AGREEMENT BETWEEN THE CITY OF NAPERVILLE & CENTURY WALK CORPORATION

May 1, 2023

THIS AGREEMENT ("Agreement") is dated May 1, 2023 ("Effective Date"), and is between the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government, with its principal office located at 400 South Eagle Street, Naperville, Illinois 60540 ("City"), and Century Walk Corporation, an Illinois not-for-profit corporation with its principal office located at 34 W Chicago Ave., Suite B, Naperville, Illinois 60540 ("Century Walk"). The City and the Century Walk may be hereinafter interchangeably referenced when individually as "Party" or cumulatively as "Parties".

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the consideration sufficiency of which the Parties agree, the City, in exercise of its home-rule authority, and the Century Walk agree as follows:

Section 1. Recitals.

- A. Century Walk was established in 1996 to create culturally significant and diverse public art throughout Naperville in the 21st Century.
- B. Since 1996, the Century Walk has led a public art initiative in Naperville featuring murals, mosaics, reliefs, mobiles, and sculptures throughout the City. To date, Century Walk has more than 50 locations of public art located throughout Naperville.
- C. Century Walk funds its art installations through a combination of private and public fund raising, including approximately fifty percent of contributions from the City.
- D. The City and the Century Walk have determined it to be in the best interest of the Parties, to memorialize their respective rights and responsibilities concerning the public art installed by the Century Walk.
- E. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to promote the health, safety, and welfare of the City and its residents, and to act to achieve such objectives.
- F. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to use its credit, revenues, and other resources to pay costs and service debt related to activities which involve a public purpose.
- G. The City has determined it is in the public interest to assist with financing the public art as it will enhance the quality of life for the greater Naperville community.

- H. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of conditions detrimental to healthy economic development, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law for the purpose of achieving such objectives.
- I. The Corporate Authorities of the City, after due and careful consideration, have determined that it is in the public interest to memorialize its relationship with the Century Walk as it will enhance the quality of life for the greater Naperville community.
 - J. The foregoing Recitals are incorporated herein and made a part of this Agreement.

Section 2. Party Responsibilities.

A. Grant Amount.

- 1. On August 17, 2021, the Naperville City Council directed that the City shall designate to the Century Walk a Grant of one one-hundred thousand dollars (\$100,000.00) in calendar years 2022, 2023 and 2024 to assist the Century Walk with financing the establishment of specific public art projects as represented by the Century Walk to the Naperville City Council on the condition that said Grants be: (1) used for capital only; (2) restricted to art on public property; (3) the funds would be prepaid; (4) a Council liaison will be added to the Century Walk board for financial oversight; and (5) Century Walk provide its financial statements to the City. Pursuant to said direction, and subject to said conditions, the City shall designate to the Century Walk a Grant of one one-hundred thousand dollars (\$100,000.00) in calendar years 2022, 2023 and 2024.
- 2. After 2024, on an annual basis, the City shall consider designating to the Century Walk a Grant in an amount determined by the Naperville City Council, in its sole discretion, to assist the Century Walk with financing the establishment of specific public art projects as represented by the Century Walk to the Naperville City Council.
- B. Reimbursement Request. The City shall not disburse any Grant funds unless and until the City receives from the Century Walk a written request for disbursement of Grant funds. Said request shall be made by the Century Walk by completing and tendering to the City a written request for reimbursement. The Century Walk shall include with said request invoices, receipts,

or other proof that the Grant funds will be spent in accordance with the approved scope of the specific public art project to justify the City disbursement of Grant funds. No Grant funds shall be disbursed by the City to the Century Walk prior to the City receiving the proof of expenses. Following receipt and review the disbursement request and proof of expenses, the City, in its discretion, shall disburse to the Century Walk the approved amount of the disbursement request out of available Grant funds. The City's disbursement of Grant funds shall not be unreasonably withheld.

C. **Public Art Ownership.** All public art installed by the Century Walk shall be categorized onto one of three lists attached this Agreement as Exhibits A, B, and C. Exhibit A shall be a list of all Century Walk public art that is located on City-owned property. Exhibit B shall be a list of all Century Walk public art that is located on non-City-owned public property. Exhibit C shall be a list of all Century Walk public art that is located on private property. As public art is added or removed or as the transfer or clarification of ownership interests is changed, Exhibits A, B, and C shall be administratively amended in writing and signed by the authorized representatives of the Parties listed in Section 7.A. (Notices).

