

PROGRAM FUNDING AGREEMENT

This **PROGRAM FUNDING AGREEMENT** (this “Agreement”), made and entered into as of the ___ day of _____, 2018, by and between City of Aurora, an Illinois unit of local government (“Recipient”) and the Illinois Housing Development Authority (the “Authority”) a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended from time to time (the “IHDA Act”).

WITNESSETH:

WHEREAS, pursuant to authority under Section 7.31 of the IHDA Act and the rules promulgated thereunder and codified at 47 Ill. Adm. Code 381 (the “Rules”), the Authority may provide Funds to municipalities, counties and land banks in Illinois participating in the Abandoned Residential Property Municipality Relief Program for the maintenance and demolition of abandoned properties; and

WHEREAS, the Authority has issued, and the Recipient has accepted, that certain Conditional Commitment Letter (together with any amendments thereto, the “Commitment”), pursuant to which the Authority has agreed to provide funds to the Recipient in an amount not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the “Funds”) and Recipient will use the Funds for Eligible Uses in connection with maintenance and demolition of Abandoned Residential Property within the Recipient’s jurisdiction (the “Project”) and for no other purpose; and

WHEREAS, as an inducement to the Authority to provide the Funds, the Recipient agrees to enter into this Agreement and consents to be regulated and restricted by the Authority as provided in this Agreement, the IHDA Act and the Rules.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Incorporation.** The foregoing recitals are made a part of this Agreement.
2. **Act and Regulations.** The Recipient agrees that at all times its acts regarding the Project shall comply with the applicable provisions of the IHDA Act and the Rules.

3. **Definitions:**

“Abandoned Property Program” shall mean the Abandoned Residential Property Municipality Relief Program authorized by Section 7.31 of the IHDA Act and the Rules.

“Abandoned Residential Property” shall have the meaning ascribed to it in the Rules.

“Application” shall mean the application for the Funds completed by the Recipient.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the Authority is authorized or obligated by law to be closed.

“Closing Date” shall mean the date upon which all requirements set forth in the Commitment have been satisfied. This Agreement shall be dated as of the Closing Date and shall become effective as of the Effective Date.

“Commitment” shall mean that certain Conditional Commitment Letter by the Authority and accepted by the Recipient dated as of April 6, 2018.

“Disbursements” shall mean the Funds that may be disbursed to the Recipient after the Closing Date.

“Effective Date” shall mean June 13, 2018.

“Eligible Uses” shall have the meaning ascribed to it in the Rules.

“Fund Documents” shall mean the Application, this Agreement, the Commitment and any and all other documents evidencing or governing the Funds.

“Initial Disbursement” shall mean that portion of the Funds that may be disbursed to the Recipient after the Closing Date for reimbursement in connection with expenses for Eligible Uses incurred by the Recipient as of January 1, 2016 through the Effective Date.

“Quarterly Disbursements” shall mean that portion of the Funds that may be disbursed to the Recipient after the Closing Date for reimbursement in connection with expenses for Eligible Uses incurred by the Recipient as detailed on the Recipient’s Quarterly Disbursement Statements.

“Termination Date” shall mean the date which is two (2) years after the Effective Date.

4. Commencement. The term of this Agreement shall commence on the Effective Date and, unless terminated earlier pursuant to the provisions herein, shall terminate on the Termination Date. No disbursement shall be made under this Agreement after the Termination Date. Any Funds disbursed to the Recipient but not expended by the Recipient as of the Termination Date shall be returned to the Authority within five (5) Business Days after the Termination Date.

