

PAYMENT IN LIEU OF PROPERTY TAX DEVELOPMENT AGREEMENT

This payment in lieu of property tax development agreement (this “Agreement”), made and entered into this ___ day of _____, 20___, by and between **AGRISTO NORTH DAKOTA, LLC**, whose mailing address is 1 _____ (referred to herein as the “Developer”), the **CITY OF GRAND FORKS**, a North Dakota municipal corporation whose principal office and mailing address is 255 North 4th Street, Grand Forks, ND 58203 (hereinafter the “City”).

RECITALS

1. The City and Developer entered into that certain Development Agreement, having an effective date of _____, 2025, which provides, among other matters, for the construction by the Developer of a potato processing and manufacturing plant.
2. The Development Agreement also provided for the Developer to seek certain property tax incentives in the form of payment in lieu of property taxes under N.D.C.C. ch. 40-57.1.
3. The City, pursuant to its policy for property tax incentives, has had the Project reviewed by its Local Government Advisory Committee, which provided a consensus and non-binding recommendation to move forward with the Project, with the proposed property tax incentive as more particularly described herein.
4. The City, pursuant to N.D.C.C. §§ 40-05-24 and 40-57.1-03(7), has obtained the consent of the Grand Forks Public School District and Grand Forks County to participate in the property tax incentive that will be in the form of a payment in lieu of taxes under N.D.C.C. § 40-57.1-03(2) (“PILOT”) for the Project.
5. On _____, the City Planning Department consulted and briefed the North Dakota Department of Commerce regarding the Project and the herein described property tax incentive for the Property.
6. The City has conducted public hearings on the Project, the proposed PILOT, and pursuant to the City’s policy and N.D.C.C. ch. 40-57.1 has made the necessary findings and determinations, including that the herein described PILOT is in the best interest of the City, and approved of the said PILOT and this Agreement.

NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

SECTION 1 – DEFINITIONS

The following defined terms and definitions apply to this Agreement:

1.1. All of the defined terms and definitions set forth in the Development Agreement shall apply to and are incorporated into this Agreement.

1.2. “**Agreement**” means this Payment in Lieu of Property Tax Development Agreement.

1.3. “**Assessment Date**” means February 1 of each year, being the date property must be listed and assessed every year in reference to its value under N.D.C.C. § 57-02-11.

1.4. “**Certificate of Occupancy**” means a certificate of occupancy applied for under City Code § 18-0507 and to be subsequently issued to the Developer for the GF Plant upon the City finding the terms, conditions and requirements under the City Code for such certificate of occupancy have been satisfied.

1.5. “**City Assessor**” means the Person appointed and acting as the city assessor for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0601.

1.6. “**Construction**” or “**Construction Services**” means erecting, building, assembling, constructing, installing, re-installing and/or performing any services or work to erect, build, assemble, construct and/or install all or any portion of the GF Plant, including the Project Improvements.

1.7. “**Development Agreement**” means the Development Agreement, as well as all schedules and exhibits thereto, as the same may be amended from time to time, by and between the City and Developer, having an effective date of _____, 2025. A copy of the Development Agreement, excluding schedules and exhibits, is attached hereto as Exhibit 1.7.

1.8. “**Effective Date**” means _____.

1.9. “**GF Property**” means collectively the GF Plant, Project Improvements and Project Land.

1.10. “**Incremental Property Value**” means the true and full value of the Project Improvements, determined pursuant to and by applying N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for property tax valuation purposes. The Incremental Property Value shall be determined as if this Agreement did not exist and therefore determined without regard to or consideration of any of the terms or conditions this Agreement. The Parties acknowledge and agree the Project Land shall be subject to property taxation, notwithstanding this Agreement, and accordingly the Incremental Property Value excludes the true and full value of the Project Land. The Incremental Property Value shall be determined on every Assessment Date occurring after the GF Plant is Substantially Completed. The Parties anticipate the first Assessment Date after the GF Plant is Substantially Completed will be February 1, _____.

1.11. “Original Property Value” means the true and full value, determined pursuant to N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for property tax purposes, of all buildings, structures, facilities, fixtures, infrastructure, improvements, and any other real property existing on the Project Land as of the Effective Date that are subject to property taxation under N.D.C.C. ch. 57-02. The Original Property Value shall be determined without regard to or consideration of any of the terms, conditions and/or PILOT under this Agreement. The Parties acknowledge and agree, the Project Land shall be subject to property taxation, notwithstanding this Agreement, and accordingly the Original Property Value excludes the true and full value of the Project Land. As of the Effective Date, given no buildings, structures, facilities, or improvements, subject to property taxation, exist on the Project Land, and as a result the Parties agree the Original Property Value is Zero Dollars (\$0.00).