The Century Walk hereby tenders to the City sole and exclusive ownership of all public art listed in Exhibit A. The transfer of ownership from the Century Walk to the City shall be deemed to have occurred once the installation of the art piece on City property is completed. Upon the City's request, the Century Walk shall cooperate with the City to establish or memorialize the City's ownership including providing written memorialization of the ownership or transfer of ownership required or requested by the City, within a reasonable time after completion of the installation of the public art.

The Parties agree and acknowledge that the City has no ownership interest in the public art listed in Exhibits B and C. The ownership of the public art listed in Exhibits B and C shall be under the control of the Century Walk or to a third party that the Century Walk may have assigned or transferred ownership of said art. Nothing contained in this Agreement shall prohibit the Century Walk, in its discretion, from transferring ownership of public art listed in Exhibits B and C to a third party. Nothing contained in this Agreement shall prohibit the City from negotiating the transfer of ownership of public art that is not located on City-owned property. In other words, the City may enter into agreements with owners of public art that is or was listed in Exhibits B or C to transfer ownership of said public art to the City and Century Walk agrees to actively assist in such transfer of ownership or license to the City. The Exhibits to this agreement shall be administratively amended by the City in writing and signed by the authorized representatives of the Parties listed in Section 7.A. (Notices) to accurately reflect the ownership of the public art.

The provisions of this Section 2.C. shall survive the expiration or termination of this Agreement.

D. Maintenance.

- 1. On August 17, 2021, the Naperville City Council directed that the City shall designate to the Century Walk a Maintenance Grant of fifty thousand dollars (\$50,000.00) in calendar years 2022, 2023 and 2024 to assist the Century Walk with maintaining the public art listed in Exhibit A, B, and C. The Century Walk shall prioritize the use of said Maintenance Grant to maintain the public art listed in Exhibit A. The Century Walk, in its discretion, may use funds remaining after maintaining the public art in Exhibit A to maintain public art listed in Exhibits B and C. Pursuant to said direction, and subject to said conditions, the City shall designate to the Century Walk a Maintenance Grant of fifty thousand dollars (\$50,000.00) in calendar years 2022, 2023 and 2024.
- 2. After 2024, on an annual basis, the City shall consider designating a Maintenance Grant to the Century Walk in an amount determined by the Naperville City Council, in its sole discretion, to assist the Century Walk with maintaining the public art listed in Exhibit A, B, and C. The Century Walk shall prioritize the use of said Maintenance Grant to maintain the public art listed in Exhibit A. The Century Walk, in its discretion, may use funds remaining after maintaining the public art in Exhibit A to maintain public art listed in Exhibits B and C.
- 3. Notwithstanding any Maintenance Grant to the Century Walk, the City is responsible for the maintenance of the public art listed in Exhibit A and may take any action, in its discretion, using City employees, volunteers, or third-party services, to maintain the public art listed in Exhibit A. The City shall have no responsibility for the maintenance of any public art listed in Exhibits B or C. The maintenance of the public art listed in Exhibits B and C shall be the responsibility of the Century Walk. Nothing contained in this Agreement shall prohibit the Century Walk, in its discretion, from transferring maintenance responsibilities of the public art listed in Exhibits B and C to a third party.
- E. **Financial Records**. The Century Walk's records pertaining to all public art in any way supported by either a Grant or Maintenance Grant from the City shall be subject to and available for inspection and audit by the City during regular business hours upon five (5) days' written notice.

- F. **Reporting.** Upon the City's request, the Century Walk shall prepare a report detailing the use of any funds from a Grant or Maintenance Grant from the City.
- G. **Shared Recognition**. For all the Century Walk's public art that was supported through City funding, the Century Walk shall acknowledge the City's participation in all releases or announcements in the electronic or print media as well as in any educational flyers, brochures or other materials promoting or explaining the public art. For any new Century Walk public art projects supported through City funding, the Century Walk shall plan and coordinate with the City a ceremony to announce and celebrate said public art project upon its satisfactory completion in a manner similar to prior dedication of its Public Art. The provisions of this paragraph shall survive the expiration or termination of this Agreement.
- H. **Non-Discrimination**. The Century Walk agrees that no person shall on the grounds of race, color, religion, national origin, sex, disability, sexual orientation, or age, while otherwise qualified, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any project or activity including employment supported in whole or in part by funds provided by a Grant or Maintenance Grant from the City.
- I. Prevailing Wage. The construction of public art is a construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor publishes the prevailing wage rates on its website at http://labor.illinois.gov/. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department's web site for revisions prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services related to the construction or maintenance of Century Walk public art funded with City Grants or Maintenance Grants must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties. The Century Walk shall comply with all aspects of the Act, including, but not limited to notifying all contractors and subcontractors of the same.