5. Project Requirements. In connection with the Project, the Recipient shall perform functions that include, but may not be limited to, the following:

- a. Report data-points and financials to Authority, as set forth herein.
- b. Use funds for Eligible Uses as ascribed in Rules.
- c. Recipient is not barred from receiving funds under any federal program or

any program of the state. In addition, Recipient is not delinquent in the payment of any debt to the State of Illinois (or if delinquent has entered into a deferred payment plan to pay the debt), and Recipient and its affiliates acknowledge the Authority may declare this Agreement void if this certification is false or if Recipient or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt.

d. Recipient has satisfied and will continue to satisfy all terms, conditions, and covenants of and has not suffered or will suffer any event of default of any agreement, contract or requirement of the Authority, HUD, the State, or any political subdivision thereof.

e. Recipient has not been convicted of bribery or attempting to bribe an officer or employee of the State in that officer's or employee's official capacity; nor has it made an admission of guilt of such conduct which is a matter of record but has not been prosecuted for such conduct. In addition, if Recipient has been convicted of a felony, as least five (5) years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business.

f. Recipient will at all times, in the performance of this Agreement, comply with all applicable federal, state, and local laws and regulations.

g. Recipient shall obtain a fidelity bond coverage or honesty insurance in an amount that is at least equal to the lesser of (a) the Funds awarded, or (b) \$100,000.00 with the Authority named as an additional insured.

h. Recipient shall provide ACH deposit instructions for the Bank Account (as defined in **Paragraph 8.f** hereof).

i. Recipient shall perform any other functions that the Authority may reasonably require.

The Authority reserves the right to assess the Recipient's performance of the Project at all times throughout the term of this Agreement. If the Authority determines, in its sole discretion, that the Recipient's performance of the Project is not satisfactory or that the Project is not yielding satisfactory results for the operation of the Abandoned Property Program, the Authority shall have the right to terminate this Agreement pursuant to **Paragraph 11** hereof.

6. Additional Covenants. The Recipient further certifies under oath, covenants and agrees that, to the best of Recipient's knowledge, information and belief to the following:

a. that Recipient is an eligible recipient of the Funds based on Section 381.201 of the Rules;

b. that all properties within the definition of Project as defined herein are Abandoned as defined in Section 381.202 of the Rules;

c. that the wages to be paid to all laborers and mechanics employed in connection with the Project shall be not less than the prevailing wage rates (“Prevailing Wages”) as provided for under the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq. and Recipient shall require that all contractors and subcontractors in connection with the Project require the payment of Prevailing Wages;

d. that Recipient will comply with all federal, state and local laws, including, but not limited to, historical preservation, environmental and lead based paint laws and regulations; and

e. that any and all third-party vendors procured by the Recipient in connection with the Project have been procured within applicable laws and regulations.

7. Certifications.

a. That all representations and warranties of the Recipient contained in this Agreement and the other Fund Documents are true, accurate and complete as of the date hereof and shall be true, accurate and complete at the time of the Disbursement;

b. that the Funds shall be used only for the purposes described in this Agreement;

c. that the award of Funds is conditioned upon the certifications as set forth in this **Paragraph 7.**

8. Disbursement of Funds. Provided that adequate funds have been appropriated or directed to the Authority to fulfill its obligations under this Agreement, the Authority will authorize the Disbursements as follows:

a. Initial Disbursement. On or after the Effective Date, the Recipient shall provide the Authority with a detailed accounting of all expenses incurred by the Recipient for Eligible Uses as of January 1, 2016 through the Effective Date (the “Initial Disbursement Statement”), as set forth in **Paragraph 8.d** hereof, on a form supplied by the Authority, and documents substantiating the expenditures made by Recipient, which must be satisfactory to the Authority in its sole and absolute discretion. Provided that the Authority approves of the Initial Disbursement Statement, the Initial Disbursement will be disbursed within forty-five (45) days of the Authority’s receipt of the Initial Disbursement Statement.