1.12. “Other Development Agreements” means the PILOT Application, the Development Agreement, any and all other agreements or instruments now or hereafter executed and delivered by the Developer and/or any other Person in connection with the performance of this Agreement, as such agreements may be amended or supplemented from time to time.

1.13. “PILOT” means the property tax incentive in the form of a payment in lieu of property tax pursuant to N.D.C.C. § 40-57.1-03(2), as determined, described and calculated under Section 3.2.2 below.

1.14. “PILOT Application” means the application for property tax incentives for new or expanding businesses and any and all other information and documents submitted to the City by the Developer requesting the PILOT.

1.15. “PILOT Resolution” means the Resolution of the City Council adopted _____ approving the PILOT and this Agreement.

1.16. “PILOT True and Full Value” means the amount calculated under Section 3.2.2.

1.17. “PILOT Value” means the amount determined, described and calculated under Section 3.2.1 below for the Project Improvements.

1.18. “Project Land” means the following described parcel of real property, located at along 27th Avenue North, Grand Forks, ND 58201, and upon which the GF Plant and Project Improvements is to be constructed and developed:

Lot 2, Block 1, Peony First Subdivision to the City of Grand Forks, North
Dakota

The Parties acknowledge and understand that the GF Plant and Project Improvements will be constructed and located on a portion of said parcel.

1.19. “Project Improvements” all buildings, structures, facilities, fixtures, infrastructure, improvements, and any other real property of the GF Plant that are to be erected, built, assembled, constructed, installed and/or operated by the Developer on the Project Land

pursuant to the Development Agreement and that are subject to property taxation under N.D.C.C. ch. 57-02. The Parties acknowledge and agree the Project Improvements exclude the Project Land.

1.20. “Substantially Completed” means the date on which (i) the GF Plant is physically and technically capable of operating for the purposes for which it is intended and (ii) the GF Plant has received all necessary governmental approvals to operate as intended, including (without limitation) a Certificate of Occupancy. The City Administrator shall make this determination in good faith following consultation with the Developer and shall provide written notice to the Developer upon determining the Project is Substantially Completed.

1.21. “Targeted Property Value” means \$ _____ (United States Dollars), being the true and full determined under N.D.C.C. §§ 57-02-01(15) and 57-02-27.1, but without regard to or consideration of any of the terms or conditions of this Agreement, the Developer estimates will be reached for the Project Improvements when the GF Plant is Substantially Completed. The Targeted Property Value excludes the true and full value of the Project Land.

SECTION 2 – DEVELOPMENT OF GF PLANT

2.1. Development/Construction of GF Plant. The Developer, at the Developer’s sole cost and expense, shall be responsible for the design, Construction and installation of the GF Plant pursuant to and in accordance with the Development Agreement. All of the terms, conditions, covenants, promises and requirements for the Construction of the GF Plant described and set forth in the Development Agreement shall apply and are incorporated into this Agreement.

2.3 Unless otherwise agreed to by the City in writing, Construction of the GF Plant shall commence by _____, _____; and

2.4 Unless otherwise agreed to by the City in writing, the Developer shall take commercially reasonable efforts to have the GF Plant Substantially Completed by _____.

2.5 The parties recognize and acknowledge that Construction of the GF Plant is a complex undertaking and construction may be subject to delays based on many reasons. Therefore, the City will not unreasonably withhold agreement to modify the anticipated dates for Construction commencement, Substantial Completion, and a Certificate of Occupancy.

SECTION 3 – PAYMENT IN LIEU OF PROPERTY TAXES ON PROJECT IMPROVEMENTS

3.1 PILOT Approval. On _____, the City Council, by and through the PILOT Resolution, approved the payment in lieu of property taxes for the Project Improvements pursuant to N.D.C.C. ch. 40-57.1-03(2), which shall be determined and calculated in accordance with this Agreement, provided the conditions precedent described in Section 3.3 below are satisfied.