Section 3. Insurance.

A. The City shall be responsible for appropriately insuring its public art as listed in Exhibit A.

B. The City shall not be responsible for insuring Century Walk public art that the City does not own, including the public art listed in Exhibits B and C. Century Walk, in its discretion, may insure its public art, including the public art listed in Exhibits B and C. Nothing contained in this Agreement shall prohibit the Century Walk, in its discretion, from transferring its insurance responsibilities of the public art listed in Exhibits B and C to a third party.

Section 4. Term.

A. **Term of the Agreement**. This Agreement shall be effective on the Effective Date hereof and extend for the next two (2) calendar years ending December 31, 2024. During this period the parties thereto agree in good faith to honor the terms hereof and continue to make adjustments as might be required from time to time. At the end of the Agreement, it will extend for an additional two-year period unless one of the Parties has provided notice to the other ninety (90) days prior thereto that it does not wish for such a continuance.

Section 5. Termination.

- A. This Agreement may be terminated at any time upon ninety (90) days written notice by either Party in the event of substantial failure to perform in accordance with the terms hereof by the other Party through no fault of the terminating Party.
- B. This Agreement is subject to termination by either Party if either Party is restrained by a state or federal court of competent jurisdiction from performing the provisions of this Agreement. Upon such termination, the liabilities of the Parties to this Agreement shall cease, but they shall not be relieved of the duty to perform their obligations through the date of termination.
- C. If because of death or any other occurrence, including, but not limited to, the Century Walk becoming insolvent, it becomes impossible for any principal or principals of the Century Walk to render the services set forth in this Agreement, the Century Walk shall not be relieved of its obligations to complete the terms of the Agreement. However, in such an occurrence, the City at its own option may terminate this Agreement if it is not furnished evidence to its satisfaction that competent professional services can still be furnished as scheduled.

Section 6. Documents, Drawings, and Intellectual Property.

- A. Any documents, including but not limited to intellectual property (hereinafter "Documents") defined herein without limitation as drawings, survey data, reports, studies, processes, specifications, estimates, maps, plans, computations, photographs, audio and video recordings, electronic data, and software and any original work of authorship fixed in a tangible medium of expression within the meaning of the Copyright Act of the United States Code, and all other materials, regardless of physical form or characteristics, prepared, created, or discovered by the Century Walk or by its consultants and subcontractors, for or in relation to the public art listed in Exhibit A, shall automatically and immediately be deemed to be the joint property of the Parties. Proprietary materials or services used by the Century Walk or its consultant or subcontractors to generate Documents related to the public art listed in Exhibit A shall not be considered City property or subject to disclosure to the City.
- B. The provisions of this Section 6 and each subpart of Section 6 shall survive the expiration or termination of this Agreement.

Section 7. General Provisions.

A. **Notice**. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic internet mail ("e-mail"). E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) a confirmation e-mail is sent by the recipient to the sender confirming receipt of e-mail notice. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Naperville Attention: City Manager 400 South Eagle Street Naperville, Illinois 60540

E-mail: KriegerD@naperville.il.us

With a copy to:

City of Naperville

Attention: City Attorney 400 South Eagle Street Naperville, Illinois 60540

E-mail: <u>DiSantoM@naperville.il.us</u>

Notices and communications to the Century Walk shall be addressed to, and delivered at, the following address:

Century Walk Corporation

Attention: Chairman of the Board 34 West Chicago Avenue, Suite B

Naperville, IL 60540

E-mail: Brand@boboskylaw.com

- B. Time of the Essence. Time is of the essence in the performance of this Agreement.
- C. **Rights Cumulative**. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.
- D. **Non-Waiver**. The Parties shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of a Party to exercise at any time any right granted to the Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Party's right to enforce that right or any other right, except as otherwise set forth herein.
- E. Written Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party, or of any duly authorized officer, employee, agent, or representative of any Party, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.
- F. **Governing Law**. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. Venue for disputes arising from or related to this Agreement, the Development, or the Subject Property shall be in the Illinois Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

- G. **Severability**. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.
- H. **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.
- I. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties participated equally in the drafting of this Agreement.
- J. **Exhibits**. All exhibits attached to this Agreement are incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.
- K. Amendments and Modifications. An amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all Parties in accordance with all requirements of law.
- L. **Changes in Laws**. Unless otherwise provided in this Agreement, any reference to the requirements of law shall be deemed to include any modifications of, or amendments to, the requirements of law that may occur in the future.
- M. **Compliance with Laws**. The Parties agree to comply with all requirements of law when performing any services under this Agreement.
- N. **Authority to Execute**. The City hereby warrants and represents to the Century Walk that the City Manager who has executed this Agreement on its behalf has been properly authorized to do so by the Corporate Authorities of the City. The Century Walk hereby warrants and represents to the City that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement, that all legal actions needed to authorize the execution, delivery, and performance

of this Agreement have been taken, and that neither the execution of this Agreement nor the performance of the obligations assumed by the Century Walk will (a) result in a breach or default under any agreement to which the Century Walk is a party or to which it is bound or (b) violate any statute, law, restriction, court order, or agreement to which the Century Walk is subject.

