

DONATION AGREEMENT

This DONATION AGREEMENT “Agreement” is made on this _____ day of May, 2021 by Metropolitan Family Services an Illinois Not-for-profit organization, on behalf of the Playful Learning Project, (“Donor”), and the City of Aurora, an Illinois municipal corporation and home rule government (“City” or “Recipient”). Donor and City are hereinafter referenced collectively as “the Parties”.

WHEREAS the City is a governmental entity providing services to the residents of Aurora, Illinois.

WHEREAS the Playful Learning Project is a collaborative project made possible by the contributions of the following organizations:

- Chicago Children’s Museum, (*Exhibit Designer*)
- Metropolitan Family Services, (*Implementation Partner*)
- Fox Valley United Way - SPARK, (*Community Anchor Organization*)
- CME Group Foundation, (*Donor*)
- Crown Family Philanthropies, (*Donor*)
- Dunham Foundation, (*Donor*)
- Illinois Children’s Healthcare Foundation, (*Donor*)
- Robert R. McCormick Foundation, (*Donor*)
- Steans Family Foundation, (*Donor*)

WHEREAS Playful Learning is a project that transforms everyday public spaces where families work, play, and live into opportunities to learn. It brings together the science of learning and urban design to infuse cities with playful learning opportunities.

WHEREAS the Marie Wilkinson Garden is a community garden managed by the Marie Wilkinson Food pantry, in the City’s Sixth Ward, and is located on City of Aurora property.

WHEREAS the City and Donor are desirous of working together in partnership to create an educational interactive monument which will encourage safe, engaging, and interactive play between adults and children. The bilingual monument will be installed on the perimeter of the Marie Wilkinson Community Garden for the benefit of Aurora citizens.

NOW, THEREFORE, the Parties agree as follows:

1. THE RECIPIENT’S OBLIGATIONS:

- A. Provide adequate area for the installation of the proposed project’s elements and complete any necessary grading, site preparation, and/or restoration.
- B. Allow installation of mutually agreed upon and designed educational activities and signage (which together create the monument) along the installation path.
- C. Allow Donors to participate in a ribbon cutting ceremony to commemorate the completion of the installation.
- D. Accept and assume all maintenance responsibility with respect to all components of the project installed by or on behalf of the Donors.

2. THE DONOR'S OBLIGATIONS:

- A. To provide the City with a final design plan for the project, at least 60 days in advance of installation so that the City can adequately clear and prepare the area for installation.
- B. To pay for the costs associated with the design, purchase and installation of the project.
- C. To hire a contractor for installation of the project, who carries the following minimum insurance requirements and shall provide a Certificate of Insurance which complies with the following terms:
 - i. General Liability Insurance. Certificate of Insurance shall indicate that the contractor carries General Liability Insurance containing broad form contractual liability providing for a limit of not less than One Million Dollars (\$1,000,000.00) single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person or destruction of property, including the loss of use thereof, in any one occurrence under the terms of which City of Aurora is named as an additional insured; and a limit of not less than Two Million Dollars (\$2,000,000.00) for all damages occurring as a result of more than one occurrence. Contractors or subcontractors working on the Project shall have a have similar coverage with a One Million Dollars (\$1,000,000.00) single limit and Two Million Dollars (\$2,000,000.00) combined limit.
 - ii. Workers' Compensation Insurance. Contractors and subcontractors working on the project shall furnish evidence that, with respect to the operations they perform, they carry a workers compensation insurance policy complying with the statutes of the State of Illinois covering all employees.
 - iii. Auto Liability Insurance:
 - a. Bodily injury with limits not less than \$1,000,000
 - b. Property damage with limits not less than \$500,000
 - iv. Umbrella excess liability of \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - v. The Donor's contractor shall include the City as a primary, non-contributory additional named insured on both General and Auto Liability Insurance policies and indicate said status on any Certificates of Insurance provided to the City pursuant to this project. All insurance premiums shall be paid without cost to the City. All insurance policies shall be written with insurance companies approved by the City of Aurora and licensed to do business in the State of Illinois and having a rating of not less than A IX, according to the latest edition of the A.M. Best Company; and shall include a provision preventing cancellation of the insurance policy unless thirty (30) days prior written notice is given to the City. This provision shall also be stated on each Certificate of Insurance as: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the certificate holder named to the left".
- D. To indemnify, defend and hold harmless, the City, its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments,

settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by the City, arising out of or related to any third-party claim alleging:

- a. Breach or non-fulfillment of any provision of this Agreement by Donor, Donor's employees or contractors;
 - b. Any negligent or more culpable act or omission of Donor, its contractor's or employees, including any reckless or willful misconduct in connection with the installation of the equipment;
 - c. Any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Donor, its contractors, or employees; or
 - d. Any failure by Donor, its contractor or its employees to comply with any applicable federal, state, or local laws, regulations, or codes.
- E. To design, create or purchase and install an educational monument which the Parties estimate will cost approximately one hundred and fifteen thousand dollars (\$115,000), which will include:
- a. Overview sign
 - b. Interactive Table Overview Sign
 - c. Activity Table
 - d. Math Benches (3)
 - e. Stunt Stools
 - f. Birdhouses (40)
 - g. Birdhouses Overview Sign
 - h. Math Stools
 - i. Stool Overview Sign
 - j. Seasonal Overview sign
 - k. Seasonal Planter
 - l. Xylophone with Sign
 - m. Overview Sign
- F. Upon completion and after inspection of the project, to transfer to the City all ownership, rights, title, interest, warranties and maintenance responsibility with respect to all equipment donated and installed by or on behalf of Donor as part of the Project.

3. MUTUAL OBLIGATIONS:

- A. Upon conclusion of installation of the outdoor park, the parties agree to work together to coordinate a Launch Day Event.
- B. To work together in good faith in carrying out the execution of this Donation Agreement.

4. SEVERABILITY

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the intent of the Agreement be carried out as originally contemplated to the greatest extent as permitted by law.

5. GOVERNING LAW:

All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state courts located in Kane County, Illinois. Donor and Recipient hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.

6. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and all prior or contemporaneous agreements, understanding, representations and statements, oral or written, are merged herein. This Agreement may be modified only by written instrument executed by the parties.

7. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the date that the last of the Parties executes this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by the authorized officials.

CITY OF AURORA,

METROPOLITAN FAMILY SERVICES
(On Behalf of the Playful Learning Project)

By: _____

By: _____

Date: _____

Date: _____

ATTEST:

ATTEST:
