

RESOLUTION R-41-14

**A RESOLUTION AUTHORIZING THE EXECUTION OF THE HOUSING AND
COMMUNITY DEVELOPMENT JOINT RECIPIENT COOPERATION AGREEMENT
BETWEEN DUPAGE COUNTY AND THE CITY OF WHEATON**

WHEREAS, the City of Wheaton has previously entered into an agreement with the County of DuPage relating to the Federal Community Development Block Grant Program; and

WHEREAS, the Department of Housing and Urban Development has requested that a new agreement be executed that meets all of HUD's current requirements.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor of the City of Wheaton is authorized to execute the Housing and Community Development Joint Recipient Cooperation Agreement between DuPage County and the City of Wheaton which is attached hereto by this reference.

ADOPTED this 7th day of July, 2014.

ATTEST:

Mayor [Signature]

City Clerk

Ayes:

Roll Call Vote:

Councilman Suess
Councilman Prendiville
Councilman Rutledge
Councilman Saline
Mayor Gresk
Councilwoman Pacino S
Councilman Scalzo

Nays:

None

Absent:

None

Motion Carried Unanimously

HOUSING AND COMMUNITY DEVELOPMENT
JOINT RECIPIENT COOPERATION AGREEMENT BETWEEN
DU PAGE COUNTY AND THE CITY OF WHEATON

(FOR FEDERAL FISCAL YEARS ENDING IN 2015, 2016, 2017 &
CONDITIONAL AUTOMATIC RENEWAL THEREAFTER)

THIS AGREEMENT is entered into effective as of the 8th day of July, 2014, between the COUNTY OF DU PAGE, a body politic and corporate of the State of Illinois ("COUNTY") and the City of Wheaton, an Illinois municipal corporation ("CITY").

WHEREAS, the United States Congress enacted the Housing and Community Development Act of 1974, as amended, (hereinafter referred to as the "ACT") providing federal assistance for the support of community development activities which are directed toward the specific objectives identified in Section 101 of the ACT; and

WHEREAS, the ACT makes possible the allocation of funds to the COUNTY and CITY for the purpose of undertaking only community development program activities within the municipality as authorized in Section 105 of the Act and further identified in Section 570.200-20 of Title 24 CFR, Chapter V, Part 570; and

WHEREAS, the National Affordable Housing Act ("NAHA") makes possible the allocation of HOME Investment Partnerships Act funds to the COUNTY for the purpose of undertaking only housing activities specified in Title II of NAHA; and

WHEREAS, the governmental entities who are parties to this Agreement:

1. Have determined that there exists in the incorporated and unincorporated areas of the COUNTY the need for various public improvements, which will aid in preventing or eliminating blight, and which will assist in the provision of housing and housing opportunities for persons of low and moderate income, including the elderly and handicapped, and also public improvements for which there is an urgent need; and
2. Have determined that the said improvements can be accomplished by participation in the program established by the Housing and Community Development Act of 1974 ("CDBG") (42 USC 5301, *et seq.*), as amended, and the HOME Investment Partnerships Act ("HOME") (42 USC 3535(d) and 12701-12839), as amended, the McKinney-Vento Homeless Assistance Act of 1987, Title IV, as amended, 42 U.S.C. 11371-78 and the 2009 Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments, ("ESG") 24 CFR Parts 91 and 576 [Docket No. FR 5474 I 01] RIN 2506 AC29. (the "ACTS") and in effectuation of the purposes thereof; and
3. Have determined that joint action by the COUNTY and CITY is the most effective way to accomplish the purposes of the ACTS within the CITY.

WHEREAS, units of local government had conferred upon them the following powers by Article VII, Section 10, of the 1970 Constitution of the State of Illinois:

“Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities”; and

WHEREAS, Sections 3 and 5 of the Intergovernmental Cooperation Act (5 ILCS 220/3 and 220/5) provide as follows:

“Section 3. INTERGOVERNMENTAL COOPERATION. Any power or powers, privileges, functions or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment and except where specifically and expressly prohibited by law....”; and

“Section 5. INTERGOVERNMENTAL CONTRACTS. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties”; and

WHEREAS, the COUNTY and CITY previously entered into a Housing And Community Development Joint Recipient Agreement Between DuPage County And The City of Wheaton dated July 13, 1993, (“1993 AGREEMENT”) commencing on October 1, 1993, and automatically renewed thereafter for each succeeding urban county qualification period through federal fiscal years 2012, 2013 and 2014, and it is the intention of the parties that the 1993 AGREEMENT will remain in effect until all CDBG, ESG, and HOME funds, including program income or income generated from the expenditure of such funds, which may be received from U.S. Department of Housing and Urban Development (“HUD”) for such program years have been expended, returned, or otherwise accounted for, to the satisfaction of HUD, whichever is longer; and

WHEREAS, updated standards have been issued by HUD and it is most expedient for the COUNTY and CITY to replace, rather than amend the 1993 AGREEMENT, and adoption of this new AGREEMENT will meet the current standards acceptable to the U.S. Department of

Housing and Urban Development (“HUD”) for the three-year urban county qualification period including federal fiscal years 2015, 2016 and 2017; and

WHEREAS, the COUNTY and CITY authorize the execution of this AGREEMENT in exercise of their respective powers and other governmental authority, and, in exercise of their intergovernmental cooperation authority under the Constitution and statutes of the State of Illinois.

