
CONTRACT FOR PRIVATE DEVELOPMENT

Between

CITY OF FARIBAULT, MINNESOTA,

RICE COUNTY, MINNESOTA,

and

TRYSTAR, LLC

Dated: _____, 2020

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 337-9300

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
ARTICLE I Definitions	
Section 1.1. Definitions.....	2
ARTICLE II Representations and Warranties	
Section 2.1. Representations by the City	4
Section 2.2. Representations by the County	4
Section 2.3. Representations and Warranties by the Developer	4
ARTICLE III Status of Development Property; Property Tax Abatement	
Section 3.1. Status of the Development Property	6
Section 3.2. City Property Tax Abatement	6
Section 3.3. County Property Tax Abatement	6
Section 3.4. Business Subsidy Agreement.....	7
Section 3.5. Records	9
ARTICLE IV Construction of Project	
Section 4.1. Completion of Project.....	10
Section 4.2. Commencement and Completion of Facility Improvements	10
Section 4.3. Occupancy of Facility	10
ARTICLE V Insurance	
Section 5.1. Insurance	11
ARTICLE VI Taxes	
Section 6.1. Right to Collect Delinquent Taxes.....	13
Section 6.2. Reduction of Taxes	13
ARTICLE VII Project Financing	
Section 7.1. Generally	14

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Prohibition Against Assignment and Transfer 15
Section 8.2. Release and Indemnification Covenants..... 16

ARTICLE IX
Events of Default

Section 9.1. Events of Default Defined..... 17
Section 9.2. Remedies on Default..... 17
Section 9.3. No Remedy Exclusive..... 18
Section 9.4. No Additional Waiver Implied by One Waiver..... 18
Section 9.5. Attorney Fees 18
Section 9.6. Default by City or County..... 18

ARTICLE X
Additional Provisions

Section 10.1. Conflict of Interests; City Representative Not Individually Liable..... 19
Section 10.2. Equal Opportunity Employer 19
Section 10.3. Restrictions on Use 19
Section 10.4. Titles of Articles and Sections 19
Section 10.5. Notices and Demands 19
Section 10.6. Counterparts 20
Section 10.7. Recording 20
Section 10.8. Entire Agreement 20
Section 10.9. Amendment 20
Section 10.10. Governing Law 20
Section 10.11. Severability..... 20

SIGNATURES AND ACKNOWLEDGEMENTS S-1

EXHIBIT A Development Property A-1

CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT (the “Agreement”), is made and entered into as of this _____ day of _____, 2020, by and between the CITY OF FARIBAULT, MINNESOTA, a municipal corporation under the laws of the State Minnesota (the “City”), RICE COUNTY, MINNESOTA, a political subdivision under the laws of the State of Minnesota (the “County”), and TRYSTAR, LLC, a Minnesota limited liability company organized under the laws of the State of Minnesota (the “Developer”).

RECITALS

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 to 469.1815 (the “Tax Abatement Act”), the City and the County are authorized to abate property taxes in order to increase or preserve tax base and provide employment opportunities; and

WHEREAS, pursuant to Minnesota Statutes, Sections 116J.993 through 116J.995, as amended (the “Business Subsidy Act”), the City and the County are authorized to grant a business subsidy to facilitate development in the City, the County, and the State of Minnesota (the “State”); and

WHEREAS, the Developer is consolidating its operations and warehousing from four separate facilities into one facility and leasing and redeveloping a single parcel of real estate owned by MET-CON COMPANIES, INC. and converting and expanding an existing building to be used for a production facility, research and development, and operations (the “Project”) and which property is legally described in Exhibit A attached hereto (the “Development Property”). The Developer has requested financial assistance as set forth herein to help with the Project; and

WHEREAS, in order to reimburse the Developer for certain costs related to the Project, the Developer has requested the following assistance: (i) a tax abatement from the City for up to ten years in the maximum amount of \$260,040.00 pursuant to the Tax Abatement Act; and (ii) a tax abatement from the County for up to ten years in the maximum amount of \$189,960.00 pursuant to the Tax Abatement Act (with a cumulative amount of both the City Abatement and the County Abatement of \$450,000.00).

