



Roll Call Number

21.1927

Agenda Item Number

44

Date December 20, 2021

**RESOLUTION APPROVING FINAL TERMS OF AN URBAN RENEWAL
DEVELOPMENT AGREEMENT WITH LANDUS COOPERATIVE TO CONSOLIDATE
AND RELOCATE OFFICE SPACE AND AN INNOVATION CENTER
TO THE CITY OF DES MOINES AT 220 SW 9th STREET.**

WHEREAS, Landus Cooperative is an agricultural technology-based and farmer-owned cooperative that is proposing to expand their employment opportunities and consolidate their office location and innovation center into a new headquarters located in the City of Des Moines; and,

Whereas, on November 15, 2021, by Roll Call No. 21-1730, the City Council authorized the City Manager to negotiate a development agreement with Landus Cooperative; and,

WHEREAS, the company has agreed to relocate its offices to Des Moines and committed to a 10-year lease and buildout of approximately 25,000 square feet of commercial space at 220 SW 9th Street and has committed to generating a minimum of 1,000 hotel room stays within the City of Des Moines per year; and,

WHEREAS, the Office of Economic Development has negotiated an urban renewal development agreement which provides for a \$250,000 forgivable loan to be paid in annual installments of \$50,000 over a 5-year term, which would be forgivable based on the lease commitment and on meeting or exceeding 1,000 hotel night stays per year in Des Moines.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The City Council hereby makes the following findings in support of the proposed Agreement with the Developer:
 - a) The Developer's obligations to construct the Improvements as provided by the Agreement furthers the objectives of the Urban Renewal Plan to provide additional housing, employment opportunities and tax base in the Metro Center Urban Renewal Project Area, and to preserve and create an environment which will protect the health, safety and general welfare of City residents.
 - b) The economic development incentives for the creation of the employment opportunities and development of the Improvements are provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under this Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Metro Center Urban Renewal Area in accordance with the Urban Renewal Plan; (ii) it will encourage further private investment to reverse the



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pattern of disinvestment and declining property values in the surrounding area; and,
(iii) it will further the City's efforts to retain and create job opportunities within the Urban Renewal Area which might otherwise be lost.

- c) The lease and commitment to hotel usage is a speculative venture and the construction and resulting benefits would not occur without the economic incentives provided by this Agreement.
 - d) The City Council believes that the lease and commitment to use of Des Moines hotels, and the fulfillment generally of the Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the project has been undertaken, and warrant the provision of the economic assistance set forth in the Agreement.
2. The Urban Renewal Development Agreement between the City and Landus Cooperative, is hereby approved. The Mayor and City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Des Moines.
 3. The Economic Development Director or the Director's designee is directed to submit a copy of the fully executed Development Agreement to the Finance Department to enable the Finance Director to make any appropriate disclosure filings in accordance with the City's adopted revised Disclosure Policy.
 4. Upon requisition by the City Manager or the City Manager's designee, the Finance Department shall advance the installments on the Economic Development Grant pursuant to the Agreement.

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- 5. The City Manager or his designees are hereby authorized and directed to administer the Urban Renewal Development Agreement on behalf of the City and to monitor compliance by the Developer with the terms and conditions of the Agreement. The City Manager is further directed to forward to City Council all matters and documents that require City Council review and approval in accordance with the Agreement.

MOVED by Boesen to adopt.

(Council Communication No. 21- 575)

FORM APPROVED:

/s/ Thomas G. Fisher Jr.
Thomas G. Fisher Jr.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED			APPROVED	

J. M. Frankin Cownie Mayor

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik City Clerk

ECONOMIC DEVELOPMENT GRANT AGREEMENT

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (the "Agreement"), is made as of the 20th day of December, 2021, by and between the **CITY OF DES MOINES, IOWA**, a municipal corporation (the "City") and **LANDUS COOPERATIVE**, an Iowa agricultural cooperative (the "Company"):

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, the City has undertaken a program pursuant to the Urban Renewal Plan for the Metro Center Area Urban Renewal Project (the "Urban Renewal Plan") to stimulate economic revitalization of the downtown area; to make use of under-utilized areas of the City; and to preserve and create an environment within the downtown area which will protect the health, safety, and welfare of the City; and

WHEREAS, the Company has proposed a project (the "Landus Project") wherein the Company agrees consolidate its office locations and innovation center into a new headquarters located in the City of Des Moines by leasing 25,000 square feet of office space in 220 SW 9th Street and committing to a minimum of 1,000 hotel room stays within the City of Des Moines per year; and