NOW, THEREFORE, upon the consideration of the mutual promises contained herein and upon the further consideration of the recitals hereinabove set forth, it is hereby agreed between and among the parties hereto as follows:

1.0 RECITALS

1.1 The foregoing recitals are incorporated herein and made part of this AGREEMENT.

2.0 BASIS, PURPOSE AND INTENT

The parties hereto, by their respective governing bodies, have investigated the provisions of the ACTS and hereby find and declare:

2.1 That the recitals hereinabove set forth show that joint action by the CITY and the COUNTY is the most effective way to accomplish the purpose of the ACTS.

2.2 That it is the purpose and intent of the parties hereto by this Intergovernmental Agreement to cooperate in undertaking, or assisting in undertaking, essential community development and housing assistance activities, specifically community renewal and lower income housing assistance activities within the CITY.

3.0 AGREEMENT

3.1 The COUNTY and the CITY agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities.

3.2 It is hereby understood by the respective parties hereto that the COUNTY shall have authority to undertake or assist in undertaking essential community development and housing assistance activities within the entire CITY.

3.3 The CITY understands that the COUNTY will have final responsibility for selecting projects and filing annual grant requests and submitting the Consolidated Plan to HUD.

3.4 The COUNTY will notify the CITY when a project is proposed inside the CITY’s corporate limit, so that the CITY may have the opportunity to comment on the project.

3.5 The CITY and COUNTY agree to take all required actions to assure compliance with the COUNTY’s certification as to the provisions of the National Environmental Policy Act of

1969, Uniform Relocation Act, Title VI of the Civil Rights Acts of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Sections 104(b) and 109 of Title I of the Housing and Community Development Act of 1974, as amended, and the Americans with Disabilities Act of 1990, as amended, affirmatively furthering fair housing, and other applicable Federal, State and local laws.

3.6 The CITY agrees to evidence its consent to participate in this AGREEMENT by providing the COUNTY with: (a) two certified copies of a Resolution from the governing body of the CITY that the Chief elected Official of the CITY is authorized to sign the AGREEMENT; and, (b) an unqualified opinion of its legal counsel acceptable to the COUNTY concluding that the CITY is authorized under Illinois and local law to enter into the terms and provisions of the AGREEMENT and to undertake or in undertaking community development activities under the CDBG Program.

4.0 DURATION OF AGREEMENT & AMENDMENT

- 4.1 The AGREEMENT shall commence upon October 1, 2014, and shall continue in operation for at least three (3) program years commencing on that date for the duration of the official DuPage County 2015, 2016, and 2017 Community Development program years or until all CDBG, HOME, and ESG funds, including program income or income generated from the expenditure of such funds, which may be received from HUD for such program years have been expended, returned or otherwise accounted for, to the satisfaction of HUD, whichever is longer.
- 4.2 This AGREEMENT will automatically be renewed for each succeeding three-year Urban County Qualification period unless the CITY or COUNTY provides written notice to the other party that it elects not to participate in a new qualification period. A copy of that notice must be sent to the HUD Field Office.
- 4.3 The COUNTY will notify the CITY in writing of the next and each succeeding Urban County Qualification period by the date specified in HUD's Urban County Qualification Notice for that qualification period, of its right not to participate. Such notification shall not be less than 60 days prior to each such qualification period. A copy of the COUNTY's notification to the CITY must be sent to the HUD Field Office by the date specified in the urban county qualification schedule applicable for that period.
- 4.4 Prior to the automatic renewal of this AGREEMENT for each succeeding three-year Urban County Qualification period, each party agrees to timely adopt any amendment to this AGREEMENT incorporating changes necessary to meet the requirements for cooperation agreements set forth in the Urban County Qualification Notice applicable to the subsequent three-year urban county qualification period, and to submit such amendment to HUD as provided in the Urban County Qualification Notice, and that such failure to comply will void the automatic renewal for such qualification period.

