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June 18, 2026

Fargo City Commission
225 Fourth Street North
Fargo, ND 58102

Re: Agreement concerning Annexation and Standstill Period.

Dear Commissioners:

In August 2025, the City of Fargo initiated annexation proceedings for approximately 257 acres of property owned by Fercho Properties, LLP and located within Fargo's extraterritorial jurisdiction. Fercho and APLD FAR-01 LLC (Applied Digital) objected to the proposed annexation, resulting in the matter being submitted to mediation pursuant to North Dakota law.

Following mediation and subsequent negotiations, the parties have reached a proposed Agreement Concerning Annexation and Standstill Period. The agreement requires Fargo to withdraw its pending annexation proceedings and establishes a standstill period through May 1, 2028, during which Fargo will not pursue annexation of the property and Fercho/APLD will not petition to be annexed by any jurisdiction (with the exception that they may petition to be annexed by Fargo) and will not support annexation of the property into another municipality. The agreement also provides for good-faith discussions regarding the future development and long-term jurisdictional status of the property while preserving the parties' rights following expiration of the standstill period.

The proposed agreement resolves the current annexation dispute and shifts the parties from a contested annexation process to a collaborative approach focused on the future development of the property. The agreement provides a two-year period for Fargo, Fercho, and Applied Digital to work together in good faith regarding development and long-term jurisdictional issues while preserving each party's rights at the conclusion of the standstill period.

SUGGESTED MOTION:

I move to approve the enclosed Agreement Concerning Annexation and Standstill Period.

Sincerely,

Ian R. McLean
City Attorney

AGREEMENT CONCERNING ANNEXATION AND STANDSTILL PERIOD

THIS AGREEMENT CONCERNING ANNEXATION AND STANDSTILL PERIOD (“Agreement”) is entered into as of _____, 2026 (“Effective Date”), by and between the City of Fargo (“Fargo”), a municipal corporation organized and existing under the laws of the State of North Dakota; Fercho Properties, LLP (“Fercho”), a North Dakota limited liability partnership; and APLD FAR-01 LLC (“APLD”), a corporation incorporated under the laws of Delaware. Fargo, Fercho, and APLD, may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Fercho owns certain real property located in Cass County, North Dakota, within the extraterritorial jurisdiction of the City of Fargo and adjacent to the City of Harwood (the “Subject Property”);

WHEREAS, the Subject Property is legally described as follows:

256.87 acres, more or less, consisting of the East Half of Section 3, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, less LESS the following tracts of land:

A tract of land in the Southeast Quarter (SE¼) and the Northeast Quarter (NE¼) of Section Three (3) in Township One Hundred Forty (140) North of Range Forty nine (49) West, as follows: Commencing at a point which is 1985 feet North of the Southeast corner of said Southeast Quarter, thence West 691.4 feet, the latter being the point of beginning, thence West 400 feet. North 1 596.8 feet. East 1 091.45 feet, South 651.8 feet, West 691.4 feet and South 945 feet to said point of beginning. (Legal Description taken from Document No. 1721673)

AND

A Fifteen acre tract in the Southeast Quarter and the Northeast Quarter of Section Three, Township One Hundred Forty North of Range Forty-nine West of the Fifth Principal Meridian, situate in the County of Cass and the State of North Dakota, and is specifically described as follows: Commencing at a point which is One Thousand Nine Hundred Eighty-five feet North of the Southeast corner of said Southeast Quarter, said point being point of beginning of tract of land hereinafter described; thence West and parallel to the South line of said Southeast Quarter for Six Hundred Ninety-one and Four-tenths feet; thence North and parallel to the East line of said Southeast and Northeast Quarters for Nine Hundred Forty-five feet; thence East and parallel to the South line of said Southeast Quarter for Six Hundred Ninety one and Forty-five hundredths feet; thence South and along said East line for Nine Hundred Forty-five feet to the point of beginning. (Legal Description taken from Document No. 1700954)

AND

Commencing at a point which is 1985 feet North of the Southeast corner of the Southeast Quarter of Section 3, Township 140 of Range 49 West of the Fifth Principal Meridian, situate in the County of Cass and the State of North Dakota, said point being the point of beginning of the tract of land hereafter described; thence South and along the East section line of said Southeast Quarter for 441 feet; thence West and parallel to the North line of said Southeast Quarter for 691.4 feet; thence North and parallel to the East line of said Southeast Quarter for 441 feet; thence East 691.4 feet to the point of beginning. (Legal Description taken from Document No. 1711029).

