

STATE OF NEBRASKA
NEBRASKA DEPARTMENT OF REVENUE

NEBRASKA ADVANTAGE ACT PROJECT AGREEMENT

«Company_Name»
«Address_Line_1»
«City», «State» «ZIP_Code»

Nebraska Identification Number 24-«SID»
Project Number «Project_Number»

This Agreement is entered into pursuant to the Nebraska Advantage Act, as defined in Section 77-5701, Nebraska Revised Statutes, (Act), between «Company_Name», referred to as Applicant, and the State of Nebraska, by and through the Tax Commissioner. This Agreement is for a Nebraska Advantage Tier 5 Renewable Energy (Tier 5RE) project.

It is agreed between Applicant and the State that:

The Plan

1. The application and related documents detailed in subparagraph (a) of this paragraph satisfy the requirements of an application as contained in the Act and this Agreement. The date of application is «AppDate», the date the application was considered complete.
 - (a) The Application includes the original application submitted «Org_Date»; supplemental pages dated «Supp_Date»; addendum(a) dated «Add_Date»; and all supporting documentation.
 - (b) The Applicant includes the entities identified in the Application as being part of the taxpayer, as defined in the Act. Entities may be added to the plan in the future only if they were:
 - (i) not in existence between the date of application and the signing of the Agreement;
 - (ii) not qualified to be included as part of the taxpayer at the time the Agreement was signed; or
 - (iii) not performing a qualified activity at the project at the time the Agreement was signed.

- (c) The plan includes only the locations identified in the Application. Locations may be added to the plan in the future only if they were:
 - (i) not used by the Applicant between the date of application and the signing of the Agreement; or
 - (ii) not used for qualified activities at the time the Agreement was signed.
- 2. The Tax Commissioner is reasonably satisfied that the plan in the Application defines a project consistent with the purposes stated in the Act.

The Commitments

- 3. Applicant agrees to complete the project before the end of the attainment period, and to comply with the following requirements:
 - (a) File a Nebraska Advantage Act Incentive Computation, Form 312N, showing investment and employment for the year during which the Application was filed and for each following year through the end of the entitlement period with the income tax return for the taxable year which includes December 31 of the year;
 - (b) Substantiate any claimed refunds by providing to the Nebraska Department of Revenue, referred to as the Department, the supporting documentation required in paragraphs 6 or 9 of this Agreement;
 - (c) Request benefits under the Act only after receiving a notice of qualification issued by the Department;
 - (d) Pay all sales and use taxes when they are due even if the tax is eligible for refund;
 - (e) Maintain the records required in paragraph 6 of this Agreement for the base year and all intervening years through three years after the end of the entitlement period, until extensions of the statute of limitations expire for any period including the base year, the attainment period, the entitlement period, or until any pending protest or court case concerning this Agreement is resolved;
 - (f) Timely make reports as required in this Agreement; and
 - (g) Confirm work eligibility of all newly hired Nebraska employees.

- (i) Maintain an active registration with E-Verify, the federal electronic verification program, or a successor program (E-Verify).
 - (ii) Use E-Verify to timely evaluate the work eligibility status of all employees hired in Nebraska after the date of application.
 - (iii) For purposes of calculating any tax incentive under the Act, exclude hours worked and compensation paid to any employee who is not eligible to work in Nebraska according to E-Verify.
- 4. The Tax Commissioner, on behalf of the State, designates the approved plan of Applicant as a project and, in consideration of Applicant's agreement and commitments contained in paragraph 3 of this Agreement, agrees to recognize Applicant's entitlement to the benefits set forth in this Agreement, under the conditions specified.
- 5. This project is a Nebraska Advantage Tier 5RE project.
 - (a) If the project includes only the production of electricity for sale by using a renewable energy source, the minimum level of investment in qualified property in Nebraska used at the project shall be at least \$20 million. There is no minimum level of employment to receive benefits; however, failure to maintain an average level of employment for the entire entitlement period that is at or above the base year level of employment will result in recapture.
 - (b) If the project includes other qualified business activities in addition to the production of electricity for sale by using a renewable energy source, the minimum level of investment in qualified property shall be \$36 million for the entire project, which includes the investment in qualified property specified in subparagraph 5(a).
 - (c) The attainment period ends the last day of the sixth year after the year the Application was filed, December 31, 2025, or the beginning of the year the required minimum level was met, whichever occurs first.
 - (d) The entitlement period is the year the minimum level was met and the next six years.

