

## **DEVELOPMENT AGREEMENT**

THIS IMPACT FEE DEVELOPMENT AGREEMENT (“Agreement”) is dated this \_\_\_\_ day of \_\_\_\_ 2024, by and between the City of Aurora, an Illinois home rule municipal corporation (“City”), and C1 Chicago Aurora III LLC, a Delaware limited liability company (“C1”), with offices at 2820 North Harwood Street, Suite 2200, Dallas, Texas 75201.

### **R E C I T A L S**

A. C1 is the contract purchaser of the approximately 32-acre property identified on **Exhibit 1** attached hereto and made a part hereof (the “Subject Property”).

B. C1 has applied to the City for various forms of discretionary land use approvals to facilitate the development of the Subject Property for a data center campus consisting of two buildings, two telecommunication towers, and an electrical substation (the “Proposed Development”).

C. The City Code (Article 43-5) requires that, in association with the development of a property, the developer install certain public improvements, including sewers, water supply, street improvements, monuments and markers, franchised utilities, sidewalks, landscaping, street and regulatory signage, and street lighting and marking.

D. The City Code (Article 43-5) provides that public improvements that provide a direct benefit to future subdivisions or developments shall be reimbursable to the extent of such benefit.

E. While the Subject Property was annexed and zoned in the City of Aurora in 1975, the Subject Property attracted no private investment toward the realization of development goals for decades.

F. To spur economic development, the City invested in regional infrastructure improvements located in and around the Subject Property, including (the “City’s Investment”):

(i) \$8,000,000.00 in 2008 dollars for the right-of-way acquisition. The value of that expenditure in 2024 dollars is \$13,440,000.00.

(ii) \$550,000.00 in 2015 dollars for utility work. The value of that expenditure in 2024 dollars is approximately \$764,500.00.

(iii) \$787,500.00 in 2008 dollars for soft costs related to said right-of-way improvements. The value of that expenditure in 2024 dollars is approximately \$1,323,000.00.

G. The City’s Investment ultimately triggered DuPage County and the State of Illinois to invest approximately \$35,000,000.00 for the construction of roadway improvements which specifically benefit the Subject Property and have spurred economic development in the region.

H. The parties agree that C1 will benefit, in terms of both cost savings and construction delays, from existing public improvements which have been constructed across the frontage of the Subject Property, specifically including but not limited to: sanitary sewer and storm sewer, full roadway improvements to Bilter Road, full roadway improvements associated with the Eola Interchange, franchised utilities, sidewalks, landscaping, street and regulatory signage, and street lighting.

I. Based on all of these considerations, the parties now desire to enter into this Agreement setting forth C1’s agreement to reimburse the City for existing public improvements that benefit the Subject Property at such time as C1: (i) receives all necessary land use approvals for the Proposed Development; and (ii) closes on the acquisition of the Subject Property.

Accordingly, it is hereby agreed by and among the parties as follows:

**Section 1. Incorporation of Recitals.** The Recitals set forth hereinabove are incorporated as if fully set forth herein.

**Section 2. Conditions Precedent.** It shall be conditions precedent to C1's obligations under this Agreement that C1 closes on its acquisition of the Subject Property on or before September 1, 2024.

**Section 3. Impact Fees & Public Improvements Reimbursement.**

A. Impact Fee Schedule. The Parties agree that impact fees payable under the City's Code shall be assessed pursuant to the following schedule:

- a. Land/Cash Fees. The City agrees to waive any land/cash dedication requirements for school or park facilities that may be payable under Section 23-11 of the City's Code.
- b. School Impact Fees. The City agrees to waive any school impact fees that may be payable under Section 23-18 of the City's Code.
- c. Public Works Development Impact Fee. The Proposed Development has frontage along Bilter Road, the Eola Road Interchange and I-88, all of which have been improved for the benefit of the Subject Property. In lieu of a Public Works Development Impact Fee based on linear frontage and in consideration of the reimbursement for public improvements set forth below, the City and C1 agree to a flat fee of \$472,500.00 in satisfaction of the Code required Public Works Development Impact Fee. Said fee shall be payable to the City at closing on C1's acquisition of the Subject Property.
- d. Fire Department Development Impact Fees. The City agrees to waive any fire department development impact fee that may be payable as a condition of the subdivision of the Property. As a condition to the issuance of a Building Permit, C1 shall pay a Fire Department Development Impact Fee based on the square footage of the permitted building. The fee shall be calculated at a rate of Fifty Dollars (\$50.00) per one thousand (1,000) gross square feet of sprinklered structure.