WHEREAS, APLD holds an option to purchase the Subject Property from Fercho;

WHEREAS, on or about August 4, 2025, Fargo adopted a resolution initiating annexation proceedings for the Subject Property;

WHEREAS, Fercho, as the owner of the Subject Property, filed a protest to Fargo's proposed annexation of the Subject Property, and APLD also filed a protest to such proposed annexation;

WHEREAS, North Dakota law provides that if the owners of one-fourth or more of the property proposed to be annexed file a protest, the city may either discontinue annexation proceedings or submit the matter to mediation pursuant to N.D.C.C. § 40-51.2-07.1;

WHEREAS on December 8, 2025, the City of Fargo elected to submit the matter to mediation pursuant to N.D.C.C. § 40-51.2-07.1

WHEREAS, the Parties have engaged in good-faith discussions, including mediation among the Parties, and desire to resolve the current dispute and avoid the time and expense associated with continued annexation proceedings, while recognizing that the future development and use of the Subject Property may ultimately inform any future jurisdictional considerations.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties Agree as follows:

AGREEMENT

1. **Withdrawal of Pending Annexation Resolution.** Fargo agrees that, following execution of this Agreement, it shall promptly take all actions necessary to withdraw and terminate its pending annexation proceedings for the Subject Property.
2. **Standstill Period.** The "Standstill Period" shall commence on the Effective Date of this Agreement and shall continue through May 1, 2028, unless earlier terminated by written agreement of all Parties.
3. **Fargo Covenant.** During the Standstill Period, Fargo agrees that it shall not initiate, adopt, or approve any resolution, or otherwise take any action, to annex the Subject Property;

provided, however, that nothing in this Agreement shall prohibit Fargo from accepting and acting upon a valid petition for annexation of the Subject Property submitted by the owner of the Subject Property. Notwithstanding any other provision of this Agreement, if during the Standstill Period, Harwood or any other municipality initiates, adopts, or otherwise undertakes any action to annex the Subject Property, or if any petition for annexation of the Subject Property is submitted to any municipality other than Fargo, Fargo shall be released from the restrictions contained in Section 3 and may immediately exercise any and all rights available under North Dakota law, including but not limited to filing protests, initiating annexation proceedings, adopting annexation resolutions, and taking any other action Fargo deems appropriate to protect its interests with respect to the Subject Property.

4. Fercho/APLD Covenant. During the Standstill Period, Fercho and APLD agree that they shall not submit or file any petition for annexation of the Subject Property into Harwood. Fercho and APLD further agree that they shall not support, assist with, or otherwise facilitate any petition for annexation of the Subject Property into Harwood. Fercho and APLD also agree not to support any resolution to annex the Subject Property of any municipality, including Fargo and Harwood, during the Standstill Period.
5. Good-Faith Discussions. During the Standstill Period, the Parties agree to engage in good-faith discussions regarding the potential development and use of the Subject Property and the long-term jurisdictional status of the Subject Property. Nothing in this Section shall obligate any Party to reach any agreement or to accept any particular terms, and nothing herein shall limit any Party's rights following expiration of the Standstill Period.
6. No Determination; Preservation of Future Rights. Except as expressly set forth herein, nothing in this Agreement shall be construed as a determination of jurisdiction over the Subject Property. Nothing in this Agreement shall be construed as limiting or restricting any Party's rights following expiration of the Standstill Period.
7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Fercho shall not transfer or convey any interest in the Subject Property unless the transferee agrees in writing to be bound by the terms of this Agreement. Any successor owner of the Subject Property shall be subject to and bound by the obligations set forth herein applicable to the owner of the Subject Property.
8. Term and Expiration. This Agreement shall remain in effect through the expiration of the Standstill Period, unless earlier terminated by written agreement of all Parties. Upon expiration or earlier termination of this Agreement, the obligations set forth herein shall terminate; provided, however, that such termination shall not affect any rights or remedies arising from any breach of this Agreement occurring prior to such expiration or termination.
9. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous

negotiations, discussions, understandings, and agreements, whether written or oral, relating to such subject matter. Each Party acknowledges and agrees that, in entering into this Agreement, it has not relied upon any statement, representation, warranty, promise, or agreement of any other Party or of any other person or entity, except for those expressly set forth in this Agreement. This Agreement may be amended only by a written instrument executed by all Parties.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota
11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures delivered by electronic means, including by email in portable document format (PDF) or by recognized electronic signature platforms (including, without limitation, DocuSign or similar services), shall be deemed to have the same legal effect as original signatures for all purposes.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed by their duly authorized representatives.

CITY OF FARGO,
a North Dakota political subdivision

By _____
Timothy J. Mahoney, M.D., its Mayor

ATTEST:

By _____
Susan Thompson, City Auditor

FERCHO PROPERTIES, LLP

By _____
William F. Fercho

Its: Partner

APLD FAR-01 LLC

By: _____

Its: _____