WHEREAS, the City and the County believe that the property tax abatement contemplated herein and fulfillment of this Agreement is in the best interests of the City and the County and the health, safety, morals and welfare of their residents, and is in accord with the public purposes and provisions of the Tax Abatement Act and other applicable State and local laws and requirements under which this Agreement is made.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Available Abatement” means the sum of the City Available Abatement and the County Available Abatement.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City or County is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

“Business Subsidy Act” means Minnesota Statutes, Sections 116J.993 through 116J.995, as amended.

“City” means the City of Faribault, Minnesota.

“City Abatement” means the property taxes (i) generated in any tax-payable year by extending the City’s total tax rate for that year against the tax capacity of the Development Property in accordance with this Agreement, excluding the portion of the tax capacity attributable to the areawide tax under Minnesota Statutes, Chapter 473F, all as of January 2 in the prior year, and (ii) paid to the City by the County.

“City Abatement Resolution” means Resolution No. 2020-051, adopted by the City Council of the City on March 24, 2020, regarding abatement of property taxes on the Development Property.

“City Available Abatement” means, on each Payment Date, the City Abatement generated in the preceding six (6) months with respect to the Development Property and remitted to the City by the County, or such lesser amount as shall cause (i) a cumulative total of \$260,040.00 over the term of the City Abatement; or (ii) the total City Available Abatement and the County Available Abatement paid to the Developer during the term of this Agreement to be no more than \$450,000.00.

“County” means Rice County, Minnesota.

“County Abatement” means the property taxes generated in any tax-payable year by extending the County’s total tax rate for that year against the tax capacity of the Development Property in accordance with this Agreement, excluding the portion of the tax capacity attributable to the areawide tax under Minnesota Statutes, Chapter 473F, all as of January 2 in the prior year.

“County Abatement Resolution” means County Resolution No. 20-015, adopted by the Board of Commissioners of the County on March 24, 2020, regarding abatement of property taxes on the Development Property.

“County Available Abatement” means, on each Payment Date, the County Abatement generated in the preceding six (6) months with respect to the Development Property and transferred to the City by

the County, or such lesser amount as shall cause (i) the cumulative County Available Abatement paid to the Developer during the term of this Agreement to be \$189,960.00; or (ii) the cumulative County Available Abatement and City Available Abatement paid to the Developer during the term of this Agreement to be no more than \$450,000.00.

“Developer” means Trystar, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Development Property” means the real property described as such in Exhibit A of this Agreement.

“Event of Default” means an action by the Developer listed in Article IX of this Agreement.

“Facility” means the building being leased, renovated, expanded, and converted by the Developer and located on the Development Property, as the same are to be improved by the building improvements to be constructed by Developer and the equipment and fixtures to be purchased by the Developer for its new location.

“Payment Date” means each February 1 and August 1, commencing August 1, 2021; provided that if any such Payment Date is not a Business Day, the Payment Date shall be the next succeeding Business Day.

“Project” means the establishment of the Developer’s manufacturing facility on the Development Property as hereinbefore described, the development and/or acquisition of manufacturing equipment and the construction of improvements to the Facility.

“State” means the State of Minnesota.

“Tax Abatement Act” means Minnesota Statutes, Sections 469.1812 to 469.1815, as amended.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“Transfer” has the meaning given such term in Section 8.1.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City or the County in exercising their rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer’s obtaining of permits or governmental approvals necessary to enable construction of the Project by the dates such construction is required under Section 4.2 of this Agreement.

(The remainder of this page is intentionally left blank.)

