

**AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF AURORA
AND WEST AURORA SCHOOL DISTRICT NO. 129**

THIS AGREEMENT (hereinafter referred to as the “Agreement”) is entered into this 23rd day of June, 2015 by and between the City of Aurora, Kane, DuPage, Kendall and Will Counties, Illinois, a home rule municipal corporation (the “City”) and West Aurora School District No. 129, Kane County, Illinois, an Illinois school district (the “District”). The City and the District are hereinafter sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

WITNESSETH

WHEREAS, in October, 2008, as part of the Energy Improvement Extension Act of 2008, which was included in the Emergency Economic Stabilization Act of 2008 (the “*Stabilization Act*”), Congress enacted Section 54D of the Internal Revenue Code of 1986, as amended (the “*Code*”), permitting State and local governments to issue qualified energy conservation bonds to finance qualified conservation purposes; and

WHEREAS, in February, 2009, as part of the American Recovery and Reinvestment Act of 2009 (the “*Recovery Act*” and, together with the Stabilization Act, “*Applicable Law*”), Congress, *inter alia*, increased the volume cap limitation for qualified energy conservation bonds; and

WHEREAS, if such bonds meet certain conditions as set forth in the Applicable Law, qualified energy conservation bonds are eligible for a direct payment by the United States Treasury (the “*Treasury*”) to the issuer of a portion of the interest coming due thereon, thereby affording potential economic benefits to the issuer of such bonds; and

WHEREAS, the proceeds of qualified energy conservation bonds must be used to pay for one or more “qualified conservation purposes” as defined in Applicable Law; and

WHEREAS, Applicable Law further requires that qualified energy conservation bonds can be issued by a state or unit of local government pursuant to an allocation by the Secretary of the Treasury (the “*Secretary*”) of a portion of a nationwide volume cap limitation; and

WHEREAS, a state or unit of local government that receives a portion of the nationwide volume cap may allocate all or a portion of such volume cap to ultimate beneficiaries; and

WHEREAS, the Secretary has heretofore awarded the State of Illinois an allocation of \$133,846,000 for qualified energy conservation bonds; and

WHEREAS, the Governor’s Office of Management and Budget has heretofore allocated a portion of its qualified energy conservation bond allocation in the amount of \$1,778,201.00 to the City (being the “*City of Aurora QECB Allocation*”); and

WHEREAS, the City Council of the City (the “*City Council*”) hereby deems it advisable, necessary, and in the best interests of the City that the City allocate all of the City of Aurora QECB Allocation to the District, to be used for qualified conservation purposes under Applicable Law forthwith upon the Parties’ approval of this Agreement; and

WHEREAS, the Mayor has informed the other public school districts with school buildings within the corporate boundaries of the City, namely East Aurora School District 131, Indian Prairie School District 204, and School District 308, of the availability of the City of Aurora QECB Allocation for use for qualified conservation purposes within the City under Applicable Law and all such school districts have responded stating they have no need for said QECB funds; and

WHEREAS, the City Council deems it advisable, necessary, and in the best interests of the City that the City allocate the City of Aurora QECB Allocation in the amount of \$1,778,201.00 to the District, to be used for qualified conservation purposes under Applicable Law:

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. **INCORPORATION OF PREAMBLES.** The preambles hereto, as set forth above, are full, true, and correct and are hereby incorporated herein by this reference and made a part hereof.
2. **CITY OF AURORA QECCB ALLOCATION.** The City hereby agrees to allocate the City of Aurora QECCB Allocation in the amount of \$1,778,201.00 to the District to be used for qualified conservation purposes under Applicable Law. The Mayor, the City Clerk, the Chief Financial Officer/City Treasurer and all other officers of the City are hereby authorized to execute all documents and certificates and take all actions necessary in connection with the allocation of the City of Aurora QECCB Allocation.
3. **REVERSION BACK TO THE CITY.** If the District, however, does not utilize the City of Aurora QECCB Allocation in its entirety in connection with the issuance of qualified energy conservation bonds for qualified conservation purposes on or before June 30, 2017, then any remaining amounts of the City of Aurora QECCB Allocation allocated to the District shall revert back to the City without any further action on the part of the District or the City.
4. **GENERAL CONDITIONS/REQUIREMENTS.**
 - A. This Agreement is entered into for the benefit of each of the Parties, solely, and not for the benefit of any third party.
 - B. Nothing contained in this Agreement shall constitute a waiver of any privileges, defenses, or immunities that either the CITY or the DISTRICT may have under the Local Governmental and Governmental Employees Tort Immunity Act with respect to any claim brought by a third party.

C. The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, by any other Party, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

5. **NOTICES.** Notice or other writings that any Party is required to, or may wish to, serve upon any other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

A. If to the City:
City of Aurora
44 E. Downer Place
Aurora, Illinois 60507
Attn: Mayor of Aurora

With copy to:
City of Aurora
44 E. Downer Place
Aurora, Illinois 60507
Attn: City Treasurer

B. If to the District:
80 S. River Street
Aurora, Illinois 60506
Attn: Secretary, Board of Education

With copy to:
Whitt Law LLC
70 S. Constitution Drive
Aurora, Illinois 60506

or to such other address, or additional individuals/entities, as any Party may from time to time designate in a written notice to the other Parties. Services by personal delivery shall be deemed given when delivery occurs, and service by certified or registered mail shall be deemed given three (3) days after depositing same in the mail.

6. **COUNTERPARTS.** This Agreement shall be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.
7. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties and supersedes any prior understanding or written or oral agreements between them regarding the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.
8. **EFFECTIVE DATE.** This Agreement shall be deemed dated and become effective on the date the last of the Parties execute this Agreement as set forth below, which date shall be filled in on page 1 hereof.

IN WITNESS WHEREOF, the City, pursuant to authority granted by the adoption of an Ordinance by its City Council has caused this Agreement to be executed by its Mayor and attested to by its Clerk, and the District, pursuant to the authority granted by the adoption of a

Motion by its Board of Education, has caused this Agreement to be signed by its President and attested to by its Secretary.

Dated: _____, 2015

Mayor,
City of Aurora
Kane, DuPage, Kendall, and Will Counties, Illinois

Attest:

City Clerk,
City of Aurora
Kane, DuPage, Kendall, and Will Counties, Illinois

President, Board of Education
West Aurora School District No. 129
Kane County, Illinois

Attest:

Secretary, Board of Education
West Aurora School District No. 129
Kane County, Illinois