Required Documentation

- 6. Applicant shall present documentation, at the Department's offices or within Nebraska, sufficient to establish its attainment or maintenance of the level of investment or to establish its entitlement to any refund. The Department may require electronic copies of any records

relating to the project maintained by the taxpayer in electronic format for purposes of this audit.

- (a) For purposes of paragraph 7 of this Agreement to determine the number of full-time equivalent Nebraska employees, the required documentation shall show the hours worked, and the total amount received and may include, but not necessarily be limited to: payroll register, payroll tax filings, copies of payroll summaries prepared by Applicant, and case verification number and system reports from E-Verify.
 - (i) If the employees are leased from a qualified leasing company, the employee leasing company must provide all of the required payroll records.
- (b) For purposes of paragraph 8 of this Agreement to determine the amount of investment, the required documentation shall show the amounts capitalized, the dates of purchase, the dates annexed or placed in service, and the tax paid and may include, but not necessarily be limited to: tax depreciation schedules, copies of construction contracts accompanied by proof of payment, statements of tax paid by contractors, statement of tangible personal property included and tax paid for annexed property contracts, copies of qualified property purchase contracts or invoices accompanied by proof of payment, or copies of lease/rental contracts accompanied by proof of payment.
- (c) The documentation required in subparagraphs (a) and (b) above will be made available for the base year, and any subsequent year through the end of the entitlement period.
- (d) If Applicant acquires a business, Applicant agrees to provide documentation regarding the levels of investment and employment for the acquired business for the twelve months prior to the acquisition.
- (e) The Department reserves the right to make inspections of the physical project and will audit the normal books and records of Applicant to determine the project's compliance and the accuracy of all amounts claimed.
- (f) When, based upon the Department's review of the documentation required under subparagraphs 6(a) and (b) of this Agreement, the Department has determined the investment at the project and is satisfied that Applicant has met the minimum investment level required in the Act, the Department will issue a notice of qualification to Applicant acknowledging its attainment of the minimum level.

Determination of Equivalent Employees

7. For purposes of computing the number of equivalent employees:
- (a) Equivalent employees shall be determined by dividing the total hours paid at the project during the year by the product of 40 times the number of weeks in that year. Salaried employees are deemed to have been paid 40 hours per week.
 - (i) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation under this paragraph. Exception: If all employees are leased from a qualified employee leasing company, then the leased employees will be considered the employees of the Applicant.
 - (ii) The hours worked by a teleworker working in his or her home on tasks interdependent with the project and who is paid based on hours or who is salaried are included in the hours worked at the project.
 - (iii) The hours worked by an employee at a military installation in Nebraska on tasks interdependent with the project are included in the hours worked at the project.
 - (b) Number of equivalent base-year employees shall mean the number of equivalent employees employed at the project during the base year. The number of equivalent base-year employees at the project will increase during the term of this Agreement if Applicant transfers employees who were employed in Nebraska by the taxpayer during the base year from other Nebraska locations into the project or upon the acquisition of a business. The number of base-year employees shall not decrease, provided that an employee will not be considered a base-year employee for two or more projects of the taxpayer with the same base year. The employee will be counted as a base-year employee for the project where he or she is currently working, or the last project at which he or she worked.

