

**COMMUNITY DEVELOPMENT BLOCK GRANT DEVELOPER AGREEMENT  
PROJECT NUMBER: CDBG-2021-13  
BETWEEN CITY OF AURORA ILLINOIS, VISIONARY VENTURES NFP  
CORPORATION AND  
WEST AURORA SCHOOL DISTRICT 129 FOR  
TODD SCHOOL (100 OAK AVENUE) DEVELOPMENT PROJECT**

This **COMMUNITY DEVELOPMENT BLOCK GRANT DEVELOPER AGREEMENT PROJECT NUMBER: CDBG-2021-13 BETWEEN CITY OF AURORA ILLINOIS, VISIONARY VENTURES NFP CORPORATION AND WEST AURORA SCHOOL DISTRICT 129 FOR TODD SCHOOL (100 OAK AVENUE) DEVELOPMENT PROJECT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the City of Aurora Illinois, an Illinois municipal corporation ("City"), Visionary Ventures NFP Corporation, an Illinois not-for-profit corporation ("Developer") and West Aurora School District 129, an Illinois public school district ("District").

**WHEREAS**, the City has applied for and received non-Research and Development Community Development Block Grant funds, Catalog of Federal Domestic Assistance Number 14.218, Grant Numbers B-18-MC-17-0002, B19-MC-17-0002, and B20-MC-17-0002 ("CDBG"), from the United States Department of Housing and Urban Development ("HUD"), as provided by the Housing and Community Development Act of 1974, as amended (P.L. 93-383) ("Act") and with a Federal Award Date which shall be incorporated by an Addendum to this Agreement and is attached hereto as **Exhibit D**; and

**WHEREAS**, the City has considered and approved the application of the Developer for the Todd School (100 Oak Avenue) development project ("Project") and hereby agrees to distribute to the Developer a portion of the total CDBG funds allotted to the City by HUD for the Project, with the portion distributed to the Developer upon the conditions provided herein. This Agreement does not obligate the City to provide the Developer with any City funds which were not obtained from HUD pursuant to the Act; and

**WHEREAS**, the City, the District and the Developer enter into this Agreement pursuant to their respective powers to enter into such agreements, as those powers are defined in the Illinois Constitution and applicable statutes; and

**WHEREAS**, the Mayor or such City employee designated in writing by the Mayor, acting on behalf of the City, is authorized to execute any contracts, extensions, amendments, or other documents relating to the terms contained herein so long as any such documents are consistent with the scope of service contained herein and in accordance with HUD statutes, regulations, guidelines or any other applicable provisions; and

**WHEREAS**, in consideration of the Developer's performance of the Project, the City shall distribute to the Developer, as the Developer's portion of the total grant received by the City from HUD, the maximum amount of Six Hundred Thousand and 00/100 (\$600,000.00) ("Grant Funds"). In the event the City, for reasons beyond its

control, does not receive the actual grant money or receives a lesser amount than requested from HUD, the City shall not be obligated to provide the Grant Funds, or any money, to the Developer or may reduce the amount of the Grant Funds as the City in its sole judgment deems necessary; and

**WHEREAS**, the Project consists of the acquisition and development of a public healthcare facility, for the exclusive use of residents of the District with school-age children, at the Project's real property location commonly known as 100 Oak Avenue ("Property"), as legally described and depicted in **Exhibit E** ("Project Area") attached hereto and made a part hereof; and

**WHEREAS**, the Project shall be identified as the "Visionary Ventures NFP Corporation - Todd School (100 Oak Avenue) Development Project," which shall be used by the Developer on all payment requests and progress reports; and

**WHEREAS**, the District transferred all rights, title and interest in Todd School (100 Oak Avenue) to the City pursuant to the "Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois And West Aurora School District 129, Kane County, Illinois" ("IGA") which was approved and authorized by the City on December 22, 2020 in Resolution 20-326, a copy of the IGA is attached hereto and made a part hereof as **Exhibit F**. The IGA requires that the District be made a party to this Agreement and creates certain obligations and rights of the parties with respect to the properties subject to this Agreement. The City and the District desire to amend Section 2 of the IGA, which amendment is set forth in Section I.F.2(d) below and is made in recognition of the public good of the Project and the companion affordable housing development being undertaken by the Developer under the "HOME Agreement," as defined in Section IV.A.2. below;

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

**I. SCOPE OF SERVICE**

**A. Activities**

During Developer's direct or indirect ownership of the Project, the Developer will be responsible for compliance with CDBG grant requirements for the Project in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds. Such Project will include the following activities eligible under the Community Development Block Grant program:

**Project Delivery**

CDBG funds will be used for the hard construction costs, related soft costs (as permitted by law and regulation) and development of a public healthcare facility, for the exclusive use of residents of the District with school-age children, of approximately three thousand five hundred (3,500) square feet as part of the Project on the Property. The description of the buildout of the public healthcare facility, for the exclusive use of residents

of the District with school-age children, is set forth in **Exhibit G** attached hereto and made a part hereof (the "Healthcare Facility").

The Project will also deliver a mix of affordable studio, one (1), two (2) and three (3) bedroom units, totaling forty seven (47) units in three (3) buildings. Todd School built in 1934, just northwest of downtown Aurora sits on 1.12 acres and will be redeveloped to accommodate eleven (11) units on three (3) stories.

### **General Administration**

Not Applicable

#### **B. National Objectives**

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 C.F.R. § 570.208.

Subsequent to the completion of the build-out of the Healthcare Facility funded by the CDBG funds as described above, the Developer will convey Lot 2, on which the Healthcare Facility is located to the District with the understanding that the District will use such conveyed property as follows:

The lease, license, operating agreement or other agreement that will be obtained by the District for the operation of the Healthcare Facility shall include a certification that the activity carried out under this Agreement will meet the following National Objective: **benefit low and moderate income persons**. The CDBG program's low and moderate income persons are defined as individuals or households with incomes, adjusted for household size, that are at or below eighty percent (80%) of the City's current area median income (per HUD's income limits).

#### **C. Levels of Accomplishment – Goals and Performance Measures**

The lease, license, operating agreement or other agreement that will be obtained by the District for the operation of the Healthcare Facility shall provide for no less than the following levels of project services:

<u>Actions/Activities</u>	<u>Total Units/Year</u>
Estimated Persons or Households Assisted Annually	_____
Estimated Persons or Households Assisted Through the 5 -Year Compliance Period	_____

D. Staffing

The lease, license, operating agreement or other agreement that will be obtained by the District for the operation of the Healthcare Facility shall provide that any changes in the key personnel assigned or their general responsibilities relating to the Healthcare Facility are subject to the prior written approval of the City.

E. Performance Monitoring

The lease, license, operating agreement or other agreement that will be obtained by the District for the operation of the Healthcare Facility shall include the agreement of the Healthcare Facility to take any and all necessary steps to ensure the above-stated goals and performance measures are met. The City will monitor the performance of the Healthcare Facility against goals and performance standards as stated above. The lease, license, operating agreement or other agreement that will be obtained by the District for the operation of the Healthcare Facility shall include provision that (1) the City will receive all necessary reporting information, including but not limited to quarterly progress reports, as required in the administration and review of the Project(s). Substandard performance as determined by the City will constitute noncompliance with this Agreement; (2) if action to correct such substandard performance is not taken by the owner of the Healthcare Facility at such time within sixty (60) calendar days after being notified by the City, contract suspension or termination procedures and repayment of expended funds will be initiated; and (iii) repayment by to the City will be required within ninety (90) calendar days of receipt of a written demand for such repayment as given in the manner set forth in Section V. The repayment obligations in this Section I.E. shall be in effect only for the Compliance Period, as defined in Section VII.E.2. below.

F. Additional Obligations Contained In IGA.

1. The conveyance of the Todd School to Developer will be “as is” with no representations, warranties, or guarantees with respect to the condition of the land, structure(s), or other improvements, including mechanical systems, provided, however, title shall be conveyed subject only to the exceptions described in Section 4.B. of the IGA.
2. As part of the redevelopment of the Todd School, Developer has approved, a plat of subdivision for the Todd School consisting of two (2) Lots.
  - a) Lot 2 will be no less than three thousand five hundred (3,500) square feet and as much as approximately four

thousand (4,000) square feet of contiguous space at the northeast wing of the building (depicted on Exhibit C to the IGA) to be built out and improved by Developer for use by the District for office, examination, food distribution, and other school-related services and Healthcare Facility. The build out will be designed by Developer and will be subject to the District's prior approval as to both design and materials used. The build out will include all public utilities, including potable water, sanitary sewer, gas, and electric services, as well as metering. The build out will also be paid entirely by the CDBG funds Developer receives hereunder and other of Developer's available funds, and the District shall have no financial responsibility for the design, labor, materials, fees, meters or permits relative to that build out.

