

PAYMENT IN LIEU OF TAX AGREEMENT
BETWEEN
THE CITY OF BERLIN, NEW HAMPSHIRE
AND NORTH COUNTRY GROWERS, LLC

This payment in lieu of tax agreement (“**PILOT Agreement**”) is entered into on the ____ day of February 2020 (the “**Effective Date**”) by and between the City of Berlin (“**the City**”), a city organized and existing under the laws of the State of New Hampshire, and North Country Growers, LLC, a Delaware Limited Liability Company, licensed to do business in New Hampshire and having an address of c/o American Ag Energy, Inc., One Boston Place, Suite 2600, Boston, MA 02108, including its successors and assigns, (collectively “North Country Growers”).

WHEREAS, North Country Growers has acquired land on East Milan Road in the City pursuant to that certain Deed from Berlin Industrial Development and Park Authority (“**BIDPA**”) an enterprise fund of the City as recorded at the Coos County Registry of Deeds (“**the Registry**”) on _____, 2020 at Book _____, Page _____ (“**the Property**”) and as more particularly shown on that certain Plan entitled “Revised 3-Lot Subdivision Plan of Tax Map 404, Lot 47” prepared by HEB Engineers and recorded at the Registry as Plan Book _____, Page ____.

WHEREAS, North Country Growers intends to construct, build, maintain and operate a greenhouse facility comprised of two (2) greenhouses of twenty (20) acres each, with an on-site combined heat and power facility in compliance with the provisions of RSA 72:74-a, and associated improvements (collectively, “**the Project**”), all as shown on that certain Site Plan entitled “Design Drawings for a Proposed Greenhouse Facility located in Berlin, NH prepared for North Country Growers, LLC – HEB Project 2016-106; Issued February 7, 2017” (“**the Site Plan**”). The Property, with the Project buildings and improvements to be constructed thereon, is referred to in this PILOT Agreement as the “North Country Growers Property.” To the extent that the North Country Growers Property is or will be taxable as real estate in the State of New Hampshire, and as such will be subject to *ad valorem* taxation by the City, it is intended to be subject to this PILOT Agreement. A true and correct copy of the Site Plan as approved by the City Planning Board on March 21, 2017, and delineating the extent of North Country Growers’ Project made the basis of this PILOT Agreement is attached hereto as Exhibit A and is incorporated herein by reference as if fully set forth.

WHEREAS, North Country Growers owns and/or controls the North Country Growers Property as herein described.

WHEREAS, pursuant to RSA Section 72:74-a, the governing body of the municipality in which a combined heat and power agricultural facility is located may exempt such agricultural facilities from taxes otherwise due under RSA Section 72.

WHEREAS, the Facility described in Section 1 below when constructed will be a combined heat and power agricultural facility within the meaning of RSA 72:74-a.

WHEREAS, the City Council of the City, by motion made or resolution adopted February ____, 2020, at a duly noticed public meeting approved and authorized the execution of this PILOT Agreement.

WHEREAS, this PILOT Agreement contains all the terms and conditions relative to all City, County, and School District *ad valorem* taxation of the North Country Growers Property.

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions set forth below, the City and North Country Growers agree as follows:

1. The Facility: North Country Growers intends to construct and operate the Project as part of the North Country Growers Property and to add new property and modifications as necessary to construct and operate the Project (collectively, the “Facility”) as proposed by North Country Growers and approved by the City’s Planning and Zoning Boards and shown on Exhibit A attached hereto. Subsequent to execution of this Agreement, if/when any person or entity other than North Country Growers (or its subcontractors, agents or permitted assigns) uses any portion of the Lots in a taxable manner not shown on Exhibit A as part of the Facility, such taxable real estate used by such third party which is not solely used for or reasonably necessary to North Country Growers’ Facility may be subject to taxation, provided, however, that North Country Growers shall not be liable for such taxes so long as such additional taxable real estate is not associated in any way with the Facility.
2. Term of Agreement. The term of this PILOT Agreement is intended to cover from the Effective Date through the tax year ending 3/31/2041.
3. Annual Local Taxes Paid. Pursuant to RSA 72:74-a, the City hereby exempts from any all local taxes that would otherwise be due under RSA 72, including local and municipal taxes, one hundred percent (100%) of the value of the North Country Growers Property. For purposes of this PILOT Agreement, local and municipal taxes shall mean any and all taxes levied by Coos County (“County”), the City, the School District (“School District”) or other taxing jurisdiction within or under the County or the City. “Local and Municipal Taxes” shall not include the utility property tax under RSA 83-F, if any ever becomes due on the Facility. Subject to the terms and conditions of this PILOT Agreement, North Country Growers will pay the amounts set forth below, beginning effective as of April 1, 2020 in lieu of the *ad valorem* taxes that would otherwise be due and payable by North Country Growers to the City with regard to the North Country Growers Property. North Country Growers agrees for itself, its successors and assigns, that all payments set forth in this PILOT Agreement shall be paid to the City prior to and in advance of any payments to management and/or investors in North Country Growers, its successor and/or assigns, unless expressly stated to the contrary in this PILOT Agreement. The City will issue a bill to North Country Growers for the amounts payable under this PILOT Agreement at the same time that it issues its tax bills to the other taxpayers in the City; and North Country Growers expressly agrees that it shall make all such payments due under this PILOT Agreement on or before July 1, 2020 and December 31, 2020 and each successive July 1 and December 31 for each year thereafter during the life of this PILOT Agreement. Any late payments of the amounts due hereunder will be subject to interest at the rate set forth in RSA 76:13. The following Table A in this PILOT Agreement constitutes