Determination of Investment

8. The basis upon which the amount of investment in this state is calculated is all tangible personal property used or available for use at the project which is placed in service after the date of application, or the portion of tangible personal property which is incorporated into real estate after the date of application. Only investment in improvements to real estate and tangible personal property that are depreciated under relevant provisions of the Internal Revenue Code (IRC), or expensed under IRC § 179, shall be considered, including any

property owned by the taxpayer that is located in the home of a teleworker whose hours are included in the hours worked at the project. Property eligible as investment shall not include: aircraft, barges, motor vehicles, railroad rolling stock, watercraft, any other property that is expensed, or that is rented or leased by Applicant to another person.

- (a) The basis upon which the investment is calculated for property owned by the taxpayer shall be the total cost required to be capitalized under relevant provisions of the IRC.
- (b) The basis upon which the investment is calculated for property rented or leased by the taxpayer shall be the annual rent required to be paid times the number of years for which the taxpayer is originally bound under the lease, not to exceed ten years. The annual rent required to be paid includes the amounts for the space, taxes, and insurance. The annual rent required to be paid does not include management fees, common area maintenance, or other services.
- (c) When a construction contract is in process prior to the date of application, a "certificate of percentage completion" must be obtained from the prime contractor stating the percentage of the contract completed as of the date of application. The portion of the construction contract already completed shall not be investment under the Act.

Sales Tax Refunds

- 9. When the minimum level of investment specified in subparagraph 5(a) of this Agreement is met before the end of the attainment period, Applicant shall be entitled to a refund of the sales and use taxes paid on purchases or leases for use at the project of qualified property used solely in the production of electricity for sale by using a renewable energy source. When the minimum level of investment specified in subparagraph 5(b) of this Agreement is met before the end of the attainment period, Applicant shall be entitled to a refund of the sales and use taxes paid on purchases or leases of qualified property at the entire project for use in qualified business activities which include, but are not limited to, the production of electricity for sale by using a renewable energy source. No claims will be filed prior to Applicant's compliance with the project verification steps contained in paragraph 6 of this Agreement and receipt of the Department's notice of qualification. If Applicant fails to maintain an updated schedule of sales tax refunds, all sales tax refunds may be suspended until the updated schedule is provided.
 - (a) The following refunds of sales or use tax are for purchases or leases made on and after the date of application, and through the end of the entitlement period, without

the use of credits (direct refunds). No direct refunds will be allowed for any year during the entitlement period that the minimum level was not met or exceeded.

- (i) The sales or use tax paid by Applicant on tangible personal property that qualifies as investment under paragraph 8 of this Agreement.
- (ii) The sales or use tax paid by Applicant on aircraft and any other property, except motor vehicles, trailers, or semitrailers, based in this state and used in this and other states in connection with the project. Any claim for refund must clearly connect the purchase and use of the property to the project as described in the Application. No refund will be allowed under this subparagraph for any aircraft or other property that is used for fundraising for, or for the transportation of, any elected official.
- (iii) The sales or use tax paid by Applicant on tangible personal property 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 after the contractor has been appointed as an agent by Applicant to purchase tangible personal property that the contractor **will incorporate into an improvement to real estate** that will be a part of the project. The refund will be based on 50% of the contract price as the cost of tangible personal property with tax. The contract price will exclude any amount for the purchase of land.
 - (A) Except as set forth in subparagraph (a)(vii) of this paragraph, the refund will only be paid to Applicant.
 - (B) The contractor shall certify to Applicant the percentage of the tangible personal property incorporated into real estate on which Nebraska and local sales or use tax was paid. If the sales or use tax has been properly paid to a state other than Nebraska, such tax does not qualify for refund. The amount of the refund will be reduced proportionally if tax was not paid or if it was paid to another state.
 - (C) The sales or use tax must have been paid to Nebraska on all tangible personal property purchased for use at the project. If the sales or use tax has not been paid, the Applicant and contractor are jointly liable for the tax, interest, and penalties on these purchases.