4.5 This AGREEMENT remains in effect until the CDBG, HOME, and ESG funds and program income received with respect to activities carried out during the three-year qualification period for the 2015, 2016 and 2017 Community Development program years, and any automatically renewed successive qualification period, are expended and the funded activities completed.

4.6 The COUNTY and CITY agree that they cannot terminate or withdraw from this AGREEMENT while it remains in effect.

5.0 PROGRAM INCOME

5.1 The CITY will inform the COUNTY of any income generated by the expenditures of CDBG or HOME funds received by the CITY from the COUNTY.

5.2 The CITY will return any such program income to the COUNTY for the reprogramming for eligible activities for use in any part of the COUNTY, as the COUNTY determines is best.

5.3 The COUNTY shall monitor and report to HUD on the use of any program income.

5.4 The CITY shall comply with all rules and regulations for the appropriate record keeping in relation to the generation and return of any program income.

5.5 In the event of a closeout of a project, change in status of the CITY, or termination of this AGREEMENT, any program income that is on hand at that time or is received subsequent thereto, shall be returned to the COUNTY.

6.0 PROPERTY ACQUISITION AND DISPOSITION

6.1 The CITY shall comply with all rules and regulations in connection with the acquisition and disposition of real property.

6.2 The CITY shall immediately notify the COUNTY of any modification or change in the use of the acquired real property from the use planned at the time of the acquisition or improvement, including but not limited to, disposition.

6.3 The CITY shall pay to the COUNTY an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds, or HOME funds, where applicable) of any property acquired or improved with CDBG funds, or HOME funds, where applicable which the CITY sells or transfers for a use which does not qualify under CDBG regulation, or HOME regulations, where applicable.

6.4 Any program income generated from the disposition or transfer of property prior or subsequent to closeout, change of status of the CITY or termination of this AGREEMENT shall be returned by the CITY to the COUNTY for reprogramming for eligible activities in any part of the COUNTY as the COUNTY determines is best.

7.0 ALLOCATION AND EXPENDITURES

7.1 No funds under the terms of this AGREEMENT will be allocated or spent by the CITY prior to approval by the COUNTY.

8.0 PROHIBITION FROM FUNDING

8.1 The COUNTY and CITY agree that the COUNTY is prohibited from and shall not fund the CITY for activities in, or in support of the CITY when the CITY does not affirmatively further fair housing within its own jurisdiction or when the CITY's actions impede the COUNTY's actions to comply with its fair housing certification to the federal government.

9.0 CITY AS SUBRECIPIENT

9.1 The CITY agrees that, pursuant to 24 CFR 570.501(b), the CITY is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement set forth in 24 CFR 570.503.

10.0 NON-VIOLENT CIVIL RIGHTS DEMONSTRATIONS POLICY

10.1 The CITY certifies that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations.

10.2 The CITY certifies that it has adopted and is enforcing a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdictions.

11.0 PARTICIPATION IN OTHER PROGRAMS

The CITY understands that, by executing this AGREEMENT, it:

11.1 May not apply for grants from appropriations under the State CDBG Program for fiscal years during the period in which it participates in the COUNTY's programs; and

11.2 May receive a formula allocation under the HOME Program only through the COUNTY. Thus, even if the COUNTY does not receive a HOME formula allocation, the CITY cannot form a HOME Consortium with other local governments.

11.3 May receive a formula allocation under the ESG Program only through the COUNTY.

12.0 NO SALE, TRADE OR TRANSFER OF FUNDS

12.1 The CITY may not sell, trade, or otherwise transfer all or any portion of such funds to another such metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.

13.0 REMEDIES

13.1 Upon the determination by HUD or by the COUNTY that any funds provided to the CITY under this program have been spent in violation of the requirements of federal or state laws, or the terms of this AGREEMENT, such funds will, upon the request of the COUNTY, be returned to the COUNTY.

13.2 Upon the direction of HUD or the COUNTY to alter or modify a program to eliminate a violation of law, the CITY will take such action.

14.0 SEVERABILITY

14.1 If any provision of this AGREEMENT is invalid for any reason, such invalidation shall not affect the other provisions of this AGREEMENT which can be given effect without the invalid provision; and to this end, the provisions of this AGREEMENT are severable.

15.0 MISCELLANEOUS

15.1 The parties hereto agree that this AGREEMENT which may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same AGREEMENT.

IN WITNESS WHEREOF, the undersigned parties have caused this AGREEMENT to be executed by their duly designated officials, pursuant to a proper resolution of their respective governing bodies.

COUNTY OF DUPAGE

By:

Daniel J. Cronin,
County Board Chairman

Attest:

Gary A. King
County Clerk

CITY OF WHEATON

By:

Michael Gesk
Mayor

Attest:

Sharon Barrett-Hagen
City Clerk