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertaking on its part herein contained:

(a) The City is a home rule charter city duly organized and existing under the laws of the State. Under the provisions of the Tax Abatement Act and the Business Subsidy Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City proposes to grant abatement of taxes on the Development Property for the purposes of promoting economic development, preserving tax base, and maintaining employment opportunities in the City.

Section 2.2. Representations by the County. The County makes the following representations and warranties as the basis for its covenants herein:

(a) The County is a political subdivision of the State, duly organized and existing under the laws of the State. Under the provisions of the Abatement Act and the Business Subsidy Act, the County has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The County proposes to grant abatement of taxes for the Project, for the purposes of promoting economic development, preserving tax base, and maintaining employment opportunities in the County.

Section 2.3. Representations and Warranties by the Developer. The Developer makes the following representations and warranties as the basis for its covenants herein:

(a) The Developer is a limited liability company in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its Articles of Incorporation or Bylaws, is duly authorized to transact business in the State, has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its governing body.

(b) The Developer will lease the Development Property, construct the necessary improvements to the existing improvements, construct new improvements, purchase and install the necessary manufacturing equipment, and operate and maintain the Facility in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) The Developer has received no notice or communication from any local, state, or federal official that the activities of the Developer may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the City is aware). The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state, or federal environmental law, regulation or review procedure.

(d) The Developer will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal

laws and regulations which must be obtained or met before the proposed improvements to the Facility may be lawfully constructed.

(e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing, which default or breach might prevent the Developer from performing its obligations under this Agreement.

(f) The Developer shall promptly advise the City and the County in writing of all litigation or claims affecting any part of the Facility and all written complaints and charges made by any governmental authority materially affecting the Facility or materially affecting Developer or its business which may delay or require changes to the Project.

(The remainder of this page is intentionally left blank.)

ARTICLE III

Status of Development Property; Property Tax Abatement

Section 3.1. Status of the Development Property. The Developer is in the process of leasing the Development Property. Neither the City nor the County shall have any obligation to acquire nor lease any property on behalf of the Developer.

Section 3.2. City Property Tax Abatement.

(a) Generally. In order to make the Project economically feasible, the City will grant the City Abatement for a period of up to ten (10) years to the Developer commencing August 1, 2021 and continuing through February 1, 2030. In no event shall the City Abatement exceed a cumulative total of \$260,040.00 over the term of the City Abatement. Further, in no event shall the City Abatement and the amount of the County Abatement provided to Developer from August 1, 2021 through February 1, 2030, exceed \$450,000.00. The City Abatement will reimburse the Developer for a portion of the costs of completing the Project. Subject to the City Abatement Volume Cap described in (b), the City shall pay the Developer the City Available Abatement each February 1 and August 1 (each, a "Payment Date"), commencing August 1, 2021, and terminating on February 1, 2030.

(b) Limitations. The pledge of City Available Abatements is subject to all the terms and conditions of the City Abatement Resolution. The City Available Abatements are payable solely from and to the extent of the City Abatements, and nothing herein shall be construed to obligate the City to make payments from any other funds. The City makes no warranties or representations as to the amount of the City Available Abatements. Any estimates of City Available Abatement amounts prepared by the City's financial consultants are for the benefit of the City only, and the Developer is not entitled to rely on such estimates.

The Developer further acknowledges that the total property tax abatements payable by the City in any year may not exceed the greater of \$200,000 or ten percent (10%) of the net tax capacity of the City for the taxes payable year to which the abatement applies (the "City Abatement Volume Cap"), all pursuant to Section 469.1813, subd. 8 of the Tax Abatement Act. The City does not warrant or represent that the City Abatement in the amounts pledged under this Agreement will be within the City's Abatement Volume Cap. The City represents that it has previously granted an abatement in the maximum amount of \$777,258.00 commencing August 1, 2021 and continuing through February 1, 2031, and an abatement in the maximum amount of \$971,950.00 commencing August 1, 2020 and continuing through February 1, 2030. The City has not granted any other abatement under the Tax Abatement Act as of the date of this Agreement, and agrees that if the City grants any additional abatements under the Tax Abatement Act during the term of this Agreement, the City's Abatement Volume Cap will be allocated first to the abatements granted prior to the date of this Agreement and to the City Abatement pledged pursuant to this Agreement.

