

**FIFTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
AND LEASE BETWEEN THE CITY OF NAPERVILLE AND THE NAPERVILLE PARK
DISTRICT FOR THE NAPERVILLE RIVERWALK**

THIS FIFTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT AND LEASE BETWEEN THE CITY OF NAPERVILLE AND THE NAPERVILLE PARK DISTRICT is entered into as of _____ (hereinafter “Effective Date”) between the City of Naperville, an Illinois municipal corporation and home rule unit of local government with offices at 400 South Eagle Street, Naperville, Illinois 60540, and the Naperville Park District, an Illinois unit of local government, with offices at 320 West Jackson, Naperville, Illinois 60540. The City and the Park District shall hereinafter also be referred to individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, since 1980 the City of Naperville (hereinafter “City”), and the Naperville Park District (hereinafter “Park District”), have been engaged in a cooperative effort to construct, improve, and maintain a park-like improvement known as the Naperville Riverwalk; and

WHEREAS, the City and the Park District have entered into several lease agreements with respect to the Naperville Riverwalk pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, and pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois which encourages and provides for units of local government to contract and otherwise associate with each other to exercise, combine or transfer any power or function in any manner not prohibited by law or by ordinance; and

WHEREAS, the Intergovernmental Agreement and Lease between the City and Park District for the Naperville Riverwalk is comprised of the following agreements (cumulatively referenced herein as the “**Riverwalk Agreement**”): (a) the “Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved in 2003 by the Park District, and by the City by Resolution 03-02; (b) the 2008 “Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution No. 08-018 [which extended the term of the Riverwalk Maintenance Agreement by five years]; (c) the 2009 “First Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution 09-014 [which added the Harold and Margaret Moser statute located adjacent to the Visitor Center on the northeast corner of the Moser Tower/Millennium Carillon to the Riverwalk and provided for its maintenance]; (d) the 2012 “Second Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved

by the Park District, and by the City by Resolution 12-039 [which added the North Central College (“NCC”) Gateway Project to the Riverwalk and provided for its maintenance]; (e) the 2014 “Third Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution 14-009 [which transitioned certain responsibilities regarding the Millennium Carillon, Moser Tower, and the Visitor Center to the City and Park District upon expiration of the Millennium Carillon Agreement with the Millennium Carillon Foundation, and which provided for a term beginning on January 1, 2014 and terminating on December 31, 2018; and (f) the 2017 “Fourth Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District and by City Resolution 17-018 [which added the Water Street Riverwalk Improvements maintenance area to the Riverwalk and provided for its maintenance]; and

WHEREAS, under the Riverwalk Agreement, unless other provision is made therefor, the City is responsible to pay for Capital Repairs and Replacements for the Riverwalk which cost in excess of \$10,000 and which are intended to last more than two years; the Park District is responsible for costs associated with Riverwalk Operations and Maintenance west of Washington Street (unless other provision is made therefor); and the City is responsible to pay costs associated with Riverwalk Operations and Maintenance costs east of Washington Street and for all new additions to the Riverwalk. Further, the City is responsible to pay the “gap” amount created by the difference between the tax cap the Park District is subject to and inflation for operation and maintenance costs for those portions of the Riverwalk west of Washington Street; and

WHEREAS, expansion of the boundaries of the Naperville Riverwalk was approved by the Park District, and by the City by Resolution 17-029 to include the Municipal Center Expansion Property for provision of an outdoor office area or “smart park” to be known as Naperville Jaycees Park; however since the Park District shall not be responsible for operation or maintenance of the Naperville Jaycees Park, no additional funds are due under the Riverwalk Maintenance Agreement to the Park District for its maintenance; and

WHEREAS, the Rotary Club of Naperville desires, at its sole cost, to install improvements on the Naperville Riverwalk between Rotary Hill and the large quarry north of Aurora Avenue and Naperville Central High School which will be a “harmony park” (hereinafter “Rotary Harmony Park”) which is anticipated will consist of four large interactive and playable outdoor percussion instruments, landscaping, paver plaza and an identifying feature noting it as the Rotary Harmony Park donated by the Rotary Club of Naperville; and