- b) Lot 1 will be the balance of the Todd School building, as well as all the land and exterior improvements, to be improved by the Developer consistent with plans approved by the City, as well as any other governmental agency with jurisdiction over the Developer's planned use of the Lots.
- c) Upon build out, and in consideration of the conveyance of the Todd School, the Developer will convey fee simple of Lot 2 to the Board of Education of the District for its exclusive ownership and use. Upon such conveyance, the District will assume responsibility for monthly service charges for all public utilities for Lot 2, including potable water, sanitary sewer, gas, and electric services and all other expenses related to Lot 2 except as set forth in subsection I.F.1.d. below.
- d) The City and the District hereby amend Section 2.D. of the IGA to read as follows, and the City and the District shall have the following ongoing obligations with regard to Lot 2:

After Lot 2 has been built out and has received a final certificate of occupancy from the CITY, the SCHOOL DISTRICT and the CITY shall equally share the costs of structural matters for Lot 2, including roofing, windows, HVAC, and tuck-pointing. At all times the Developer will remain responsible, at its sole cost and expense, for the exterior lighting, parking lots, landscaping, mowing, trimming, snow removal, trash removal, and the like on the Property, and neither the SCHOOL DISTRICT nor the CITY shall have any responsibility or liability therefor

- e) At all times, Developer will remain responsible, at its sole cost and expense, for Lot 1, the exterior lighting, parking

lots, landscaping, mowing, trimming, snow removal, trash removal, and the like on the Property, and neither the District nor the City shall have any responsibility or liability therefor.

- f) Developer shall, without cost to the City or the District, grant to the District a permanent easement for as many as five (5) parking spaces in the parking lot at the Todd School depicted on Exhibit C to the IGA for District use, as well ingress and egress to Lot 2.
- g) Notwithstanding any term in this Agreement to the contrary, Developer shall comply with all obligations of the "Developer" in the IGA, except as such obligations have been amended in this Agreement.

G. Mortgage and Note. Prior to receipt of any funding under this Agreement, Developer shall execute and deliver to the City (1) a mortgage in the form attached as Exhibit H ("Mortgage") in the amount of the Grant Funds, with such changes thereto as approved by the City to conform the Mortgage to the terms of this Agreement, (2) a note in the form attached as Exhibit I ("Note") in the amount of the Grant Funds, with such changes thereto as approved and/or required by the City to conform the Note to the terms of this Agreement. The Mortgage and Note shall be in effect during the "Compliance Period," as defined below. Simultaneous with Developer taking title to the Property, Developer shall record against title to the Property as described on Exhibit E attached hereto, with the Kane County Recorder's office at Developer's cost, the executed Mortgage.

## II. TIME OF PERFORMANCE

Services of the Developer may start on the \_\_\_\_ day of \_\_\_\_\_, 2022 and end on the construction completion, anticipated to be on or before November 30, 2023. With thirty (30) days prior written approval of the City, the term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer remains in control of CDBG funds or other CDBG assets, including program income, provided that the work for which the extension is requested is consistent with the Developer's scope of service contained herein.

## III. BUDGET

CDBG Funds shall be used solely for the stated purposes set forth in this Agreement and Exhibit A attached hereto and made a part hereof, and the expenditures shall be supported by contracts, invoices, vouchers and other data as appropriate, including any reports required by the City, evidencing the costs incurred. On a biannual basis, or more frequently as needed if requested, the Developer shall tender an updated budget along with any and all supporting documents. Any and all interest earned on the CDBG Funds shall be remitted to the City. If the CDBG Funds are not expended in accordance with the terms,

conditions and time period set forth in this Agreement or the total amount of the CDBG Funds exceeds the eligible costs of the Project, the amounts improperly expended or not expended shall be returned by the Developer to the City within thirty (30) days after the expiration or termination of this Agreement. The City shall require delivery before payment is made for purchased goods, equipment or services unless the City obtains satisfactory security from the vendor.

Project costs shall be paid in accordance with the budget allocations outlined in **Exhibit A**. All costs incurred must be fully documented. Any indirect costs charged must be consistent with the conditions of Section VII (C)(2) of this Agreement. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Developer shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to the budget must be approved in writing by the City, the District and the Developer.

#### **IV. PAYMENT AND REPAYMENT TERMS**

##### **A. Payment Conditions**

The City shall not disburse any funds to the Developer under this Agreement unless:

1. Developer provides the City with acceptable written evidence of funding for the entire Project, in a format requested by the City.
2. The Developer is in full compliance with this Agreement, the "Development Agreement Between The City Of Aurora, Visionary Ventures NFP Corporation And West Aurora School District 129 Relating To The Todd School (100 Oak Avenue) And The Lincoln School (631 South Lake Street) Development Project HOME-2021-02" ("HOME Agreement") and the City of Aurora Municipal Code.
3. The Developer is proceeding under the HOME Agreement with construction and development of the "Project," as defined in the HOME Agreement.
4. The City has been notified by the District in writing that an adequate lease, license, operating agreement or other agreement, that includes the terms required in this Agreement, has been obtained for the Healthcare Facility portion of the Project, which lease, license, operating agreement or other agreement has a term of no less than five (5) years.

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement, for the sole and express purpose of undertaking the scope of services for the Project as specified in Section I, shall not exceed Six Hundred Thousand and 00/100 Dollars (\$600,000.00). Reimbursement from the Grant Funds for the payment of eligible expenses of the Project shall be made by the City in an amount

not to exceed a proportional amount of Developer's Project budget expended as of the date of Developer's payment request is made and in accordance with performance. For example, if Developer has expended ten percent (10%) of its Project budget as of the date of a payment request, the maximum amount of Grant Funds to be paid for that request would be ten percent (10%) of the Grant Funds, which is Sixty Thousand and No/100 Dollars (\$60,000.00).

Payments may be contingent upon certification of the Developer's financial management system as required by the applicable provisions of 2 CFR 200, *et. seq.* The City reserves the right to suspend payments should the Developer fail to provide required reports in a timely and adequate fashion or if the Developer fails to meet other terms and conditions of this Agreement.

The Developer shall keep all records of the CDBG funds in a manner that is consistent with generally accepted accounting principles.

The City's obligation to pay the Developer under this Agreement is conditioned on, in addition to the other conditions precedent herein, the Developer being in compliance with its obligations in this Agreement and the Developer being in compliance with the obligations of the "Developer" in the IGA, as amended in this Agreement. If the City elects to withhold or deny payment to Developer, the City shall advise the Developer in writing as to the specific basis for the City's position.

#### B. Payment Requests and Processing

When submitting a payment request ("Payment Request") to the City for eligible rehabilitation, construction, and carrying costs which Developer has incurred, all such Payment Requests shall include (if not already submitted): (1) the most current City-approved Project plans, (2) building permits issued by the City, (3) evidence of an agreement which commits Developer to an amount of at least equal to the amount requested in the Payment Request for purposes of rehabilitation of the Property, (4) paid receipts, lien waivers and/or invoices for rehabilitation/construction costs submitted for the Property, (5) such additional information and documents as reasonably requested by the City, and (6) the following certifications:

1. For interim payments to contractors and subcontractors, certification that the work for which payment is requested has been performed and is in place and to the best of Developer's knowledge, information and belief, the quality of such work is in accordance with the subcontract and all applicable City Codes, a copy of all applicable contractor waivers, and subject to: (a) any evaluation of such work as a functioning project upon substantial completion, (b) the results of any subsequent tests permitted by the subcontract, and (c) any defects or deficiencies not readily apparent upon inspection of the work; and



2. For final payment on the rehabilitation of the Property and all dwelling units therein, all of the above noted certifications, as well as a certification that all other applicable laws and regulations have been met or exceeded.

3. A statement by Developer, under oath, that it is entitled to the amounts requested in the Payment Request.

Developer shall simultaneously submit Payment Requests to the City and a courtesy copy thereof to the District. If the Project comes in under budget, meaning that at construction completion, the costs are less than the costs set forth in the construction contract, the City may retain the portion of the Grant Funds not paid to Developer. If the Project comes in over budget, meaning that at construction completion, the costs are greater than the costs set forth in the construction contract, the Developer will be responsible for the overage.

#### C. Repayment

In the event that the City is required to repay the CDBG funds as a result of the Project's failure to comply with any CDBG, HUD or other federal regulation or law, the owner of the Project at the time of non-compliance shall repay the City the amount of the "Project Commitment" (as defined in Subsection IV.A. above) paid by the City to Developer pursuant to this Agreement ("Paid Commitment") as follows:

1. Should the Healthcare Facility not be in operation within twelve (12) months from the completion date of the construction phase of the Project, a marketing plan to find an eligible provider or plan to lease the space for an eligible use, at project owner's cost, shall be submitted by the Project owner to the City.

2. Should the Healthcare Facility not be in operation for at least five (5) years from commencement, immediate repayment of the Paid Commitment by the Project owner at the time of non-compliance to the City shall be made.