Section 3.3. County Property Tax Abatement.

(a) Generally. In order to make the Project economically feasible, the County will grant the County Abatement for a period of up to ten (10) years to the Developer commencing August 1, 2021 and continuing through February 1, 2030. In no event shall the County Abatement exceed a cumulative total of \$189,960.00 over the term of the County Abatement. Further, in no event shall the cumulative City Abatement and County Abatement paid to the Developer during the term of this Agreement exceed an amount of \$450,000.00. The County Abatement will reimburse the Developer for a portion of the costs

of the Project. Subject to the County Abatement Volume Cap described in (b), the County shall pay the City the County Available Abatement on or before the business day prior to each Payment Date, commencing the business day prior to August 1, 2020, and continuing through the business day prior to February 1, 2030. The transfer by the County of the County Available Abatement to the City will be accompanied by electronic communication to the City's Finance Officer providing the amount of the County Available Abatement transferred. The City shall disburse the County Available Abatement received pursuant to this Section to the Developer on each Payment Date.

(b) Limitations. The pledge of County Available Abatements is subject to all the terms and conditions of the County Abatement Resolution. The County Available Abatements are payable solely from and to the extent of the County Abatements, and nothing herein shall be construed to obligate the County to make payments from any other funds. The County makes no warranties or representations as to the amount of the County Available Abatements. Any estimates of County Available Abatement amounts prepared by the County's financial consultants are for the benefit of the County only, and the Developer is not entitled to rely on such estimates.

The Developer further acknowledges that the total property tax abatements payable by the County in any year may not exceed the greater of \$200,000 or ten percent (10%) of the net tax capacity of the County for the taxes payable year to which the abatement applies (the "County Abatement Volume Cap"), all pursuant to Section 469.1813, subd. 8 of the Tax Abatement Act. The County does not warrant or represent that the County Abatement in the amounts pledged under this Agreement will be within the County's Abatement Volume Cap. The County has previously granted five abatements prior to the date of this Agreement. The County has not granted any other abatement under the Tax Abatement Act as of the date of this Agreement, and agrees that if the County grants any additional abatements under the Tax Abatement Act during the term of this Agreement, the County's Abatement Volume Cap will be allocated first to the abatements granted prior to the date of this Agreement and to the City Abatement pledged pursuant to this Agreement.

Section 3.4. Business Subsidy Agreement. The provisions of this Section constitute the "business subsidy agreement" for the purposes of the Business Subsidy Act.

(a) *General Terms*. The parties agree and represent to each other as follows:

(1) The subsidies provided to the Developer pursuant to this Agreement consist of the principal amount of the City Abatement described in Section 3.2 of this Agreement and the principal amount of the County Abatement described in Section 3.3 of this Agreement. This business subsidy agreement shall apply to all the subsidies set forth in this Section.

(2) The public purposes of the subsidy are to facilitate the Project, to facilitate the renovation of existing improvements and construction of additional improvements, to preserve tax base, and to retain employment in the City and the County.

(3) The goals for the subsidy are (i) to secure development of the Project on the Development Property; (ii) to maintain such improvements as a manufacturing facility for at least five years as described in clause (6) below; and (iii) to retain the jobs and wage levels described in paragraph (b) of this Section.

(4) If the goals described in clause (3) are not met, the Developer must make the payments to the City and the County described in Section 3.4(c) of this Agreement.

(5) The subsidy is needed to induce Developer to consolidate and to expand its manufacturing business to the Development Property, and to make the cost of the Project financially feasible.

