

EXHIBIT A

PROPERTY ADDRESS:

**95th Street Library
3015 Cedar Glade Road
Naperville, Il 60564
P.I.N. 01-10-101-014-0000**

Return to:

**Naperville Park District
320 W. Jackson Avenue
Naperville, IL 60540**

**INTERGOVERNMENTAL AGREEMENT GRANTING
LAND USE PERMITS FROM THE CITY OF NAPERVILLE
TO THE NAPERVILLE PARK DISTRICT
FOR CITY PROPERTY AT THE 95TH STREET LIBRARY**

THE CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of government (“City”), and THE NAPERVILLE PARK DISTRICT, a body politic and a unit of local government (the “**Park District**”), hereby enter into THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) for Land Use Permits from the City to the Park District for City Property at the 95th Street Library as set forth herein.

RECITALS

WHEREAS, the City is the owner of that Property commonly known as the 95th Street Library generally located south of 95th Street and west of Cedar Glade Road (“**City Library Property**”); and

WHEREAS, the Park District owns the property adjacent to and immediately south of the City Library Property (“**Park Property**”); and

WHEREAS, the Park District desires to improve the area on the north end of its property and the southerly seventy (70) feet of the City Library Property with a new public gathering space (the “**Plaza**”) as generally depicted on **Exhibit A** attached hereto and made part hereof, to be constructed at the Park District’s sole expense, to serve constituents of both the Library and the Park District; and

WHEREAS, the Board of Library Trustees and Staff of the Library have participated in the planning of the Plaza and desire to have the Park District to construct the Plaza; and

WHEREAS, the Board of Library Trustees and the Park District previously cooperated in a pilot “farmers’ market” program located on the Library parking lot and the parties now desire to continue that program and to formalize the rights and responsibilities of the parties in doing so through a formal permit agreement; and

WHEREAS, this Agreement is authorized by the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, both of which provide for the execution of agreements and implementation of cooperative ventures between units of local government of the State of Illinois; and

WHEREAS, the City and the Park District previously entered into a Land Sales Agreement (“**LSA**”) concerning a portion of the City Library Property that referenced and incorporated a proposed site plan setting forth the anticipated development and use of the City Library Property and the Park Property; and

WHEREAS, the City and the Park District agree that the provisions of this Agreement shall supersede the provisions of the LSA to the extent that there is any conflict between them.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the City of Naperville hereby grants to the Naperville Park District the following Land Use Permits upon the terms and conditions set forth herein:

AGREEMENT

1. **Recitals.**

The foregoing recitals are incorporated herein as though fully set forth.

2. **Land Use Permits Granted.**

For and in consideration of the use of one dollar and other good and valuable considerations to it paid, the City of Naperville, an Illinois municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, DuPage and Will Counties, in the exercise of its home-rule powers and in accord with the authority granted to all units of government to engage in intergovernmental cooperation, does hereby permit Naperville Park District, an Illinois park district and local unit of government formed and operating under the Illinois Park Code and the laws and Constitution of the State of Illinois, DuPage and Will Counties, the following three (3) Land Use Permits subject to the terms and conditions set forth and referenced herein:

A) **The Plaza Permit:** Subject to the terms and conditions set forth in Section 3(A) hereof, a non-exclusive right, permission and authority to survey, construct, reconstruct, use, operate, maintain, test, inspect, repair, replace, alter, or remove improvements for the outdoor Plaza project described herein, including any and all related underground utilities, pad mounted equipment and appurtenances thereto (“**Plaza Facilities on City Library Property**”), together with the right of access thereto for said purposes, in, upon, under, along, and across property commonly known as the southerly seventy (70) feet, more or less, of the City-owned property on which is located the 95th Street Library and parking lot, all of which is more accurately depicted on the Illustration attached hereto and made part hereof as **Exhibit A** and identified thereon as the “**Plaza Permit Area**”. Notwithstanding the foregoing, any replacement, alteration, or removal of Plaza Facilities from the City Library Property shall be subject to prior written approval of the City Engineer and the Executive Library Director.