b. Quarterly Disbursements. Within ten (10) calendar days of the end of each quarter, commencing with the first full quarter ending after the Effective Date, the Recipient shall provide the Authority with a detailed accounting of all expenses incurred by the Recipient for Eligible Uses (the “Quarterly Disbursement Statement”), as set forth in **Paragraph 8.d** hereof, on a form supplied by the Authority which must be satisfactory to the Authority in its sole and absolute discretion. Provided that the Authority approves of the Quarterly Disbursement Statement, the Quarterly Disbursement will be disbursed

within forty-five (45) days of the Authority's receipt of the Quarterly Disbursement Statement. Notwithstanding anything to the contrary contained herein, each Quarterly Disbursement shall also be based on the Recipient's performance under the Abandoned Property Program to date and the Recipient's continued willingness to perform. Notwithstanding anything to the contrary contained herein, the Authority reserves the right, in its sole and absolute discretion, to increase, decrease or eliminate the Funds to the Recipient and the Authority has the right to modify the expenditure timeline as set forth herein.

c. Rejection of Disbursement Statement. If the Authority rejects the Recipient's Initial Disbursement Statement or a Quarterly Disbursement Statement, the Authority shall give its reasons for such rejection in a written notice to Recipient as provided in **Paragraph 20** hereof and the Recipient shall have five (5) Business Days from the date of receipt of the rejection notice, or within such further time as the Authority in its sole discretion permits, to cure any defects in the documents submitted and, provided the cure is accepted by the Authority, additional Disbursements may be made to the Recipient. If the Recipient fails to cure any defects to the Authority's satisfaction, the Authority may declare a default under this Agreement, effective upon notice to the Recipient, and shall have the remedies available to it as set forth in **Paragraph 11** hereof.

d. Disbursement Statements. The Initial Disbursement Statement and each Quarterly Disbursement Statement shall include:

(i) A complete and accurate Abandoned Property Program-Cumulative Accounting of the expenses for Eligible Uses incurred by the Recipient on a form supplied by the Authority.

(ii) Evidence and back-up documentation of expenses for Eligible Uses, including, but not limited to, receipts, ledgers, invoices, before and after pictures, addresses or geographic coordinates, and number of abandoned residential properties served.

(iii) Any and all other documents and showings reasonably requested by the Authority or its counsel.

e. Documentation Retention. As set forth in **Paragraph 12** hereof, Recipient shall maintain copies of all documents substantiating expenditures made by Recipient in connection with the Abandoned Property Program for a period of five (5) years after the Termination Date. Recipient shall ensure that all books, records, and supporting documents in relation to all expenses in connection with the Abandoned Property Program are maintained at the address listed for the Recipient in **Paragraph 20** hereof and are available for inspection by the Authority upon the Authority's request.

f. Bank Account for Disbursements. The Authority shall effectuate Disbursements by transferring the Funds directly to a bank account (the "Bank Account"), established at a bank or other financial institution (the "Bank") selected by the Recipient

and acceptable to the Authority. Recipient shall provide evidence of the Bank Account to the Authority on a form acceptable to the Authority and shall include ACH instructions on a form acceptable to the Authority. Recipient shall be responsible for the management of the Bank Account, and shall cause the Bank to provide the Authority with copies of statements upon the Authority's request. Recipient shall maintain the Bank Account as a separate account or a separate sub-account designated solely for the Abandoned Property Program. Any fees and costs charged or incurred by Bank in connection with the Bank Account shall be paid by the Recipient.

9. Reporting Requirements. The Recipient shall provide quarterly reports to the Authority within ten (10) calendar days of the end of each quarter, commencing with the first full quarter ending after the Effective Date in accordance with Section 381.209 of the Rules. The Recipient's submission of the Quarterly Disbursement Statements as set forth in **Paragraph 8** hereof will be sufficient to meet the reporting requirements under this **Paragraph 9**.

