

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2020, by and between the CITY OF AURORA and AURORA DOWNTOWN, an Illinois general not-for-profit corporation.

RECITALS:

WHEREAS, the City of Aurora (“the City”) is an Illinois municipal corporation acting under the authority of the Illinois Municipal Code with home rule authority as provided in the State of Illinois Constitution; and

WHEREAS, Aurora Downtown (“AD”) is a duly organized Illinois general not-for-profit 501 (c)(4) corporation established for the purpose of improving, redeveloping, aiding and assisting persons and business enterprises in an area described in the City of Aurora Redevelopment Ordinance Numbered 4471 adopted July 25, 1975, and thereafter amended from time to time, which said area is commonly known as the Aurora Downtown; and

WHEREAS, in carrying out its functions, AD engages in activities designed to bring recognition to the Aurora Downtown as an attractive, business, cultural, recreational and entertainment destination, including sponsoring cultural and promotional events and festivals, maintaining, improving, landscaping, and seasonally decorating public spaces within the downtown area; and

WHEREAS, the City recognizes the undertaking of AD as an important contribution to the general welfare of the City; and

WHEREAS, the City finds that it is in its interest to provide resources sufficient to support and sustain the activities of AD; and

WHEREAS, AD is committed to continuing its efforts to enhance and promote the Aurora Downtown; and

WHEREAS, a special service area as contemplated by the Special Service Area Tax Law 35 ILCS 200/27-5 was created pursuant to City of Aurora Ordinance No. O94-93 adopted September 6, 1994 and thereafter extended by Ordinance No. O02-92 adopted August 27, 2002, and again by Ordinance No. O10-051 adopted August 24, 2010, and Ordinance No. O18 - 0056 adopted August 28, 2018, which said Ordinances shall hereafter be collectively referred to as “the ORDINANCES;” and

WHEREAS, the Special Service Area created by the ORDINANCES is commonly referred to and known as SPECIAL SERVICE AREA-One (hereafter “SSA-One”); and

WHEREAS, SSA-One shall remain in existence through tax year 2026; and

WHEREAS, the ORDINANCES referred to herein apply to the area of the City of Aurora commonly referred to as the Aurora Downtown and is identified by the map set forth in **Exhibit A** hereto and

WHEREAS, the ORDINANCES provide that the taxes derived thereby shall be used for specifically defined purposes relating to the development, marketing, management, promotion and improvement of Aurora Downtown; and

WHEREAS, the ORDINANCES provide that a not-for-profit corporation be organized for the purpose of managing the tax fund created by the ORDINANCES and fulfilling the objectives and purposes defined by the ORDINANCES; and

WHEREAS, AD, a not-for-profit corporation, has been organized for the foregoing purposes and has pursuant to prior Agreements been designated by the City as the entity responsible for the management and deployment of the taxes generated by the levies filed against property within SSA-One pursuant to the terms of this Agreement; and

WHEREAS, the membership of AD is comprised of the owners of property located within SSA-One, businesses conducting business within the boundaries of SSA-One, community organizations and individuals having a direct and containing interest in the development and promotion of SSA-One; and

WHEREAS, AD is uniquely suited to act as administrator in carrying out the responsibilities of administering, managing and developing the taxes derived from tax levies filed against property within SSA-One and desires to do so.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the adequacy of which each party hereby acknowledges, the parties agree as follows:

1. **Appointment.** The City hereby designates and appoints AD as the City's exclusive ADMINISTRATOR of all NET TAX REVENUES derived from taxes levied against properties within SSA-One pursuant to the ORDINANCES and of all Supplemental Funds as hereafter defined and of all other funds as may be from time to time provided by the City from other sources.

2. **Authority to Act.** The City hereby authorizes the Mayor or his designee to disburse to AD the Net Revenue generated from the levy against SSA-One property pursuant to the City's SSA-One Ordinance. Net Revenue shall be defined as the amount collected by the City pursuant to the most recent SSA-One levy less amounts withheld to:

- a. Cover the City's expenses incurred in collecting and managing taxes derived from the City's SSA-One Ordinance or in providing special or non-customary services to AD at AD's request;
- b. Satisfy any amounts reclaimed by the City pursuant to Paragraph 11 hereof;

- c. Stand as reserves to defend, settle or pay judgments related to tax appeals or objections directed against taxes levied by the City pursuant to the SSA-One Ordinance or the TIF referred to in Paragraph 4.4 hereof.