- (v) The sales or use tax paid by a contractor after the contractor has been appointed as an agent by Applicant to purchase tangible personal property that the contractor **will annex to, but not incorporate into, real estate** that will be a part of the project. The refund will be based on the cost of tangible personal property subject to the sales or use tax that was annexed to real estate.
- (A) The refund will only be paid to Applicant.
 - (B) The contractor shall certify to Applicant the percentage of the contract price that represents the cost of tangible personal property annexed to the real estate at the project. The cost of tangible personal property does not include the cost of items that are not annexed to real estate, for example, crane rental and meals.
 - (C) The contractor shall certify to Applicant the percentage of the tangible personal property annexed to real estate on which Nebraska and local sales or use tax was paid. If the sales or use tax has been properly paid to a state other than Nebraska, such tax does not qualify for refund. The amount of the refund will be reduced proportionally if tax was not paid or if it was paid to another state.
 - (D) The sales or use tax must have been paid to Nebraska on all tangible personal property purchased for use at the project. If the sales or use tax has not been paid, the Applicant and contractor are jointly liable for the tax, interest, and penalties on these purchases.
- (vi) The sales or use tax paid by a contractor after the contractor has been appointed as an agent by Applicant to purchase tangible personal property that the contractor will, under a single contract: **(a) incorporate tangible personal property into an improvement to; and also (b) annex tangible personal property to, but not incorporate it into; real estate that will become a part of the project.** The refund will be based on 50% of the contract price as the cost of tangible personal property with tax. The contract price will exclude any amount for the purchase of land.
- (A) The refund will only be paid to Applicant.
 - (B) The contractor shall certify to Applicant the percentage of the tangible personal property incorporated into, or annexed to, real estate on which Nebraska and local sales or use tax was paid. If the sales or use

tax has been properly paid to a state other than Nebraska, such tax does not qualify for refund. The amount of the refund will be reduced proportionally if tax was not paid or if it was paid to another state.

- (C) The sales or use tax must have been paid to Nebraska on all tangible personal property purchased for use at the project. If the sales or use tax has not been paid, the Applicant and contractor are jointly liable for the tax, interest, and penalties on these purchases.
- (vii) If any improvement to real estate being built for use at the project is not owned by Applicant or a related party, the owner of the improvement during the period of its construction may receive a refund of the sales or use taxes paid on tangible personal property incorporated into the improvement on and after the date of application. The owner will be considered the same as Applicant for purposes of subparagraphs (a)(iii) and (a)(iv), above. Any contractor must be appointed as agent for the purchasing of tangible personal property and provide the required certification.
- (viii) If any improvement to real estate being built for use at the project is not owned by Applicant but is owned by a related party during the period of its construction, Applicant may receive a refund of the sales or use taxes paid on tangible personal property incorporated into the improvement on and after the date of application to the same extent that the related person would be eligible for a refund if the related person was considered the Applicant for purposes of subparagraphs (a)(iii) through (a)(vi), above. Any contractor must be appointed as agent for the purchasing of tangible personal property and provide the required certification.
- (b) A claim for refund of the state sales and use taxes paid may be filed quarterly, or when the amount claimed exceeds \$25,000 after the Department's notice of qualification has been received by the Applicant.
 - (i) Any local option sales tax refund that exceeds \$25,000 will not be refunded when the claim is approved. The local option amount claimed and approved will be refunded after November 15 of the same year if the claim was filed on or before June 15. The local option amount claimed and approved will be refunded after November 15 of the following year if the claim was filed on or after June 16.
- (c) For purposes of this paragraph, the required documentation for a sales tax refund claim shall include, but not necessarily be limited to: any documentation required

under paragraph 6 of this Agreement, receiving reports, use tax returns, copies of licensing agreements, and copies of maintenance or service agreements.