3.2 Calculation of PILOT Value and PILOT - Payment in Lieu Taxes.

3.2.1 Pilot Value - 90% of Incremental Value.

(a) Commencing on January 1 of the calendar year immediately succeeding the Calendar Day the GF Plant is Substantially Completed and continuing each calendar year thereafter during the twenty calendar year term of this Agreement, the PILOT Value shall be equal to the product of 90% multiplied by the difference of the Incremental Property Value minus the Original Property Value.

(b) By way of example and illustration purposes only, if the Incremental Property Value on each Assessment Date for the entire twenty year described in Section 3.2.1(a) is \$250,000,000.00 (US Dollars) (which assumes no change in the true and full value during the entire twenty-year period) the PILOT Value for the each year of the 20-year period shall be calculated as follows:

Incremental Property Value:	\$250,000,000.00
Minus Original Property Value	(None)
Sub-Total	\$250,000,000.00
Multiplied by 90%	<u>x 90%</u>
PILOT Value	<u>\$225,000,000.00</u>

3.2.2 PILOT - Calculation and establishment of the payment in lieu of taxes amount – annual certification.

(a) Commencing on the first Assessment Date occurring after the GF Plant is Substantially Completed and for each Assessment Date thereafter during the term of this Agreement, the annual PILOT, being the payment in lieu of taxes for the Project Improvements, shall be calculated and certified by the City Assessor to the Grand Forks County Auditor pursuant to N.D.C.C. § 40-57.1-03(4) as follows:

(1) The PILOT Value, calculated pursuant to Section 3.2.1 above, shall be used to determine the payment in lieu of taxes under N.D.C.C. § 40-57.1-03(4). The Parties acknowledge and agree the anticipated first Assessment Date after the GF Plant is Substantially Completed will be February 1, ____.

(2) The City Assessor shall deduct the PILOT Value, as calculated each year, from the the Incremental Property Value for such year, and the resulting amount shall be the PILOT True and Full Value.

(3) By way of example and illustration purposes only, if the PILOT Value, as calculated under Section 3.2.1 (a) for each of the twenty years is \$225,000,000.00

(US Dollars), and the Incremental Property Value for such years is \$250,000,000.00 (US Dollars), then the PILOT True and Full Value shall be as follows:

Incremental Property Value:	\$250,000,000.00
Minus PILOT Value	<u>(\$225,000,000.00)</u>
PILOT True and Full Value	<u>\$25,000,000.00</u>

(4) During the term of this Agreement, the PILOT and the amount due as the payment in lieu of taxes for the Project Improvements for each year and to be certified by the City Assessor to the Grand Forks County Auditor under N.D.C.C. § 40-57.1-03(4) shall be the amount that is equal to the property tax mill rate, for the applicable year, and applied to and using the PILOT True and Full Value. In the event the property tax mill rate is not finalized by October 31 in any given year during the term of this Agreement, then for such applicable year, the most recent property tax mill rate shall be applied to and using the PILOT True and Full Value for the City Assessor's certification of the amount due as the PILOT and the payment in lieu of taxes for the Project Improvements.

(5) The City Assessor may report to the Grand Forks County Auditor the PILOT True and Full Value and as the true and full value of the Project Improvements for property tax assessment and levy purposes.

(6) The City and Developer acknowledge and agree the calculation and amount of the PILOT, being the payment in lieu of taxes for the Project Improvements under this Agreement, is based on actual annual levels of assessment during the 20-year period of this Agreement and will result in different annual amounts of payments in lieu of taxes each year of this Agreement to the extent that the Incremental Property Value and/or the actual tax mill rate changes from year to year.

3.2.3 *Project Land – Subject to Property Taxation.* Notwithstanding any other terms of this Agreement, the Project Land shall be subject to property taxation and the City and Developer acknowledge and agree nothing in this Agreement affects, alters or otherwise modifies the property taxation of the Project Land and/or the property tax valuation of the Project Land.

3.2.4 *Term of PILOT.* Subject to early termination under N.D.C.C. § 40-57.1-03(6) and Section 6.5, the PILOT shall commence on the first Assessment Date (and be applicable for said calendar year) for which the PILOT is calculated under Section 3.2.2 and shall terminate on the 20-year anniversary of the first Assessment Date. The Parties anticipate the first Assessment Date shall be February 1, ____ (with the PILOT, PILOT Value and PILOT True and Full Value first being applicable for the ____ calendar year) and the final Assessment Date will be February 1, ____ (with the ____ calendar year being the final year of this Agreement, the PILOT, PILOT Value and PILOT True and Full Value).

