations set forth in this Program Agreement, including all obligations of the LA 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 LA will provide the Business with written notice setting forth the effective date of termination.

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### III. Additional Obligations, Declarations, and Certifications:

- 3.1 The Parties agree to comply with all applicable federal, state and local laws, ordinances, rules and regulations relating to the activities carried out by the Parties 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.

The LA and the Business agree to commit all reasonable efforts and resources necessary to carry out the provisions of this Program Agreement, understanding that failure to comply with the terms set forth herein may result in the State's termination of the EOP project, and the State's demand for reimbursement from the Parties of all EOP funds disbursed thus far. The Business further agrees to cooperate and provide any and all efforts requested or required by the LA so that the LA may meet the terms of its Program Agreement with the State.

- 3.2 It is understood that the LA will be required by its Program Agreement with the State to accept responsibility for the management, planning, design, right-of-way activities, bid letting, construction, construction engineering and future operation and maintenance of this project subject to terms which will be specifically set forth in the Program Agreement between the State and the LA. A copy of the Program Agreement between the State and the LA will be provided to the Business.

In addition, the Parties understand and agree that:

a. Prior to advertising for bids for the project, the LA will be required to 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 will be required to 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 will be required to provide plans

for review which meet the higher NDOT standard highway design and construction requirements applicable to State highway projects.

c. The LA will be required to 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 will be 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.

- 3.3 The Business and the LA agree to 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. Each shall make such documentation available to the other to copy or review upon request, within a reasonable time period, and in particular in a manner sufficient to respond or comply with internal or external audit requirements of the LA, the Business, and/or the State.
- 3.4 The Business must submit an annual economic impact progress report to the the LA by **December 1st** of each subsequent year after completion of the project, for a period of five consecutive years after completion of the project.
- 3.5. The Parties understand that in the event the LA or the Business 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 1.2 of this Program Agreement (also known as “default”), the State may immediately provide the LA with notice of termination of funding and seek reimbursement and repayment of all EOP funds disbursed thus far upon the project from the LA. In the event of such occurrence, the Business shall immediately reimburse and repay the LA for all EOP funds disbursed thus far to the Business by the LA; all EOP funds reimbursed and repaid by the Business to the LA shall then be repaid by the LA to the State.

Furthermore, in the event of termination of this Program Agreement, the Parties agree to the following terms regarding reimbursement and repayment of non-EOP funds expended upon the project by the Business and the LA up to the date of termination:

Each party shall bear the cost and expense of its own non-EOP funded expenditures upon the project up to the date of termination.

- 3.6 This Program Agreement commences upon signature by the last of all required signatories and terminates 30 days after the LA’s receipt of the final annual progress report unless terminated sooner pursuant to the terms set forth herein, or by the written mutual agreement of the Parties.
- 3.7 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

and the Business 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.

- 3.8 The Business agrees to hold the LA and 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 Business and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this Program Agreement, or impacting the performance of the Program Agreement between the LA and the State. The LA agrees to hold the Business 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 impacting the performance of the LA's Program Agreement with the State.
- 3.9 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.

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#### IV. Attachments

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

#### VI. 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\_\_.

By Bob Missel, Chairman, County of Dodge Board of Supervisors

\_\_\_\_\_  
Signature

EXECUTED by the Business this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By Curt Mastbergen, President, VCS Fremont Property I, LLC

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Signature