The repayment obligations in this Section IV.C. shall be in effect for the Compliance Period, as defined in Section VII.E.2. below.

#### V. NOTICES

Notices required by this Agreement shall be in writing and delivered via regular mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means, such as e-mail. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following representatives:

City

Chris Ragona  
*Community Development Manager*  
City of Aurora  
Community Development Division  
44 E. Downer Place  
Aurora, IL 60505  
Phone: 630-256-3320  
Fax: 630-256-3329  
Email: ragonac@aurora.il.us

Developer

Visionary Ventures NFP Corporation  
c/o Shelly Tucciarelli  
President/Executive Director  
Visionary Ventures  
232 S. Oak Street  
Itasca, IL 60143  
Phone: 312-286-1737  
Email: stucciarelli.vvnfp@gmail.com

Copy to:

JM Developers, LLC  
346 N. Lake Street  
Aurora, IL 60506  
Attn: Michael Poulakidas

And:

Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, IL 60605  
Attention: Nicholas Brunick

West Aurora School District 129  
Attn.: Superintendent  
1877 W. Downer Place  
Aurora, IL 60506

AND:

Whitt Law, LLC  
70 S. Constitution Drive  
Aurora, IL 60506

## **VI. GENERAL CONDITIONS**

### **A. General Compliance**

Each of the Developer and the District agree to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) neither the Developer nor the District assume the recipient's environmental responsibilities described in 24 CFR 570.604

and (2) neither the Developer nor the District assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Developer and the District also agree to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The Developer further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Developer shall at all times remain an "independent contractor" and not an employee of the City or the District with respect to the Project and the services to be performed under this Agreement. The City and the District shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Developer is an independent contractor.

C. Hold Harmless

The Developer shall hold harmless, defend and indemnify the City, the District, and their respective elected officials, employees, and agents from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Developer's performance or nonperformance of the Project and the services or subject matter set forth in this Agreement.

D. Workers' Compensation

The Developer shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Developer shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and at a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to the total grant amount.

The Developer shall comply with the bonding and insurance requirements as required by the applicable provisions of 2 CFR 200, *et. seq.*

F. City Recognition

The Developer shall ensure recognition of the role of the City in the Project and the provision of services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Developer will

include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The City, the District and the Developer may amend, consistent with applicable terms and conditions, this Agreement at any time provided that such amendment(s) make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and/or approved by the City's and the District's respective governing bodies when deemed appropriate by the City and the District in accordance with their respective policies and procedures. Such amendments shall not invalidate this Agreement, nor relieve or release the City, the District or the Developer from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts. If such amendments result in a change in the funding, the Project, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by the City, the District, and the Developer.

H. Suspension or Termination

In accordance with 2 CFR 200.338 – 200.342, the City may suspend or terminate this Agreement if the Developer materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Developer to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;  
or
4. Submission by the Developer to the City of reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR Part 200 Uniform Administrative Requirements, this Agreement may also be terminated for convenience by either the City or the Developer, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the

portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City in its sole discretion may terminate the award in its entirety.

Notwithstanding anything contained herein to the contrary, upon notice to the Developer of its failure to comply with the terms of the Agreement, the Developer shall have thirty (30) days to cure such breach, provided, that if the breach is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, so long as the Developer institutes curative action within the applicable period and diligently pursues that action to completion, the Developer shall have an additional ninety (90) days to cure such breach. Provided further that if the District owns Lot 2, the District shall have the sole obligation to cure such breach and shall have the same cure period to do so.

In the event of a breach by the Developer or the District, the City reserves its right to enforce any and all of its cumulative legal remedies and rights, including, without limitation, seeking monetary damages or injunctive relief. The parties agree that this Agreement is governed by the laws of the state of Illinois, and venue for any legal action shall be proper only in the Circuit Court of Kane County, Illinois.

## **VII. ADMINISTRATIVE REQUIREMENTS**

### **A. Financial Management**

#### **1. Accounting Standards**

Each of the Developer and the District agrees to comply with the applicable provisions of 2 CFR Part 200, *et. seq.* and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### **2. Cost Principles**

Each of the Developer and District shall administer its program in conformance with the applicable provisions of 2 CFR Part 200, *et. seq.* related to , “Cost Principles for Non-Profit Organizations” and “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### **B. Documentation and Record Keeping**

#### **1. Records to be Maintained**

The Developer and the District shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the Project and the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a) Records providing a full description of each activity undertaken;
- b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c) Records required to determine the eligibility of activities;
- d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR 570.502, and as required by the applicable provisions of 2 CFR 200, *et. seq.*; and
- g) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

## 2. Retention

The Developer and the District shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years from the completion date identified in the Integrated Disbursement and Information System (IDIS). Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five (5) year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five (5) year period, whichever occurs later.

## 3. Client Data

The Developer and the District shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request. The Developer and the District shall retain all client data records and all other records pertinent to the Agreement for a period of five (5) years from the completion date identified in the Integrated Disbursement and Information System (IDIS)

## 4. Disclosure

The Developer and the District understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or the Developer's or the District's responsibilities with respect to the Project and services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian, except to the extent such use or disclosure is required by applicable federal, state or local law.

5. Closeouts

The Developer's obligation and the District's obligation to the City shall not end until all of their respective close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Developer has control over CDBG funds, including program income.

6. Audits & Inspections

All Developer and District records, with respect to their period of Project Owner, with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cured by the Developer within 30 days after receipt of notice of deficiency by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Developer hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning the Developer audits and Uniform Guidance. The Developer shall complete and sign the Audit Certification Form presented as Exhibit "C" of this Agreement.

The District and the Developer shall make available to the other all of its records with respect to any matters covered by this Agreement as reasonably requested in order for the other's audit to be completed and as reasonably requested for the other to

complete any other reports required to be delivered by the other under this Agreement.

C. Reporting and Payment Procedures

1. Program Income

The Developer and the District, as applicable, shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Developer and the District shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitation, the Developer and the District may use such income during the agreement period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the City at the end of the Agreement period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

2. Indirect Costs

If indirect costs are charged and the Developer does not have a federally negotiated Facilities and Administrative Rate (F&A Rate), the Developer may charge a de minimis indirect cost rate as defined in 2 CFR Section 200.414 Indirect (F&A) costs, paragraph (f), or develop an indirect cost allocation plan for determining the appropriate Developer's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City before said charges are billed.

3. Payment Procedures

The City will pay to the Developer funds available under this Agreement based upon information submitted by the Developer and consistent with any approved budget and City policy concerning payments. Developer Payments will be adjusted by the City in accordance with advance fund and program income balances available in the Developer accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Developer.

4. Progress Reports



The Developer and the District shall submit regular Progress Reports to the City in the form, content, and frequency as required by the City.

D. Procurement

1. Compliance

The Developer and the District shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.

2. OMB Standards

Unless specified otherwise within this Agreement, the Developer shall procure all materials, property, or services in accordance with the applicable provisions of 2 CFR 200, *et. seq.*

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR 200, *et. seq.* and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Developer shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Developer's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after the completion date in the Integrated Disbursement and Information System (IDIS) ("Compliance Period"). If the Developer fails to use CDBG-assisted real property that is under its control in a manner that meets a CDBG National Objective for the prescribed period of time, the Developer shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the City. The Developer may retain real property acquired or improved under this Agreement after the expiration of the Compliance Period. For avoidance of doubt, once the Developer conveys Lot 2 to the District, Lot 2 will not be under the control of the Developer, and the Developer will have no liability

for the failure of Lot 2 to satisfy a CDBG National Objective pursuant to 24 CFR 570.208.

## **VIII. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Developer agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Developer shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Developer also agrees to comply with applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

## **IX. PERSONNEL & PARTICIPANT CONDITIONS**

### **A. Civil Rights**

#### **1. Compliance**

The Developer agrees to comply with all the requirements set forth in 24 CFR Part 570.600, including but not limited to, Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### **2. Nondiscrimination**

The Developer agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

#### **3. Section 504**

The Developer agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the

individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Plan

The Developer agrees that it shall be committed to carry out an affirmative action program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Developer agrees to not discriminate against any worker, employee, or applicant, or any member of the public because of race, religion, handicap, creed, color, sex, age or national origin, or otherwise commit an unfair employment practice; and take affirmative action to ensure that applicants are employed without regard to race, religion, handicap, creed, color, sex, age or national origin, with such affirmative action including, but not limited to the following: employment, upgrading, demotion or transfer, termination, rates of pay, other forms of compensation, selection for training, including apprenticeships.

2. Women-, Minority- and Disabled Person-Owned Businesses

The Developer will use its best efforts to afford small businesses, minority business enterprises, women's business enterprises and disabled person business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Developer may rely on written representations by businesses regarding their status as minority, female or disabled person business enterprises in lieu of an independent investigation.

