

STATE OF NEBRASKA
NEBRASKA DEPARTMENT OF REVENUE

EMPLOYMENT AND INVESTMENT GROWTH ACT PROJECT AGREEMENT

FIELD(Full company name)
FIELD(Address)

Nebraska Identification Number 24-FIELD(SID #)

This Agreement is entered into pursuant to the Employment and Investment Growth Act, as defined in Section 77-4101, R.R.S. 1996, (Act), between FIELD(Parent Company Name) and the members of the unitary group, hereinafter collectively referred to as FIELD(Company name), and the State of Nebraska, by and through the Tax Commissioner, hereinafter referred to as the State.

It is hereby agreed between FIELD(Company name) and the State that:

(1) The application submitted by FIELD(Company name) on FIELD(Application Date), and addendum(a) thereto dated FIELD(Addendum Date), hereinafter collectively referred to as the Application, satisfy the requirements of an application as contained in the Act, which Application and all supporting documentation are made a part of this Agreement. For purposes of this Agreement, the date of application is FIELD(Application Date).

As stated in said Application, it is the intention of FIELD(Company name) to complete the project described in the Application.

(2) Upon review of said Application, the Tax Commissioner is reasonably satisfied that the plan in the Application defines a project consistent with the purposes stated in the Act, in one or more qualified business activities within this state and that this plan will result in FIELD(Company name)'s investment in qualified property of at least \$3,000,000 and the hiring of at least thirty (30) new employees, which meet the minimum levels of investment and employment required by the Act, and that these levels will be met prior to FIELD(Application Yr + next 6 yrs). For purposes of this Agreement the required levels of employment and investment shall be the hiring of at least thirty (30) new employees in Nebraska and the

investment in qualified property in Nebraska of at least \$3,000,000 for all incentives herein.

(3) FIELD(Company name) hereby agrees to complete the project within the above-referenced time limit and meet the minimum employment and investment levels required by the Act.

FIELD(

Company name) agrees to file a Nebraska Employment and Investment Growth Act Credit Computation, Form 775N, and supporting documentation as required in paragraph (6) of this Agreement, with the Economic Incentive Coordinator of the Nebraska Department of Revenue, for purposes of establishing FIELD(Company name)'s attainment of the qualification levels specified in paragraph (2) of this Agreement. For purposes of establishing FIELD(Company name)'s initial qualification under the Act, this Form 775N may be filed independent from FIELD(Company name)'s Nebraska Corporation Income Tax Return, Form 1120N, immediately following the close of the federal tax year within which FIELD(Company name) has first met or exceeded the minimum required levels of employment and investment as specified in paragraph (2). FIELD(Company name) also agrees to complete and file a yearly Nebraska Employment and Investment Growth Act Credit Computation, Form 775N, with its Nebraska Corporation Income Tax Return, Form 1120N. The Form 775N will be filed for the year during which the Application was filed and for each year thereafter until the expiration of all incentives available under the Act.

(4) The Tax Commissioner, on behalf of the State, hereby designates the approved plan of FIELD(Company name) as a project and, in consideration of FIELD(Company name)'s agreement and commitments contained in paragraphs (2) and (3), the State hereby agrees to allow FIELD(Company name) to use the following incentive, and the incentives set forth in paragraph (5), under the conditions specified:

(a) FIELD(Company name) may elect annually to determine taxable income for purposes of the Nebraska income tax by multiplying federal taxable income, as adjusted, by the sales factor only. This incentive may be used for tax year ending FIELD(First Yr-end Date after Application), and for each taxable year thereafter through the eighth year after the end of the entitlement period. For purposes of this Agreement, entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next six (6) taxable years.

(5) Upon meeting the minimum levels of employment and investment required in the Act, FIELD(Company name) shall be entitled to the following incentives subsequent to FIELD(Company name)'s compliance with the project verification steps contained in paragraph (6). FIELD(Company name) may receive a refund of the sales and use taxes paid on purchases or leases of the following items when satisfactory documentation, as required in paragraph (6), is provided and the claim is submitted under the Act, and is approved by the Department of Revenue. Only one claim may be filed during each calendar quarter, unless the amount claimed exceeds \$25,000, in which case a claim may be submitted at any time.

(a) The following refunds of sales or use tax are for purchases or leases made on and after the date of the Application, and through the end of the sixth year after the year the required levels of employment and investment were first reached.

(i) The sales or use tax paid by FIELD(Company name) on tangible property used as a part of the project and "placed in service" on and after FIELD(Application Date). For purposes of this Agreement, "placed in service" means the day the qualified property is eligible for depreciation, amortization, or other recovery under the Internal Revenue Code of the United States. The tangible property purchased or leased must be of a type of property subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986. Purchases that are normally expensed under the Internal Revenue Code of 1986 (e.g., hand tools) will not qualify for refund of the sales or use tax as provided in this subparagraph.