WHEREAS, economic development assistance for the Landus Project in the form of the grant as set forth herein shall be provided by the City to Company pursuant to Chapter 15A ("Use of Public Funds to Aid Economic Development") of the Code of Iowa, and the Landus Project will ensure job retention and create an opportunity for job creation by assisting Company in expanding its existing operations and consolidating them in the City of Des Moines; and

WHEREAS, the Company is an agricultural technology-based and farmer-owned cooperative that is in the Ag/biotech sector focusing on agriculture innovation, data services and technology solutions and the Landus Project will continue to generate new opportunities for the Des Moines economy; and

WHEREAS, the Landus Project furthers economic development objectives to strengthen central Des Moines as the business, financial, and administrative center of the metropolitan area and which will protect the health, safety, and general welfare of City residents and expand taxable values of properties; and

WHEREAS, the economic development incentives for build-out of the Leased Premises and the creation and retention of employment in the downtown shall be provided by the City pursuant to Chapter 15A of the Code of Iowa, and the obligations of Company under this Agreement to lease the Leased Premises and locate employees in the Leased Premises will generate the following public gains and benefits: (i) it will help maintain and expand taxable values in the Project Area; (ii) it will encourage further private investment and will attract and retain businesses in the Project Area to reverse the pattern of disinvestment and provide for economic stabilization

within the Project Area; and (iii) it will further the City's efforts to create and retain job opportunities within the Project Area which might otherwise be lost; and

WHEREAS, the Landus Project and resulting job retention and creation opportunities would not occur without the economic incentives provided by this Agreement and the public gains and benefits for urban renewal and economic development resulting from the Landus Project are warranted in comparison to the amount of such assistance; and

WHEREAS, the City believes that the Landus Project, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Landus Project has been undertaken and warrant the economic assistance set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE 1. COMPANY DUTIES; ECONOMIC DEVELOPMENT GRANT

Section 1.1. Duty to Lease Office Space, Create Jobs and Guaranty Hotel Stays. Company agrees, subject to the terms of this Agreement, to undertake the following economic development actions to create and retain jobs in the Project Area:

- A. The Company shall enter a Lease Agreement for the Leased Premises and will continuously occupy and possess the Leased Premises for its office facilities and operations and will remain in the Leased premises for the term of this Agreement.
- B. The Company will have visitors and employees that will use 1,000 hotel room stays within the City of Des Moines per calendar year for the term of this Agreement.

Section 1.2. City Use of Conference Facility. The Company shall permit the City to use its large meeting facility three times per calendar year during March, April, May, September, October or November. The City must request use of the facility at least 30 days in advance. If the facility is not available when requested, the Company will notify the City twenty-five days prior to the requested date. The Company will in good faith make the facility available if possible.

Section 1.3. Basis for Assistance. In consideration of the obligations of the Company to enter into a Lease of the Leased Premises and to occupy such Leased Premises within the Project Area as part of its operations, to provide employment, and to guarantee the hotel room stays, and in consideration of the economic development, and employment opportunities that will be retained and created in the Project Area by the Company as a result of such undertaking, the City shall cause to be provided the economic development assistance identified in this Agreement ("Economic Development Grant").

Section 1.4. Economic Development Grant. Provided that Company complies with its duties of leasing and occupying the Leased Premises and guaranteeing the hotel room stays, and that the City has determined that such obligations have been completed in accordance with the terms of this Agreement, the City shall pay to Company an Economic Development Grant of \$250,000.00 as follows:

- A. Within 30 days of the issuance of the Certificate of Occupancy for the Leased Premises and the provision of a promissory note for \$50,000.00 in the form provided as Exhibit A of this Agreement, the City shall pay the Company \$50,000.00 subject to the promissory note.
- B. For each subsequent 12-month period for the years 2023 through 2026, if the Company provides and the City approves a satisfactory report pursuant to Section 1.7 of this Agreement and a promissory note for \$50,000.00 in the form provided as Exhibit A, the City shall pay the Company \$50,000.00 subject to each promissory note received within 30 days of receipt.

Section 1.5. Forgiveness of the Loans. The City shall forgive the existing promissory note provided pursuant to this Agreement upon satisfactory report pursuant to Section 1.7 provided annually by January 31. If the Company fails to fully satisfy the hotels stays provision pursuant to Section 1.1, the City shall forgive the prior existing promissory note on a pro rata basis based on a percentage of the number of actual hotel nights compared to 1,000 nights.