The Mayor and the Mayor's designees are further authorized to exercise such discretion and to take all action necessary to carry out the terms of this Agreement.

3. **AD's Duties.** AD agrees, as ADMINISTRATOR, that it shall:

3.1 Plan, administer, manage, promote and execute all programs, projects, events or other functions that may be, from time to time, undertaken or developed within the SSA-One and financed with NET TAX REVENUES obtained by reason of SSA-One, the SUPPLEMENTAL PAYMENTS described in Paragraph 4.4 hereof, or by funds provided by the City from other sources. As such, AD agrees to complete the following tasks:

- a. Governance of AD
 - 1. Manage all AD Board nominations and elections
 - 2. Host an annual internal AD planning meeting.
- b. Provide marketing for AD by updating, maintaining and issuing the following materials:
 - 1. Issue quarterly newsletters or emails for SSA-One.
 - 2. Provide website maintenance for "auroradowntown.org", which shall include a comprehensive business directory and calendar for SSA-One.
 - 3. Provide street banners to the City from time-to-time. The City will install banners on available poles (City to provide which poles are available) on River Street and Stolp Avenue (year round). AD will store any banners provided.
 - 4. Provide downtown directories as well as directory brochures.
 - 5. Promotion of events hosted by AD and events held within SSA-One. This includes, but is not limited to: press releases, radio spots, print ads, social media ads, posters and fliers.
 - 6. Maintain a comprehensive and updated list of downtown businesses including the building owner and business owner.
- c. Promote Business Attraction and Retention:
 - 1. Develop an annual Capital Improvement Plan (CIP) requests and deliver to the City of Aurora based on identified needs and hopes for SSA-One.
 - 2. Implement and execute programs and avenues of assistance for new and existing businesses within the SSA-One.
 - 3. Host bi-monthly "Morning Mixers" and other events aimed at educating and bringing together business and property owners and stakeholders together.

- d. Events for AD
 - 1. Meet with City Special Events staff and a member of the Mayor's Office no later than January annually to review Program of Work for the upcoming year. The City will instruct AD on how to register the events in the Special Events program.
 - 2. Manage and coordinate all SSA-One events hosted by AD (not including parades and independent events) and as listed in the "Program of Work" provided to the City in Paragraph 3.2.
 - a. AD will utilize the City's permit process for all AD events through the online special events portal. All communication with City staff, including requests for services, will take place through the online portal or email.
 - b. AD is responsible for set up and take down of all items or equipment used for events in a timely manner.
 - 3. AD to cover the cost of all printed materials and advertise events independently of the City.
- e. Streetscape in SSA-One
 - 1. AD is to handle all components, including storage of holiday decorations, in SSA-One, except for some installation handled by the City. The areas to be decorated by AD will be determined as part of the annual Scope of Work submitted by AD. The City of Aurora will retain responsibility for the storage of the potted planters.
 - a. AD is to handle the coordination and cost of installation of holiday decorations, except for some items to be purchased and installed by the City as determined by the annual Scope of Work submitted by AD.
 - b. AD shall work through the Special Events process to coordinate any necessary City Services on the locations and the decorations prior to installation.
 - c. City reserves the right to determine the theme and decoration of Water Street Mall as it is City Property but will work with AD through the Scope of Work to coordinate when possible.
 - 2. AD shall coordinate with Broadway business owners on the annual holiday window decorations and manage all donated funds or assist in establishing a fund for doing so.
 - a. The Streetscape committee shall create a variety of appropriate themes for the Broadway business windows each year.
 - b. From the themes created, the Streetscape committee will vote on a chosen theme.
 - 3. Pay for the flowers annually in potted planters (not including hanging planters) located throughout downtown, as determined by the annual Scope of Work submitted by AD.