Documentation in the form provided by the City shall be completed by the Developer and any contractor/subcontractor identifying whether or not said entity is classified as a Women-, Minority- and/or Disabled Person-Owned Businesses.

3. Access to Records

The Developer shall furnish and cause each of its own Developers or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Developer will include the provisions of Sections IX.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, that is entered into by Developer so that such provisions will be binding upon each of its own Developers or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Developer is prohibited from using funds provided herein or personnel employed in the administration of the project for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act of 1931, 40 U.S.C. §§ 3141 to 3148. Developer shall comply with the Federal Labor Standards and shall pay workers on the Project either the Davis Bacon Prevailing Wage Rates, including the conducting of employee interviews of the contractor and/or subcontractors at the job site. The Developer shall require all contractors and subcontractors to submit weekly timesheets for all workers on the jobsite performing labor and shall also require that all payrolls include the worker's name, job title according to the locked in wage decision, wages and fringes, and lastly confirm that if fringes are not included, that they are paid in cash at an hourly rate to each worker as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the

performance of this Agreement. The Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher wage. The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

D. Bid Specifications

1. Developer's bid specifications and/or work write-ups ("Bid Specifications") shall comply with the requirements as set forth in 2 C.F.R. § 200 *et seq.* which include but are not limited to the inclusion of a clear and accurate description of the technical requirements for the material, product or service to be procured (such description shall not contain features which unduly restrict competition); Developer shall assure the best available price for any contracts and subcontracts for construction activities associated with the Project and shall provide to City all materials requested by City so that the City is able to review and approve the construction cost estimates and determine that costs are reasonable. The City shall also utilize the cost reasonableness review of the Illinois Housing Development Authority (IHDA) to determine that costs are fair and reasonable. Developer shall provide City with copies of all executed contracts and provide a description, whenever practicable, of technical requirements in terms of functions to be performed, including the range of acceptable characteristics or minimum acceptable standards; specific features of "brand name or equal" descriptions that bidders are required to meet; acceptance to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement; preference, to the extent

practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

2. Developer shall further, to the extent it is applicable, comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u, ("Section 3") by making efforts to offer training and employment opportunities to low and very low income residents of the Project area, should Developer find it necessary to hire additional employees to carry out the Project, and by making efforts to award contracts to Section 3 Business Concerns when contracting for the rehabilitation work involved in the Project. All Section 3 contracts shall include the following clauses (referred to as "Section 3 Clauses"):

- (1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 ("HUD"), as amended, 12 U.S.C. § 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons (Section 3 workers and Targeted Section 3 workers) and to eligible businesses (Section 3 Businesses) and require the same of its contractors.
- (2) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with such regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, notice advising the labor organization or workers' representative of contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR 75.9 or 24 CFR Part 75.19, as applicable, and agrees to take appropriate action, as provided in the applicable provision of the subcontract or in this Section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations of 24 CFR Part 75.
  - (5) The contractor will certify that any vacant employment positions, including the training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.
  - (6) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 3. If sealed bids are required, Developer shall provide the City with a copy of the classified advertisements and the results from the bid opening. The contract award will be made in writing to the lowest qualified responsive and responsible bidder that meets specifications. Any or all bids may be rejected, if there is reason to believe that the low bidder will be unable to complete the project in accordance with the Bid Specifications, including, but not limited to, the following reasons: contractor has been debarred by the U.S. government from working on Federally-funded projects; contractor is unable to furnish any required bond; contractor has a poor record of past performance; or contractor's bid is unusually low in relation to other bids and contractor is not able to document how it will be able to meet the Bid Specifications for the amount bid. Developer shall include in any invitation for bids or work write-up being used to solicit bids, the statement "Minorities and women contractors and Section 3 businesses are encouraged to submit bids." Developer shall send an invitation to bid to the Minority Business Enterprise ("MBE") and Woman-owned Business Enterprise ("WBE") firms currently listed with the City, as appropriate for the type of work to be done. Developer shall also send an invitation to bid to all known Section 3 business concerns within the project area.
- 4. Except as otherwise required by law, ordinance, or regulation, Developer may follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for

contracts or subcontracts entered into by Developer exceeding One Hundred Thousand and Fifty and No/100 Dollars (\$150,000.00). Such contracts or subcontracts must meet the following requirements: a bid guarantee from each bidder equivalent to Five Percent (5%) of the bid amount shall be obtained consisting of a bid bond, certified check, or other negotiable instrument; a performance bond on the part of the contractor for One Hundred Percent (100%) of the contract price shall be required; and a payment bond on the part of the contractor for One Hundred Percent (100%) of the contract price shall be required.

5. Developer shall provide the City with copies of all executed contracts for the Project.

E. Developer Conduct

1. Assignability. The Developer shall not assign or transfer any of its duties and obligations in this Agreement without the prior written consent of the City thereto, including any assignments for claims for money due or to become due to the Developer from the City under this Agreement to a bank, trust company, or other financial institution.
2. Subcontracts.
  - i. Approvals: The Developer is hereby granted authority to subcontract all or any portion of the Project as the Developer shall deem appropriate or necessary and upon such terms as may be acceptable to the Developer and which comply with all applicable laws, rules and regulations. Administration of any subcontracts by the Developer shall be in conformance with the applicable provisions of 2 CFR 200, *et. seq.*
  - ii. Content: The Developer shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
3. Hatch Act. The Developer agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
4. Conflict of Interest. The Developer agrees to abide by the applicable provisions of 2 CFR 200, *et. seq.* and 24 CFR 570.611, which include (but are not limited to) the following:
  - a) The Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts for the Project.



- b) No employee, officer or agent of the Developer shall participate in the selection, or in the award, or administration of, a contract for the Project if a conflict of interest, real or apparent, would be involved.
- c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Developer, or any designated public agency.

5. Lobbying. The Developer hereby certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and
- c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants,

and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly:

d) Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Reporting of Total Compensation of Developer Executives

The Developer shall complete certifications regarding Reporting of Total Compensation of Developer Executives, with reference to the Project, as set forth in the Equal Employment Opportunity Certification, attached hereto as **Exhibit H**, and made a part hereof by reference.

7. Copyright

If this Agreement results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

8. Religious Activities

The Developer agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**X. ENVIRONMENTAL CONDITIONS**

A. Air and Water

The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry,

reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Developer agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Developer agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

E. Mitigation Measure Condition and Mitigation Plan

Per the regulations of 24 CFR Part 58, The City of Aurora completed a HUD required Environmental Assessment and identified the following Mitigation Measure or Conditions and Mitigation Plan:

“Lead based paint hazards and lead based paint to be disturbed as part of rehab activities will be abated using safe work practices by certified personnel. Interim clearance will be conducted after demolition activities and prior to work commencing. Identified Asbestos Containing Materials (ACM) and any suspected ACM uncovered during demolition and reconstruction activities that testing determines is ACM, will be mitigated and safely removed and disposed of in accordance with local, state, and federal regulations. Any presence of mold discovered will be mitigated and safely removed and disposed of in accordance with local, state, and federal regulations. Finally, upon the completion of the project, but before the lease up of units, radon testing will be completed to confirm the pCi/L amount is below the acceptable amount of 4pCi/L. The Developer will be responsible for all costs associated with additional testing, remediation, and required abatement.”

**XI. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XII. SECTION HEADINGS AND SUBHEADINGS**

The Section headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement, and should be ignored in construing or interpreting this Agreement.

**XIII. WAIVER**

The City’s failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XIV. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the City and the Developer for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Developer with respect to this Agreement.

**XV. SUBJECT TO FINANCIAL ASSISTANCE AGREEMENT**

This Agreement is made subject to financial assistance agreements between the City and HUD, with the rights and remedies of the parties hereto being in accordance with this Agreement.

## **XVI. ATTORNEY'S OPINION**

If requested, the Developer shall provide an opinion by its attorney, in a form reasonably satisfactory to the Corporation Counsel of the City of Aurora, that all steps necessary to adopt this Agreement, in a manner binding upon the Developer, have been taken by the Developer. If requested, the District shall provide an opinion by its attorney, in a form reasonably satisfactory to the Corporation Counsel of the City of Aurora, that all steps necessary to adopt this Agreement, in a manner binding upon the District, have been taken by the District.

## **XVII. TERM**

Unless terminated by the City, this Agreement shall remain in effect for the entirety of the Compliance Period and for a period of five (5) years thereafter. Developer's indemnification obligations in Sections VI. and XVIII. shall survive the termination, or expiration, of this Agreement.

