

PROPERTY TAX INCENTIVE APPLICATION FOR
KILBOURNE GROUP
NP AVENUE PROJECT
(Jim Gilmour)

SUGGESTED MOTION:

Move to participate in the request for Tax Increment Financing (TIF) in the City of Fargo submitted by Kilbourne Group to assist with the redevelopment of a property located in the 600 block of NP Avenue for up to five years.

OR

SUGGESTED MOTION:

Move to NOT participate in the request for a Tax Increment Financing (TIF) in the City of Fargo submitted by Kilbourne Group to assist with the redevelopment of a property located in the 600 block of NP Avenue for up to five years.

OR

SUGGESTED MOTION:

Move to NOT participate in the request for a Tax Increment Financing (TIF) in the City of Fargo submitted by Kilbourne Group to assist with the redevelopment of a property located in the 600 block of NP Avenue for up to five years and negotiate the terms of the property tax incentive as described in N.D.C.C 40-05-24.



RECEIVED
CASS COUNTY COMMISSION

MAY 30 2023

ADMINISTRATION DEPARTMENT

May 25, 2023

Chad Peterson, Chairman
Cass County Commission
211 9th Street South
Fargo, ND 58103

Dear Mr. Peterson,

According to N.D.C.C. Chapter 40-05-24, if the City of Fargo anticipates granting a property tax incentive for more than five years, the Chairman of the County must be notified by letter. Within 30 days of receipt of the letter, the County shall notify the City of Fargo whether they intend to participate in the incentive. If the City does not receive a response, the County must be treated as participating.

The incentive being considered is Tax Increment Financing (TIF) that will not exceed five years. However, it would be in addition to a Renaissance Zone tax exemption of five years.

The City of Fargo is considering an application from a developer for up to \$1.85 million of TIF funds to assist with the redevelopment of a block in downtown Fargo. The site is located in the 600 block of NP Avenue. The developer's project will be ~168-unit apartment building and ~2,600 sf of main floor commercial space. A community theater and a city parking garage will be part of the building.

The incentive would be granted in the form of a TIF note that would repay the developer from TIF property taxes for approved TIF costs. The TIF request is for extraordinary costs to make the site suitable for development. These include:

- Demolition, Soil Correction and Remediation
- Public Works Improvements
- Land Acquisition/Write Down
- Administration Costs

TIF costs are estimated at \$1.85 million for the developer. The period of the TIF note is up to five years after expiration of Renaissance Zone incentives. Please respond at your earliest convenience with the determination made by the County Commission regarding the participation.

Feel free to contact me with any questions or concerns.

Jim Gilmour
Strategic Planning Director

CC: Robert Wilson



Kilbourne Group
210 Broadway, Suite 300
Fargo, ND 58102
p: (701) 237-2279
e: info@kilbournegroup.com
www.kilbournegroup.com

January 27, 2023

Jim Gilmour
Director of Strategic Planning & Research
City of Fargo
225 4th Street North
Fargo, North Dakota 58102

Dear Mr. Gilmour:

Please find this application for Tax Increment Financing for the NP Avenue mixed use parking garage located at 602/636 NP Ave N.

1. PROJECT SUMMARY

Six story private development includes +/- 2,500sf of ground floor retail, +/- 3,000sf of amenity space, +/- 168 market rate apartments units – together all known as the “mixed use program”, and +/- 30,000sf of ground floor theater space, and +/- 465 stall parking garage. The TIF application is for the mixed-use program of the project only and does not include the theater space or parking garage.

Location – 602/636 NP Ave N

Schedule – 26-month construction starting in summer of 2023 and opening fall of 2025

2. CONTACT INFORMATION

Mike Allmendinger
210 Broadway, Suite 300
Fargo, ND 58102
701.237.2279
mike@kilbournegroup.com

Owner – Great Plains NP Holdings, LLC
Developer – Kilbourne Group

3. PROJECT PROGRAM

Commercial - +/- 2,500sf (*mixed use program, included in TIF application*)

Apartments - +/- 168 units (*mixed use program, included in TIF application*)

Unit mix – Studio 44% | 1B 38% | 2B 12% | 3B 6%

Theater - +/- 30,000sf

Parking - +/- 465 stalls | 6 level precast garage

4. PROJECT FINANCIALS

Total Project Cost – \$35.4MM (mixed-use program only)

TIF Assistance – \$1,831,613

Eligible Costs

- Land – \$761,000
- Site Preparation/Environmental – \$770,689
- Public Improvements – \$299,924

We are excited at the opportunity to partner with the City on this project and the significant positive impact this project will have for this area of downtown. Please let me know if there is additional information needed.