4. Arrange a planting day at the end of May annually to assist the City in filling the planters.

f. Financial Requirements

1. Handle all Accounts Payable/Accounts Receivable for AD
2. Renew Annual Report for AD
3. Complete all additional requirements listed in this agreement.

3.2 Prepare, annually, during the term of this Agreement, a program of work for the next following calendar year (herein the “PROGRAM OF WORK”) and submit it with the hereinbelow described budget, to the City by December 1 of each year, which the City will review and accept. The PROGRAM OF WORK shall 1) itemize and list all programs, projects, events, promotions and functions or other matters, which believes should be undertaken or continued in the following calendar year (herein the “Projects”); 2) state tentative dates for completion of the Projects; and 3) prepare an estimated cost for the Projects.

3.3 Prepare a budget (hereafter the “BUDGET”), annually, during the term of this Agreement, which shall list all expenditures proposed and income intended to be received by AD for its use in carrying out PROGRAM OF WORK and submit it (together with the PROGRAM OF WORK) to the City by December 1st of each year.

3.4 Do all things necessary to accomplish, as far as possible, the PROGRAM OF WORK and receive and apply all NET TAX REVENUES obtained by reason of SSA-One SUPPLEMENTAL PAYMENTS and funds provided by the City from other sources exclusively for the purposes set forth in the PROGRAM OF WORK, the ORDINANCES and in this Agreement.

3.5 Submit to the City, within thirty (30) days after the end of each calendar year, during the term of this Agreement, a year-end Financial Statement detailing all income received and expenditures made by AD hereunder during the prior calendar year together with a balance sheet showing all assets, including cash on hand and liabilities of AD.

3.6 Prepare, annually, and submit to the City, by May 1st of each year, during the term of this Agreement, for its review, a proposed list of downtown improvement projects and programs (hereafter “the PUBLIC PROJECT PROPOSAL”) which AD desires and requests the City to undertake during the following calendar year and to be paid for exclusively by other City sources of revenue other than NET TAX REVENUES or other funds theretofore transferred by the City to AD.

4. **City Duties.** The City agrees that it shall:

4.1 Within 14 days of the City’s receipt of the information specified in Paragraph 2, provide AD with a copy of the most recent levy extension report showing the amount of taxes collected or anticipated to be collected against the levy filed pursuant to SSA-One for the

most recent levy year, together with an estimate of the time at which taxes assessed against the SSA-One property will be available for distribution.

4.2 Promptly review all PROGRAMS OF WORK and BUDGETS received from AD and levy against properties in SSA-One pursuant to the ORDINANCES, such amounts as shall be required by the BUDGET to carry out the PROGRAM OF WORK, provided the levy shall not exceed the limitations imposed by the Ordinances.

4.3 Pay to AD all NET TAX REVENUES obtained by it from levies imposed pursuant to Paragraph 3.1 above. Payments shall be made pursuant to a schedule to be determined by agreement of authorized representatives of the City and AD. The City is to distribute the funds twice a year after the funds become available from the County.

4.4 Pay to AD, annually, as a supplement to the NET TAX REVENUES such funds that may be obtained by reason of any property included in SSA-One falling within the boundaries of the City's Downtown Redevelopment Project Area (hereafter the "TIF" District) in an amount equal to the applicable net property tax revenues related to the TIF received by the City from SSA-One property lying within the TIF District (hereafter "the SUPPLEMENTAL PAYMENT"). Such revenues shall be calculated by the application of the SSA tax rate to the annual incremental increase in equalized assessed valuation over the initial value for properties in the TIF District that are also included in SSA-One (hereafter "the INCREMENT"). Such supplements shall be paid in any year where the NET TAX REVENUES do not exceed AD's aggregate expenditures for the prior year provided that the amount of the SUPPLEMENTAL PAYMENTS shall not exceed in any tax year the lesser of 1) an amount which when added to NET TAX REVENUES equals AD's aggregate expenditures for the previous year; or 2) the amount of the Increment.