- (i) The Department in its discretion may allow Applicant to submit refund claims without documentation for all of the items claimed, but may require the documentation to be provided based on a sample, a stratification on invoice amounts, or by account or vendor.
- (ii) The Department may require any records that are maintained in a digital or electronic format to be provided electronically.

Reporting

- 10. Applicant will report or provide each year with the Form 312N the following:
 - (a) Wage levels and number of jobs within each wage level for all jobs created at the project, whether or not the wage is above the minimum wage level;
 - (b) An annual update to the sales tax refund schedule that was included with the Application;
 - (c) The average compensation paid to all employees in the state in the year of application and paid for the new jobs at the project; and
 - (d) Any changes in the structure of the taxpayer, or any significant changes in ownership in the entities that comprise the taxpayer.
 - (i) For a taxpayer that includes more than one entity, a significant change in ownership is any change that reduces the ownership by the rest of the taxpayer below 50% for any entity.
- 11. The Tax Commissioner shall report to the Legislature as required by the Act.
 - (a) Every other year, the Tax Commissioner will report the refunds received by Applicant for each project. The amount will be a single aggregated amount for each project for every two-year period.

Transfers of the Project

- 12. Any benefits allowed under the Act shall be transferable only when the project is transferred in its entirety by sale or lease, or in a sale of assets under IRC § 381.

- (a) The transferring person must notify the Tax Commissioner of the transfer of a project. The transferee must accept the transfer of the project.
- (b) The transferor cannot claim any benefits after the date of the notification of the transfer. The transferor is entitled only to a refund of sales or use taxes for a refund claim, which is filed before the date of the notification of the transfer, regardless of the period covered by the claim.
- (c) Only future benefits can be transferred. Refunds that could have been claimed by the transferor prior to the transfer of the project cannot be transferred.
- (d) The Department may disclose to the transferee, information about the project and prior benefits that is reasonably necessary to determine the future incentives and liabilities of the project.
- (e) The transferee is liable for all recapture that becomes due after the date of transfer.

Changes in Taxpayer or Business

13. If there are changes from the information contained in the Application, Applicant may no longer be eligible to receive benefits under the Act, or the benefits may be limited to those parts of the plan that continue to qualify.
- (a) Some of the changes that could affect the qualification for benefits are:
 - (i) A change in the structure of Applicant, the type of entities included in the plan, or the ownership of the entities, whether or not as part of a tax-free reorganization, such that some or all of the entities can no longer be a part of the taxpayer.
 - (ii) A change in the nature of the business or portions of the business so that some activities are no longer in a qualified business.
 - (b) The Agreement will remain in effect.
 - (i) During any period the taxpayer is not in conformance with the requirements of the Act or this Agreement, Applicant cannot receive benefits for any period during which the nonconformance continues.

- (ii) When only a part of the plan no longer qualifies, the remaining part of the plan, if still above the minimum level when only the qualifying portion is considered for the current year, will continue to receive benefits.
- (iii) Applicant will be allowed to make changes to bring the entire plan back into conformance with the requirements of the Act and this Agreement. After the conforming changes, future benefits would again be allowable if the applicable time periods have not expired.

Recapture

14. If Applicant fails either to meet the minimum level of investment for the project by the end of the attainment period, or to utilize such project in a qualified business at the minimum level of investment through the end of the entitlement period, all or a portion of all benefits received and any interest and penalties applicable thereto, shall be recaptured or disallowed as set forth in the Act.
- (a) If the project is sold or otherwise disposed of, but the project is not transferred under paragraph 12 of this Agreement, the amount of investment at the project will be zero and Applicant remains liable for any recapture.
 - (b) For the refund of the sales and use taxes paid on purchases or leases of qualified property at the project for use in qualified business activities other than the production of electricity for sale by using a renewable energy source, the minimum level will be the level in subparagraph 5(b) of this Agreement, and the entitlement period will be determined based on the meeting of this level. For all other benefits, the minimum level is the level in subparagraph 5(a), and the entitlement period will be determined based on the meeting of that level.
 - (c) Any benefits that were received improperly, or to which Applicant was not entitled, will be recaptured in full and will then be excluded from the calculation of any other recapture that is required.
 - (d) Any recapture that is not paid when due may be included in a deficiency determination mailed within three years of the end of the entitlement period, the normal period for the statute of limitations, or during any period that the statute has been extended, whichever is longest.
 - (e) If the project is transferred, any recapture that is due before the date of transfer must be repaid before the transfer will be allowed. Any recapture that becomes due after the date the project is transferred is the liability of the transferee. Recapture becomes

