

## PURCHASE AGREEMENT

**THIS AGREEMENT** by and between AOD-MO Holdings, LLC, a limited liability company organized and existing under the laws of the State of Colorado ("**Company**"), and the City of Columbia, Missouri, a municipal corporation, ("**City**") has been made as of the date of the last party to execute the agreement (the "**Effective Date**"):

### WITNESSETH:

**WHEREAS**, affiliates of the Company are a leading producer and processor of organic milk and butter headquartered in Boulder, Colorado with a vertically integrated supply chain to ensure high quality standards for production of organic dairy products from cow-to-carton and to deliver affordable organic dairy product to consumers; and

**WHEREAS**, in 2012 and 2015 the Company's parent published its Corporate Citizenship Report demonstrating its commitment to sustainability, with Ragan Communications honoring the 2015 report as "Best One-Time or Annual Report" in their 2015 PR Dairy Corporate Social Responsibility Awards and Corporate Register recognizing the report as a finalist in its 2016 Corporate Responsibility Reporting Awards in the categories of Relevance & Materiality, Creativity in Communication, and Openness & Honesty; and

**WHEREAS**, all the Company's affiliated dairies and existing processing plant are certified for animal welfare by Validus, an independent USDA approved process certifier; and

**WHEREAS**, due to the need for expanded production capacity, Company proposes to construct a new approximately 80,000 square foot state of the art organic dairy processing manufacturing facility, with the capacity to expand up to approximately 130,000 square feet, together with related improvements (collectively, the "**Project**") on an undeveloped parcel of land described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**") located generally at the intersection of Waco Road and Route B within the City; and

**WHEREAS**, the combined new capital investment of the Company within the City of Columbia for Phase 1 of the Project, including real estate, new building construction and new manufacturing machinery and equipment is estimated to be \$91,000,000 with Phase 2 expected to add an estimated additional capital investment of \$50,000,000 within the first five years of operation; and

**WHEREAS**, the Company currently anticipates that the Project, when operational, will provide significant economic benefits to the City by employing approximately 145 to 160 people within the State of Missouri within the first five years of operation at annual starting salaries, or aggregate annual wages, as applicable, averaging in excess of \$42,000 with favorable benefits, and will generate significant real estate and personal property tax revenues for the taxing jurisdictions wherein the Property is located; and

**WHEREAS**, the Company further anticipates that the Project, when completed and fully operational, will have an annual electrical usage of approximately 15,000,000 kWh, resulting in significant annual revenues to the City's electrical utility; and

**WHEREAS**, the Property has been vacant for many years and is difficult and slow to develop; and

**WHEREAS**, in order to develop the Property and construct the Project, the Company, in coordination and partnership with the City and the County of Boone, will incur significant costs including costs for items that will become public improvements belonging to the City or inuring to the

benefit of the City and its citizens and for items that are for a public purpose and that benefit the City and its citizens; and

**WHEREAS**, the City and Company desire to enter into this Agreement whereby the Company, among other things, agrees to purchase the Property for the purpose of constructing and operating the Project, and the City, among other things, agrees to sell the Property on the terms and conditions herein as well as provide public utilities and roadway access to the Property sufficient for operation of the Project; and

**WHEREAS**, the City and Company further desire to provide for the development of the Property by Company in general conformance with the description of the Project attached hereto as **Exhibit "B"** (the "**Project Description**"); and

**WHEREAS**, the City has determined it is in the public interest to sell the Property to Company on the terms and conditions set forth herein; and

**WHEREAS**, the City is authorized to enter into this Agreement with the Company pursuant to the provisions of Section 70.210 et seq. RSMo;

**NOW, THEREFORE**, to improve, maintain and revitalize industrial and business activity in the City by assuring opportunities for development and attracting sound and stable business growth, to promote the public interest and to enhance the tax base of the City, and to induce the Company to undertake the Project within the City in order to provide the greatest benefit and opportunity for residents of the City, and in consideration of the mutual covenants and agreements herein set forth, the City and the Company do hereby covenant and agree as follows:

1. **Purchase of the Property.** Company agrees to purchase from City, on the terms and subject to the conditions set forth in this Agreement, the Property consisting of an unimproved 101.78 +/- acre parcel of real estate located generally at the intersection of Waco Road and Route B in the City of Columbia, Missouri, as legally described on **Exhibit "A"**, together with all related appurtenances, rights, privileges, interests and easements. Company shall not assume any liabilities of City related to the Property, except as expressly described herein.
2. **Purchase Price.** The purchase price for the Property shall be Two Million Thirty-Five Thousand Six Hundred Dollars (\$2,035,600.00), subject to adjustment and proration (on a per acre basis) if the property contains less than 101.78 acres as determined by an ALTA Survey prepared in accordance with Section 3.c below (the "**Purchase Price**"), a portion of which will be held in escrow following Closing pursuant to Section 13 hereof, which Purchase Price Company agrees to pay to City as follows:
  - a. Seventy-five Thousand Dollars (\$75,000.00) (the "**Earnest Money**") shall be deposited in escrow with the Title Company (as described below) within five business days after Company has executed this Agreement ("**Escrow**").
  - b. The remainder of the Purchase Price shall be paid at the Closing (as defined below), subject to the terms and conditions of this Agreement.
3. **Plat; Title; Survey; Due Diligence; Exceptions.**
  - a. Plat. Following the Effective Date of this Agreement and deposit of Earnest Money by Company, City shall proceed without unnecessary delay to cause the Property to be platted into a single lot. Such plat shall include, at a minimum, the vacation of each of the following:
    - (i) Sutter Industrial Drive right of way, (ii) the 10' utility easements adjacent to Sutter Industrial

Drive, (iii) the 100' x 100' temporary turn around easement at the northern terminus of Sutter Industrial Drive, and (iv) a 16' drainage easement along the north property line of Lot 1. All costs associated with the platting of the Property and street/utility vacations shall be paid by City.

- b. Investigation. City will allow Company and its consultants and representative to access the property for purposes of their investigation thereof and to permit such soils testing, environmental testing, or other physical evaluation of the Property as Company may consider necessary or appropriate. Company shall have the ability to terminate this Agreement by written notice to City at any time on or before the date that is twenty (20) days prior to the Closing Date, as defined below, (the "**Inspection Period**") if Company is dissatisfied, in its sole discretion, with its investigation of the physical condition of the Property or of any other conditions affecting the Property, the Company's intended use of the Property, or the Project, including without limitation, zoning or other regulatory restrictions applicable to the Property. If such notice is given, Company shall be entitled to a full refund of the Earnest Money and this Agreement shall terminate.
- c. Title. City agrees to convey good and marketable title to the Property to Company by a special warranty deed ("**Warranty Deed**"), subject only to the exceptions and encumbrances that are permitted by this Agreement ("**Permitted Encumbrances**"). City shall, at its sole cost and expense, deliver to Company within twenty (20) days after the Effective Date, a commitment ("**Title Commitment**") to issue an owner's title insurance policy insuring Company in the amount of the Purchase Price, and committing to delete the standard preprinted exceptions or provide an "extended coverage" endorsement, to be issued through First American Title Company ("**Title Company**"), which shall be in a form approved by the American Land Title Association ("**ALTA**") and acceptable to the Company. The Title Commitment must show good and marketable title to the Property to be in City's name, subject only to beneficial easements and restrictions of record that will not materially interfere with or with Company's intended use of the Property or the Project. The Title Commitment shall be updated following the platting of the Property required by Paragraph 3.a hereof to reflect the accurate legal description created by such plat approval.
- d. Survey. Company may obtain, at Company's expense, a ALTA survey of the Property which locates the boundaries of the Property, all improvements on the Property, any easements, or rights of way affecting or benefiting the Property and any encroachments across the boundaries of the Property that is in form and substance acceptable to Company and Company's lender, if any, including, without limitation, the form of certification ("**Survey**").
- e. Other Due Diligence Materials. City shall, as soon as practicable, but no later than ten (10) days after the Effective Date, provide Company with copies of any existing title policies, surveys, environmental studies and/or reports, water quality reports, floodway or drainage permits or certificates, zoning information, building and land use restrictions, and legal notices received by City from any governmental authority or any other information regarding the Property of which it is aware or which is reasonably requested by Company ("**Due Diligence Materials**").
- f. Exceptions. Company shall notify City on or before the last day of the Inspection Period (or if later, five days after the addition of any new exception to the Title Commitment), if there are any exceptions not permitted by this Agreement or if the Survey shows any deviation from apparent boundaries or represented acreage, flood hazard area, encroachment, or condition that poses a problem for Company or Company's lenders, if any, or that, in Company's reasonable judgment, could interfere with Company's intended use of the Property or the Project, (individually and collectively, a "**Defect**"). All encumbrances other than financial liens

identified on Schedule B-2 of the Title Commitment and not identified by Company as Defects in accordance with the above shall be considered Permitted Exceptions. City shall remove each Defect at City's expense within fifteen (15) days after Company's written notice of the Defect to City. In addition, City shall satisfy the requirements attributable to City set forth in the Title Commitment on or before the Closing Date. If City fails or refuses to remove any Defect, then Company may cure any Defect that is capable of being cured or satisfied by the payment of a sum certain, deducting such sum(s) from the remaining Purchase Price otherwise payable to City hereunder. As an alternative, Company may, on or before the last day of the Inspection Period (or the later period described above with respect to exceptions added to the Title Commitment) and in lieu of a notice of Defects, determine in its sole discretion that any aspect of the Property does not meet Company's approval or that any of the Defects or conditions to closing have not been satisfied and provide notice to City that it desires to terminate this Agreement without further liability or cost to either party. If such notice is given, Company shall be entitled to a full refund of the Earnest Money and this Agreement shall terminate.

4. **City's Representations and Warranties.** City represents and warrants to Company, which representations and warranties shall be true on the date hereof and on the Closing Date, as follows:
- a. There are no pending or, to the best of City's knowledge, threatened condemnation proceedings against the whole or any part of the Property;
  - b. There are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or, to the best of City's knowledge, threatened against or relating to the Property or the Incentives, as defined in Section 5.c;
  - c. City has at all times operated the Property in compliance with all applicable laws, ordinances, orders, codes, rules, regulations, building and use restrictions, and other legal requirements, including, without limitation, compliance with all applicable environmental laws (collectively, "**Applicable Law**"), and, to the best of City's knowledge, the Property is free and clear of all violations of Applicable Law;
  - d. To the best of City's knowledge, there has been no production, generation, use, storage, transport, treatment, spill, release, infiltration, or disposal at the Property or, any adjoining property of any hazardous substance or solid or hazardous waste (as those terms are defined in applicable federal and state environmental protection laws and regulations, including, without limitation, petroleum and its derivatives, polychlorinated biphenyls, radon gas, urea formaldehyde foam insulation and asbestos (collectively, "**Hazardous Substances**"), except as may be disclosed by any environmental assessment report certified to Company obtained by Company during the Inspection Period;
  - e. To the best of City's knowledge, no Hazardous Substance is present on, in, or under the Property in a quantity or concentration that would give rise to a claim of liability against any person under Applicable Law, except as disclosed by any Phase I environmental assessment report obtained by Company during the Inspection Period;
  - f. There are not now, and to the best of City's knowledge never have been, any aboveground or underground storage tanks at the Property;
  - g. There is no pending or, to the best of City's knowledge, proposed special assessment affecting or which may affect the whole or any part of the Property;

- h. City has and can deliver to Company good and marketable title to the Property, subject only to the Permitted Encumbrances;
- i. The Property has legal and physical access from a publicly dedicated and improved right-of-way;
- j. City represents that City is not a foreign person as described in the Foreign Investment in Real Property Tax Act and agrees to deliver a certificate at Closing to that effect which shall contain City's tax identification number; and
- k. All necessary actions to approve, execute, deliver, and perform this Agreement have been taken by City, or will be taken by City prior to Closing, and this Agreement is the valid and binding obligation of City, enforceable against City in accordance with its terms.

To the extent allowed by law, and without waiving or forfeiting any right to claim sovereign immunity, City shall hold Company harmless and indemnify Company from and against any loss, including, without limitation, reasonable attorneys' fees, incurred by reason of City's breach of any of the foregoing representations and warranties.

5. **Company's Representations and Warranties.** Company represents and warrants to City, which representations and warranties shall be true on the Closing Date, as follows:

- a. The Company is a limited liability company duly organized in the State of Colorado authorized to transact business in the State of Missouri;
- b. The Company has the power and authority to enter into this Agreement and to carry out its obligations hereunder and has, or will have by the date of Closing, duly authorized the execution, delivery and performance of this Agreement by proper action of its board of directors and this Agreement is the valid and binding obligation of Company, enforceable against Company in accordance with its terms;
- c. The Company would not be willing to enter this Agreement nor construct the Project in the City but for the execution of this Agreement and receipt of the tax abatement and/or other economic development incentives contemplated to be provided to Company by the City, County of Boone, and the State of Missouri (the "**Incentives**") and, except as otherwise herein provided, performance hereunder is expressly contingent upon approval and receipt of such assistance.