Section 1.6. Condition to Performance by City. In the event that any report provided pursuant to Section 1.7 reflects that Company has failed to meet its obligations under this Agreement, the City shall have no obligation to pay any future installments of the Economic Development Grant.

Section 1.7. Reporting Requirements, Records. The Company shall provide a report to the City as required in this Agreement. The report shall contain the following information for the period since the prior report:

- A. Information establishing that the Company has maintained its lease and use of the Leased Premises.
- B. Information establishing that employees of the Company or visitors to the Company have stayed in hotels within the City of Des Moines for 1,000 nights since the prior report.
- C. Information establishing that the Company has remained in compliance with Section 1.8 of this Agreement.

Each report shall include a certification by the chief executive officer of Company, the president, chief legal and corporate affairs officer, or chief financial officer that the information contained in the Report is true and accurate.

Section 1.8. Prohibition Against Change of Ownership, Control, or Operation. The Company acknowledges and agrees to the following:

- A. The Company represents and agrees that its undertakings pursuant to this Agreement are, and will be used, for the purpose of advancing the Landus Project and to locate its home office facilities for the Company within the Metro Center Urban Renewal Project Area.
- B. The Company further recognizes that the importance of the Landus Project and of the retention of the operations of the Company and of the associated employment in the downtown area of the City to the general welfare of the community as a whole and of the substantial financing and other public aid that has been made available by the City for the purpose of making the Landus Project possible the qualifications and identity of the Company are of particular concern to the community and the City.
- C. The Company further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Company, and, in so doing, is willing to accept and rely on the Company for the faithful performance of all undertakings and covenants to be performed by the Company under this Agreement.
- D. The Company represents and agrees for itself, and its successors and assigns, that until December 31, 2026, the Company shall not permit, without the written permission of City, any change in a majority of its ownership interests, or the control or operation of its home office facilities at the Leased Premises, including but not limited to: merger or consolidation of the Company with any other person, firm, or corporation; change in the nature of the business activities as carried out at the date hereof; or substantial distribution, liquidation, or other disposal of its assets at the Leased Premises. The City will not approve an ownership change, as described above, unless the purchasing entity first agrees to be bound by the provisions of this Agreement and agrees to assume the terms and conditions of this Agreement. The City shall not unreasonably withhold the approval of a change in ownership, control or operation.

Section 1.9. Non-appropriation/Limited Source of Funding. A. Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay the Economic Development Grant shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit under the meaning of any constitutional or statutory debt limitation and shall be subject in all respects to the right of non-appropriation reserved by the City Council as provided in this Section. The City may exercise its right of non-appropriation as to the amount of the Economic Development Grant to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall be exercised only by resolution affirmatively declaring the

City's election to non-appropriate funds otherwise required to be paid to the Company in the next fiscal year under this Agreement.

B. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to pay future installments of the Economic Development Grant shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result thereof. If any provision of this Agreement is so suspended, the suspension shall not affect other provisions or application of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Section are severable.

Section 1.10. Representations by the Company. The Company represents, warrants and covenants to the City that at the time of signing this Agreement and at the time of each advancement of the Economic Development Grant by the City to the Company, the following are, and shall be, true and correct:

- A. The Company is authorized to conduct business in the State of Iowa as contemplated by this Agreement and is not in violation of any provisions of its Articles of Incorporation, Articles of Organization, Bylaws or Operating Agreement, as the case may be, or the applicable laws of the State of Iowa.
- B. The Company has the full power and authority to execute this Agreement and this Agreement constitutes the legal, valid and binding obligation of the Company in accordance with its terms, and all consents of other parties required for the execution and delivery of this Agreement by the Company or the consummation of the transactions contemplated hereby have been obtained.
- C. To the best of the Company's knowledge, the execution and delivery of this Agreement and the consummation of the transactions contemplated herein, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented or limited by or in conflict with, and will not result in a breach of, other provisions of the Articles of Incorporation, Articles of Organization, Bylaws or Operating Agreement, as the case may be, of the Company or with any evidences of indebtedness, agreements or instruments of whatever nature to which the Company is now a party or by which it may be bound, and will not constitute a default under any of the foregoing.
- D. The making and performance of this Agreement by the Company and the execution and delivery of the documents to be delivered by it pursuant hereto, have been duly

authorized by all necessary actions, and this Agreement constitutes the legal, valid and binding obligations of the Company enforceable in accordance with its terms.

