

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN
THE CITY OF AURORA AND EAST AURORA SCHOOL DISTRICT NO. 131
REGARDING THE MAINTENANCE OF STREET CURB**

THIS AGREEMENT is made this ____ day of _____, 2021, by and between CITY OF AURORA, an Illinois home rule municipal corporation (the “City”) and the Board of Education of EAST AURORA SCHOOL DISTRICT NO. 131, KANE COUNTY, ILLINOIS, a public school district of the State of Illinois (the “School District”). Collectively, the City and the School District shall be referred to as the “Parties” and individually as a “Party”.

WHEREAS, the Parties are vested with certain authority pursuant to their intergovernmental cooperation powers under Article VII, Section 10 of the Illinois Constitution of 1970 and the Illinois *Intergovernmental Cooperation Act* [5 ILCS 220/1, *et seq.*]; and

WHEREAS, per City requirements, a Letter of Credit was required to be posted by the School District for construction work related the East High School Stadium and Addition project dating back to 2017. At the close of the project in 2018, a punch list was completed by the City that included the installation of a concrete curb (the “Curb”) along the length of State Street to delineate the line between the city street and stadium parking and to facilitate stormwater drainage. To complete the project on schedule the site work along State St. was completed early in the process and the existing curb and gutter was removed and new asphalt installed to the edge of the existing roadway ; and

WHEREAS, the Parties wish to memorialize their agreement regarding inspection, maintenance, and eventual installation of the Curb.

NOW, THEREFORE, in consideration of the mutual promises and consideration set forth herein, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. The preambles set forth above are incorporated in this Agreement as though set forth in this Section 1.

2. The School District hereby agrees to make annual inspections of the condition of the Curb by June 30 each year and report to the City regarding the condition of the asphalt. When the City deems that the condition of the asphalt is not acceptable due to deterioration and failure of the existing asphalt installation the School District shall install a concrete curb meeting the city of Aurora requirements for such curb at the School District's cost.

3. Upon approval of this Agreement by the City, the City shall release and no longer require the Letter of Credit given by the School District for the 2017 East High School Stadium and Addition Project.

4. Each Party shall execute and deliver any further documents and do all acts and things as each Party may reasonably require to carry out the true intent and meaning of this Agreement.

5. No Party may waive of any term or condition of this Agreement without the written consent of the other unless the waiving party is the sole beneficiary of the term or condition it proposes to waive. No waiver shall be binding or effective for any purpose unless set forth in writing and signed by the Party making the waiver, and then shall be effective only in the specific instance and for the purpose given.

6. In the event of any default of any promise contained herein, after giving the defaulting Party a reasonable opportunity to cure such default, the non-defaulting Party may litigate to enforce this agreement and shall be entitled to recover any and all reasonable attorney's fees and costs incurred in enforcing this Agreement against the defaulting Party.

7. A Party shall not be deemed in default of this Agreement with respect to any obligation(s) of this Agreement on such Party's part to be performed if such Party fails to timely perform the same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, pandemics, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other Party (or the other Party's agents, employees or invitees) or similar causes beyond the reasonable control of such Party ("Force Majeure") related to Curb. If one of the foregoing events shall occur or either Party shall notify the other Party that such an event shall have occurred, the Party to whom such notice is provided is made has the right, but not the obligation to investigate the notification and consult with the party making such claim of Force Majeure regarding the same and the Party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was caused or exacerbated by such Force Majeure.

8. This Agreement expresses the complete and final understanding of the Parties with respect to its subject matter and may not be amended or modified except by a written agreement executed by the Parties. This Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof.

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

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials as of the dates set forth below.

BOARD OF EDUCATION, EAST
AURORA SCHOOL DISTRICT NO. 131,
KANE COUNTY, ILLINOIS

CITY OF AURORA, Kane County,
Illinois

President

Mayor

Attest:_____
Secretary

Attest:_____
City Clerk

Date:_____

Date:_____

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