To the extent allowed by law, and without waiving or forfeiting any rights, Company shall hold City harmless and indemnify City from and against any loss, including, without limitation, reasonable attorneys' fees, incurred by reason of Company's breach of any of the foregoing representations and warranties.

6. **Contingencies to Purchase of the Property.** The obligation of Company to Purchase the Property shall be contingent upon the satisfaction or waiver, in the sole discretion of the Company, of the following conditions:

- a. All representations and warranties of City set forth in this Agreement will in all material respects be true as of the Closing Date;
- b. City having timely performed and complied in all material respects with all covenants, obligations, and agreements to be performed or complied with by City on or prior to the Closing Date;

- c. Company's satisfaction with a due diligence inspection and investigation of the Property, including but not limited to the environmental condition of the Property, matters disclosed in the Survey, the condition of title to the Property and the results of all tests, inspections and examinations on the Property, as determined in Company's sole and absolute discretion;
- d. Approval by Company's managers or other governing body;
- e. The form and adequacy of the Title Commitment and the availability of endorsements requested by Seller or its lenders; and
- f. Approval of satisfactory entitlements, development rights and the Incentives from other jurisdictions necessary to make the project feasible and economically viable, including the County of Boone and State of Missouri.

If any one or more of the contingencies, is not satisfied and Seller and is not willing to waive the contingency(ies), then Company may terminate this Agreement and the Earnest Money shall be returned to Company, provided such termination is communicated, in writing to City, on or before twenty (20) days prior to the Closing Date.

## 7. **Property Closing.**

- a. The Closing of the purchase and sale of the Property hereunder (the "**Closing**") shall take place on or before March 31, 2017 (as such date may be extended as provided below, the "**Closing Date**"). With this limitation, the Closing shall take place at such time and place and on such date as shall be specified by Company with at least five (5) days' notice to City at the offices of First American Title Company. The Company may extend the Inspection Period and the Closing Date by written notice to the City on or before the last day of the Inspection Period to permit the Company to complete its investigation, provide additional time to satisfy the conditions to Closing herein, or otherwise facilitate an orderly Closing.
- b. At the Closing, City shall execute and deliver the following:
  - (i) The Warranty Deed, in recordable form;
  - (ii) A closing statement setting forth any closing adjustments;
  - (iii) Affidavit(s) in the form prescribed by the Title Company for the removal of its standard printed exceptions;
  - (iv) An ordinance or other evidence of authorization of the transaction acceptable to the title company;
  - (v) An Escrow Agreement setting forth the terms of the escrow described in Section 13 below;
  - (vi) Any documentation necessary or appropriate to confirm the availability of the Incentives from the City;
  - (vii) A certificate of non-foreign status; and
  - (viii) Any other documents reasonably necessary or legally required to evidence the purchase and sale.

- c. At the Closing, City shall deliver, or cause to be delivered, the following:
  - (i) Actual physical possession of the Property; and
  - (ii) An ALTA owner's title insurance policy in the amount of the Purchase Price which shall insure Company's title as set forth herein.
- d. At the Closing, Company shall execute and/or deliver the following:
  - (i) A closing statement setting forth closing costs and adjustments; and
  - (ii) Any other documents reasonably necessary or legally required to evidence the purchase and sale.
- e. At the Closing, City shall pay all recording and filing costs in connection with curing its title to the Property and the title insurance premium for issuance of a policy pursuant to the Title Commitment and any other costs and expenses customarily paid by a seller in a real estate transaction in Missouri. Company shall pay any title insurance premium or fees for any additional title insurance endorsement(s) required by Company or its Lenders and the recording fee for the Warranty Deed and any other costs and expenses customarily paid by a purchaser in a real estate transaction in Missouri. City and Company shall each pay one-half of any closing costs charged by the Title Company.

8. **Taxes and Assessments.** All real estate and personal property taxes and special assessments with respect to the Property, whether or not payable in installments or deferrable without penalty or interest to a later date, that first become due and payable or in the case of special assessments, a lien upon the Property, on or before the Closing Date, or which are assessed retroactively for the period of time prior to the Closing Date, shall be prorated on a calendar year basis. Except as otherwise provided, Company shall be responsible for payment of all taxes and assessments with respect to the Property following the Closing Date.

9. **Real Estate Brokers.** City and Company each agrees and represents to the other that such party has not engaged or involved a broker in the purchase or sale of the Property who is entitled to a commission. Notwithstanding the above, however, each party shall have the right and obligation to compensate any real estate broker or other agent engaged by such party for services associated with the transaction. City and Company shall each indemnify, defend, and hold harmless the other from any claims made by, or payments due to, any broker engaged by, or claiming to have been engaged by, it or by any of its affiliates, including, without limitation, reasonable attorneys' fees expended to defend against such claim to the extent allowed by law.

10. **Construction of the Project by Company.** Subject to the contingencies set forth in this Agreement, following Closing Company hereby agrees to develop the Property and construct the Project in substantially the parameters as set forth in the Project Description, attached hereto as **Exhibit "B"** and made a part hereof by reference. The Project shall be deemed to be in substantial compliance with the terms of this Agreement so long as Company constructs a state of the art dairy processing plant designed and constructed to provide initially for at least 80 full-time employees and are in general compliance with the Project Description. Notwithstanding the above, City acknowledges and agrees that Company shall not be deemed to have violated this provision as a result of any delay or modifications to the Project required by the City, any metropolitan district or other governmental or quasi-governmental agency or to comply with any laws or regulations applicable to the Property, unforeseen physical or other conditions on the Property, changes in general economic conditions or any other matters outside the reasonable control of Company..

Approval of any Project plans hereunder is solely for purposes of this Agreement and shall not constitute approval for any other City purpose. The parties expressly acknowledge a significant consideration in establishing the Purchase Price of the Property is the construction of the Project and it is not the intent of the City to convey the Property to Company independent of Project construction. In the event Company fails to construct Phase 1 of the Project within three years after Closing, subject to force majeure (as defined below), Company agrees upon the written request of City and repayment of the Purchase Price to Company plus the actual costs, if any, incurred by Company in constructing any improvements on the Property (including professional and consulting fees and other "soft costs" directly related to the Project, less fees and expenses, Company will re-convey the Property to City free and clear of all liens and encumbrances. Except as set forth in Section 13 below, such right to require the Company to re-convey the Property shall be the sole and exclusive remedy of the City under this Section 10.

11. **Occupancy and Operation of the Project.** Within the first five years of occupancy and operation of the Project, Company estimates that it will create a minimum of 130 new jobs within the City with annual starting salaries, or aggregate annual wages, as applicable, averaging in excess of \$42,000 and an annual payroll in excess of \$6,000,000. Company affirms it engages in non-discriminatory employment practices and will use its good faith efforts to implement an employment plan for operation of the Project which includes a target of a workforce reflective of the demographics of the City, including a 10% African-American workforce; provided, however, that such target shall be a goal of the Company and subject to other factors, including the availability of qualified candidates to meet the job requirements and the demographic diversity of the City. Notwithstanding the above, all employment decisions shall be exercised in Company's sole and absolute discretion and there shall not be any penalty or remedy for the Company's failure to meet such employment targets other than as set forth in Section 13 below.

12. **Availability of Utilities.** When fully operational, the Project is estimated to have an annual electrical usage of approximately 15,000,000 kWh, monthly sewer usage of approximately 6,000,000 gallons per month and monthly water usage of approximately 9 million gallons per month. The City represents and warrants that it currently has, and covenants that it will continue to have sufficient electric, water and sewer infrastructure in place adjacent to the Project site to accommodate the needs of Company based upon the Project estimates provided.

13. **Escrow of Purchase Price Reduction.** The City is willing to provide for a reduction in the Purchase Price of the Property upon certification Company has met certain benchmarks related to Project construction, operation and employment of full-time employees as set forth herein. At Closing, \$500,000 of the Purchase Price (the "**Escrow Funds**") received from Company hereunder shall be deposited in escrow with the Title Company or other third party escrow agent agreed to by City and Company to be held pursuant to an escrow agreement agreed to between the City, Company, and such escrow agent (the "**Escrow Agreement**"). Such Escrow Agreement shall provide for release of the entire \$500,000 of Escrow Funds to City if Company fails to complete Phase 1 of the Project on or before the three year anniversary of the Closing Date, subject to force majeure, as evidenced by issuance of a temporary or permanent Certificate of Occupancy (the "**Phase 1 Completion Date**"). If the Phase 1 Completion Date occurs on or before the three year anniversary of the Closing Date, the funds will be retained by the escrow agent and \$100,000 of the Escrow Funds shall be released to the Company if, at any time during the twelve month period following the Phase 1 Completion Date or any subsequent 12 month period (each, a "**Project Year**"), the Company has working at the Project the number of full-time employees specified below for the relevant year (each, a "**Total Employee Benchmark**"):