- E. There are no lawsuits or proceedings pending, or to the knowledge of the Company threatened against the Company affecting in any manner whatsoever the right of the Company to execute this Agreement or any other documents required to be executed under this Agreement. Further, there are no proceedings by or before any governmental commission, board, bureau or other administrative agency pending or, to the knowledge of the Company, threatened against the Company with respect to the Landus Project.
- F. Except as expressly provided in this Agreement, the Company does not make or give any representation or warranty or condition of any kind, whether such representation, warranty, or condition be express or implied.

ARTICLE 2. REMEDIES

Section 2.1. In General. A. City and the Company shall work together cooperatively using good faith and commercially reasonable efforts to comply with the terms and conditions of this Agreement. Except as otherwise specifically provided in this Agreement, in the event of a default by either party under this Agreement, the aggrieved party may, by written notice of default to the party in default, demand that it proceed immediately to cure or remedy such default, and, in any event, complete such cure or remedy within thirty (30) days (or such longer time as may be specifically provided herein) after receipt of such notice. Any default on an obligation to pay money shall be cured within ten (10) business days after receipt of such notice. Notwithstanding the foregoing, if any non-monetary default reasonably requires more than thirty (30) days to cure, such default shall not constitute an event of default if the defaulting party commences to cure the default promptly upon receipt of the notice of the default and with due diligence thereafter continuously prosecutes such cure to completion.

B. In the event that a Notice of Default is given as provided above and action to cure or remedy the default is not promptly taken or not diligently pursued, or if the default is not cured or remedied within the time allowed, then the party in default may be declared to be in breach of this Agreement by the aggrieved party. In the event of a breach of this Agreement, in addition to such other rights as the aggrieved party may have hereunder, the aggrieved party may institute proceedings for damages for breach of contract. In any claim, action or civil proceeding wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party for any breach of this Agreement. Upon declaration of default, the existing notes issued pursuant to Section 1.4 become enforceable and are no longer forgivable.

Section 2.2. Other Rights and Remedies; No Waiver by Delay. City and the Company shall have the right to institute such actions or proceedings as each may deem desirable for effectuating the purposes of this Article; provided, however, that any delay by City or the Company in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive either City or Company of or limit such rights in any way; it being the intent of this provision that City and Company should not be constrained

to exercise such remedies at a time when such party may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City or the Company with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of City or Company with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City or Company.

Section 2.3. Enforced Delay in Performance. Except for an obligation to pay money to the other pursuant to this Agreement, neither City nor Company shall be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, in the event of an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, temporary injunctions, acts of God, acts of the public enemy, acts of government (provided that City may not rely upon its own acts as reason for delay), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of City or of Company, as the case may be, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this Article shall, within thirty (30) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay.

Section 2.4. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either party shall be deemed a waiver in any respect in regard to any other rights of the party making the waiver or of any other obligations of the other party.

ARTICLE 3. GENERAL

Section 3.1. Conflict of Interest. The Company agrees that, to its best knowledge and belief, no member, officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Landus Project, or who is in a position to participate in a decision-making process or gain insider information with regard to the Landus Project, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Landus Project, or in any activity, or benefit therefrom, which is part of the Landus Project at any time during or after such person's tenure.

Section 3.2. Non-Discrimination. The Company agrees that for the term of this Agreement:

- A. It will not discriminate against any employee or applicant for employment because of age, race, color, creed, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. Applicants will be evaluated and considered, and employees will be treated during employment, without regard to their age, race, color, creed, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. Company agrees to post in conspicuous places, available to employees and applicants for employment, notices available from City setting forth the provisions of this non-discrimination clause.

- B. It will, implement and follow a policy that all qualified applicants will receive consideration for employment without regard to age, race, color, creed, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status.

Section 3.3. City Not a Guarantor, Surety or Partner. The City is not a guarantor or surety for the Landus Project nor for any indebtedness incurred by the Company. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners or joint venture between the parties hereto, or as constituting the Company as a contractor, agent or representative of the City for any purpose or in any manner whatsoever.

Section 3.4. Compliance with Laws and Regulations. Company shall comply in all material respects with all applicable Federal, State and local laws, rules, ordinances, regulations and orders.

