

INTERGOVERNMENTAL AGREEMENT
by and between
THE CITY OF PANA, CHRISTIAN COUNTY, ILLINOIS,
and
PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8

This Intergovernmental Agreement is entered into this _____ day of _____, 2023 by and between the **City of Pana**, an Illinois Municipal Corporation and **Pana Community Unit School District No. 8 ("CUSD #8")**, an Illinois School District, pursuant to the 1970 Illinois Constitution and Illinois Compiled Statutes.

PREAMBLE

WHEREAS, the City of Pana, ("**City**") is an Illinois Municipal Corporation organized under the Constitution and Statutes of the State of Illinois; and

WHEREAS, Pana Community Unit School District #8, (**CUSD #8 or the "School District"**) is an Illinois School District organized under the Statutes of the State of Illinois; and

WHEREAS, the City has the authority under the Expenses for Economic Development Act, 65 ILCS 5/8-1-2.5, to appropriate and expend funds for economic development purposes, including, but not limited to, the making of grants to other governmental entities that is deemed necessary or desirable for the promotion for economic development within the municipality; and

WHEREAS, the 1970 Illinois Constitution, Article VII, Section 10, and the Illinois Compiled Statutes, Ch. 5 Section 220/1 *et. seq.* provide legal authority for intergovernmental privileges and authority to be enjoyed jointly by school districts and municipalities as well as other public bodies politic; and

WHEREAS, the Tax Increment Allocation Redevelopment Act ("**TIF Act**"), Illinois Compiled Statutes, Ch. 65 Section 5/11-74.4-1, *et seq.* authorizes a municipality to enter into all contracts necessary or incidental to the implementation and furtherance of its redevelopment plan and project; and

WHEREAS, pursuant to Sections 4-3(q)(7) and (q)(10) of the TIF Act, a municipality may make payments to affected taxing districts for reimbursement of all or a portion of a taxing district's capital costs and for vocational education, 65 ILCS 5/11-74.4-3(q)(7) and (q)(10); and

WHEREAS, pursuant to Section 4-3 (q)(7.5) of the TIF Act, a municipality may make payments to a school district for an increase in costs attributable to an increase in students from an assisted housing project in the Project Area, all as provided in the TIF Act; and

WHEREAS, the City has adopted a Redevelopment Plan and Project and designated a Redevelopment Project Area pursuant to the TIF Act known as the "Lake Pana Tax Increment Financing District No. 2" ("**TIF #2**"), which is an area located within CUSD #8 and which will impact the growth of CUSD #8 taxing base; and

WHEREAS, this Agreement is subject to and contingent in its entirety on the City's successful establishment of the TIF District #2; and

WHEREAS, the City has determined that it wishes to reduce the negative impact on the real estate tax base of CUSD #8 from the establishment of TIF #2 by providing payments to CUSD #8, as set forth herein, as a result of an increase in students attending the School District from assisted housing units in the TIF #2 Project Area; and

WHEREAS, the City is also willing to share up to 10% of the gross real estate tax increment generated in TIF #2 for capital costs incurred by CUSD #8; and

WHEREAS, any payments provided for hereunder are not payments in lieu of taxes as defined by the Act; and

WHEREAS, the City of Pana ("**City**"), Pana Community Unit School District #8 ("**CUSD #8**"), entered into a Settlement Agreement in order to resolve a lawsuit concerning the establishment of a TIF District in the City of Pana in 2012 ("**TIF #1**"). A copy of the Settlement Agreement is attached hereto by reference as **Exhibit A**; and

WHEREAS, pursuant to the terms of the Settlement Agreement, the City of Pana agreed to share a portion of the incremental revenues from the TIF #1 as payment for any and all redevelopment project costs, as that term is defined in Section 3Q of the TIF Act, all as set forth in the Settlement Agreement; and

WHEREAS, the City has implemented a new Tax Increment Financing Redevelopment Plan and Redevelopment Project for an area known as Lake Pana (**TIF #2**); and

WHEREAS, the new Redevelopment Plan and Project for Lake Pana, **TIF #2**, encompasses territory currently zoned residential but used for a variety of uses such as camping, fishing, boating, and other recreational purposes and also for the production and treatment of municipal water and other public purposes; and