## **XVIII. RELEASE AND INDEMNIFICATION**

During Developer's direct or indirect ownership of Lot 2, the Developer shall (i) assume all obligations of ownership and construction of the Healthcare Facility in a manner consistent with all local, state and federal laws and regulations, including but not limited to CDBG and HUD laws and regulations, and (ii) indemnify the District, its directors, officers, members, employees and agents and save it harmless against any and all liabilities, including judgments, costs and reasonable attorney fees, for any action or omission by the Developer with respect to its obligations hereunder and for any death, personal injury, or damage to property that occurred or was alleged to occur during the period of the Developer's direct or indirect ownership of Lot 2.

Upon Developer's conveyance of Lot 2 to the District, the District shall (i) assume all obligations of ownership and operations of Lot 2 and the Healthcare Facility in a manner consistent with all local, state and federal laws and regulations, including but not limited to CDBG and HUD laws and regulations, and (ii) indemnify Developer, its directors, officers, members, employees and agents and save it harmless against any and all liabilities, including judgments, costs and reasonable attorney fees, for any action or omission by the District with respect to its obligations hereunder and for any death, personal injury, or damage to property that occurred or was alleged to occur during the period of the District's ownership of Lot 2.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

[SIGNATURE PAGE FOLLOWS]

**CITY OF AURORA ILLINOIS**

**VISIONARY VENTURES NFP CORPORATION**

BY: \_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

ITS: Community Development Manager

\_\_\_\_\_  
Name

ATTEST: \_\_\_\_\_  
CITY CLERK

ATTEST: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

DATE: \_\_\_\_\_, 2022

\_\_\_\_\_  
(Federal Identification Number)

\_\_\_\_\_  
(DUNS Number)

DATE: \_\_\_\_\_

**WEST AURORA SCHOOL DISTRICT 129**

BY: \_\_\_\_\_  
SIGNATURE

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

# EXHIBIT A

## 2021 CDBG BUDGET

### Project No. CDBG-2021-13 VISIONARY VENTURES NFP CORPORATION - TODD SCHOOL (100 OAK AVENUE) DEVELOPMENT PROJECT

	COLUMN A Designated Use of Funds	COLUMN B Total Amount/Value (Including CDBG)	COLUMN C Amount of CDBG Funds
1.	Direct Project Costs – MUST Match Application Description		
2.		\$	\$
3.		\$	\$
4.		\$	\$
5.		\$	\$
6.		\$	\$
7.		\$	\$
8.		\$	\$
9.		\$	\$
10.		\$	\$
11.		\$	\$
12.	SUBTOTAL:	\$ 0.00	\$ 0.00
	Personnel/Administrative Costs (Group salary/benefits together for each position title)*		
1.		\$	\$
2.		\$	\$
3.		\$	\$
4.		\$	\$
5.		\$	\$
6.		\$	\$
7.		\$	\$
8.		\$	\$
9.		\$	\$
10.		\$	\$
11.	SUBTOTAL:	\$ 0.00	\$ 0.00
	OVERALL Project TOTAL (Direct Project Costs + Personnel Admin.):	\$ 0.00	\$ 0.00

\*Personnel/Administrative Costs (***Group salary/benefits together for each position title***)





## EXHIBIT B

FY 2021

### REPORTING OF TOTAL COMPENSATION OF Developer EXECUTIVES

**Project No. CDBG-2021-13  
VISIONARY VENTURES NFP CORPORATION - TODD SCHOOL (100 OAK  
AVENUE) DEVELOPMENT PROJECT**

For sub-awards equal to or greater than \$25,000, report the names and total compensation of each of the Developer's five most highly compensated executives for the Developer's preceding completed fiscal year, if:

- (A) 80 percent or more of its annual gross revenues is from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- (B) \$25,000,000 or more in annual gross revenues is from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- (C) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

Name	Total Compensation
1.	
2.	
3.	
4.	
5.	

☐ Check here if the above qualification does not apply to the Developer organization.

(FFATA/FSRS)

\_\_\_\_\_  
Signature, Board Chairperson

\_\_\_\_\_  
Date signed

ATTEST:

\_\_\_\_\_  
Signature, Executive Director/President

\_\_\_\_\_  
Date signed

**EXHIBIT C**  
**Project No. CDBG-2021-13**

**FY 2021**  
**Community Development Block Grant (CDBG)**  
**Audit Certification**  
**Community Development Block Grants/Entitlement Grants**  
**CFDA 14.218 (CDBG)**

**Visionary Ventures NFP Corporation**

Address: **232 S. Oak Street, Itasca, IL 60143**

Audit Point of Contact: **Shelly Tucciarelli President/Executive Director**

Phone: **312-286-1737** E-mail address: **stucciarelli.vvnfp@gmail.com**

The City of Aurora ("City"), as administrator of federal Community Development Block Grant and HOME Investment Partnership Act funds, is responsible for ensuring compliance with Federal, State and local laws and regulations in the performance of grant work. Federal regulations require that non-Federal organizations, **which expend \$750,000 or more in total Federal assistance** during their fiscal year, must have a Single Audit performed in accordance with the Single Audit Act of 1984 (as amended) and Office of Management and Budget (OMB) UNIFORM GUIDANCE. The City is required to monitor our sub-recipients of federal awards and determine whether they have met the audit requirements of the Uniform Guidance and whether they are in compliance with federal laws and regulations.

If your jurisdiction/organization met the above expenditure threshold you must submit a copy of the Single Audit report to the City. Please note that you are only required to submit to us a Single Audit report for those fiscal years that your organization received CDBG and/or HOME funding through the City and the expenditure threshold is met. Failure to provide the required audit report or reports will affect your organization's Federal assistance in future years.

Accordingly, we are requesting that you check one of the following, INSERT INFORMATION AS TO THE END DATE FOR YOUR FY20 fiscal year, sign and date the letter and return it to us at your earliest convenience.

1.\_\_\_\_ We have completed our single audit for fiscal year ended \_\_\_\_\_. A copy of the audit reports and all applicable reports are enclosed. (If material exceptions were noted, please enclose a copy of the responses and corrective actions taken.)

2.\_\_\_\_ We expect our single audit for the fiscal year ending \_\_\_\_\_ to be completed by \_\_\_\_\_. A copy of the audit report will be forwarded to the Community Development Division, Attn: Chris Ragona, Community Development Manager, 44 E. Downer Place, Aurora, IL 60505 within 30 days of the receipt of that report.

3.\_\_\_\_ We are not subject to a single audit for the **fiscal year ending (mm/dd)**

\_\_\_\_\_ because:  
\_\_\_\_\_ We expend less than \$750,000 in federal awards (from all sources)  
annually.  
\_\_\_\_\_ We are a for-profit organization.  
\_\_\_\_\_ Other (please  
explain)\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Type or Print Name Title

\_\_\_\_\_  
\_\_\_\_\_  
Signature Date

**EXHIBIT D  
PY 2021  
Community Development Block Grant (CDBG)**

**Project No. CDBG-2021-13  
VISIONARY VENTURES NFP CORPORATION - TODD SCHOOL (100 OAK  
AVENUE) DEVELOPMENT PROJECT**

**ADDENDUM**

# Certification for a Drug-Free Workplace

U.S. Department of Housing  
and Urban Development

Applicant Name

**VISIONARY VENTURES**

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant'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 employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

**2. Sites for Work Performance.** The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

**Project Location: 100 Oak Avenue, Aurora, Illinois**

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.  
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

«ED\_Fname» «EDLName»

Title

Executive Director/CEO

Signature

Date

X

## **EXHIBIT E**

### **Project Area**

[Lot 2 of Todd School Subdivision in the City of Aurora, Kane County, Illinois]



Aerial Map (1:1,500):



## EXHIBIT F

### IGA





CITY OF AURORA, ILLINOIS

RESOLUTION NO. R20-326  
DATE OF PASSAGE December 22, 2020

A Resolution authorizing an Intergovernmental Agreement between the City of Aurora and the Board of Education of West Aurora School District 129 involving the Conveyance, Renovation and Beneficial Reuse of the Todd and Lincoln School Properties.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, West Aurora School District 129 and the City are proposing entering into separate Intergovernmental Agreement involving the conveyance, renovation and beneficial reuse of the Todd and Lincoln School Properties; and

WHEREAS, the City recognizes and appreciates the need for the School District to expand its ability to provide much needed student support services in a centralized location to meet the demands of the community as well as repurpose two historic vacant properties; and

WHEREAS, the City recognizes and appreciates the need for providing additional affordable workplace housing near its downtown and facilitating redevelopment agreements for both Todd and Lincoln with a developer who will in turn provide the necessary office space required by the School District for student support services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: that the Intergovernmental Agreement attached to this Resolution as Exhibit A shall be and hereby is approved; and further

BE IT RESOLVED, that the Mayor shall be and hereby is authorized to execute said Intergovernmental Agreement in substantially the same form as attached to this Resolution; and further

RESOLUTION NO. R20-326  
DATE OF PASSAGE December 22, 2020

BE IT RESOLVED, that the officers of and employees of the City shall be and hereby are authorized and empowered to take all actions necessary and proper to carry the purposes of said the Intergovernmental Agreement into execution in accordance with its terms, including, specifically, all actions required to accept the conveyance of the real property from the School District as contemplated by the Agreement.

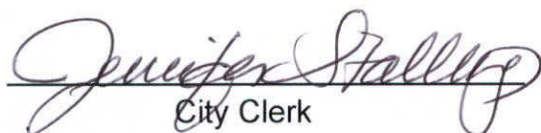
RESOLUTION NO. R20-326


PASSED AND APPROVED ON December 22, 2020

AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

ALDERMAN	Vote
Alderman Llamas, Ward 1	yes
Alderman Garza, Ward 2	yes
Alderman Mesiacos, Ward 3	yes
Alderman Donnell, Ward 4	yes
Alderman Franco, Ward 5	yes
Alderman Saville, Ward 6	yes
Alderman Hart-Burns, Ward 7	yes
Alderman Smith, Ward 8	yes
Alderman Bugg, Ward 9	yes
Alderman Lofchie, Ward 10	yes
Alderman Jenkins, At Large	yes
Alderman O'Connor, At Large	yes

ATTEST:

  
City Clerk

  
Mayor

20-0862

**RECOMMENDATION**

TO: THE COMMITTEE OF THE WHOLE

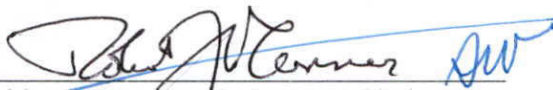

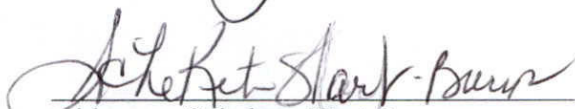
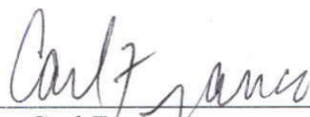
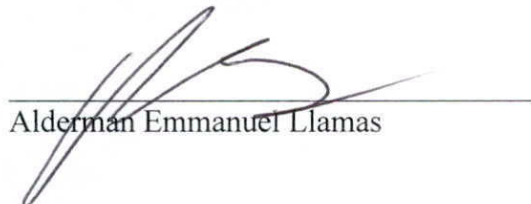
FROM: THE FINANCE COMMITTEE

The Finance Committee at the regular scheduled meeting on **Thursday, December 22, 2020**

Recommended **APPROVAL** of a Resolution authorizing an Intergovernmental Agreement between the City of Aurora and the Board of Education of West Aurora School District 129 involving the Conveyance, Renovation and Beneficial Reuse of the Todd and Lincoln School Properties.

Vote 4-1

Submitted By:

  
Alderman Robert O'Connor, Chairperson  
Alderman Edward Bugg, Vice Chairperson  
Alderman Scheketa Hart-Burns  
Alderman Carl Franco  
Alderman Emmanuel Llamas

Dated this 22nd day of December, 2020



**BOARD OF EDUCATION OF  
WEST AURORA SCHOOL DISTRICT 129,  
KANE COUNTY, ILLINOIS**

**RESOLUTION RE:  
TODD SCHOOL AND LINCOLN SCHOOL**

WHEREAS, this Board of Education (hereinafter "Board") is the duly-elected governing board of West Aurora School District 129, Kane County, Illinois (hereinafter "School District"); and

WHEREAS, this Board is the owner of record of Todd School (legally described on Exhibit A attached hereto and made a part hereof); and

WHEREAS, this Board is the owner of record of Lincoln School (legally described on Exhibit B attached hereto and made a part hereof); and

WHEREAS, this Board has received reports and recommendations from the Administration of this School District regarding the needs and conditions of the District as it relates to the District's educational facilities; and

WHEREAS, the reports and recommendations so received establish that Todd School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, the reports and recommendations so received establish that Lincoln School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, this Board of Education finds and determines that Todd School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, this Board of Education finds and determines that it is in the best interests of the School District to transfer all right, title and interest in Todd School to the City of Aurora, Illinois upon such terms and conditions as set forth in the Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois attached hereto and made a part hereof as Exhibit C; and

WHEREAS, this Board of Education finds and determines that Lincoln School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the District; and

WHEREAS, this Board of Education finds and determines that it is in the best interests of the School District to transfer all right, title and interest in Lincoln School to the City of Aurora, Illinois upon such terms and conditions as set forth in the Intergovernmental Cooperation Agreement a Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois attached hereto and made a part hereof as Exhibit C.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Education of West Aurora School District 129, Kane County, Illinois as follows:

SECTION ONE: That the preambles to this Resolution are hereby adopted, ratified, and confirmed as if fully set forth and restated in this SECTION ONE *verbatim*.

SECTION TWO: That the Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois attached hereto as Exhibit C is hereby adopted, ratified, and approved as if fully set forth and restated in this SECTION TWO *verbatim*.

SECTION THREE: That the President and Secretary of this Board are hereby authorized and directed to affix their signatures to this Resolution and the Intergovernmental Cooperation Agreement Between the City of Aurora, Illinois and West Aurora School District 129, Kane County, Illinois, and the Administration of this School District, and its legal counsel, shall have the authority to take all actions and perform all tasks necessary to fulfill the commitments set forth in the Intergovernmental Cooperation Agreement.

SECTION FOUR: That this Resolution shall be in full force and effect forthwith upon and after its adoption, and all resolutions or parts of resolutions in conflict herewith are hereby repealed.

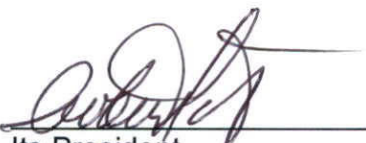
ADOPTED this 4 day of January, 2021 by the following roll call vote:

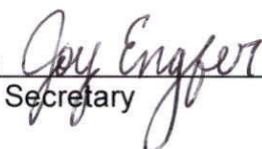
AYE: Robert Gonzalez, Richard Kevins, Ira Lathan, Melody Superston,  
Valerie Brown Dykstra, Christopher Sparks, & Thomas St. Jules

NAY: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

BOARD OF EDUCATION OF  
WEST AURORA SCHOOL DISTRICT 129  
KANE COUNTY, ILLINOIS

  
\_\_\_\_\_  
Its President

Attest:   
\_\_\_\_\_  
Secretary

**EXHIBIT A**

**Legal Description of Todd School  
265 W. New York Street  
Aurora, Illinois**

Lots 1 through 4 in Block 8 of Gale's Addition to  
the City of Aurora, Kane County, Illinois

PIN: 15-22-159-001



**EXHIBIT B**

**Legal Description of Lincoln School  
641 S. Lake Street  
Aurora, Illinois**

Lots 5 through 9 in Block 2 of Wagner's Second Addition to  
the City of Aurora, Kane County, Illinois

PINs: 15-28-129-008  
15-28-129-025

## **EXHIBIT C**

### **INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF AURORA, ILLINOIS AND WEST AURORA SCHOOL DISTRICT 129, KANE COUNTY, ILLINOIS**

#### **WITNESSETH:**

WHEREAS, the City of Aurora, Illinois (hereinafter "CITY") is a home rule municipality operating under the authority of Article VII of the Constitution of the State of Illinois and the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*); and

WHEREAS, West Aurora School District 129, Kane County, Illinois (hereinafter "SCHOOL DISTRICT") is a public school district operating under the authority of Article X of the Constitution of the State of Illinois and the Illinois School Code (105 ILCS 5/1-1 *et seq.*); and

WHEREAS, Article VII, Section 10 of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) authorize units of local government, including municipalities, and school districts to contract and otherwise associate among themselves to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, Section 5-22 of the Illinois School Code (105 ILCS 5/5-22) and Section 2 of the Local Government Property Transfer Act (50 ILCS 605/2) provide, in pertinent part, that if the territory of any school district shall be partly within and partly without the corporate limits of any municipality, the board of education of the school district shall have the power to transfer all right, title and interest held by it immediately prior to such transfer, in and to such real estate, to the municipality upon such terms as may be agreed upon by the corporate authorities of both the school district and the municipality, and thereafter the municipality receiving title to such real estate shall have

the right to use, occupy or improve the real estate so transferred for any municipal or public purpose and shall hold said real estate by the same right, title and interest by which the transferor municipality held said real estate immediately prior to said transfer; and

WHEREAS, the territory of the SCHOOL DISTRICT is partly within and partly without the corporate limits of the CITY; and