3.2.5 Consent to PILOT. The Developer requests, consents to, and approves the creation of the PILOT, as allowed under N.D.C.C. § 40-57.1-03(2). The Developer expressly waives any objection to any irregularity with regard to this Agreement and/or the creation or calculation of the PILOT, the PILOT Resolution, provided, however, the Developer may make application for correction or appeal alleged errors in the listing of or the Incremental Property Value of the Project Improvements or the value of the Project Land, pursuant to N.D.C.C. § 57-11-04, N.D.C.C. chs. 57-12 and 57-13, and the final determination of such application or appeal will be used for calculation the Incremental Property Value, the PILOT Value and the PILOT True and Full Value. Further, the Developer waives all rights to appeal such action of the City, whether pursuant to N.D.C.C. § 28-34-01 or under any other provision of law. This waiver is express, and the Developer acknowledges that it is waiving any and all rights of appeal regarding any irregularity with regard to this Agreement and/or the creation or calculation of the PILOT, the PILOT Resolution, PILOT Value and the PILOT True and Full Value.

3.3. Conditions Precedent for PILOT. The granting of the PILOT is subject to the satisfaction of the following conditions precedent:

3.3.1 The conditions precedent described in Sections 8 and 9 of Development Agreement have been satisfied.

3.3.2 The GF Plant is Substantially Completed and a Certificate of Occupancy has been issued for the GF Plant.

3.3.3 There has been no event of default under this Agreement, the Development Agreement or the Other Development Agreements by the Developer or any other Person obligated thereunder.

3.3.4 On each Assessment Date for which the PILOT Value, PILOT True and Full Value and the PILOT is calculated under Section 3.2, there has been no event of default under this Agreement, the Development Agreement or the Other Development Agreements by the Developer or any other Person obligated thereunder

3.3.5 On each Assessment Date for which the PILOT Value, PILOT True and Full Value and PILOT are calculated under Section 3.2, the representations and warranties of the Developer, described in Section 4 are true and correct.

SECTION 4 – DEVELOPER REPRESENTATIONS/INDEMNITY/RELEASE OF LIABILITY

4.1. Representations and Covenants of the Developer. The Developer represents and covenants to the City, which the City has relied on in entering into this Agreement and shall continue to rely on in the execution of and performance of this Agreement:

4.1.1 The Developer is a foreign corporation duly organized and validly existing, has been issued a certificate of authority from the North Dakota Secretary of State pursuant to

N.D.C.C. §§ 10-19.1-134, 10-19.1-135 and 10-19.1-136, and is authorized to do business in the State of North Dakota.

4.1.2 The Developer is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement, and/or the Developer, the Developer's operations or the GF Plant is not and shall not become a threat to, conflict with or be contrary to the operation and security of any federal Governmental Authority, state Governmental Authority or the City.

4.1.3 The Developer shall comply with, obtain and satisfy all applicable Governmental Requirements (including under N.D.C.C. §§ 11-11-70, 40-05-26, and 47-01-09) relating to ownership interests or investment in the Developer and/or financing of the Developer from (a) any person or entity from a foreign country or identified on the office of foreign assets control sanctions list and/or (b) a foreign governmental body or agency.

4.1.4 The Developer is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

4.1.5 This Agreement to which the Developer is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

4.1.6 To the knowledge of the Developer, there is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

4.1.7 The Developer's undertakings pursuant to this Agreement are for the purpose of developing the GF Property.

4.1.8 Developer further recognizes that, in view of (a) the importance of the development of the GF Property to the general welfare of the City; and (b) the substantial financing and other public aids that were made available by the City for the purpose of making such development possible, the qualifications and identity of Developer are of particular concern to the City. Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with Developer, and, in doing so, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed.

4.1.9 The Developer will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

4.2 **Indemnity.** The Developer agrees to and shall indemnify, save and hold the City, its agents, officers, employees, contractors and other sub-contractors harmless from any and all actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with any acts or omissions of the Developer under this Agreement. Without limiting the foregoing, the indemnification obligation of the Developer shall include the obligation and duty to defend the City, for and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the Developer's indemnification obligations as described in this Section 4.2.

4.3. Release of Liability. The Developer hereby releases and forever discharges the City from any and all claims or causes of which may result from a loss of the tax incentive as provided herein, whether by legislative action or judicial decision. The Developer understands and agrees that the tax incentive which is to be provided to the Developer pursuant this Agreement and Chapter 40-57.1 of the North Dakota Century Code is solely dependent upon the validity of said provisions and compliance with all of the provisions contained therein. The Developer has satisfied itself as to such validity and compliance and hereby waives any and all claims and causes of actions which it has or may have against the City in the event of loss of the tax exemption for any reason.