B) **The Temporary Construction Permit:** a non-exclusive right, from time to time and as reasonably necessary, to stage equipment and supplies and otherwise access the Plaza Facilities, subject to the terms and conditions set forth in Section 3(B) hereof, for the purposes of surveying, constructing, reconstructing, using, operating, maintaining, testing, inspecting, repairing, replacing, altering, or removing Plaza Facilities which is more accurately depicted on the Illustration attached hereto and made part hereof as **Exhibit A** and identified thereon as the

“Temporary Construction Permit Area”. Notwithstanding the foregoing, any replacement, alteration, or removal of Plaza Facilities from the City Library Property shall be subject to prior written approval of the City Engineer and the Executive Library Director.

- C) **The Farmers’ Market Permit:** a non-exclusive right, permission and authority to use a portion of the Parking Lot of the 95th Street Library as set forth in Section 3(C) hereof, for hosting, on dates annually agreed to by the Library Board, the Park District’s Farmers’ Market Program, including vendors, customers and visitors, together with the right of access thereto for said purposes.

3. **Obligations of the Parties with Respect to Each Land Use Permit Area.**

A) Plaza Permit Area.

i. With respect to the Plaza Permit Area and Plaza Facilities, the District covenants and agrees to obtain all permits required by statute, City Ordinance, City Code, or any other applicable law, and to provide the City with the reasonable opportunity to review and approve, disapprove, or propose modifications to any plans or specifications for any work to be performed by the District, at District expense, on the City Library Property in the Plaza Permit Area; however, the District shall have the sole final authority to decide whether to construct any of the proposed improvements in the Plaza Permit Area. The District shall have the obligation to maintain, repair, reconstruct or replace, at its sole expense, the Plaza Permit Area and the Plaza Facilities on the City Library Property in a safe, clean, operable, and orderly condition. Maintenance obligations for the District include but are not limited to maintenance of all landscaping, all improvements, mowing (if any), and snow removal (as necessary) to maintain the Plaza Permit Area in a safe, clean, operable and orderly condition.

ii. The City agrees not to prevent access by the District to the Plaza Facilities and agrees to be financially responsible for any request for the relocation of said Facilities initiated by the City Engineer and the Executive Director of the Library unless such relocation is determined to be necessary due to the condition of the Facilities. Such payment shall be subject to agreement by the City Engineer that the invoiced amount is reasonable. Likewise, the District agrees to allow patrons of the Library to have access to the adjacent Park District Property and adjacent Plaza amenities. The Library shall be permitted to program Plaza amenities on the adjacent Park District Property (e.g., the amphitheater) in accordance with scheduling and use protocols agreed to by the Executive Directors of the District and Library.

iii. The District covenants and agrees to defend (with legal counsel approved by the City, which approval shall not be unreasonably withheld), indemnify and save harmless the City and its officers, agents, and employees from and against any and all claims, demands, and causes, or causes of action, loss or damage of any kind

which may occur by reason of: (a) the use and operation of the Plaza and the Plaza Facilities, excepting therefrom any loss or damage arising out of negligence or willful acts on the part of the City, its successors and assigns, employees, and agents; and (b) the construction, installation, operation, repair, and maintenance of the Plaza Facilities and all related or appurtenant equipment on the above-described Plaza Permit Area, but excepting therefrom any loss or damage arising out of negligence or wrongful acts on the part of the City, its successors and assigns, employees, and agents.

- iv. The right, permission, and authority is also given to District, with not less than five (5) calendar days' written notice to the City Engineer and to the Executive Director of the Library, (unless such timeframe is waived by the City Engineer and the Executive Director of the Library), to trim, cut down and/or remove trees and/or brush within the Plaza Permit Area when, in the opinion of District, said trees and/or brush interfere with the installation or maintenance of such Plaza Facilities or present a hazard to such Plaza Facilities, provided that the location and species of replacement trees, and the timing thereof, shall be at the discretion of the City.
- v. Upon completion of installation of the Plaza Facilities, "as-built" documentation relative to the location and construction of the Plaza Facilities shall be provided by the District to the City and also appended hereto and made part hereof as **Exhibit C**. Whenever the District makes changes to the Plaza Facilities, the District shall promptly update **Exhibit C** upon completion of those changes. Any changes, additions, or removal of Plaza Facilities on City Library Property proposed to take place within the Plaza Permit Area shall first be approved in writing by the City Engineer and the Executive Director of the Library.