WHEREAS, the Lake Pana Redevelopment Area includes open space, woods, farm ground and lots leased which may be improved with sheds, carports, cabins, cottages and residential dwellings, and;

WHEREAS, less than 25% of the area of **TIF #2** is residential property; and

WHEREAS, the 2012 Settlement Agreement executed between the parties provided for sharing of incremental revenue from future TIF Districts composed of more than 25% residential property; and

WHEREAS, the parties desire to amend the existing Settlement Agreement to reflect statutory limitations on the use of incremental revenue generated from TIF #1; and

WHEREAS, in order to avoid disputes concerning the existing Settlement Agreement, the parties have determined that it is in the best interest of all parties to enter into this Agreement governing the sharing of incremental revenues from TIF #2.

WHEREAS, in consideration for the City's pledge to reimburse CUSD #8 as described herein, CUSD #8 agrees that it shall fully support the City's establishment of the TIF #2 AND WAIVE ANY RIGHT TO RECEIVE TIF INCREMENT PAYMENTS UNDER THE 2012 SETTLEMENT AGREEMENT, as said Settlement relates to TIF #2; and;

WHEREAS, the Parties declare that this Agreement is adopted pursuant to the 1970 Illinois Constitution, Article VII, Section 10; the Tax Increment Allocation Redevelopment Act, Illinois Compiled Statutes, as amended, Ch. 65 Section 5/11-74.4-1 *et seq.* and other applicable statutes.

AGREEMENTS

NOW THEREFORE, in consideration of the statements and findings hereinafter set forth, the mutual covenants herein contained, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereto find and agree as follows:

A. REIMBURSEMENT OF CAPITAL COSTS

1. **Reimbursement of Capital Costs (TIF # 1 only)**: That the City of Pana agrees to continue making payments of incremental TIF revenue to CUSD #8 from TIF #1 established in 2012, according to the terms of Section 4 of the Settlement Agreement, previously entered into between the parties, which is attached hereto by reference as **Exhibit A**. Payment shall be conditioned upon submission to the City of Pana of a request in proper form showing the expenditure of funds by CUSD #8 for eligible expenses as defined in Section 3Q of the Illinois TIF Act. In the event an application is not filed on or before February 1, covering the prior calendar year, then the sharing of incremental revenue from TIF #1 shall be considered waived.

The City shall consider the request for reimbursement of eligible expenses as submitted by CUSD #8 and promptly (upon receipt of the second installment of TIF increment from Christian County) remit payment reimbursement for said eligible expenses, but not to exceed in any one year for CUSD #8, more than 25% of the amount received by the City as incremental revenue for TIF #1 for that prior calendar year.

Such payments are not payments in lieu of taxes and shall be made by the City only from TIF #1 Special Tax Allocation Fund.

2. **Reimbursement of Capital Costs (TIF # 2 only):** Each year during the term of this Agreement, the City shall pay to the School District Ten Percent (10%) of the gross real estate tax increment generated within the Lake Pana TIF #2 District, located within the CUSD #8 School District. CUSD #8 shall use these funds for the reimbursement of capital costs (as defined in *Section A(3)* below) and for the costs of operating its job training, advanced vocational education and career education programs. Such payments are not payments in lieu of taxes and shall be made by the City only from the TIF #2 District Special Tax Allocation Fund.

3. **Definition of Capital Costs:** For purposes of this Agreement, the term "capital costs" shall mean expenditures for the purchase, rental, or use of "capital assets" or "non-capitalized equipment" as those terms are defined in the current Illinois State Board of Education Regulations. Examples of "capital costs" may include:

- a. Acquisition of land to serve the immediate or future needs of children from the development;
- b. Improvement to any existing school site which already serves such needs;
- c. Development of classrooms, parking lots, sidewalks, traffic signals, internal roadways, connections with water, sewer and electrical lines; playgrounds; recreation grounds and athletic fields;
- d. Remodeling or renovation of school facilities;
- e. Purchase and prefabrication of classroom units;
- f. Material, goods or equipment;
- g. Buses, maintenance equipment, office equipment, district vehicles, or playground equipment; and
- h. Any other capital equipment deemed necessary by the School District or Community College and approved by City; and
- i. Any expenditures associated with advanced vocational education programs such as Vocational Building Trades.