the minimum tax payments (“PILOT Payments”) to be made by North Country Growers and the dates for which they are to be made concerning the construction and operation of the Project. If additional improvements are added to the Property which are not shown on the above-referenced Plans, those improvements will be subject to additional taxation in addition to the PILOT Payments.

TABLE A

(see next page)

(remainder of page intentionally left blank)

Tax Year	Payment Due Date	Tax Payment	
2020	July 1, 2020	\$ 25,000	Preliminary payment during construction - regardless of date of completion of first 20 acre greenhouse.
2020	December 31, 2020	\$ 25,000	
2021	July 1, 2021	\$ 25,000	
2021	December 31, 2021	\$ 25,000	
2022	July 1, 2022	\$ 100,000	Payment based on one 20 acre greenhouse regardless of date of completion; and Payment increase to \$875,000/year shall occur when the second 20 acre greenhouse is constructed or by Tax Year 2032, whichever is sooner.
2022	December 31, 2022	\$ 100,000	
2023	July 1, 2023	\$ 150,000	
2023	December 31, 2023	\$ 150,000	
2024	July 1, 2024	\$ 250,000	
2024	December 31, 2024	\$ 250,000	
2025	July 1, 2025	\$ 250,000	
2025	December 31, 2025	\$ 250,000	
2026	July 1, 2026	\$ 250,000	
2026	December 31, 2026	\$ 250,000	
2027	July 1, 2027	\$ 250,000	Payment for Tax Years 2032-2041 based on up to two 20 acre greenhouses.
2027	December 31, 2027	\$ 250,000	
2028	July 1, 2028	\$ 250,000	
2028	December 31, 2028	\$ 250,000	
2029	July 1, 2029	\$ 250,000	
2029	December 31, 2029	\$ 250,000	
2030	July 1, 2030	\$ 250,000	
2030	December 31, 2030	\$ 250,000	
2031	July 1, 2031	\$ 250,000	
2031	December 31, 2031	\$ 250,000	
2032	July 1, 2032	\$ 437,500	
2032	December 31, 2032	\$ 437,500	
2033	July 1, 2033	\$ 437,500	
2033	December 31, 2033	\$ 437,500	
2034	July 1, 2034	\$ 437,500	
2034	December 31, 2034	\$ 437,500	
2035	July 1, 2035	\$ 437,500	
2035	December 31, 2035	\$ 437,500	
2036	July 1, 2036	\$ 437,500	
2036	December 31, 2036	\$ 437,500	
2037	July 1, 2037	\$ 437,500	
2037	December 31, 2037	\$ 437,500	
2038	July 1, 2038	\$ 437,500	
2038	December 31, 2038	\$ 437,500	
2039	July 1, 2039	\$ 437,500	
2039	December 31, 2039	\$ 437,500	
2040	July 1, 2040	\$ 437,500	
2040	December 31, 2040	\$ 437,500	
2041	July 1, 2041	\$ 437,500	
2041	December 31, 2041	\$ 437,500	

In recognition of the “back end loading” of the PILOT Payments contained in this PILOT Agreement, the parties further agree that: (i) the increase of the annual PILOT Payment from \$500,000 to \$875,000 shall occur upon completion of the second 20 acre greenhouse contemplated in the Project or by Tax Year 2032, whichever occurs first and regardless of whether the second 20 acre greenhouse is constructed; and (ii) in the event that North Country Growers, its successors and assigns terminate the PILOT Agreement under Section 8 prior to the expiration of the full term as defined in Article 2, above, then North Country Growers, its successors and assigns shall pay to the City the difference between (a) any and all tax payments that would have been due to the City on the Facility had there been no PILOT Agreement (based upon the valuations used in the attached Exhibit B) and (b) the sum of the Pilot Payments as scheduled in Article 3, above, paid by North Country Growers prior to the effective date of the Termination (“the Catch-Up Payment”).

4. Total Payments. Subject to the terms and conditions of this PILOT Agreement, the amounts payable by North Country Growers pursuant to Article 3 of this PILOT Agreement shall be in lieu of any and all other City, local School District, or County taxes or assessments of a similar nature relating to the North Country Growers Property, including but not limited to taxes on the value of real property and the entire Facility, which would or could otherwise be assessed in any year covered by this PILOT Agreement against North Country Growers, any of its partners, members, investors, permitted assigns, or the owners of the North Country Growers Property.