Section 3.5. Additional Funds. Company shall be solely responsible for providing any additional equity or debt funding which may be needed to cover additional costs incurred as a result of overruns or unanticipated expenses in financing the Landus Project.

Section 3.6. Indemnity, Fees, Expenses. Company shall assume, defend, indemnify, protect and hold harmless the City and its officers, employees and agents from any and all claims, demands, actions or causes of action of whatsoever kind occasioned wholly or in part by any grossly negligent act or omission of Company or of any of Company's employees, agents or contractors arising out of or in any way connected with the performance of this Agreement or the carrying out of the Landus Project. Company's obligation to indemnify, defend and hold harmless shall include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the aforementioned claims, or in enforcing the provisions of this paragraph, including all out-of-pocket expenses such as reasonable attorney's fees and the value of any services rendered by the City's Legal Department or by any of the City's officers or employees.

Company shall upon demand pay to the City the reasonable amount of any and all fees and expenses of its counsel and of any experts and agents, which the City may incur in connection with: the exercise or enforcement of any of the rights of the City hereunder against Company; the failure by Company to perform or observe any of the provisions hereof; the collection of payments due under this Agreement from Company; and any other expenses incurred by the City related to the Grant or the Landus Project.

Company agrees to pay all license fees, permit fees, and insurance premiums related to the Landus Project for which it is responsible under its lease. It is the intention of the parties that the City shall not incur pecuniary liability by reason of the terms of this Agreement and Company shall indemnify and hold harmless the City (including any person at any time serving as an officer, employee, or agent) against all claims by or on behalf of any person, firm, or corporation, arising out of this Agreement, and all costs and expenses incurred in connection with any claim or in connection with any action or proceeding brought thereon to the extent caused by Company's gross negligence or willful misconduct, and except to the extent caused by the City's willful misconduct or negligence.

In no event shall either party be liable to the other party or any other person or entity for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever. In no event shall the Company's liability to the City or any other person or entity arising out of or in connection with this Agreement, in the aggregate, the total Economic Development Grant actually paid by the City to the Company.

Section 3.7. Interpretation of Contract. The following rules shall be applied in the interpretation of this Agreement:

a. *Choice of Laws.* This Agreement shall be construed in accordance with the laws of the State of Iowa.

b. *Complete Agreement.* This Agreement constitutes the entire agreement and understanding among the parties and supersedes all prior proposals, negotiations, agreements and understandings. In entering into this Agreement, Company acknowledges that it is relying on no statement, representation, warranty, covenant or agreement of any kind made by the City, or any employee or agent of the City, except for the agreements of the City set forth herein.

c. *Non-working Days.* In the event the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.

d. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

e. *Titles of Articles and Sections.* Titles of the several sections, subsections, and paragraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

f. *Successors and Assigns.* This Agreement shall inure to the benefit of and shall be binding upon successors and assigns of the parties.

g. *No Third Party Beneficiaries.* No third party beneficiaries are contemplated by the parties to this Agreement, and no third party shall claim or be entitled to any benefit from any of the provisions hereof or the obligations imposed herein.

Section 3.8. Notices. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to the other party at their address below:

a. In the case of Company, is addressed or delivered by first-class mail, return receipt requested to: Steve Nielsen, EVP & General Counsel, Landus Cooperative, 220 SW 9th Street, Des Moines, Iowa 50309 (will relocate to the leased premises upon completion of the buildout);

b. In the case of the City: Economic Development Director, Office of Economic Development, City Hall, 400 Robert D Ray Drive, Des Moines, Iowa 50309;

Or to such other person or address with respect to either party as that party may from time to time designate by notice to the other as provided in this Section.

Section 3.9. Representatives Not Individually Liable. No member, official, or employee of City or Company shall be personally liable in the event of any default or breach by either party under this Agreement, or for any amount which may become due or on any obligations under the terms of this Agreement.