due at the end of the year for which the minimum level were not maintained or utilized in a qualified business.

15. If the Applicant fails to maintain the base-year level of employment, all or a portion of the benefits received and any interest and penalties applicable thereto, shall be recaptured or disallowed as set forth in the Act.
 - (a) If the project is sold or otherwise disposed of, but the project is not transferred under paragraph 12 of this Agreement, the amount of employment at the project will be zero and Applicant remains liable for any recapture.
 - (b) The Applicant has failed to maintain the base-year level of employment if the average number of equivalent employees for the entitlement period is less than the number of base-year employees.
 - (c) The average number of equivalent employees for the entitlement period is the total of the number of equivalent employees for each year of the entitlement period divided by seven.
16. The recapture provisions of paragraphs 14 and 15 of this Agreement are separately computed and both provisions may apply. The total recapture under both paragraphs, before the addition of interest and penalty, will not exceed the amount of benefits received.

Amendment of Agreement

17. The Applicant must request changes in the plan described in the Application either on the Form 312N filed for the year during which the change occurred, or by a letter prior to the filing of the Form 312N. The changes that must be requested include any new locations or any new entities that are desired to be added to the plan.
 - (a) For each new location or new entity that is requested to be added to the plan, the same type of information that was required on the Application with respect to the original plan must also be submitted with the request for the new location or the new entity.
 - (b) Locations or entities cannot be deleted from the plan.
 - (c) Failure to timely request changes will result in the changes not becoming an approved part of the plan or the Agreement.

18. This Tier 5RE Agreement may be amended to a Tier 5 Agreement. Once the Agreement is amended, it may not be amended back to a Tier 5RE Agreement.
- (a) Permission to amend the Agreement is dependent upon the repayment of all benefits that are not allowable under the amended Agreement, or upon payment of interest for any change in the timing of the benefits received.
19. This Agreement may be withdrawn by Applicant at any time. Once withdrawn, the Agreement may not be reinstated. All benefits received under this Agreement are immediately due and payable upon the withdrawal of the Agreement.

General Provisions

20. As used in this Agreement, "year" means the calendar year.
- (a) The base year is the year before the date of application, except as provided in paragraph 20(a)(i).
- (i) If the Applicant has a prior incentive project with an entitlement period that ends within the year that includes the date of application in paragraph 1 of this Agreement, the Applicant elects to use the 12 months prior to the end of the entitlement period of the prior project as the base year for the project described in this Agreement.
- (b) If the Applicant has a prior incentive project and paragraph 20(a)(i) applies, then the year of application begins on the first day after the end of the entitlement period for the prior incentive project and ends on the first December 31 on or after the date of application.
- (c) A 52/53 week tax year ending on or about December 31 is considered to be the same as December 31, which will be used for determining years that tax credits may be used.
21. Interest shall not be paid or otherwise allowed to Applicant on any refunds available under the Act.
22. This Agreement contains all binding agreements between the parties. 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, shall be binding on either party. To the extent that the other provisions in this Agreement are incomplete or directly conflict with

the Act, the language of the Act shall control and is incorporated into this Agreement by this reference.

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

Signed this _____ day of _____ 2019.

By _____

Title _____

«Company_Name»

Signed this _____ day of _____ 2019.

By _____

Tony Fulton
Tax Commissioner
State of Nebraska