10. Additional Covenants.

a. Non-Discrimination.

i. The Recipient shall not, in the provision of services in connection with the Project, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, age, disability, national origin, familial or marital status, unfavorable military discharge or because the person is receiving governmental rental assistance.

ii. The Recipient shall comply with all of the provisions of Paragraph 13 of the IHDA Act, and all other provisions of federal, state and local law relative to non-discrimination.

iii. The Recipient agrees not to commit unlawful discrimination in employment in Illinois as that term is used in the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination The Recipient agrees to comply with the applicable provisions of the Fair Housing Act (42 USC 3601 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Illinois Environmental Barriers Act (410 ILCS 25), the Illinois Accessibility Code (71 Ill. Adm. Code 400), and all other applicable state and federal laws concerning discrimination and fair housing. The Recipient further agrees to take affirmative action to ensure that no unlawful discrimination is committed.

iv. The Recipient agrees and acknowledges that they are in compliance with and will remain in compliance with all federal and State laws, rules, and regulations required as a regular course of their business and pursuant to IHDA Act, the Rules, and the Abandoned Property Program. The Recipient agrees and acknowledges that it is its responsibility to determine which laws, rules and regulations apply.

b. Grant Act and Grant Transparency Act. The Recipient also acknowledges that the Authority's issuance of the Funds to the Sponsor is governed by the Illinois Grant Funds Recovery Act (30 ILCS 705) (the "Grant Act") and the Grant Accountability and Transparency Act (30 ILCS 70) (the "Grant Transparency Act") and agrees to comply with the Grant Act and the Grant Transparency Act, to the extent by which each applies to the Funds.

11. Violation of Agreement. Upon learning of a violation of any of the provisions of this Agreement by the Recipient or if the Authority determines, in its sole discretion, that the Recipient's performance of the Project is not satisfactory or that the Project is not yielding satisfactory results for the operation of the Abandoned Property Program, or if the Recipient becomes insolvent, defunct, or commences bankruptcy proceedings, or should any director, officer, employee or official of Recipient engage in fraud, willful misconduct or gross negligence or misappropriate any funds, then the Authority may give written notice of such violation or unsatisfactory performance to the Recipient, as provided in **Paragraph 20** hereof. If such violation or unsatisfactory performance is not corrected to the satisfaction of the Authority within thirty (30) days after the receipt of such notice, or within such further time as the Authority in its sole discretion permits, the Authority may declare a default under this Agreement, effective upon notice to the Recipient the Authority may:

- a. Recover the disbursed Funds, or such portion of the disbursed Funds as are, in the sole judgment of the Authority, related to the violation of this Agreement;
- b. Terminate this Agreement; and
- c. Exercise such other rights or remedies as may be available to the Authority under this Agreement, at law or in equity.

No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other existing or subsequent breach of this Agreement. No delay in exercising, failure to exercise, or incomplete exercise by the Authority of any right under this Agreement shall operate as a waiver of such right or any other right. The Authority's remedies are cumulative and the exercise of one remedy shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies.

Notwithstanding the foregoing thirty (30) day cure period for violations of the Agreement, the cure period for Requests for Disbursements shall be as set forth in **Paragraph 8** hereof.

12. Monitoring of Project. The Authority, the Auditor General and the Attorney General, and their respective agents or representatives (collectively, the "Auditor") shall have the right at any time from the Closing Date through five (5) years after the Termination Date, upon notice to the Recipient to inspect the books and records of the Recipient relating to the Project completed during the Project. Recipient shall make available this Agreement and all books, records and supporting documents related to this Agreement for review and audit by the Auditor. Recipient shall cooperate fully with any audit conducted by the Auditor and shall permit the Auditor full

access to all relevant materials. The required documentation may include, but is not limited to, a copy of the municipality's or county's Application to the Authority; all records relating to the Eligible Uses under the Program, as set forth in Section 381.203 of the Rules; and any other documentation required by the Auditor. Recipient further agrees that the failure of the Recipient to maintain the books, records, and supporting documents required by this **Paragraph 12** shall establish a presumption in favor of the State of Illinois and the Authority for the recovery of any funds paid by the State of Illinois or the Authority under this Agreement for which adequate books, records and supporting documentation are not available to support their purported disbursement.