Sincerely,



Mike Allmendinger

President

Enclosures



- Area Legend**
- AMENITY
 - COMMON / CIRCULATION
 - PARKING
 - RETAIL
 - SERVICE
 - THEATRE



1 LEVEL 1 PLAN
T13 1" = 30'-0"



2 LEVEL 2 PLAN
 11.3 1" = 30'-0"



3 TYPICAL RESIDENTIAL LEVEL PLAN (LEVELS 3-6)
 T1.3 1" = 30'-0"

City of Fargo, North Dakota
Renaissance Zone & Tax Increment Financing Program
“But-For” Report
602/636 NP Avenue



DRAFT



April 14, 2023



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Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for 602/636 NP Ave., a development by Kilbourne Group (the "Developer").

PFM first reviewed the application to ensure that appropriate assumptions regarding property value, rent, condo sales, vacancy, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). We also made sure the Developer followed the City of Fargo's (the "City") Economic Development Incentives Policies and Guidelines (the "Policy") including the allowable costs and the Developer's calculations for determining the amount of allowable subsidy financing. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.



Project

The project being proposed by the Developer includes the development of a 168-unit rental apartment building located at 602/636 NP Ave N.

The Developer estimates the construction will be completed in late 2025 with occupancy immediately following. The Developer has requested TIF assistance in the amount of \$1,831,613 to complete the project.



TIF Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. The Developer is asking for a 5-year Renaissance Zone PILOT followed by a 5-year TIF exemption. The Policy states a 100% exemption on the increased value of the improvements for the first five years.

Eligible TIF Expenditures

Land	761,000
Site Preparation/Environmental	770,689
Public Improvements	<u>299,924</u>
Total Eligible TIF Expenditures	\$1,831,613

The Policy limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of \$35,400,000 the Developer can receive up to \$5,310,000. The Developer is requesting \$1,831,613, which is below the maximum allowed.

Land Cost

The Developer states the purchase price to acquire the property for the project is \$1,328,000. Land acquisition is reimbursable under the Policy. The Developer is requesting to be reimbursed \$761,000 for the land acquisition which complies with the Policy.



The Policy states that the maximum eligible land costs to be recouped by the Developer should be limited to the lesser of:

- 1.) **The total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value of the property.** The Developer's cost to acquire the property is \$1,328,000. The assessor's market value for the property totals \$505,000. The eligible amount for reimbursement is 150% of \$931,000 which totals \$757,500.
- 2.) **The difference between what was paid by the Developer for the property less the assessor's market value for the land (as opposed to land and buildings).** The current assessor's land value is \$505,000. Based on an acquisition price of \$1,328,000 the maximum reimbursement is \$823,000.

The lesser of the two tests detailed above is \$757,500. The requested reimbursement amount for land acquisition of \$761,000 is slightly higher than the amount allowed under the Policy.

Term

The Policy states the length of the term will be limited to 15 years or less. The Developer is requesting a total of a 10-year term with TIF payout in years 6 - 10.

TIF Estimate

PFM estimates that \$2,296,996 of TIF will be generated over years 6 - 10 assuming a 2% market growth rate. Based on a discount rate of 5%, the present value of the estimated TIF cash flow is \$1,407,507 for years 6 to 10 of the project when the TIF would be in effect. This is less than the total eligible TIF expenditures.