B. Reimbursement for Public Improvements. C1 hereby agrees to reimburse the City for the cost of public improvements that benefit the Subject Property. The Parties have investigated prior public investment in improvements that benefit the Subject Property. The Parties have also

investigated the cost to construct public improvements as required by the City Code if those improvements were not presently available. The Parties agree that it is difficult to ascertain the exact cost of existing public improvements or the reasonable cost to construct said improvements in today's dollars. The Parties further agree that the present existence of the public improvements is a critical component of the timing of C1's acquisition and development of the Subject Property. In light of the foregoing considerations, the Parties agree that the sum of \$15,527,500.00 represents a reasonable estimation of the value of public improvements presently available at the Subject Property, said sum representing the present value of the City's recent investment in public infrastructure on or adjacent to the Subject Property and specifically intended to spur economic development of the Subject Property.

C. At such time as C1 closes on the acquisition of the Subject Property, C1 shall pay the City the \$15,527,500.00 for reimbursement of public improvements which specifically and uniquely benefit the Subject Property.

**Section 4. Payment At Closing; Escrow.**

A. The payments provided for in Section 3 shall be made at the time C1 closes on the acquisition of the Subject Property.

B. The City shall be a party to the closing escrow between C1 and C1's Seller. The escrow shall instruct the title company or other escrow to make the payment called for in this Agreement at closing.

**Section 5. Execution In Counterparts; Originals.** This Agreement may be executed in counterparts, and each signed counterpart will be deemed an original. An electronic pdf scan bearing a signature may be deemed an original and tendered as such.

**Section 6. Entire Agreement.** The provisions of this written Agreement contain the entire agreement among the parties. No other agreements, understandings, representations, promises or assurances have been made contemporaneously with the Agreement contained herein that are not contained herein, and no such agreement, understanding, representation, promise or assurance will be valid or binding. The Parties further agree that in entering into this Agreement, they are not relying on any promise, inducement, or representation not contained in this Agreement.

**Section 7. Governing Law; Venue; Prevailing Party Attorney's Fees.** This Agreement shall be construed in accordance with the substantive law of the State of Illinois. In the event of litigation, the parties agree that venue shall be in the Eighteenth Judicial District, DuPage County, Illinois. In the event of litigation regarding the enforcement of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees in addition to any other relief granted by the Court.

**Section 8. Construction.** All terms contained herein shall be given their ordinary English meaning. To the extent that any provision hereof is found to be ambiguous, this Agreement shall be treated as the joint product of the Parties and shall not be construed against any party.

**Section 9. Amendment; Assignment; and Waiver.** No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by an authorized representative of each party. Any waiver of the breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach. In the event that any section, subsection or paragraph of this Agreement is held to be invalid, the invalidity of such section, subsection or paragraph shall not affect any of the other provisions of this Agreement.

**Section 10.**    **City Council Approval.** This Agreement is contingent upon the approval of the City's City Council.

**Section 11.**    **Notices.** Notices contemplated or called for under this Agreement shall be made in writing via nationally-recognized carrier such as UPS or Federal Express to the following addresses:

IF TO City of Aurora:  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60505  
Attention:    Mayor and Chief Management Officer

WITH COPY BY BOTH DELIVERY AND E-MAIL TO:  
Richard J. Veenstra  
Corporation Counsel  
44 East Downer Place  
Aurora, Illinois 60505  
[VeenstraR@aurora.il.us](mailto:VeenstraR@aurora.il.us)

IF TO C1 Chicago Aurora III LLC  
C1 Chicago Aurora III LLC  
2820 North Harwood Street  
Suite 2200  
Dallas, Texas 75201  
Attention:    General Counsel  
[generalcounsel@cyrusone.com](mailto:generalcounsel@cyrusone.com)

WITH COPY BY BOTH DELIVERY AND E-MAIL TO:

Russ Whitaker  
Rosanova & Whitaker, Ltd  
445 Jackson Avenue, Suite 200  
Naperville, IL 60540  
[russ@rw-attorneys.com](mailto:russ@rw-attorneys.com)

Signature Page(s) to Follow

The parties therefore execute this Agreement, agreeing to the above terms, effective as of the date of execution.

C1 CHICAGO AURORA III LLC

CITY OF AURORA

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_