B) Temporary Construction Permit Area.

- i. The District and its agents shall, upon no less than 24 hours' notice to the Executive Director of the Library, have the right to enter the Temporary Construction Permit Area for the purpose of exercising the rights herein acquired.
- ii. Upon completion of its activities in the Temporary Construction Permit Area, the District shall promptly restore the Temporary Construction Permit Area to the conditions existing prior to any entry by the District or its agents. The District shall be liable for making payment within of an invoice for damages, if any, to vegetation, turf, fences, parking lots, trails, walkways, signs, park improvements and any other fixtures owned by the City and caused by the acts of the District, its agents or employees within forty-five (45) days of written acknowledgment by the District that such damages were the responsibility of the District and agreement by the District that the invoiced amount is reasonable.
- iii. The District further covenants and agrees to defend (with legal counsel approved by the City, which approval shall not be unreasonably withheld), indemnify and save harmless the City and its officers, agents, and employees from

and against any and all claims, demands, and causes, or causes of action, loss or damage which may occur by reason of District activities within the Temporary Construction Permit Area, but excepting therefrom any loss or damage arising out of negligence or wrongful acts on the part of the City, its successors and assigns, employees, and agents.

C) Farmers' Market Permit Area.

i. Subject to the terms and conditions set forth herein, the District and its agents shall have the right to use a portion of the parking lot of the 95th Street Library on those dates and for those times mutually agreed to by the Executive Directors of the District and the Library for the purposes of the Park District's Farmers' Market Program (which is a recreational program of the District). Prior to the first session of each annual Farmer's Market Program, authorized representatives from the Library and Park District will mutually agree upon the location of the Farmer's Market ("Farmer's Market Permit Area"). Notwithstanding the foregoing, the location of the Farmers' Market Permit Area may be modified at the direction of the Executive Director of the Library for one or more dates upon notice to the District. The District agrees that the Farmers' Market shall not impede or interfere with access to or use of the Library.

ii. The District further covenants and agrees to defend, indemnify and save harmless the City from and against any and all claims, demands, and causes, or causes of action, loss or damage arising out of or related to the Farmers' Market Program, or which may occur by reason of the operation and presence of the Farmers' Market Program, but excepting therefrom any loss or damage arising out of negligence or wrongful acts on the part of the City, its successors and assigns, employees, and agents.

4. **Insurance.**

Insurance shall be provided hereunder as set forth in **Exhibit B** attached hereto and made part hereof.

5. **Miscellaneous.**

Nothing herein shall constitute a waiver of any immunities against liability available to either party under law.

Whenever either the terms "Executive Directors of the District and Library" is used, it is intended to mean the Executive Directors of the District and Library or their designees.

Whenever the term "City Engineer" is used, is intended to mean the City Engineer or his designees.

The District accepts the City Library Property in an AS-IS condition as of the Effective Date of this Agreement.

The District shall prohibit the use of drones, or similar technology or devices, to be used within the City Library Property, including but not limited to the Plaza Permit Area, the Temporary Construction Permit Area, or in the parking lot of the 95th Street Library unless otherwise agreed to in writing by the City Engineer and the Executive Director of the Library.

This Agreement conveying Land Use Permits may be recorded in the Office of the Will County Recorder, and shall be binding upon and/or in use to the benefit of both the City's and the District's successors and assigns, but all rights granted to the District by this permit are expressly non-transferable and shall not be assigned.

The Land Use Permit for the Farmers' Market Program shall remain in place for a period of three (3) years after the Effective Date of this Agreement after which it shall automatically renew each year unless otherwise terminated by either party. Notwithstanding the foregoing, the Executive Director of the Library may terminate the Land Use Permit within the first three (3) years after the Effective Date with not less than nine (9) months' prior notice if, in her discretion, she determines that it will interfere with the use or operation of the Library.