**B. TIF #2 AND ASSISTED HOUSING RESULTING IN
INCREASED CUSD #8 STUDENTS**

1. **Payments to CUSD #8:** Each year during the term of this Agreement, the City shall pay to the CUSD #8 an amount as calculated below, in order to reimburse the CUSD #8 for increased costs due to additional students attending CUSD #8 from assisted housing units located with TIF #2 for which the developer or redeveloper receives financial assistance through an agreement with the municipality, or because the municipality incurs the cost of necessary infrastructure improvements within the boundaries of the assisted housing sites necessary for the completion of that housing as authorized by this Act.

An amount determined by multiplying the district's increase in attendance resulting from the net increase in new students enrolled in that school district, who reside in housing units within the redevelopment project area, that have received financial assistance through an agreement with the municipality or because the municipality incurs the cost of necessary infrastructure

improvements within the boundaries of the housing sites necessary for the completion of that housing as authorized by this Act, since the designation of the redevelopment project area by the most recently available per capita tuition cost as defined in Section 10-20.12a of the School Code less any increase in general State aid, as defined in Section 18-8.05 of the School Code or evidence-based funding as defined in Section 18-8.15 of the School Code, attributable to these added new students subject to the following annual limitations: No more than 25% of the total amount of property tax increment revenue produced by those housing units that have received tax increment finance assistance under this Act and from which the students reside.

Such payments are not payments in lieu of taxes and shall be made by the City only from TIF #2 Special Tax Allocation Fund.

The installation of water mains in the TIF #2 District serving residential dwelling units existing as of the date of execution of this Agreement shall not constitute or be considered the installation of infrastructure improvements for assisted living sites.

C. PROCESS

1. **Verification of Real Estate Tax Increment:** The Parties agree that the County Clerk will provide to the parties the actual annual net real estate tax increment generated within TIF #2 District and within the boundaries of the School District and report such increment to the Parties. The Parties shall then use the information provided by the County Clerk to compute the reimbursements to be made to the School District under Sections A and B above. If the County Clerk fails to provide the information requested, the Parties will use their own best efforts to obtain the necessary documentation.
2. **Verification of Costs:** The School District will annually provide to the City an accounting of its capital and/or vocational education expenditures in advance of its request for funds to be provided hereunder. CUSD #8 shall annually provide to the City an accounting of its increased costs attributable to an increase in students enrolled in CUSD #8 residing in assisted housing units located in TIF #2 Project Area. The accounting shall be submitted by the School District to the City on or before February 1 of the year in which a real estate increment to the City is deposited in the Special Tax Allocation Fund and from which payments are to be made to the School District.
3. **Time of Payment:** The City shall pay the sums determined due to the School District within sixty (60) days of the City's receipt of the second installment of real estate taxes from the county, and submission of cost verification acceptable to City.
4. **Excess Costs:** In the event the amounts due the School District in any year, exceed the amount available for distribution hereunder from the applicable special tax allocation fund, any amounts due may be carried over to a subsequent year or years and paid by the City.
5. **Withholding of Reimbursements:** If a refund or reimbursement of real estate tax increment (including any statutory interest thereon) is potentially due from the City's Special Tax Allocation Fund for any reason including, but not limited to, any tax objection, assessment challenge or formal appeal to the Illinois Property Tax Appeal Board (PTAB), issuance of a certificate of error or any

other similar action, including any appeals therefrom for any property located within the TIF District, the City may at its sole discretion, withhold the Districts' share of any such refund or reimbursement from payments due the School District under this Agreement until the time such action is resolved.

Any funds withheld by the City under this section shall be deposited by it into a separate interest-bearing bank account. Upon final determination of the assessed value of the parcel or parcels, the City shall pay to the School District the principal amount due, if any, under this Agreement as recalculated. The City shall be entitled to retain any interest earned on the account as partial payment for the administration of the account due to the delay of the determination of the final evaluation and recalculation of the benefits due to the School District under this Agreement.

If it appears to the City that it will be unable to recover the Districts' share of any such refund from remaining future reimbursements due the School District under this Agreement, then the School District shall reimburse the City for its remaining unpaid share of such refund (including any accrued statutory interest thereon), within thirty (30) days upon receiving written demand of the same from the City.