(6) The Developer must continue operation of the Project as a “Qualified Facility” for at least five years after the Benefit Date (defined hereinafter), subject to the continuing obligation described in Section 10.3 of this Agreement. For the purposes of this Section, the term Qualified Facility means a manufacturing facility. The improvements will be a Qualified Facility as long as the Facility is operated by Developer or a tenant for the aforementioned qualified uses. During any period when the Facility is vacant and not operated for the aforementioned qualified uses, the Facility will not constitute a Qualified Facility.

(7) The Developer is a limited liability company under the laws of the State of Minnesota and is in good standing, and has no other parent corporation.

(8) The Developer expects to receive financial assistance from the following “grantors” as defined in the Business Subsidy Act, in connection with the Development Property or the Project:

(a) a forgivable loan from the Economic Development Authority of the City of Faribault, Minnesota of up to \$100,000.00.

(b) *Job and Wage Goals.* The “Benefit Date” is the date the Facility is occupied for business. Within two years after the Benefit Date (the “Compliance Date”), the Developer shall cause to be retained: (i) at least one hundred fifty (150) full-time equivalent jobs in the Facility with wages for each such full-time jobs of no less than \$_____ per hour, excluding benefits. Notwithstanding anything to the contrary herein, if the wage and job goals described in this paragraph are met by the Compliance Date, those goals are deemed satisfied despite the Developer’s continuing obligations under Sections 3.4(a)(6) and 3.4(d). The City or the County, may, after each holds a public hearing, extend the Compliance Date by up to one year, provided that nothing in this section will be construed to limit the City’s or the County’s legislative discretion regarding this matter.

(c) *Remedies.* If the Developer fails to meet the goals described in Section 3.4(a)(3), the Developer shall repay to the City and the County, respectively, upon written demand from the City or the County, a “pro rata share” of the outstanding principal amount of the respective subsidies, together with interest based on the rate set forth in Section 116J.994, subd. 6 of the Business Subsidy Act, accrued from the date of the default to the date of payment. The term “pro rata share” means a percentage calculated as follows:

(i) if the failure relates to the number of jobs, the jobs required less the jobs retained, divided by the jobs required;

(ii) if the failure relates to wages, the number of jobs required less the number of jobs that meet the minimum wages, divided by the number of jobs required;

(iii) if the failure relates to maintenance of the Project in accordance with Section 3.4(a)(6), 60 less the number of months of operation as a manufacturing facility, commencing on the Benefit Date and ending with the date the facility ceases operation as determined by City or County staff, divided by 60; and

(iv) if more than one of clauses (i) through (iii) apply, the sum of the applicable percentages, not to exceed 100%.

Nothing in this Section shall be construed to limit the City's or the County's remedies under Article IX hereof. In addition to the remedy described in this Section and any other remedy available to the City or the County for failure to meet the goals stated in Section 3.4(a)(3), the Developer agrees and understands that it may not receive a business subsidy from the City or the County or any grantor (as defined in the Business Subsidy Act) for a period of five years from the date of the failure or until the Developer satisfies its repayment obligation under this Section, whichever occurs first.

(d) *Reports.* The Developer must submit to the City and the County, a written report regarding business subsidy goals and results by no later than March 1 of each year, commencing March 1, 2021, and continuing until the later of (i) the date the goals stated Section 3.4(a)(3) are met; (ii) 30 days after expiration of the period described in Section 3.4(a)(6); or (iii) if the goals are not met, the date the subsidy is repaid in accordance with Section 3.4(c). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The City and the County will provide information to the Developer regarding the required forms. If the Developer fails to timely file any report required under this Section, the City will mail the Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the City and the County a penalty of \$100.00 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is \$1,000.00 payable to the City, and \$1,000.00 payable to the County.

(e) *Audits.* Upon written request of the City or County in any year, Developer shall retain at its expense an independent, third party accountant to audit any job and wage report submitted by Developer under Section 3.4(d). The Developer must deliver to the City and the County a written report from the accountant promptly upon completion of such audit.