Project Financing

The Developer is investing 30% equity, or \$10,626,271, and will be privately financing \$24,794,633. The Developer is additionally requesting annual TIF assistance in the total amount of \$1,831,613 as well as Renaissance Zone PILOT payments. The private financing is estimated to be a 30-year loan with an estimated interest rate of 6.5% resulting in an annual principal and interest payment of \$1,898,710. The Developer anticipates refinancing the construction loan after two years of occupancy. The refinancing loan is estimated to be a 30-year loan with an estimated interest rate of 5.5% resulting in an annual principal and interest payment of \$2,145,349. The application states the project will be completed by the late 2025.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and operating expenses. The Developer is proposing rents of \$1,153 for a studio unit, \$1,466 for a one-bedroom unit, \$2,166 for a two-bedroom unit and \$2,984 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market and location. Annual estimates of operating expenses for the 168-unit rental development were provided, as follows; Administrative Costs - \$184,148, Marketing - \$23,437, Repairs and Maintenance Costs - \$105,466, Utilities - \$36,830, Real Estate Taxes - \$434,403 (without public assistance), Insurance Costs - \$26,785, and Management Fees - \$75,333. The total expenses are approximately 41% of gross operating income after stabilization.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without public assistance the Developer would have about a 10.12% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 12.73% internal rate for 10 years if it received the public assistance. A reasonable rate of return for the proposed project is 10% - 15%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 9 of 1.02x without assistance, with a Year 6 coverage of 0.91x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.23x in Year 9, with a Year 6 coverage of 1.11x.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable debt coverage ratio. We also looked at how much the rental rates would have to fluctuate in order to achieve a reasonable debt coverage. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable debt coverage ratio of 1.20x by year 9.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$4,804,363 or 13.5% in order for the project to become viable without assistance. This reduces the amount to be financed from \$24,794,633 to \$19,990,270 and reduces the annual payment from \$1,898,710 to \$1,530,804 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the apartment rental rates would have to increase by 10.9%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from \$3,047,386 to \$3,379,296. PFM believes the current proposed rents are reasonable rental rates and does not believe an increase this large would occur.

Sensitivity Scenario 3 – Combination of Project Costs and Rental Rates

The final scenario looks at both a reduction of project costs and an increase in apartment rental rates. The analysis showed that project costs would have to be reduced by \$2,479,463 or 7.0% and rental rates would have to increase by about 5.3%. Either of these events could occur but may be unlikely to occur together.

The above scenarios show the circumstances in which the project would become viable without public assistance. PFM has determined that the project is unlikely to occur "but-for" the public assistance.



Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs, occupancy of the buildings, the rental market, and monthly expenses. The base scenario without assistance along with the sensitivity analyses demonstrates that the project would be unlikely to be feasible without assistance.

PFM has calculated that with public assistance, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 12.73%. In addition, the coverage ratio in Year 9 is estimated to be 1.23x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.



SECOND AMENDMENT TO

DEVELOPER AGREEMENT

[CITY OF FARGO and GREAT PLAINS NP HOLDINGS, LLC]

THIS AMENDMENT TO DEVELOPER AGREEMENT, dated as of _____, 2023; is by and between the City of Fargo, a North Dakota municipal corporation (“City”), and Great Plains NP Holdings, LLC, a North Dakota Limited Liability Company (“Developer”); and provides as follows:

WHEREAS, the Developer and the City entered into a Developer Agreement dated as of October 31, 2022, (the “Agreement”) pertaining to a project for the development of the NP Avenue Project, which agreement addresses matters related to the designing, building, financing, ownership and maintenance of a public parking garage to ultimately be owned by the City surrounded or “wrapped” by a mixed-use multi-level structure including residential living units, commercial space and a theater area; and,

WHEREAS, Section 8.4 of the Agreement provided that the Developer would seek certain Tax Increment Financing with respect to the Wrap portion of the NP Avenue Project with terms for such Tax Increment Financing to be set forth in a separate TIF developer agreement to be entered into between the Developer and City; and,

WHEREAS, Section 10.3 of the Agreement included a contingency for the benefit of the Developer that Developer’s obligations under said agreement are subject to satisfaction or waiver by Developer of a contingency that Developer will have received final approvals from all necessary governing bodies that the Wrap has been approved for the Tax Increment Financing program as referenced in said Section 8.4; and,

WHEREAS, the board of city commissioners of the City of Fargo has approved Developer’s application for a five-year property tax exemption on the Wrap as contemplated in Section 8.3 of the Agreement and as provided pursuant to N.D.C.C. §40-63-05; and,

WHEREAS, it is the desire of the Parties to set forth the terms by which the City will issue a Tax Increment Note that establishes five “Tax Years,” as defined herein, from which the City is to make payments to the Developer and which describes as the source of funds, the “Available Tax Increments”, said source being the Developer’s Taxes but the source not being property taxes generated from other property within the TIF District; and,

WHEREAS, Developer and City are now prepared to enter into an agreement regarding said Tax Increment Financing, to be accomplished by this amendment of the NP Avenue Developer Agreement;

NOW, THEREFOR, the Agreement is hereby amended as follows:

SECTION I. Section 1.1 of Article I of the Agreement is amended to include the following additional definitions:

"Available Tax Increments" means the Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby.