(ii) The sales or use tax paid by FIELD(Company name) on any property, other than motor vehicles, based in this state and used in this and other states in connection with the project. Any claim for refund of Nebraska sales or use tax submitted under the Act, must be accompanied by a copy of that portion of FIELD(Company name)'s Application which clearly connects the purchase of that property to the project as described in the Application and the resulting use thereof.

(iii) The sales or use tax paid by FIELD(Company name) on tangible personal

property (building materials) incorporated into an improvement to real estate that will be a part of the project.

(iv) The sales or use tax paid by a contractor on tangible personal property (building materials) incorporated into an improvement to real estate after the contractor had been appointed as an agent by FIELD(Company name) to purchase the property. The construction contract must contain a clause stating that all applicable Nebraska sales or use taxes will be paid by the general (prime) contractor or the respective subcontractor(s). Except as set forth in paragraph (5)(a)(v), the refund will only be paid to FIELD(Company name). When a construction contract is in process prior to FIELD(Application Date), a "certificate of percentage completion" must be obtained from the prime contractor stating the percentage of the contract completed as of FIELD(Application Date). The portion of the construction contract so completed shall be excluded from the provisions of the Act. For purposes of obtaining a refund of sales or use tax on that portion of the pre-existing contract completed on and after FIELD(Application Date), the claim will be based upon a "certificate of percentage completion" supplied to FIELD(Company name) by the prime contractor for each remaining phase of the construction contract. Such certificates will be those normally used to support progress payments to the prime contractor by FIELD(Company name). The refund will be based on fifty percent (50%) of the contract price, excluding any amount for the purchase of land. If the sales or use tax has been properly paid to a state other than Nebraska, such tax shall not qualify for refund. The amount of the refund will be reduced proportionally.

The sales or use tax must be paid on all material purchased for use in the project. For purposes of this Agreement, if the sales or use tax has not been paid, the contractor and FIELD(Company name) are jointly liable for the tax, interest, and penalties on such purchases.

(v) If any improvement being built for use in the project is not owned by FIELD(Company name), the owner of the improvement may receive a refund of the sales or use taxes paid on tangible personal property (building materials) incorporated

into the improvement on and after FIELD(Application Date). The owner will be considered the same as FIELD(Company name) for purposes of subparagraphs (iii) and (iv), above. Any contractor must be appointed as agent for the purchasing of tangible personal property (building materials).

(b) The following credits shall be allowed for each year of the entitlement period that FIELD(Company name) is at or above the minimum employment and investment levels required under the Act. For purposes of meeting and maintaining the required minimum levels of employment, the number of new employees shall mean the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year. The credit allowed in paragraph (5)(b)(ii) of this Agreement is also allowable during the first year of the entitlement period for all qualified property placed in service on and after FIELD(Application Date), through the date the required minimum levels of employment and investment are met. These credits may be used after any other nonrefundable credits to reduce FIELD(Company name)'s tax liability imposed by sections 77-2714 to 77-27,135 of the Nebraska Revised Statutes. The credits may also be used to obtain a refund of Nebraska state and applicable local option sales or use taxes paid on any purchase or lease for use at the project which is not otherwise refundable. The purchase or lease must have been made after the start of the taxable year following the year in which the required minimum levels of employment and investment were first met and before the end of the fourteenth (14) year thereafter.

(i) A credit equal to five (5) percent of the amount by which the total compensation paid during the year to employees who are either Nebraska employees or base-year employees while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees.

For purposes of computing this credit, average compensation shall mean the total compensation paid at the project divided by the total number of equivalent employees at the project. Equivalent employees shall mean the number of employees computed by dividing the total hours paid in a year by the product of forty (40) times the number of weeks in a year. Base-year employee shall mean

an individual who was employed in Nebraska by FIELD(Company name) during FIELD(Company name)'s federal taxable year ending FIELD(Base Year), and is now, or has been employed at the project described in paragraph (1) at some time after FIELD(Base Year minus 1). Number of equivalent base-year employees shall mean the number of employees computed by dividing the total hours paid during the base year to base-year employees, by the product of forty (40) times the number of weeks in the base year. The number of equivalent base-year employees at the project will increase during the term of this Agreement when FIELD(Company name) transfers additional existing Nebraska employees from other Nebraska locations into the project. The number of base-year employees shall not decrease; and

(ii) a credit equal to ten (10) percent of the investment made in qualified property, or the components of such property, that will be located and used at the project. The basis upon which the investment credit is calculated shall be the total cost required to be capitalized by the Internal Revenue Code, less the amounts of Nebraska state and local option sales or use taxes subject to refund under the Act. Property eligible for this credit shall not include: aircraft, barges, motor vehicles, railroad rolling stock, watercraft, or any property that is rented or leased by FIELD(Company name) to another person.