5. Assignment; Collateral Assignment for Lenders/Financiers. This PILOT Agreement shall inure to the benefit of and shall be binding upon the City, North Country Growers, and their respective successors and assigns. North Country Growers may assign, convey, and transfer all of its rights and interests in this PILOT Agreement to any entity which is a successor to North Country Growers or a successor tenant of the North Country Growers Property, provided the City is given written notice of the assignment. North Country Growers may assign, pledge or transfer all or any part of, or any right or obligation under this PILOT Agreement for security purposes in connection with any borrowing or other financial arrangements regarding the Facility. In either event, North Country Growers and such successors and assigns shall remain fully liable under the terms of this PILOT Agreement, provided, however, no assignee solely for the purpose of financing the Facility shall have any liability or obligation to the City under or with respect to this PILOT Agreement, unless it elects by written notice to the City to become the owner and operator of the Facility under the terms of its collateral security agreements with North Country Growers.

6. Operating Conditions. This PILOT Agreement is intended to be on a payment schedule which is not interrupted by normal operating events at the Facility, such as maintenance, breakdowns, unexpected outages, severe drought, power/gas line disruptions, or any other activity or occurrence which may reduce the annual operating characteristics of the Facility, the amount of produce generated, or the revenue generated. If significant disruptions, beyond normal operating events occur such that the Facility is rendered inoperable, in whole or in part, for a period of twelve months or longer, this PILOT Agreement may be terminated as of the date of written notice to the City by North Country Growers. If North Country Growers and the City are unable to renegotiate this PILOT Agreement within six (6) months of the date of

such notice, then North Country Growers shall pay to the City the Catch-Up Payment referenced in Article 3, above; and the North Country Growers Property shall thereafter be assessed in accordance with the ordinary assessment procedures applicable to other properties in the City.

7. Enforcement. The City shall have all rights, at law and in equity, including the right to bring suit for acceleration and/or specific performance, to enforce this PILOT Agreement against North Country Growers, its successors and assigns. Prior to bringing any action for enforcement, the City shall provide North Country Growers at least thirty (30) days' prior written notice of the default and a commercially reasonable opportunity to cure any default or breach of this PILOT Agreement. However, in the event of breach of this PILOT Agreement, the City shall have the immediate right to lien the Property and the Facility pursuant to RSA Chapter 80 to protect the City's rights to collect all sums as set forth in the PILOT Agreement

8. Notices. All notices and other formal communications which either party may give to the other under or in connection with this PILOT Agreement shall be in writing, shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or facsimile transmission or email transmission, provided that receipt of such transmission is confirmed. The communications shall be sent to the addresses, facsimile number or email addresses below the signature blocks of each party. Either party may modify the address, facsimile number or email address via notice to the other party in accordance with this notice provision.

9. Obligation to Modify. Upon implementation by a governmental authority of any law, rule or regulation that may affect any provision of this PILOT Agreement or the ability of North Country Growers to develop, finance, construct or operate any or portion of the Facility, the parties shall be obligated to amend this PILOT Agreement to conform to such law(s), rule(s), order(s) and/or regulation(s) to the extent that such amendments are commercially reasonable. The parties shall use their best efforts to conform such amendment to the original intent of this PILOT Agreement and to do so in a timely fashion.

10. Further Assurances. From time to time and at any time at and after the execution of this PILOT Agreement, each party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other party.

11. Entire Agreement; Successors and Assigns; Amendments; Choice of Law and Venue. This PILOT Agreement constitute the entire understanding and agreement of the parties hereto with respect to a payment in lieu of taxes concerning the North Country Growers Property and any portion thereof, and supersedes any prior understandings, representations, or agreements, either written or verbal, by or between the parties with respect to the subject matter hereof. This PILOT Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This PILOT Agreement shall not be amended or altered except in writing signed by all parties hereto. This PILOT Agreement shall be governed by and construed under the laws of the State of New Hampshire; and venue for any suit concerning these Agreements shall be in the Superior Court of Coos County, NH.

12. Countersignature. This PILOT Agreement may be executed in one or more counterparts and by facsimile, and may be signed by each party on a separate counterpart, each of which, taken together, shall be an original, and all of which shall constitute one and the same instrument.

13. Authorization. The City Manager's execution of this PILOT Agreement was authorized by the City Council at a duly called and noticed public hearing pursuant to NH RSA 72:74 held on February ____, 2020. Ms. Piret's execution of this PILOT Agreement was authorized by a Member Consent of North Country Growers dated February ____, 2020.

IN WITNESS WHEREOF, THE PARTIES HERETO by their duly authorized officials have executed this PILOT Agreement as of the date first above written.

NORTH COUNTRY GROWERS LLC

By: _____
Marguerite A. Piret
Member/Manager, Duly Authorized
c/o American Ag Energy, Inc.
One Boston Place, Suite 2600
Boston, MA 02108
Tel: _____
Fax: _____
Email: mpiret@newburypiret.com

CITY OF BERLIN, NEW HAMPSHIRE

by _____
Jim Wheeler, City Manager
Duly Authorized
168 Main Street
Berlin, NH 03750
Tel: 603-752-7532
Fax: 603-752-_____
Email: jwheeler@berlinnh.gov

EXHIBIT A
THE SITE PLAN
(Separately Attached)