Section 3.5. Records. The City and the County and their representatives shall have the right at all reasonable times after reasonable notice to inspect, examine, and copy all books and records of Developer relating to the Project. Developer shall also use its best efforts to cause the contractor or contractors, all sub-contractors and their agents and lenders to make their books and records relating to the Project available to the City and the County, upon reasonable notice, for inspection, examination and audit. Such records shall be kept and maintained by Developer until the termination of this Agreement.

(The remainder of this page is intentionally left blank.)

ARTICLE IV

Completion of Project

Section 4.1. Completion of Project. The Developer agrees that it will construct the Project involving the Facility on the Development Property in accordance with the provisions of this Agreement and will at all times during the term of this Agreement operate and maintain, preserve and keep the Facility, the Project or such improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The City shall have no obligation to operate or maintain the Facility.

Section 4.2. Commencement and Completion of Facility Improvements. Subject to Unavoidable Delays, the Developer shall commence construction of the Project and improvements to the Facility by June 1, 2020. Subject to Unavoidable Delays, the Developer shall complete the Project by November, 30, 2020. All work with respect to the construction of the improvements to the Facility shall be in conformity with the City's zoning ordinances and the Developer shall obtain all required permits.

Section 4.3. Occupancy of Facility. Subject to Unavoidable Delays, the Developer shall occupy the Facility no later than November 30, 2020.

(The remainder of this page is intentionally left blank.)

ARTICLE V

Insurance

Section 5.1. Insurance.

(a) During the term of this Agreement, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the City or County shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Facility under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Commercial general liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,500,000, and shall be endorsed to show the City and County as additional insureds.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(b) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the City and County policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement each policy shall contain an endorsement that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the City and County at least sixty (60) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the City and County a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Facility.

(c) The Developer will notify the City and County promptly in the case of damage exceeding \$100,000 in amount to, or destruction of, the Facility or any portion thereof resulting from fire or other casualty. In such event the Developer will promptly repair, reconstruct and restore the Facility to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer shall complete the repair, reconstruction, and restoration of the Facility, whether or not the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction and restoration shall be the property of the Developer.

(d) All of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

(The remainder of this page is intentionally left blank.)

ARTICLE VI

Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the City and the County are providing substantial aid and assistance in furtherance of the Project pursuant to this Agreement. The Developer understands that the City Abatement and County Abatement pledged pursuant to this Agreement are derived from real property taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real property taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate and personal property taxes assessed against the Development Property and the Project. The Developer acknowledges that this obligation creates a contractual right on behalf of the City to sue the Developer or its successors and assigns to collect delinquent real estate and personal property taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the City shall also be entitled to recover its costs, expenses, and reasonable attorneys' fees.

Section 6.2. Reduction of Taxes. Prior to the termination of this Agreement, the Developer will not (a) cause a reduction in the real property taxes paid in respect of the Development Property through willful destruction of the Facility or any part thereof; or (b) fail to reconstruct the Facility if damaged or destroyed, as required under Section 5.1(c) hereof.

(The remainder of this page is intentionally left blank.)

ARTICLE VII

Project Financing

Section 7.1. Generally. The Developer warrants and represents to the City and the County that it has or will have available funds sufficient to complete the Project.

(The remainder of this page is intentionally left blank.)

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Prohibition Against Assignment and Transfer.

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to completing the Project under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create, or suffer to be made or created any total or assignment, conveyance, or lease, or transfer in any other mode or form of or with respect to this Agreement, the Developer's equipment located on the Development Property or its interest in the Project or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity whether or not related in any way to the Developer (collectively, a "Transfer"), without the prior written approval of the City and County unless the Developer remains liable and bound by this Agreement in which event the City's and County's approval is not required. Any such Transfer shall be subject to the provisions of this Agreement.