| <u>Year</u>         | <u>Total Employee Benchmark</u> |
|---------------------|---------------------------------|
| First Project Year  | 80                              |
| Second Project Year | 100                             |
| Third Project Year  | 110                             |
| Fourth Project Year | 120                             |
| Fifth Project Year  | 130                             |

The Escrow Funds shall be eligible to be released to Company in five equal installments of \$100,000 (each, a “**Disbursement Amount**”) during each of the first five successive Project Years. As a condition precedent to each such release of the Disbursement Amount for such Project Year to the Company hereunder, the Company shall, within ninety (90) days following the applicable anniversary, deliver to the City payroll records or other documentation of the number of employees, or by completing a certification in substantially the form set forth in **Exhibit “C”** attached hereto (in whatever form, the “**Employment Documentation**”) demonstrating the highest number of full-time Company employees at the Project during the applicable Project Year. If the Company delivers Employment Documentation within such ninety (90) day period, which indicates that the applicable Total Employee Benchmark has been achieved, the escrow agent shall release the Disbursement Amount for the applicable Project Year to the Company. If the Company fails to deliver Employment Documentation within such ninety (90) day period, or if any timely Employment Documentation indicates that the applicable Total Employee Benchmark has not been achieved, the escrow agent shall retain the Disbursement Amount for the applicable Project Year. Failure of Company to meet the Total Employee Benchmark for any particular Project Year shall not prohibit Company from filing Employment Documentation and receiving the Disbursement Amount in any subsequent Project Year, and if Company achieves the Total Employee Benchmark during a subsequent Project Year, all Disbursement Amounts retained for any prior Project Year shall be disbursed to Company. At the end of five years, any portion of the Escrow Funds for which the Company has not qualified shall be released to City.

14. **Other Approvals Required.** Notwithstanding anything contained herein to the contrary, the obligations of Company contained herein to construct the Project is contingent upon the following actions, none of which shall be unreasonably withheld if required to be approved by the other party:

- a. Submission of an application and required drawings for issuance of a building permit by the Company and approval of such permit by the City;
- b. Approval of a structured price reduction on the Purchase Price of the Property by the City as set forth herein;
- c. Approval of Chapter 100 financing by the County of Boone on terms and conditions acceptable to Company; and
- d. Allocation and approval of participation in the Missouri Works Program, Missouri Build Program, and the Missouri Works Training Program by the State of Missouri on terms and conditions acceptable to Company.

Both Company and City affirm neither party would be willing to enter this Agreement nor construct the improvements on the Property as set forth herein without the assistance provided by the State of Missouri, the County of Boone, and the City of Columbia and the Project construction and Property Purchase is contingent on receipt of such assistance.

15. **Default and Remedies.**

- a. If the Closing does not occur as a result of a default by City under this Agreement including failure of the City to comply with any material covenant, agreement or obligation within any

time limits required by this Agreement and such failure continues for more than thirty (30) days after the City's receipt of written notice thereof from the Company, the Company may either: (1) elect to terminate this Agreement, in which case the Earnest Money shall be returned to Company and Company shall have a right to recover from the City the actual costs incurred by Company in connection with this Agreement, including costs of surveys, environmental or other reports, or other costs and expenses incurred in connection with its investigation of the Property, or (2) obtain specific enforcement of the terms hereof.

- b. If the Closing does not occur as a result of a default by Company under this Agreement including failure of the Company to comply with any material covenant, agreement or obligation within any time limits required by this Agreement and such failure continues for more than thirty (30) days after the City's receipt of written notice thereof from the Company, the Earnest Money shall be delivered to City, and City shall have the right to retain such amount as liquidated damages.
- c. In the event of a default hereunder after the Closing Date, except as otherwise provided herein, the sole remedy of the non-defaulting party shall be to cure the default and seek and be entitled to reimbursement for such cure from the defaulting party. In the event the City defaults under this Agreement after the Closing Date, the Company may also seek and be entitled to specific performance of the City's obligations under this Agreement, provided that Company is not in material default under any of the remaining terms of this Agreement.
- d. If, as a result of a default under this Agreement, whether before or after Closing, either City or Company employs an attorney to enforce its rights, the defaulting party shall, unless prohibited by law, reimburse the non-defaulting party for all reasonable attorneys' fees, court costs and other legal expenses incurred by the non-defaulting party in connection with the default.