The Land Use Permits for the Plaza Permit and the Temporary Construction Permit may be revoked by the City if the parties agree, or if the District ceases to use the Plaza Permit Area for the purposes described herein for a period of eighteen (18) months ("abandonment"). Absent agreement or abandonment, revocation of the Plaza Permit and Temporary Construction Permit shall not be permitted for a period of thirty (30) years after the Effective Date of this Agreement after which it may be terminated by either Party for any reason but shall automatically renew each year unless notice of termination is given by either Party.

All notices to the District shall be sent by overnight mail addressed to the Executive Director, Naperville Park District, 320 West Jackson Avenue, Naperville, Illinois 60540. All notices to the City and the Executive Library Director shall be sent by overnight mail addressed to the City Manager, City of Naperville, 400 S. Eagle Street, Naperville, Illinois, 60540, and to the Executive Director of the Naperville Library at 200 West Jefferson, Naperville, IL 60540.

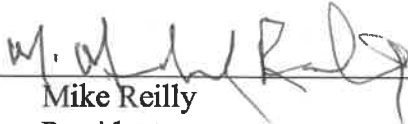
The City of Naperville, under the laws of the State of Illinois, hereby certifies that it is the Owner of the Premises and that as such Owner hereby grants to the District the Land Use Permits described herein for the uses and purposes therein set forth as allowed and provided for by statutes and does hereby acknowledge and adopt the same under the style and title aforesaid.


The City agrees that if it sells any portion of the Plaza Permit Area in the next thirty (30) years, an easement shall attach to the portion of the Plaza Permit Area so conveyed for

whatever period of the thirty (30) years remains, after which such easement shall expire and be of no further force or effect. While in effect, the easement shall be subject to the terms and conditions set forth herein.

This Agreement shall take effect upon its completed execution by the parties hereto.

NAPERVILLE PARK DISTRICT

By: 
Mike Reilly
President

Attest: 
Bridget Tuft
Secretary

Date: March 14, 2019



CITY OF NAPERVILLE

By: _____
Steve Chirico
Mayor

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

Date: _____

Prepared by:
Derke Price
Ancel Glink
1979 N. Mill Street
Naperville, IL 60540

[https://cityofnaperville-my.sharepoint.com/personal/lordp_naperville_il_us/Documents/IGA unl. Land Use Permits Plaza, Farmers' Market March 2019.docx](https://cityofnaperville-my.sharepoint.com/personal/lordp_naperville_il_us/Documents/IGA%20unl.%20Land%20Use%20Permits%20Plaza,%20Farmers'%20Market%20March%202019.docx)

EXHIBIT B

Insurance

The following insurance provisions shall apply to the Intergovernmental Agreement Granting Land Use Permits from the City of Naperville ("City") to the Naperville Park District ("Park District") for City Property at the 95th Street Library ("IGA").

- 1.1 The Naperville Park District ("Park District") and its contractors, subcontractors, consultants, and agents who perform work and/or undertake operations related to the Land Use Permits granted in the IGA (hereinafter "Insuring Entities" when referenced cumulatively and "Insuring Entity" when referenced individually) shall, at their own expense, secure and maintain in effect throughout the duration of this IGA, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Land Use Permits described in the IGA of the types and limits shown herein unless otherwise agreed to in writing by the City.
- 1.2 The Insuring Entities shall cause the City of Naperville and its officers, agents, employees, and volunteers to be named as additional insureds by endorsement on all policies except workers' compensation and professional liability. If any Insuring Entity, other than the Park District, maintains higher limits than the minimums shown below, the City shall be entitled to coverage for the higher limits. All insurance policies shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rating of not less than A - VII according to the A.M. Best Company. In the alternative, the Park District may instead self-insure through participation in a self-insured intergovernmental risk pool. The Park District shall require and verify that all contractors, consultants, and vendors maintain insurance meeting all requirements stated herein, and the Park District shall ensure that the City of Naperville, and its officers, agents, employees, and volunteers are additional insureds on such insurance. For CGL coverage, subcontractors, consultants, and vendors shall provide coverage with a form at least as broad as CG 20 38 04 13.
- 1.3 Where policies are permitted to be written on a claims-made basis, then the policy retroactive date must coincide with or precede the start of services under this agreement, and the coverage shall be maintained for at least three years after the completion of the work.
- 1.4 The Insuring Entities shall provide insurance coverage at least as broad in not less than the following amounts unless otherwise agreed to in writing by the City:

- a. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01 or equivalent):

Limits:

General Aggregate	\$2,000,000.00
Products/Completed Liability Aggregate	\$2,000,000.00
Each Occurrence	\$2,000,000.00
Personal Injury	\$2,000,000.00

- b. Professional Liability [applicable only to the construction engineering phase of the Project]:

Limits:

Annual Aggregate	\$2,000,000.00
Per Occurrence or Wrongful Act	\$2,000,000.00

- c. **Worker's Compensation:**
 - i. Worker's Compensation Insurance shall be provided in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees at the site of the project, and in the event work is sublet, the Consultant shall require each subconsultant to provide Worker's Compensation Insurance. In the event employees engaged in hazardous work under this Agreement at the Project site are not protected under the Worker's Compensation statute, the Consultant shall provide, and cause each subconsultant to provide, adequate and suitable insurance coverage for the protection of each employee not otherwise provided.
 - ii. **Employer's Liability**
Per occurrence for Bodily Injury or Disease
\$2,000,000.00

- d. **Automobile Liability:**
Coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

Limits:
 - i. Per occurrence for Bodily Injury and Property Damage
\$2,000,000.00

- e. **Umbrella for each of the above-named insurance policies, except worker's compensation.**
 - i. **Limits:**
Each Occurrence/Aggregate \$2,000,000.00

- f. **Deductibles and Self-Insured Retentions**
Any deductibles or self-insured retentions of any Insuring Entity other than the Park District shall be declared to and approved by the Park District. At the option of the Park District, said Insuring Entit(ies) shall either reduce or eliminate such deductibles or self-insured retentions as respects the Park District and the City, and their respective officers, officials, employees and volunteers, or the Insuring Entit(ies) shall provide a financial guarantee satisfactory to the Park District guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- g. **Other Insurance Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:**
 - 1. The policy of Commercial General Liability Insurance for Insuring Entities other than the Park District, shall include an endorsement naming the Naperville Park District and the City of Naperville as additional insureds. In lieu of an endorsement, the

Naperville Park District will issue a certificate of coverage naming the City of Naperville as an additional insured.

2. The City of Naperville and its officers, agents, employees, and volunteers are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of any Insuring Entity, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the Insuring Entity's insurance policy.

3. For any claims related to operations and work performed under the IGA, the Insuring Entit(ies') insurance coverage shall be primary insurance as respects the City or its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City or its officers, agents, employees, or volunteers shall be excess of the Insuring Entity's insurance and shall not contribute with it.

4. Each certificate of insurance and policy shall contain a provision that termination or failure to renew the policy shall not be made without thirty (30) days written notice to the City. Additional insured certificates of coverage issued on behalf of the Park District and the City will contain a provision that the provider will provide as much written notice as practicable given the conditions surrounding the termination or failure to renew.

h. Waiver of Subrogation

The Insuring Entities, other than the Park District, agree to waive subrogation which any insurer of such Insuring Entities may acquire from an Insuring Entity by virtue of the payment of any loss. The Insuring Entities shall obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy of each Insuring Entity, other than the Park District, shall be endorsed with a waiver of subrogation in favor of the City for all work performed by said Insuring Entity and its employees, agents, subconsultants and subcontractors.

i. Verification of Coverage

The Park District shall furnish the City with original certificates and endorsements effecting coverage required herein upon request by the City. All certificates and endorsements of other Insuring Entities shall be received and approved by the Park District before work, or operations begin. However, failure to do so shall not operate as a waiver of these insurance requirements. The City reserves the right to require complete, certified copies of all required insurance policies of Insuring Entities other than the Park District, including endorsements affecting the coverage required by these specifications at any time.