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the sum of the products of the various eligible expenses initially borne by Developer and the City that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Five and One-half Percent (5-1/2%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date such expense was incurred to the date of the Tax Increment Note.

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes.

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifth (5th) Tax Year and earlier Tax Years. Taxes for the sixth (6th) year following the first Tax Year, or for any subsequent year, are not included as Developer's Taxes.

"Development Costs" means those costs incurred and to be incurred by or on behalf of the Developer in acquiring the Development Property, in completing the Improvements and in financing those undertakings (including all interest charges on borrowed funds).

"Development Plan" means the Developer's development plan for the Development Property approved by the City on May 30, 2023, including all exhibits thereto, as the same may be amended from time to time.

"Development Property" means the real property parcels described in Exhibits A and B to this Agreement.

"Improvements" means the improvements constructed or to be constructed by the Developer on the Development Property, including all related landscaping, lighting, parking, and other site improvements. The Improvements may exceed, but shall not be less than, the Minimum Improvements, as provided in Section 8.4.

"Maturity Date" means the date that is three (3) years from the Payment Date for the fifth Tax Year.

"Minimum Improvements" means the improvements contemplated by and in accordance with this Agreement and generally described in Section 8.4.

"Renaissance Zone Property Tax Exemption" means the five-year property tax exemption provided by the Renaissance Zone program authorized, pursuant to N.D.C.C. Chapter 40-63, for the Development Project by the board of city commissioners on the 30th day of May, 2023.

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of \$1,831,613.00 or in a lesser initial principal amount that represents reimbursement of eligible costs paid by the Developer as described in this Agreement, plus Capitalized Interest at 5-1/2% per annum, the form of which is attached as Exhibit L to this Agreement, issued when conditions set forth in Section 8.4 are met.

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

"Tax Year" is one of a maximum of five (5) successive calendar years, with the first year being the year that, pursuant to this Agreement, is the year following the five-year Renaissance Zone Property Tax Exemption, said first year to be identified in the Tax Increment Note and with the subsequent years being the four (4) subsequent calendar years. The fifth (5th) Tax Year, therefore, is the fourth (4th) calendar year following the first said year.

"Urban Renewal Law" means the North Dakota Urban Renewal Law, that is, North Dakota Century Code, Chapter 40-58, as the same may be amended.

"TIF District" means the area identified as the "District," or "District [[TIF District No]]" under the City's Development Plan approved by the Board of City Commissioners of the City of Fargo on May 30, 2023, as the same may be amended.

SECTION II. Section 8.4 of Article VIII of the Agreement is amended to read as follows:

Section 8.4. Reimbursement by City of Certain Costs; Terms of Tax Increment Note. The Developer hereby represents to the City that the Developer has incurred and paid and will incur and pay significant Development Costs. The reimbursements, through Available Tax Increments, that establish the principal balance of the Tax Increment Note whose principal and interest are payable to the Developer shall be as follows. The City hereby agrees to defray a portion of the Development Costs up to \$1,831,613.00, comprised of three components plus a fourth component, being administrative and TIF fees of \$50,000:

First Component: Land Acquisition costs (\$761,000) borne by Developer

Second Component: Demolition and site cleaning, soil correction and remediation, grading and utility distribution throughout the Development Property This cost is the estimate to demolish the existing structure(s), remove substandard soils and rubble, fill and grade the site plus install new utilities (\$770,689) that will be borne by the Developer;

Third Component: Public improvements in the City right of way, including utilities disconnect and stub, sidewalk repair and right of way repair and enhancements such as plantings, landscape and furnishings (\$299,924).

Fourth Component: Advance Administrative/TIF Fees. Other Tax Increment costs include the administrative costs (\$50,000.00) for the city of Fargo

The \$50,000.00 advance administrative fee, set forth above, will be initially paid by Developer to the City at the time of issuance of the Tax Increment Note, but shall be an eligible cost reimbursable through Available Tax Increments along with other eligible costs. In addition, an annual administrative fee equal to five percent (5%), subject to a maximum sum of \$12,500 each year, of the annual increment received from the County Auditor (the "Annual Administrative Fee") shall be retained by the City prior to remittance to developer of said increment as payment of the Tax Increment Note.