16. **Miscellaneous.**

- a. Notwithstanding anything contained herein to the contrary, City's obligations under this Agreement are expressly contingent on City Council approval and, once approved by ordinance of the City Council, shall bind and benefit City, Company and their respective successors, assigns, heirs, executors, and personal representatives.
- b. Company may assign its rights and obligations under this Agreement to any parent company, subsidiary or affiliate which is controlled by or under common control with the Company.
- c. All notices under this Agreement shall be in writing and shall be delivered to City and Company at their respective addresses set forth below, or at another address designated by like notice to one another. Personal delivery, facsimile transmission, or mailing of a notice by certified mail, postage prepaid, or delivery by recognized overnight service shall be sufficient notice. Notice shall be effective upon receipt, if personally delivered or faxed, upon mailing, if mailed, or upon deposit with the overnight delivery service.
- d. Time is of the essence of this Agreement. If any date for delivery of a document, or for giving of a notice, falls on a Saturday, Sunday or bank holiday, then it shall be automatically deferred to the next day that is not a Saturday, Sunday or bank holiday. Notwithstanding the above, where a date is qualified by reference to force majeure, such date will be extended if, and to the extent a party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such party's reasonable control, including, by way of example, failure of Internet access outside the party's control, war, terror, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be

deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay.

- e. This Agreement may not be amended, altered or modified except by means of a writing signed by the person against whom enforcement of any waiver, change, modification, or discharge is sought.
- f. The representations, warranties and agreements set forth in this Agreement shall survive the Closing, delivery of the Warranty Deed, and payment of the Purchase Price.
- g. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.
- h. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Boone County, Missouri. The Company expressly waives its rights to bring such action in or to remove such action to any other court whether state or federal.
- i. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.
- j. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.
- k. This Agreement and the exhibits to this Agreement contain all of the representations and statements by City and Company to one another and express the entire understanding between City and Company with respect to the Agreement. All prior and contemporaneous communications concerning the Agreement are merged in and replaced by this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective corporate names by their duly authorized officials and officers.

**COMPANY:**

**AOD-MO HOLDINGS, LLC.**  
1919 14<sup>TH</sup> Street – Suite 300  
Boulder, Colorado 80302

\_\_\_\_\_  
By: Gary R. Sebek  
Title: Chief Operating Officer

Date: \_\_\_\_\_

**CITY:**

**THE CITY OF COLUMBIA, MISSOURI**  
701 E. Broadway – 2<sup>nd</sup> Floor  
Columbia, Missouri 65201

\_\_\_\_\_  
By: Mike Matthes  
Title: City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sheela Amin, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nancy Thompson, City Counselor

## **EXHIBIT A**

### **Property Description**

Lots 1, 2, and 3 of the Final Plat of Sutter Industrial, Plat 3 in the City of Columbia, County of Boone, State of Missouri, consisting of 101.78 acres, more or less, subject to all easements of record, with the exception of the following easements and rights of way, which shall be vacated by the city prior to closing: Sutter Industrial Drive right of way, the 10' utility easements adjacent to Sutter Industrial Drive, the 100' x 100' temporary turn around easement at the northern terminus of Sutter Industrial Drive, and a 16' drainage easement along the north property line of Lot 1.

## **EXHIBIT B**

### **Project Description**

**Company is a leading producer and processor of store-brand organic milk and butter for U.S. retailers through a vertically integrated supply chain. The Company is headquartered in Boulder, Colorado with a processing plant in Platteville, Colorado and organic dairy, heifer and calf farms in Colorado and Texas. The Columbia, Missouri Project will consist of construction of a new approximately 80,000 sq. ft. organic dairy processing facility. The Project will have the capacity to expand to 130,000 sq. ft., dependent on future product demand. Initial capital investment of the Company for Phase 1 of the Project is estimated to be \$91,000,000, with Phase 2 expansion estimated to be an additional \$50,000,000.**