(b) In the event the Developer, upon Transfer, seeks to be released from its obligations under this Agreement, the City and County shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City and County, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and County, shall, for itself and its successors and assigns, and expressly for the benefit of the City and County, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and County) deprive the City and County of any rights or remedies or controls provided in this Agreement; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City or County of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Facility that the City or County would have had, had there been no such transfer or change. In the absence of specific written agreement by the City or County to the contrary, no such transfer or approval by the City or County thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the completion of the Project, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII shall be in a form reasonably satisfactory to the City and County.

Section 8.2. Release and Indemnification Covenants.

(a) The City and the County and the governing body members, officers, agents, servants and employees thereof (the “Indemnified Parties”) shall not be liable for and the Developer shall indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Development Property or the Project.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Development Property or the Project.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Project.

(d) All covenants, stipulations, promises, agreements and obligations of the City or the County contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of such entities and not of any governing body member, officer, agent, servant or employee of the City or the County in the individual capacity thereof.

(The remainder of this page is intentionally left blank.)

ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides 30 days written notice to the defaulting party of the event, but only if the event has not been cured within said 30 days or, if the event is by its nature incurable within 30 days, the defaulting party does not, within such 30-day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

- (a) failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder.
- (b) if the Developer sells or otherwise disposes of the Facility or the Development Property without the written approval of the City and County;
- (c) if the Developer shall
 - (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law; or
 - (ii) make an assignment for benefit of its creditors; or
 - (iii) admit in writing its inability to pay its debts generally as they become due; or
 - (iv) be adjudicated a bankrupt or insolvent.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs, the City or the County may each exercise any of the following rights under this Section after providing thirty days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days, the Developer does not, within such 30-day period, provide assurances reasonably satisfactory to the party providing notice of default that the Event of Default will be cured and will be cured as soon as reasonably possible:

- (a) Suspend its performance under this Agreement until it receives reasonably satisfactory assurances that the Developer will cure its default and continue its performance under this Agreement.
- (b) Cancel and rescind or terminate its obligations under this Agreement, provided that:
 - (i) if the City terminates its obligations under this Agreement, it shall have no obligation to make payments of the City Abatements;
 - (ii) if the County terminates its obligations under this Agreement, it shall have no further obligations to make payments of County Abatements to the City hereunder, and the City shall have no obligation to make payments of the County Abatements to the Developer;

(iii) if the City and the County terminate their obligations hereunder, respectively, this Agreement shall be deemed terminated and the City and the County shall have no further obligations hereunder. The City may not terminate its obligations to make payments of the County Abatement under this Agreement unless the County has terminated its obligations hereunder; and

(iv) if the County terminates its obligations under this Agreement and the City continues to pay the City Abatement, the City, at its option, may decrease the City Abatement by the amount the County Abatement would have been for each Payment Date.

(c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. 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 or the County to exercise any remedy reserved to either the City or the County, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any of the terms contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Attorney Fees. Whenever any Event of Default occurs and if the City or the County shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the Developer shall, within ten days of written demand by the City or the County, pay to the City or the County the reasonable fees of such attorneys and such other expenses so incurred by the City or the County.

Section 9.6. Default by City or the County. Notwithstanding anything to the contrary herein, in the event the City or the County fails to perform any covenant, condition, obligation or agreement on its part, and such failure has not been cured within 30 days after receipt of written notice to the City from the Developer, or if such failure is by its nature incurable within 30 days, the City does not, within such 30-day limit, provide assurances reasonably satisfactory to the Developer that the failure will be cured as soon as reasonably possible, then the Developer may exercise such remedies as may be available at law or in equity with respect to the defaulting party. The terms of Section 9.3 and Section 9.4 (but not Section 9.5) apply in favor of the Developer as well as the City and the County.