WHEREAS, the SCHOOL DISTRICT's Todd School (legally described on Exhibit A attached hereto and made a part hereof) and the SCHOOL DISTRICT's Lincoln School (legally described on Exhibit B attached hereto and made a part hereof) are each within the territories and corporate limits of the SCHOOL DISTRICT and the CITY; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT has heretofore determined that Todd School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the SCHOOL DISTRICT; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT has heretofore determined that Lincoln School has become unnecessary, unsuitable, and inconvenient for a school and unnecessary for the uses of the SCHOOL DISTRICT; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT hereby finds and determines that it is in the best interests of the SCHOOL DISTRICT to transfer all right, title and interest in Todd School to the CITY upon such terms and conditions set forth below; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT hereby finds and determines that it is in the best interests of the SCHOOL DISTRICT to transfer all right,

title and interest in Lincoln School to the CITY upon such terms and conditions set forth below; and

WHEREAS, the City Council of the CITY has found and determined that it is in the best interests of the CITY to accept all right, title, and interest in Todd School from the SCHOOL DISTRICT upon such terms and conditions set forth below; and

WHEREAS, the City Council of the CITY has found and determined that it is in the best interests of the CITY to accept all right, title, and interest in Lincoln School from the SCHOOL DISTRICT upon such terms and conditions set forth below; and

WHEREAS, the CITY understands and values the importance of the SCHOOL DISTRICT and the invaluable services it provides to the CITY's community; and

WHEREAS, the CITY recognizes and appreciates the need for the SCHOOL DISTRICT to expand its current ability to provide much-needed student support services in order to meet the demands of the community and improve the general health, well-being, and overall functioning of SCHOOL DISTRICT students and their families; and

WHEREAS, the CITY recognizes the benefits to the community derived from the SCHOOL DISTRICT's student support services and, therefore, wishes to collaborate with the DISTRICT to facilitate the best way for the SCHOOL DISTRICT to provide said services; and

WHEREAS, the SCHOOL DISTRICT and the CITY acknowledge and agree that in order to accomplish the foregoing it will be necessary for the Todd School building to be redeveloped and renovated, which such redevelopment and renovation will need to be accomplished by a third party (the "Developer") pursuant to a Development Agreement with the CITY and a conveyance of the Todd School building by the CITY to



such Developer, which Development Agreement and conveyance shall include the obligations and uses described in Section Two hereof; and

WHEREAS, the Board of Education of the SCHOOL DISTRICT and the City Council of the CITY find and determine that it is in each of their respective best interests to enter into this Intergovernmental Cooperation Agreement.

NOW, THEREFORE, BE IT AND IT IS HEREBY AGREED by the CITY and the SCHOOL DISTRICT as follows:

SECTION ONE: That the preambles to this Intergovernmental Cooperation Agreement are hereby found to be true and correct and are hereby incorporated herein as if fully set forth and restated in this Section One *verbatim*.

SECTION TWO: That the Board of Education of the SCHOOL DISTRICT will, in accordance with the terms and conditions set forth below, convey all right, title and interest in Todd School, its grounds, building, fixtures, and improvements to the CITY to be used by the CITY for redevelopment to provide suitable housing for residents of the CITY and other uses ancillary thereto. The parties acknowledge that the provisions of this section with respect to the Todd School building will be accomplished by means of a Development Agreement with, and a conveyance of the property to, a Developer capable of completing the redevelopment and renovation of the building in a manner meeting the SCHOOL DISTRICT's needs and, upon the execution of a Development Agreement and such conveyance, the CITY will be relieved of any further obligations with respect to the same and the SCHOOL DISTRICT agrees to accept the Developer as the party responsible to provide compliance with the terms and conditions as described in this Section Two. This conveyance, and any Development Agreement and

subsequent conveyance of the Todd School building to a Developer, shall be subject to the following conditions and restrictions:

- A. The conveyance of Todd School will be "as is" with no representations, warranties, or guarantees with respect to the condition of the land, structure(s), or other improvements, including mechanical systems, provided, however, title shall be conveyed subject only to the exceptions described in Section 4 B hereof.
- B. As part of the redevelopment of Todd School, the Developer will petition the CITY for, and the CITY will approve, a plat of condominium for Todd School consisting of two (2) units.
  - 1. Unit 1 will be no less than 3,500 and as much as 4,000 square feet of contiguous space at the northeast wing of the building (depicted on Exhibit C attached hereto and made a part hereof) to be built out and improved by the Developer for use by the SCHOOL DISTRICT for office, examination, food distribution, and other school-related services. The build out will be designed by the Developer and will be subject to the SCHOOL DISTRICT's prior approval as to both design and materials used. The build out will include all public utilities, including potable water, sanitary sewer, gas, and electric services, as well as metering. The build out will also be paid entirely by the Developer and the SCHOOL DISTRICT shall have no financial responsibility for the design, labor, materials, fees, meters or permits relative to that build out.
  - 2. Unit 2 will be the balance of the Todd School building, as well as the land and exterior improvements, to be improved by the Developer consistent with plans approved by the CITY, as well as any other governmental agency with jurisdiction over the Developer's planned use of the Unit.
- C. Upon build out, and in consideration of the conveyance of Todd School and Lincoln School, the Developer will convey fee simple of Unit 1 to the Board of Education of the SCHOOL DISTRICT for its exclusive ownership and use. Upon such conveyance, the SCHOOL DISTRICT will assume responsibility for monthly service charges for all public utilities for Unit 1, including potable water, sanitary sewer, gas, and electric services.
- D. At all times, the Developer will remain responsible for all structural matters, including exterior walls, windows, roofing, and exterior lighting for the entire building, as well as outdoor maintenance, including sidewalks, parking lots, landscaping, mowing, trimming, snow removal, trash removal, and the like, and the SCHOOL DISTRICT will have no responsibility or liability therefor.



- E. The Developer will, without cost, grant to the SCHOOL DISTRICT a permanent easement for as many as five (5) parking spaces in the parking lot depicted on Exhibit C for School District use, as well ingress and egress to Unit 1.
- F. To ensure that the Developer's obligations to the SCHOOL DISTRICT as set forth in this Section Two are fulfilled, the SCHOOL DISTRICT will be a party to the Development Agreement between the Developer and the CITY.
- G. The SCHOOL DISTRICT's rights set forth in this Section Two shall be a right running with the land and binding on all successors and assigns of the CITY and the Developer, and the SCHOOL DISTRICT shall have the right to record a memorandum of such rights in the office of the Recorder of Kane County, Illinois.

SECTION THREE: That the Board of Education of the SCHOOL DISTRICT will, in accordance with the terms and conditions set forth below, convey all right, title, and interest in Lincoln School, its grounds, building, fixtures, and improvements to the CITY to be used by the CITY to provide suitable housing for residents of the CITY and other uses ancillary thereto. This conveyance shall be subject to the following conditions and restrictions:

- A. The conveyance of Lincoln School will be "as is" with no representations, warranties, or guarantees with respect the condition of the land, structure(s), or other improvements, including mechanical systems, provided, however, title shall be conveyed subject only to the exceptions described in Section 4 B hereof.

SECTION FOUR: The conveyance of Todd School and Lincoln School shall be made on the following timetable and manner:

- A. The SCHOOL DISTRICT will prepare and deliver quit claim deeds to Todd School and to Lincoln School to the CITY at a closing to be held on or before January 31, 2021.
- B. No less than fourteen (14) days prior to closing, the SCHOOL DISTRICT will deliver to the CITY commitments for title insurance in the minimal amount

issued by Chicago Title Insurance Company, evidencing the SCHOOL DISTRICT's clear and merchantable title to each of Todd School and Lincoln School, subject only to easements; covenants, conditions, restrictions, and rights of way of record; zoning law and ordinances; and such other title exceptions as may be acceptable to the CITY. The SCHOOL DISTRICT shall bear the cost of the title commitments in the minimal amount. Any additional limits of title insurance shall be borne by the CITY.

- C. No less than fourteen (14) days prior to closing, the SCHOOL DISTRICT will deliver to the CITY (1) any boundary and other surveys of Todd School and Lincoln School that it has in its possession; and (2) any maintenance records of the building systems of Todd School and Lincoln School that it has in its possession.
- D. Possession of Todd School and Lincoln School shall be delivered to the CITY at the time of closing and, thereafter, responsibility for property maintenance and public utilities (water, sanitary sewer, gas and electric) will shift from the SCHOOL DISTRICT to the CITY.
- E. The Administrations of the SCHOOL DISTRICT and the CITY, as well as their legal counsel, shall have the authority to take all actions and perform all tasks necessary to close these conveyances in the time and manner expressed herein.

SECTION FIVE: The SCHOOL DISTRICT shall indemnify, defend and hold harmless the CITY, its elected officials, employees and agents, from and against all actions, causes of action, claims, demands, lawsuits, costs and expenses and liability



for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising prior to the closing date, and the CITY shall indemnify, defend and hold harmless the DISTRICT, its elected officials, employees and agents, from and against all actions, causes of action, claims, demands, lawsuits, costs and expenses and liability for damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organizations arising subsequent to the closing date, and prior to any subsequent conveyance of the property, excluding such actions, claims demands, lawsuits and liability for damages to persons or property arising solely from the negligence or willful misconduct of the indemnified party, its officers, employees or agents. Said sums shall include, in the event of legal action, court costs, expenses of litigation, and reasonable attorney's fees. The costs, salary and expenses of the City Corporation Counsel and members of his/her office shall be considered as "attorney fees" for the purpose of this paragraph.