(6) Prior to using the incentives allowed under the preceding paragraph (5), FIELD(Company name) shall present documentation, at the Department's offices or within Nebraska, sufficient to establish its attainment or maintenance of the required minimum levels of employment and investment.

(a) For purposes of paragraphs (5)(a) and (5)(b)(ii), the required documentation shall include, but not necessarily be limited to: copies of construction contracts accompanied by proof of payment and architect's or engineer's "certificate of percentage completion"; copies of qualified property purchase contracts or invoices accompanied by proof of payment; copies of lease/rental contracts accompanied by proof of payment. The Department of Revenue reserves the right to make inspections of the physical project and the normal books and records of FIELD(Company name) to determine the project's

compliance.

(b) For purposes of paragraph (5)(b)(i), the required documentation shall include, but not necessarily be limited to: copies of Employment Insurance Contribution Reports as filed with the Nebraska Department of Labor; quarterly payroll summaries prepared by FIELD(Company name) showing the amounts of payroll subject to Nebraska income tax withholding and the number of full-time or full-time equivalent Nebraska employees. Equivalent employees shall be determined by dividing the total hours paid during FIELD(Company name)'s federal taxable year by the product of forty (40) times the number of weeks in that federal taxable year. Salaried employees are deemed to work a forty-hour week, provided, non-salaried employees are regularly paid for a forty-hour week. If FIELD(Company name)'s normal work week is not forty hours, the number of salaried employees must be adjusted accordingly. The Department of Revenue reserves the right to inspect the payroll records of FIELD(Company name) to determine the project's compliance.

(c) When, based upon the Department of Revenue's review of the documentation required under paragraphs (6)(a) and (b), it is satisfied that FIELD(Company name) has met the minimum employment and investment levels required in the Act, the Department of Revenue will issue a letter to FIELD(Company name), acknowledging its attainment of the required levels. A copy of this letter must accompany each claim for incentives allowed under paragraph (5).

(7) Any incentives allowed under the Act shall be transferable only as allowed under the Act.

(8) As used in this Agreement, "year" shall mean FIELD(Company name)'s taxable year for federal income tax purposes. Based upon the FIELD(Tax return year provided) federal income tax return filed by FIELD(Company name), its federal taxable year end is FIELD(Tax return provided - month, day). Any change in this federal taxable year shall result in a corresponding change to dates referenced in this Agreement.

(9) Interest shall not be paid or otherwise allowed to FIELD(Company name) on any incentives available under the Act.

FIELD(Full company name)

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(10) If **FIELD**(Company name) fails either to meet the required levels of employment and investment for the applicable project by the end of the sixth year after the end of the year the Application was submitted for the project or to utilize such project in a qualified business at the minimum employment and investment levels required in this Agreement for the entire entitlement period, all or a portion of the incentives set forth in the Act and any penalties applicable thereto, shall be recaptured or disallowed as set forth in the Act.

(11) This Agreement may be amended to an agreement requiring the investment in qualified property resulting in a net gain in the total value of tangible property in Nebraska of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, of at least twenty (20) million dollars and no increase in employment. **FIELD**(Company name) must make a written request for amendment to the Department of Revenue and make payment of all amounts of refunds received or taxes not paid as a result of the incentives received under the Act, along with interest at the current rate established in section 45-104.02 of the Nebraska Revised Statutes, because of any credits that may have been earned or used under this Agreement.

(12) The parties intend that **FIELD**(Company name) shall be entitled to all the incentives for which **FIELD**(Company name) qualifies as set forth in the Act. To the extent that the language contained in this Agreement is incomplete or inconsistent with the Act, the language of the Act shall control and is hereby incorporated herein by this reference.

(13) **FIELD**(Company name) hereby agrees to submit to the Economic Incentive Coordinator of the Nebraska Department of Revenue, a yearly update of the information contained in the Application which outlines in detail, additional phases of the original project contained in **FIELD**(Company name)'s Application.

(14) **FIELD**(Company name) hereby agrees to submit to the Economic Incentive Coordinator of the Nebraska Department of Revenue an annual update of the timetable of sales tax refunds as set out in the application. Failure to comply with this requirement may result in the Tax Commissioner deferring any pending sales tax refunds until **FIELD**(Company name) does comply.

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(15) This Agreement contains all binding agreements between the parties hereto. It shall be governed by the laws of the state of Nebraska. No oral or other statements, proposals, or agreements, unless set out in writing and signed by all parties hereto, shall be binding on either party.

The undersigned parties hereto accept and bind themselves to the provisions of this Agreement.

Signed this _____ day of _____, 1999.

By _____

Title _____
FIELD(Full company name)

Signed this _____ day of _____, 1999.

By _____
Mary Jane Egr
State Tax Commissioner
State of Nebraska