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Representatives Not Individually Liable. The City, the County, and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the City or the County shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the City or the County shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or the County or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that until the termination of this Agreement, the Developer, and such successors and assigns, shall use the Development Property and the Project thereon only as a manufacturing facility, warehouse facility and related office uses. Further, until the termination of this Agreement, the Developer shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

- (a) in the case of the Developer, is addressed to or delivered personally to the Developer:

Trystar, LLC
2917 Industrial Drive
Faribault, MN 55021
Attn: Andrew J. Smith, Manager

- (b) in the case of the City, is addressed to or delivered personally to the City:

City of Faribault
City Hall
208 First Avenue NW
Faribault, MN 55021
Attn: City Administrator

(c) in the case of the County, is addressed to or delivered personally to the County:

Rice County
Government Services Building
320 Third Street NW
Faribault, MN 55021
Attn: County Administrator

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.7. Recording. The City may record this Agreement and any amendments thereto with the County Recorder of Rice County. The Developer shall pay all costs for recording.

Section 10.8. Entire Agreement. This Agreement, together with its Exhibits, which are incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning this Agreement, provided that nothing contained herein shall impair the rights of the City or the County or the obligations of the Developer under any other agreement between the City, the County, and the Developer. This Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by both parties hereto. Without limitation of the foregoing, any modification is subject to the restrictions on modifications set forth in the City Abatement Resolution and the County Abatement Resolution.

Section 10.9. Amendment. This Agreement may be amended only by a written agreement approved by all parties hereto.

Section 10.10. Governing Law. This Agreement is made and shall be governed in all respects by the laws of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 10.11. Severability. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications that can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf, the County has caused this Agreement to be duly executed in its name and behalf, and the Developer has caused this Agreement to be duly executed in its name and behalf, on or as of the date first above written.

Execution page of the City to the Contract for Private Development, dated as of the date and year first written above.

CITY OF FARIBAULT, MINNESOTA

By: _____
Kevin F. Voracek, Mayor

By: _____
Timothy C. Murray, City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Kevin F. Voracek, the Mayor of the City of Faribault, Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Timothy C. Murray, the City Administrator of the City of Faribault, Minnesota, on behalf of the City.

Notary Public

Execution page of the County to the Contract for Private Development, dated as of the date and year first written above.

RICE COUNTY, MINNESOTA

By: _____
Its: Chairperson

By: _____
Its: County Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the Chairperson of Rice County, on behalf of the County.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the County Administrator of Rice County, on behalf of the County.

Notary Public

Execution page of the Developer to the Contract for Private Development, dated as of the date and year first written above.

TRYSTAR, LLC

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of Trystar, LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public

DRAFTED BY:

KENNEDY & GRAVEN, CHARTERED (SJR)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 337-9300

EXHIBIT A
DEVELOPMENT PROPERTY

That real property in the City of Faribault, County of Rice, State of Minnesota, legally described as follows:

That part of the Southeast Quarter (SEL/4) of Section 1 Township 110 North Range 21 West of the fifth Principal Meridian, Rice County, Minnesota, lying East of County Road No.76, now known as Acorn Trail: EXCEPTING THEREFROM that part thereof described as follows: Beginning at a point in the South line of said Southeast Quarter (SEL/4) for purposes of this description bearings are assumed and based on said South line being 89°33'57" West), a distance of 963.44 feet Westerly from the Southeast corner of said Southeast Quarter (SEL/4), said point being in the center line of Acorn Trail, thence North 10°36'04" East, along said center line of Acorn Trail, 430.00 feet; thence North 89°33'57" East, 474.90 Feet; thence South 0°26'03" East, 422.05 feet to a point in said South line; thence South 89°33'57" West, 557.21 feet to said point of beginning. SUBJECT TO roads, easements and restrictions of record.

And Also

ALL THAT PART OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 6 TOWNSHIP 110 NORTH RANGE 20 WEST OF THE FIFTH PRINCIPAL MERIDIAN, RICE COUNTY, MINNESOTA, LYING WEST OF THE RIGHT OF WAY OF THE MINNEAPOLIS, ST. PAUL ROCHESTER AND DUBUQUE ELECTRIC TRACTION COMPANY