If there is a category of expense that is deemed ineligible under the Urban Renewal Law, but there are additional eligible expenses not otherwise reimbursed under this Agreement, then such otherwise non-reimbursed, but eligible, expenses shall be recognized as an eligible expense under this Agreement. If eligible costs in the First, Second or Third Component noted above are less than the maximum amount designated for each Component, then such deficit may be realized through another Component so long as all costs are in fact eligible costs. In addition to the foregoing costs, Developer shall be entitled to reimbursement over and above the foregoing eligible expenses an agreed upon interest rate of Five and One-Half Percent (5-1/2%) Per Annum to be paid to Developer under the Tax Increment Note. All of the said costs, and interest, meet the representation set forth at Section 8.4(c) by issuing the Tax Increment Note, substantially in the form of Exhibit L to this Agreement, subject to the following conditions:

(a) There shall be one (1) Tax Increment Note. The amount of the Tax Increment Note shall be determined by adding the \$1,831,613.00 (or so much thereof as shall be demonstrated as set forth in Section 8.4(d) plus a sum equal to Capitalized Interest. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first Tax Year and for each of four (4) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the fifth (5th) or earlier Tax Years.

(b) The Tax Increment Note shall be delivered only if no Event of Default shall have occurred and be at the time continuing.

(c) The Developer represents and covenants that throughout the term of this Agreement that the tax increment assistance provided under this Agreement will be used by the Developer solely to finance those costs which are eligible costs for reimbursement of a project as defined in the Urban Renewal Law. Developer acknowledges that tax increment assistance does not apply to those costs that are initially borne by the City and reimbursed to the City by Developer and City administrative or TIF fees, including the Annual Administrative Fees, as provided in this Section 8.4.

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered upon the later of when the Certificate of Completion is delivered and when the Developer has demonstrated in writing to the reasonable satisfaction of the City the amount of eligible costs of the Improvements incurred and paid by Developer. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the eligible costs of the Improvements have been incurred, together with lien waivers and evidence satisfactory to the City of the nature and amount of the eligible costs of the Improvements that have been paid by the Developer. Each certification shall demonstrate the specific purpose and amount of the eligible costs of the Improvements and their compliance with the representation set forth at Section 8.4(c). The City's determination of a cost's compliance with the representation set forth at Section 8.4(c) shall, if based on the advice of the city attorney's office after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable commencing on May 15th immediately following the first Tax Year, and on May 15th of each year thereafter until the Maturity Date, said May 15th being referred to herein as the "Payment Date" or collectively as "Payment Dates", in the amount described in this subsection. The Parties recognize that at the time of issuance of the Tax Increment Note, the first Tax Year will be known and that the Tax Increment Note will be prepared before issuance to identify the same. The first Tax Year will be the first calendar year following the fifth and final year of the Renaissance Zone Property Tax Exemption. The sole source of funds available for payment of the City's obligations to the Developer under this Section shall be the Tax Increment Note (a non-cash source), and the sole source of funds available for payment of the Tax Increment Note shall be the Available Tax Increments for the first through the fifth Tax Years. The amounts otherwise payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City from Tax Years prior to the applicable Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

(f) The unpaid principal of the Tax Increment Note shall bear interest at Five and One-Half Percent (5-1/2%) per annum from the date of issuance, compounded annually. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

(g) The City expresses no opinion in particular as to whether, or not, the interest income from any such TIF Revenue Note is exempt from federal income taxation, but it is assumed that the Tax Increment Note will be a "taxable" obligation.

(h) The Tax Increment Note shall be a special and limited revenue obligation of the City and not a general obligation of the City, and only Available Tax Increments received by the City shall be used to pay the principal of and interest on the Tax Increment Note

(i) The Tax Increment Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit L. In the event of any conflict between the terms of the Tax Increment Note and the terms of this Section 8.4, the terms of the Tax Increment Note shall govern. No payments will be made on the Tax Increment Note during such time as there is a Specified Event of Default that has not been cured by the Developer.

(j) In connection with the issuance of the Tax Increment Note, and as conditions to such issuance, the Developer shall be provided with a private placement memorandum and shall execute a receipt in a form acceptable to the City stating that it has relied on its own determinations in acquiring the Tax Increment Note and not on representations or information provided by the City.

(k) For purposes of this Agreement all project values shall be as valued by the City Assessor.