13. Indemnification of the Authority. Recipient agrees to defend and indemnify and hold harmless the Authority from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that the Authority may incur or suffer by reason of or in connection with the Project, including without limitation the execution of the Fund Documents and the provision of the Funds. Recipient further agrees that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims. The obligations of Recipient under this **Paragraph 13** shall survive the provision of the Funds.

14. Drug-Free Workplace. If applicable, Recipient agrees to comply with the Drug Free Workplace Act (30 ILCS 580/1 *et seq.*). The Recipient's Drug Free Workplace Certification (form of which is attached hereto as **Exhibit A**) is made a part of this Agreement.

15. Amendment of Agreement. This Agreement shall not be altered or amended except by a written instrument signed by the parties to it.

16. Partial Invalidity. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of its remaining portions.

17. Binding on Successors. This Agreement shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest and assigns, provided that the Recipient may not assign this Agreement, its right to the Funds proceeds or any of its obligations under this Agreement without the prior written approval of the Authority.

18. Gender. The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

19. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of any provision of the Agreement.

20. Notices. Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to the Authority:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attention: Legal Department

If to Recipient:

City of Aurora
44 East Downer Place
Aurora, Illinois 60505
Attention: Ms. Abby Schuler

Such addresses may be changed by notice to the other party given in the same manner as provided in this **Paragraph 20**. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) Business Day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) Business Days after proper deposit with the United States Postal Service.

21. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers.

RECIPIENT:

CITY OF AURORA,
an Illinois unit of local government

By: _____

Name: _____

Title: _____

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____

Audra Hamernik, Executive Director

Approved as to form:

By: _____

Maureen G. Ohle, General Counsel

By: _____

Nandini Natarajan, Chief Financial Officer

Exhibit A: Drug-Free Work Place Certification

EXHIBIT A

DRUG FREE WORK PLACE CERTIFICATE

STATE OF ILLINOIS

This certification is required by the Drug Free Workplace Act (30 ILCS 580). The Drug Free Workplace Act, effective January 1, 1992, requires that no Recipient or contractor shall receive a Funds or be considered for the purposes of being awarded a contract for the procurement of any property or services from the State unless that Recipient or contractor has certified to the State that the Recipient or contractor will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or Funds payments, termination of the contract or Funds and debarment from contracting or Funds opportunities with the State for at least one (1) year but not more than five (5) years.

For the purpose of this certification, "Recipient" or "contractor" means a corporation, partnership, or other entity with twenty-five (25) or more employees at the time of the issuing of the Funds, or a department, division, or other unit thereof, directly responsible for the specific performance under a contract or Funds of \$5,000 or more from the State.

The contractor/Recipient certifies and agrees that it will provide a drug free workplace by:

- (a) Publishing a statement:
 - (1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the Recipient's or contractor's workplace;
 - (2) Specifying the actions that will be taken against employees for violations of such prohibition; and
 - (3) Notifying the employees that, as a condition of employment on such contract or Funds, the employee will:
 - A. abide by the terms of the statement; and
 - B. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug free awareness program to inform employees about:
 - (1) the dangers of drug abuse in the workplace;
 - (2) the Recipient's or contractor's policy of maintaining a drug free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs;
and

(4) the penalties that may be imposed upon an employee for drug violations.

(c) Providing a copy of the statement required by paragraph (a) hereof to each employee engaged in the performance of the contract or Funds and posting the statement in a prominent place in the workplace.

(d) Notifying the contracting or Funding agency within ten (10) days after receiving notice under subparagraph (3) of paragraph (a) hereof from an employee, or otherwise receiving actual notice of such conviction.

(e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5 of the Drug Free Workplace Act.

(f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF THE DESIGNATED ORGANIZATION.

CITY OF AURORA,
an Illinois unit of local government

By: _____

Name: _____

Title: _____