Notwithstanding anything in this Agreement to the contrary, the obligations contained in this Paragraph A shall remain in effect for the life of TIF #2. Furthermore, the obligations set forth in this paragraph shall survive the expiration of TIF #2 if a tax objection or other such action taken by a property owner is pending prior to the expiration of TIF #2 and shall continue until final disposition of such action.

D. GENERAL PROVISIONS

1. **Binding Effect:** This Agreement shall be binding on the parties and their respective successors, including successors in office. Should the School District merge, this Agreement shall apply to the successor School District.
2. **Governing Law:** This Agreement is governed by and shall be construed in accordance with the laws of the State of Illinois.
3. **Term:** This Agreement shall become effective upon the adoption by the City of an Ordinance approving it and shall remain in effect until either the City adopts an Ordinance dissolving the applicable TIF District or until the termination of the applicable TIF District. Whether the applicable TIF District exists for the entire twenty-three (23) years called for under the Plan or terminates earlier, the City will pay from incremental real estate taxes distributed to the City in the year following the sums due the School District for the prior year which remains unpaid.
4. **Amendments, Waivers Modifications:** No amendment, waiver or modification of any term or condition of this Agreement shall be binding or effective for any purpose unless expressed in writing and adopted by each of the parties as required by law.
5. **Real Estate Tax Increment Information:** The City agree to provide the School District with information developed to establish the initial equalized assessed valuation of

the TIF #2 District and the calculations for successive years' computation of the real estate increment for the TIF #2 District as a whole. The City further agree to provide the School District with a copy of the TIF #2 Annual Report when it is presented to the City Council and such other documents or information required by law to be provided to the taxing bodies.

6. **Enforcement:** The Parties agree that in the event either party to this Agreement should fail to perform or avoid its obligations hereunder, the party not in breach may initiate an action in the local Circuit Court to enforce the terms and conditions set forth herein and shall be permitted to assess all costs and reasonable attorneys' fees incurred by reason of such enforcement action against the party in breach, which costs and reasonable attorneys' fees shall be promptly paid.

7. **Amending TIF # 2 District:** The City will not enlarge the TIF #2 District or amend the TIF #2 District Plan without prior notification to the School District as required by statute.

8. **Waiver:** CUSD #8 by its execution and approval of this Agreement, hereby waives forever, any and all right to directly or indirectly set aside, modify or contest in any manner, the establishment or administration of TIF #1 and TIF #2, including the Redevelopment Plans, Projects and Areas as proposed and approved by the City. CUSD #8 by its execution and approval of this Agreement, hereby waives forever, any and all right to receive TIF increment under the 2012 Settlement Agreement except as provided herein. Nothing contained herein is to be construed to give the School District any right to participate in the administration of TIF #1 and TIF #2.

9. **Prevailing Wage:** The School District acknowledges that it is responsible for compliance with the Illinois Prevailing Wage Act. The School District shall not pay less than the prevailing rate of wages as found by the City or Illinois Department of Labor to all laborers, workers and mechanics performing construction work paid for in whole or in part with TIF funds received under this Agreement unless Illinois law or administrative guidance from the Illinois Department of Labor excludes TIF funds from the Prevailing Wage Act. The School District shall indemnify and hold harmless the City, its officers, officials, agents and consultants from any and all claims related thereto.

10. **Complete Agreement:** This Agreement expresses the complete and final understanding of the parties with respect to the subject matter as of the date of its execution. Each party acknowledges that no representations have been made which have not been set forth herein. This Agreement together with the Settlement Agreement referenced herein constitute the final understanding of the parties with respect to the subject matter of the agreements.

11. **Tides of Paragraphs:** Tides of the several parts, paragraphs, sections or articles of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any provisions hereof.

12. **Partial Invalidity:** In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13. **Notices:** All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid addressed as follows:

To City:

City of Pana
c/o City Clerk
115 N. Main Street
Pana, IL 62568
Phone: (217) 824-2101

To School District:

To LLCC:

14. **Authority to Execute:** The undersigned represent that they have the authority of their respective governing authorities to execute this Agreement.

(This page intentionally left blank – signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 2023.

CITY OF PANA, an Illinois
Municipal Corporation

CUSD #8, an Illinois School District

By: _____

By: _____

ATTEST:

City Clerk

EXHIBIT A

SETTLEMENT AGREEMENT

(See attached)