5. **Joint Responsibilities.** Prior to March 1st of each year, the Mayor or the Mayor's designee and the Chief Operating Officer of AD, or such representative otherwise appointed by AD and such staff as the City and AD shall deem advisable, shall meet to determine how and by what means the PROGRAM OF WORK or any PUBLIC PROJECT PROPOSALS shall be accomplished, and to determine what, if any, in-kind services the City might be asked to supply pursuant to Paragraph 17 below. At this meeting, and at any reconvened session thereof, the City and AD shall create a document to be attached as an ANNUAL ADDENDUM hereto dated and signed by each party's designee, which allocates the responsibilities that each party is expected to fulfill during the following 12 months in carrying out the PROGRAM OF WORK or such PUBLIC PROJECT PROPOSALS which might be submitted to the City Council or which have been approved pursuant to the provisions of Paragraph 8 below. Such ANNUAL ADDENDUM shall include the City's best estimate of the DISBURSEMENT SCHEDULE contemplated by Paragraph 6 below and a non-binding projection of what SUPPLEMENTAL PAYMENTS contemplated by Paragraph 4.4 above, AD might reasonably expect to receive. Each ANNUAL ADDENDUM shall supersede and replace all prior ADDENDA.

6. **Disbursement Schedule.** The Mayor or the Mayor's designee and the authorized representatives of AD shall, from time to time, meet to determine a schedule of payments from SSA-One that shall optimize the cash flow considerations of AD, taking into account the tax

collection cycle governing the City's receipt of taxes. The City shall disburse the funds within thirty (30) days of receiving the final distribution of tax funds from the County from each semi-annual distribution, and shall not be responsible for providing more than two funding checks per year.

7. **Advance Payments.** The Mayor or the Mayor's designee may make payments of Net Revenue to AD in advance of the City's receipt of SSA taxes levied against SSA-One property upon the determination that the receipt of the corresponding tax collections is reasonably certain from which the advance shall be reimbursed.

8. Action on **Public Project Proposals.** The Mayor or the Mayor's designee shall review any PUBLIC PROJECT PROPOSAL submitted by AD and shall consult appropriate City staff concerning the feasibility and desirability thereof, and shall, subject to the advice of staff, relay the PUBLIC PROJECT PROPOSAL to the City Council for consideration and approval along with notice of the source of the proposal and staff recommendations, if any. Undertaking any project so proposed shall be at the complete discretion of the City and shall be at the City's expense without the use of Net Revenues unless otherwise agreed in writing by the parties hereto.

9. **Other Funding.** Nothing set forth herein shall prohibit AD from raising funds from any source whatsoever or expending such funds in ways and for such purposes not contemplated by this Agreement and need not account to the City for such expenditures.

10. **Administrative Expenses.** The BUDGET may include expenditures of NET REVENUES for salaries or other compensation paid to such administrative personnel AD may require to carry out its duties set forth in this Agreement.

11. **Recovery of Unapplied or Misapplied Funds.** The City may recover from AD NET TAX REVENUES, SUPPLEMENTAL PAYMENTS or funds transferred by the City to AD from other sources, that have not been applied to the PROGRAM OF WORK or amendments thereto of which the City is from time to time advised and to which the City does not object, within 18 months of its submission or that have been applied to purposes other than those authorized by the Ordinances. The City may recover such funds by deducting the amount thereof from Net Revenues derived from the first SSA-One levy thereafter collected or by demanding immediate repayment directly from AD.

12. **Term and Termination.** This Agreement shall continue for the term of the SSA-One Ordinance currently in place (Ordinance No. O18-0056 adopted August 28, 2018) and for the term of any extensions thereof unless sooner terminated by either party upon serving written Notice upon the other 365 days prior to such termination. Termination shall be effective on the 366th day following delivery of the Notice of Termination. Upon termination, all payments otherwise due to AD shall cease and AD shall return to the City any NET REVENUES, SUPPLEMENTAL PAYMENTS or other monies transferred by the City from other sources, that have not been applied to the purposes set forth herein.

13. **Prior Agreement.** This Agreement shall supersede that certain Agreement entered into between the parties hereto on the 31st day of January, 1995, entitled “City-Downtown Agreement.”