WHEREAS, as required by the provisions of Sections 7.2 and 7.3 of the Riverwalk Agreement, the City and Park District hereby agree to add Rotary Harmony Park to the Riverwalk and to fund its maintenance as provided herein; and

WHEREAS, the Park District will be responsible for the ongoing operation and maintenance of Rotary Harmony Park and the City will be responsible to pay for its maintenance as provided in the Annual City Contributions set forth in a revised Section 2.2.5 of the Riverwalk Maintenance Agreement as provided herein and the Annual City Contribution Spread Sheet attached hereto and made part hereof as **Amended Exhibit 2** (subject however, to reimbursement to the City of said maintenance costs for Rotary Harmony Park from the Rotary Club for a period of five (5) years); and

WHEREAS, Exhibit 1 to the Riverwalk Agreement shall be amended and updated to include Rotary Harmony Park and the Municipal Center Expansion Property/Naperville Jaycees Park described above (hereinafter **Amended Exhibit 1**); and

WHEREAS, the current Term of the Riverwalk Agreement terminates on December 31, 2018; and

WHEREAS, the Parties hereto desire to extend the Term of the Riverwalk Agreement for an additional three (3) year period (from January 1, 2019 through December 31, 2021), with two additional one (1) year Term extensions to occur automatically on January 1, 2022 and January 1, 2023 unless either Party terminates the Riverwalk Agreement prior to commencement of the said additional one (1) year extensions.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties hereby agree as follows:

SECTION 1: The Recitals above are incorporated as part of this Section 1 as though set forth herein in their entirety.

SECTION 2: Amended Exhibit 1 to the Riverwalk Agreement, attached hereto and made part hereof, has been updated to include Rotary Harmony Park, and the Municipal Center Expansion Property for the Naperville Jaycees Park as described herein.

SECTION 3: Section 2.2.5 of the Riverwalk Agreement is hereby amended to include a maintenance payment in 2018 to the Park District for Rotary Harmony Park in the amount of \$346 which represents one-third of the annual \$1,037.00 maintenance payment.

SECTION 4: Section 2.2.5 of the Riverwalk Agreement is hereby amended to reflect annual City maintenance payments to the Park District from January 1, 2019

through December 31, 2023 as set forth below and as detailed in **Amended Exhibit 2** attached hereto and made part hereof:

	Riverwalk	Carillon	Total
2.2.5 For calendar year 2019, the sum of	\$175,326	\$105,217	\$280,543
2.2.5 For calendar year 2020, the sum of	\$177,956	\$106,795	\$284,751
2.2.5 For calendar year 2021, the sum of	\$180,625	\$108,397	\$289,023
2.2.5 For calendar year 2022, the sum of	\$183,334	\$110,023	\$293,358
2.2.5 For calendar year 2023, the sum of	\$186,085	\$111,673	\$297,758

SECTION 5: The Term of the Riverwalk Agreement shall be extended from January 1, 2019 through December 31, 2021 with two additional one (1) year term extensions to occur automatically on January 1, 2022 and January 1, 2023 unless either Party terminates this Agreement prior to commencement of either of said additional one (1) year extensions.

SECTION 6: All other terms of the Riverwalk Agreement, including but not limited to the Exhibits thereto (except as amended herein) shall remain in full force and effect.

THE PARTIES TO THIS FIFTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT AND LEASE BETWEEN THE CITY OF NAPERVILLE AND THE NAPERVILLE PARK DISTRICT by their signatures acknowledge that they have read and understand this Agreement and intent to be bound by its terms.

CITY OF NAPERVILLE

NAPERVILLE PARK DISTRICT

By: _____
Steve Chirico
Mayor

By: _____
Mike Reilly
President

ATTEST

ATTEST

By: _____
Pam Gallahue, Ph.D.
City Clerk

By: _____
Bridget Tuft
Board Secretary