Section 3.10. WAIVER OF JURY TRIAL. THE CITY AND DEVELOPER EACH HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE OBLIGATIONS OF THE CITY, ANY RELATED DOCUMENTS, THE OBLIGATIONS THEREUNDER OR ANY TRANSACTIONS ARISING THEREFROM OR FROM ANY AMENDMENTS THERETO. THIS WAIVER IS MADE ON BEHALF OF AND APPLIES TO ALL EMPLOYEES, OFFICERS, OWNERS, PRINCIPALS, AGENTS AND CONTRACTORS AND INVITEES OF BOTH THE CITY AND THE DEVELOPER. THIS WAIVER APPLIES TO ALL CLAIMS WHETHER MADE AT LAW OR EQUITY AND WHETHER BASED IN CONTRACT OR TORT THAT ARE MADE BY ANYONE IN RELATIONSHIP TO THE AGREEMENT OR IN RELATIONSHIP TO ANY ASPECT OF THE PROJECT OR CONSTRUCTION OF OR OPERATION OF THE IMPROVEMENTS. THE DEVELOPER AND THE CITY EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

LANDUS COOPERATIVE

By: *Stephen V. Nielsen*
Stephen Nielsen, General Counsel

STATE OF IOWA }
COUNTY OF POLK } ss:

This instrument was acknowledged before me on 17 December, 2021, by Stephen Nielsen as General Counsel of Landus Cooperative., an Iowa Cooperative, on behalf of whom the instrument was executed.

Katherine Bloom
Notary Public in the State of Iowa

KATHERINE BLOOM
Notarial Seal, Iowa
Commission Number 810638
My Commission Expires May 21, 2024

EXHIBIT A

PROMISSORY NOTE

\$50,000.00

Des Moines, Iowa
December 17, 2021

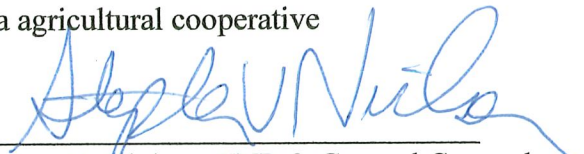
1. FOR VALUE RECEIVED, the undersigned, **LANDUS COOPERATIVE**, an Iowa agricultural cooperative, hereby promises to pay to the order of the City of Des Moines, Iowa (the "City"), the principal sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Indebtedness").
2. The Indebtedness evidenced by this Note shall be due and payable in full on _____ [Specific Month and Day depends on the initial reporting date], 2026 or upon default under the Economic Development Grant Agreement between the City of Des Moines and Landus Cooperative dated _____, 2021 (the "Maturity Date"). Any portion of the Indebtedness not repaid on the Maturity Date shall thereafter draw interest at the rate of (8.0%) per month for each month or portion thereof after the Maturity Date, until paid. Any payments on the Indebtedness shall be applied first to accrued interest, if any, and then to reduction of principal.
3. All payments hereunder are payable in lawful money of the United States of America at the City Administration Building, 400 E. Court Avenue, Des Moines, Iowa, 50309, or at such other place as the holder hereof shall designate to Landus Cooperative in writing.
4. Landus Cooperative waives presentment, demand for payment, protest and notice of dishonor and agrees to pay all costs of collection, including reasonable attorneys' fees. Any forbearance by City in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by City.

This Note may not be changed, modified or terminated except in writing signed by the party to be charged unless the note is forgiven pursuant to terms of the Economic Development Grant Agreement between the City of Des Moines and Landus Cooperative dated _____, 2021. If this Note is forgiven, it will be returned to Landus Cooperative.

This Note shall be governed by and construed in accordance with the laws of the State of Iowa.

LANDUS COOPERATIVE


an Iowa agricultural cooperative

By: 
Its: Stephen V. Nielsen, EVP & General Counsel

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on December 17, 2021, by Stephen V. Nielsen, as the EVP & General Counsel of Landus Cooperative, on behalf of whom the instrument was executed.

KATHERINE BLOOM
Notarial Seal, Iowa
Commission Number 810638
My Commission Expires May 21, 2024



Notary Public in the State of Iowa
My commission expires: 5-21-24

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Company has caused this Agreement to be duly executed in its names and behalf on or as of the day first above written.

CITY OF DES MOINES, IOWA

ATTEST:

By: 
P. Kay Cmelik, City Clerk

By: 
T.M. Franklin Cownie, Mayor


STATE OF IOWA }
COUNTY OF POLK } ss:

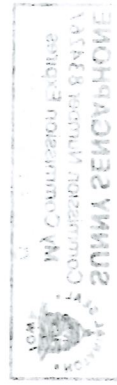
On this 20th day of December, 2021, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 21- 1987 of City Council on the 20th day of December 2021, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.




Notary Public in the State of Iowa

APPROVED AS TO FORM:


Thomas G. Fisher Jr.
Assistant City Attorney



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