SECTION SIX: Any notices to be provided under this Intergovernmental Cooperation Agreement shall be in writing and addressed:

To the CITY:

Richard J. Veenstra  
Corporation Counsel  
City of Aurora  
44 W. Downer Place  
Aurora, IL 60506

To the SCHOOL DISTRICT:

Dr. Jeff Craig  
Superintendent  
West Aurora School District 129  
1877 W. Downer Place  
Aurora, IL 60506


SECTION SEVEN: This Intergovernmental Cooperation Agreement is entered into, and is to be construed and enforceable in accordance with, the laws of the State of

Illinois and venue for any suit, action, or proceeding arising under or in connection with this agreement shall exist exclusively in the Circuit Court of Kane County, Illinois.

SECTION EIGHT: Neither this Intergovernmental Cooperation Agreement nor any of its terms may be changed, modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, modification, waiver, or termination is sought.

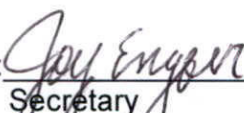
IN WITNESS WHEREOF, the parties have executed this Intergovernmental Cooperation Agreement as of the dates set forth below.

BOARD OF EDUCATION OF  
WEST AURORA SCHOOL DISTRICT 129  
KANE COUNTY, ILLINOIS

  
\_\_\_\_\_  
Its President

CITY OF AURORA, ILLINOIS

  
\_\_\_\_\_  
Its Mayor

Attest:   
\_\_\_\_\_  
Secretary

Date: 1/4/21

Attest:   
\_\_\_\_\_  
City Clerk

Date: 1-5-21

**EXHIBIT A**

**Legal Description of Todd School  
265 W. New York Street  
Aurora, Illinois**

Lots 1 through 4 in Block 8 of Gale's Addition to  
the City of Aurora, Kane County, Illinois

PIN: 15-22-159-001

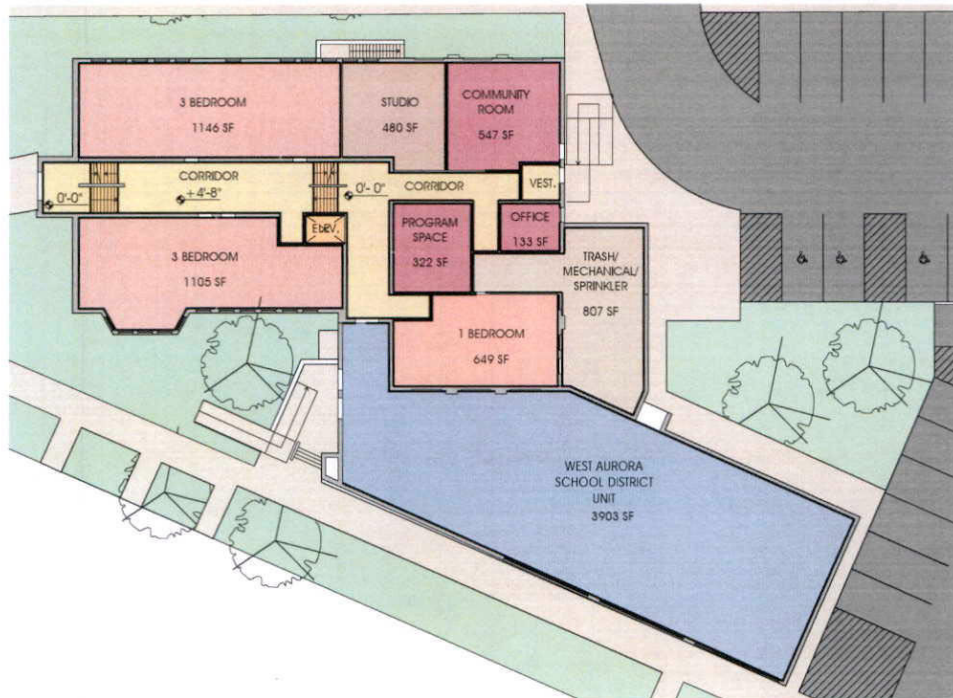
**EXHIBIT B**

**Legal Description of Lincoln School  
641 S. Lake Street  
Aurora, Illinois**

Lots 5 through 9 in Block 2 of Wagner's Second Addition to  
the City of Aurora, Kane County, Illinois

PINs: 15-28-129-008  
15-28-129-025

# EXHIBIT C



## EXISTING BUILDING INFORMATION:

BUILDING FOOTPRINT = 11,175 SF

ABOVE GRADE - 2 FLOORS  
BELOW GRADE - 1 FLOOR

## TOTAL BUILDING AREA:

- FLRS. BELOW GRADE (1) = 4,022 SF
- FLRS. ABOVE GRADE (2) = 17,845 SF
- TOTAL AREA = 21,867 SF

## UNIT TYPES:

- STUDIO UNITS = 02
- 1 BEDROOM UNITS = 03
- 2 BEDROOM UNITS = 01
- 3 BEDROOM UNITS = 06
- TOTAL UNITS = 12

CONCEPTUAL PLAN - FIRST FLOOR

TODD SCHOOL ADAPTIVE REUSE

100 OAK/265 W. NEW YORK ST.

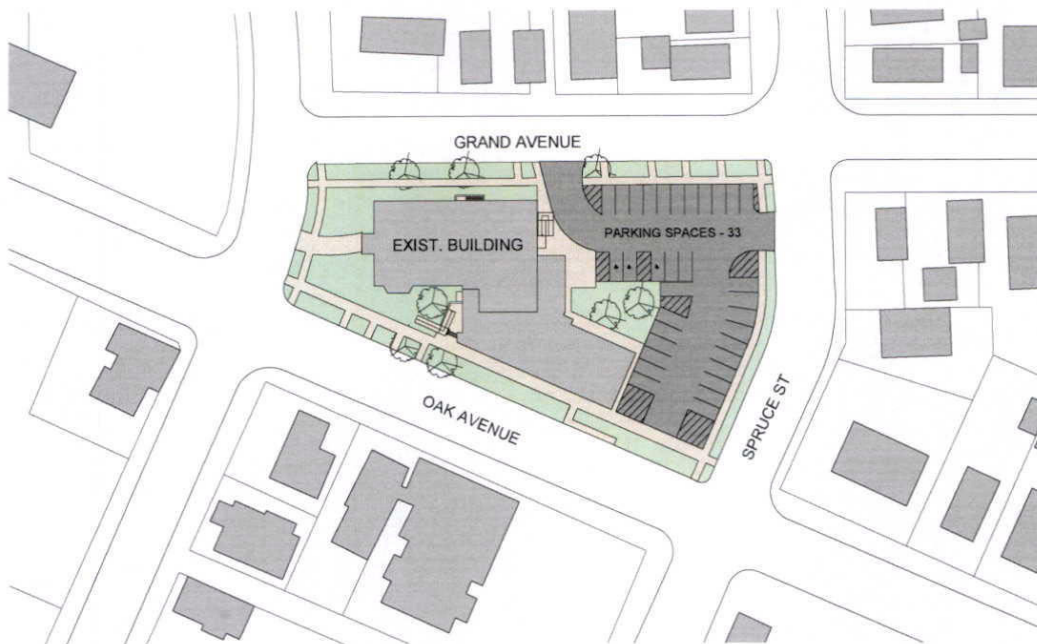
09.29.2020

TOD-03

**CORDOGAN CLARK**  
ARCHITECTURE • ENGINEERING • CONSTRUCTION



# EXHIBIT C



## SITE INFORMATION:

PRESUMED SITE AREA = 1.2 ACRES

## EXISTING BUILDING INFORMATION:

BUILDING FOOTPRINT = 11,175 SF

ABOVE GRADE - 2 FLOORS

BELOW GRADE - 1 FLOOR

## TOTAL BUILDING AREA:

- FLRS. BELOW GRADE (1) = 4,022 SF
- FLRS. ABOVE GRADE (2) = 17,845 SF
- TOTAL AREA = 21,867 SF

## UNIT TYPES:

- STUDIO UNITS = 02
- 1 BEDROOM UNITS = 03
- 2 BEDROOM UNITS = 01
- 3 BEDROOM UNITS = 06
- TOTAL UNITS = 12

## PARKING COUNTS:

- REQUIRED - 37 SPACES
- PROVIDED - 33 SPACES



## **EXHIBIT G**

### Healthcare Facility



FIRST FLOOR PLAN

A1



## **EXHIBIT H**

### **Equal Employment Opportunity Certification**