SECTION III. Article VIII of the Agreement is amended to include a new section, to be numbered Section 8.6, as follows:

Section 8.6. Use of Tax Increments.

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Available Tax Increments for any purpose permitted by law. Available Tax Increments shall be used on each Payment Date for the following purposes in the following order of priority: (a) to make the maximum possible payment on the Tax Increment Note; (b) to pay or reimburse redevelopment costs at or near the Project identified by the City; and then (c) to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

SECTION IV. The Agreement is amended to include an additional exhibit, Exhibit "L", which shall be the form of Tax Increment Note, appended hereto.

SECTION V. Effective date of amendment. This first amendment to the NP Avenue Developer Agreement shall be effective as of _____.

SECTION VI. In all other respects, the NP Avenue Developer Agreement shall remain in full force and effect.

[Execution pages to follow]

IN WITNESS WHEREOF, the City and Developer have caused this First Amendment to Developer Agreement to be executed by their duly authorized representatives.

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Timothy Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Timothy Mahoney and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, North Dakota, on behalf of said City.

Notary Public

This document drafted by:

Erik R. Johnson
Assistant City Attorney
608 24th Ave S
Fargo, ND 58103
(701) 371-6850
ejohnson@lawfargo.com

GREAT PLAINS NP HOLDINGS, LLC

By: _____

Its: _____

By _____,

_____, _____

STATE OF NORTH DAKOTA)

)

COUNTY OF CASS)

)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of _____, a North Dakota limited liability _____, the Manager of GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company.

Notary Public

EXHIBIT L
FORM OF TAX INCREMENT NOTE

No. R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

TAX INCREMENT
REVENUE NOTE OF 20____
(TAX INCREMENT DISTRICT [[TIF District No]] PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota (the "City"), certifies that it is indebted and for value received promises to pay to GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company (the "Developer"), or the registered assign, the principal sum of _____ Million _____ Hundred _____ Thousand and no/100 Dollars (\$ __, __, 000.00), an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of Five and one-half Percent (5-1/2%) per annum, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of _____, 20__ (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and GREAT PLAINS NP HOLDINGS, LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by GREAT PLAINS NP HOLDINGS, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15th following ~~the date of issuance of the Tax Increment Note~~ first Tax Year, said first Tax Year ending on December 31, 20____
[[Insert: the calendar year following the final year of the five-year RZ property tax

exemption]] and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates".

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

"Developer Tax Increments" are defined in the Developer Agreement as follows:

"The portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

“Tax Increments” means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

In addition, “Developer’s Taxes” are defined in the Developer Agreement as follows:

“Developer's Taxes” means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifth (5th) Tax Year and earlier Tax Years. Taxes for the sixth (6th) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes.”

In addition, “Tax Year” is defined in the Developer Agreement as follows:

“Tax Year” is one of a maximum of five (5) successive calendar years, with the first year being the year that, pursuant to this Agreement, is the year following the five-year Renaissance Zone Property Tax Exemption, said first year to be identified in the Tax Increment Note and with the subsequent years being the four (4) subsequent calendar years. The fifth (5th) Tax Year, therefore, is the fourth (4th) calendar year following the first said year.

In addition, “Maturity Date” is defined in the Developer Agreement as follows:

“Maturity Date” means the date that is three (3) years from the Payment Date for the fifth Tax Year.

In addition, Section 3.6 of the Developer Agreement provides as follows:

“The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,
- (b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate

Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$ __, ____, ____ (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District [[TIF District No]], specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of [[TIF District No]](700 NP Avenue Project) Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's [[TIF District No]] Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. This Note may only be transferred to a person who is (1) a successor of GREAT PLAINS NP HOLDINGS, LLC, by reorganization, merger or acquisition, (2) a member of GREAT PLAINS NP HOLDINGS, LLC, (3) to a lender of GREAT PLAINS NP HOLDINGS, LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to GREAT PLAINS NP HOLDINGS, LLC, noted above.

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than GREAT PLAINS NP HOLDINGS, LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of _____, 20__.

CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

By: _____, its Mayor

ATTEST:

_____, City Auditor

(SEAL)

Tax Increment Revenue Note of 202__ (District [[TIF District No]])

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATION

REGISTERED OWNER

SIGNATURE OF
AUTHORITY'S TREASURER

GREAT PLAINS NP
HOLDINGS, LLC

_____, 2022

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____