SECTION 5 - DEFAULT BY DEVELOPER / REMEDIES OF CITY

5.1. Default By Developer. An event of default by Developer shall occur if any of the following occur:

5.1.1 The Developer fails to act or otherwise observe or perform any term, condition, covenant or promise of this Agreement following written notice and a 60-day opportunity to cure such default.

5.1.2 The Developer fails to observe or perform any term, condition, covenant or promise of any of the Development Agreement and/or the Other Development Agreements following written notice and a 60-day opportunity to cure such default.

5.1.3 Any representation or warranty by the Developer in this Agreement, the Development Agreement and/or the Other Development Agreements or in any other agreement, certificate, request, or other document executed, furnished pursuant to or under this Agreement proves to have been incorrect in any material respect as of the date when made or on any Assessment Date.

5.1.4 The occurrence of an event described in N.D.C.C. § 40-57.1-03(6) or Section 6.5.

5.1.5 The Developer commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

5.1.6 The Developer makes an assignment for the benefit of its creditors.

5.1.7 The Developer consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

5.1.8 The Developer has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the Developer or any Guarantor, as the case may be, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Developer or any Guarantor or for any substantial part of its property, or approving a plan for reorganization of the Developer or any Guarantor, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

5.2. Remedies by City. Without in any manner limiting the termination provisions under N.D.C.C. § 40-57.1-03(6) and Section 6.5, but in addition thereto, upon the occurrence of an event of default by the Developer, the City may terminate and declare null and void this Agreement and the PILOT.

5.3 Remedies by City Cumulative. All rights and remedies of the City from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

5.4. Non-Waiver of Remedy. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice except as may otherwise be provided by law

SECTION 6 – MISCELLANEOUS PROVISIONS

6.1. Future Special Assessments. The Developer acknowledges and agrees nothing herein shall preclude special assessments for improvements benefitting the GF Property being levied and apportioned as special assessments against the GF Property.

6.2. Payment of Taxes and Special Assessments. Developer shall pay when due all property taxes and any future special assessments levied, assessed and/or payable with respect to the GF Property in accordance with the provisions of applicable laws of the State of North Dakota.

6.3. No other property tax incentives. The Developer acknowledges and agrees that during the term of this Agreement, the GF Property shall not be eligible for any other property tax incentive, including but not limited to exemptions described in N.D.C.C. § 57-02.2-03 or other incentive that serves to lower or reduce the value of any part of the GF Property.

6.4. Assignment. Except as otherwise permitted upon the prior written consent by the City, the Developer agrees, this Agreement and the rights, interests, and benefits hereunder will not be assigned, transferred, pledged, or hypothecated in any way by the Developer or by any other Person claiming under it by virtue of this Agreement, and will not be subject to execution, attachment, or similar process. The Developer acknowledges and agrees that any such assignment, transfer, pledge or hypothecation (including the transfer or purchase of all or any part of the GF Property) shall require compliance with N.D.C.C. § 40-57.1-06 to retain the PILOT for the remainder of the term of this Agreement. Any assignment, transfer, pledge, or hypothecation or other disposition of the GF Property without prior approval from the City may, at the sole discretion of the City, result in the early termination of this Agreement and the rights and benefits associated therewith.

6.5. Discontinued Business Operation. In the event the Developer discontinues its business operations on the GF Property, except for periods of remodeling/renovation or in the event of damage caused by fire, flood, natural disaster or any general strike, pandemic or health-related closure, declaration of war, or other matter wholly beyond the control of Developer, this Agreement and the PILOT shall immediately terminate, become void and be of no force or effect.

6.6. Severability. If any of the provisions contained herein shall for any reasons be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

6.7. Entire Agreement.

6.7.1 This Agreement constitutes the entire understanding of the parties with respect to the PILOT and property tax incentive as provided for herein and supersedes any previous agreements and understanding between the parties with respect to the subject matter hereof, provided, however, nothing herein supersedes, alters, modifies, changes, limits or enlarges any term, condition or obligation under the Development Agreement and/or the Other Development Agreements.

6.7.2 This Agreement, the Development Agreement and the Other Development Agreements are to be read together and *in pari materia* but to the extent of any inconsistency between any term of this Agreement and any term of the Development Agreement and/or the Other Development Agreements, the terms of the Development Agreement or the Other Development Agreements, as the case may be, shall prevail.