14. **Independent Contractor.** AD, as a duly organized not-for-profit corporation, represents that it shall act solely as an independent contractor in undertaking any act in furtherance of this Agreement and that it is not an agent or affiliate of the City and operates independently of any control or direction of the City. AD shall be solely responsible for the means and methods of any undertaking performed by it in carrying out the duties imposed upon it pursuant to the terms hereof.

15. **Response to Records Request and Open Meetings Act.** AD is a not-for-profit 501 (c)(4) corporation which has been organized and operates without direction or control from the City, does not operate as a board, bureau, committee or commission of the City and is not a public body as that term is defined in the Illinois Freedom of Information Act, 5 ILCS 140/2 or the Open Meetings Act, 5 ILCS 120/1.02. To the extent, however, AD receives requests for information pursuant to the Freedom of Information Act and involving the City of Aurora, AD agrees to, within 3 days prior to the time by which a response to such request would otherwise be due, forward a copy of the request to the City in order to allow the City to determine whether any component of such request might obligate either the City or AD to provide any of the requested information. The request shall be forwarded to the City Clerk and the City FOIA Officer (current emails are located on the City Clerk’s website). AD agrees to cooperate in the production of documents that the City deems to be subjected to any Freedom of Information Act request received by AD. The City FOIA Officer will respond to the FOIA if it is subject to the Freedom of Information Act. If it does not fall under the Act, the City FOIA Officer will notify a representative of AD. AD further acknowledges that any documents provided to the City pursuant to the terms of this Agreement while in the possession of the City become public records subject to disclosure pursuant to the Freedom of Information Act. Additionally, as AD is not a public body as defined in the 5 ILCS 120/1.02, they are not subject to the requirements of the Open Meetings Act.

16. **Restriction on Use of Funds.** AD agrees that all funds received by it from the City from SSA-One shall be used solely for the purposes set forth herein or by written amendment hereto or by other written agreement between the parties hereto, and that no funds derived from this Agreement shall inure to the benefit of or be distributed to its members, trustees or officers other than as contemplated by the Agreement or as reasonable compensation for services performed in furtherance of the terms of the Agreement or be used in support of campaigns for political office or to advocate the adoption or repeal of legislation at any level of government. This agreement does not put limits on funds raised by AD through other sources.

17. **In-Kind Services.** The City agrees to, without cost, provide such in-kind services as shall facilitate the accomplishment of any then current PROGRAM OF WORK scheduled by AD and which, in the City’s judgment, contributes to the welfare of the properties within SSA-One or the general welfare of the Aurora community at large.

18. **Insurance and Indemnity.** AD agrees to, at all times, at its sole cost be covered by a policy of general liability insurance with per person and per occurrence limits of no less than

\$2,000,000 with the City named as an additional insured thereon and to indemnify and defend the City against all claims related to AD's performance of its duties under this Agreement or associated with AD's use or occupancy of any City property or right of way.

19. **Use of City Property.** AD agrees to use the City's Special Events permitting process in advanced and as described in Chapter 41.5 of the City's municipal code. Through this process, AD will be able to work with staff in determining the use of City property and City services at each event. Upon the conclusion of any event conducted by AD on City property and at the end of each holiday season, AD shall restore the site of such event to its pre-event condition and shall remove all seasonal decorations attached by AD to City fixtures or structures.

20. **Cooperation.** The parties agree that the success of the SSA depends on the cooperation and support of both the City and AD, and further, agree that they will use their best efforts to accomplish the purposes of this Agreement.

21. **Notices.** Any notices to be given to the parties by reason of this Agreement, shall be given by hand delivery, fax or regular mail to the parties at the following addresses:

If to the City:
City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Attention: Mayor

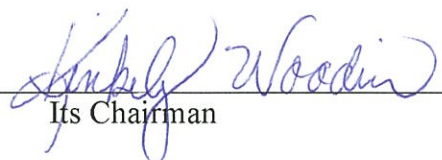
If to AD:
Aurora Downtown
43 West Galena
Aurora, Illinois 60506
Attention: Chairman

The parties have signed this Agreement on the date above written and agree to abide by the terms of this Agreement.

CITY OF AURORA

By: _____
Its Mayor

AURORA DOWNTOWN

By:  _____
Its Chairman