6.7.3 All defined terms and definitions set forth in the Development Agreement shall apply and are by this reference incorporated into this Agreement. All other defined terms and definitions set forth in this Agreement shall apply.

6.7.4 No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

6.8. Amendments. Neither the Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto.

6.9. Change in the Law. If a Change of Law occurs or will occur within one-hundred eighty (180) Calendar Days, any Party may notify the other Party and include in such notification: (i) an opinion on its likely effects; (ii) any necessary changes to the GF Plant or implementation of this Agreement, including the full detail of the procedure for implementing such changes; and (iii) amendments (if any) required by this Agreement. After either Party delivers a notice of a Change in Law, the Parties shall meet and discuss the issues referred to in such notice and any ways in which the Developer can mitigate the effect of the relevant Change in Law.

6.10. Legislative and Tax Law Disclosure. The Developer acknowledges and agrees that the authority of the City to create, impose, and administer the PILOT is derived from North Dakota statutory authority and the North Dakota Legislature has the power to amend, repeal, and replace any and all laws relating to property tax exemptions, payments in lieu of taxes, tax increment financing, property tax valuation, and collection.

6.11. Authority. The Parties to this Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Agreement. The Parties to this Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Agreement and each agreement, document and instrument executed and delivered pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

6.12. Memorandum of Agreement. The City and the Developer agree to execute and deliver on the date of the signing of this Agreement a memorandum or short form of this Agreement in a form sufficient to put all contractors, suppliers, and the public on notice of the existence of the Agreement with respect to the GF Property. A copy of this Agreement may be fixed to the memorandum of Agreement. The Developer shall pay all costs charged by the State of North Dakota and Grand Forks County to record the memorandum of Agreement. The Developer agrees that within ten (10) Calendar Days following the expiration or earlier termination of this Agreement, a memorandum noting such expiration or termination which may be executed by the City and recorded in the official records of Grand Forks County, North Dakota, at the City's sole cost and expense.

6.13. Non-Merger. None of the provisions of this Agreement shall be merged by reason of any deed or other instrument transferring any interest in any part of the GF Property or any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

6.14. Headings. All titles or headings to articles, sections, subsections or other divisions of this Agreement or exhibits hereto are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections,

subsections or other divisions, such other content being controlling as to the agreement between the Parties hereto.

6.15. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota and the Ordinances of the City of Grand Forks and any action or claim related thereto shall be brought in the District Court for Grand Forks County, North Dakota. The Parties acknowledge and agree that nothing in this Agreement is intended, nor shall this Agreement be construed or interpreted, to supersede or expand the provisions of N.D.C.C. § 40-57.1-03, including but not limited to the provisions of N.D.C.C. § 40-57.1-03(6).

6.16. Waivers. One or more waivers by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

6.17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

6.18. No Third-Party Beneficiary. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns. No other person or entity shall have any right to rely on this Agreement or to claim or derive any benefit therefrom absent the expressed written consent of the Party to be charged with such reliance or benefit.

6.19. Relationship of Parties. The Parties shall perform as independent contractors under this Agreement. Each Party, its employees, agents, and representatives are not employees of the other Party for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Compensation Act, and the North Dakota Workers' Compensation Act. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship. Each Party will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

6.20. Cooperation. The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

6.21. Singular and Plural. Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

6.22. References. The words "herein," "hereof," "hereunder" and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular

article, section or subsection. Any reference herein to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Agreement unless otherwise stated herein. Any reference herein to an Exhibit shall be deemed to refer to the applicable Exhibit attached hereto unless otherwise stated herein.

6.23. Notices. Any notice required or desired to be served by either Party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the City:
255 North 4th Street
Grand Forks, ND 58201

To the Developer:

The provisions of this Section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

6.24. Time of the essence. Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

6.25. Performance of Additional Acts. The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

6.26. Binding Effect. This Agreement will inure to the benefit of and is binding upon the City and the Developer, and their respective successors and assigns.

AGRISTO NORTH DAKOTA, LLC

CITY OF GRAND FORKS,
a North Dakota municipal
corporation

By:
Its:
Dated: _____

By: Brandon Bochenski
Its: Mayor
Dated: _____

Attest:

By: Maureen Storstad
Its: City Auditor
Dated: _____

“Developer”

“City”

WORKING DRAFT