- O. **No Third-Party Beneficiaries**. Nothing herein, express or implied, is intended to or shall confer upon any other person, entity, company, or organization, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- P. **Counterparts**. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.
- Q. **Savings Clause**. If any provision of this Agreement, or the application of such provision, is rendered or declared invalid by a court of competent jurisdiction, the remaining parts or portions of this Agreement shall remain in full force and effect.
- R. Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.
- S. Successors and Assigns. The City and the Century Walk each bind themselves and their partners, successors, executors, administrators and assigns to the other Party of the Agreement and to the partners, successors, executors, administrators and assigns of such other Party in respect to all provisions of this Agreement. Neither the City nor the Century Walk shall assign or in any way transfer its interest in this Agreement without the written consent of the other.
- T. **Personal Liability.** Nothing herein shall be construed as creating any personal liability on the part of any officer, agent, or employee of the City or any individual officer, agent, or employee of the Century Walk.

Exhibit List

Exhibit A List of Century Walk Art on City Property

Exhibit B List of Century Walk Art on Non-City Public Property

Exhibit C List of Century Walk Art on Private Property

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed on the date first above written.

CITY OF NAPERVILLE

CENTURY WALK CORPORATION

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By: Douglas A. Krieger By: Brand Bobosky

Its: City Manager Its: Chairman of the Board

Exhibit A Century Walk Public Art Located on City-Owned Property

Year	No.	Artwork Description & Location	Owner
2001	14	Sculpture: Horse Market Days (Naper Settlement)	City
2002	16	Stained Glass: Cars of the 20th Century (Van Buren Parking Deck)	City
2002	17	Sculpture: 2 Children on Bench (Riverwalk on Main Street)	City
2003	19	Statue: Doughboy of WWI (Burlington Park)	City
2003	20	Sculpture: Wehrli Hands (Jefferson St. near Naperville Running Store)	City
2003	21	Sculpture: Shanower Memorial (DuPage River/City Hall)	City
2005	23	Sculpture: Fredenhagen Sculpture (Fredenhagen Park)	City
2005	25	Sculpture: Riverwalk Visionaries (Riverwalk near horse trough fountain)	City
2005	27	Mural: The Great Concerto (Central Park Concert Center)	City
2006	28	Sculpture: Veterans' Valor (Washington Street by YMCA)	City
2006	29	Sculpture: Kids Kinetic (DuPage Children's Museum)	City
2008	33	Sculpture: Mr. & Mrs. Naperville (Riverwalk near Carillon)	City
2010	37	Mural: Van Buren Deck Way Finding (Van Buren Parking Deck)	City
2013	43	Sculpture: Joe Naper (Joe Naper Homestead - Jefferson & Mill)	City
2013	44	Sculpture: The Spirit of the American Navy (Burlington Square Park)	City
2018	49	Instruments: Rotary Harmony Park (Riverwalk near Rotary Hill)	City
2018	50	Sculpture: Laughing Lincoln (Central Park)	City

Exhibit B
Century Walk Public Art Located on Non-City-Owned Public Property

Year	No.	Artwork Description & Location	Owner
1998	7	Plaque: Bronze Plat of Geographic History (Nichols Library)	Library
1998	8	Sculpture: Base Relief Sculptures carved in brick (Nichols Library)	Library
1998	9	Sculpture: Boy/Girl Reading (Nichols Library)	Library
2002	18	Sculpture: Basketball Player (Naperville Central High School)	NCUSD 203
2006	30	Sculpture: Officer Friendly (Washington St Washington Jr. High)	NCUSD 203
2007	31	Sculpture: Cat in the Hat (Nichols Library)	Library
2008	32	Sculpture: Green Eggs & Ham (95th St. Library)	Library
2011	39	Sculpture: Whale of a School (Highlands Elementary School)	NCUSD 203
2012	42	Sculpture: The Grinch (Naperville Blvd Library)	Library
2014	46	Sculpture: Best Friends (Riverwalk near Park District Building)	Park District
2014	47	Sculpture: Reflections on Scotts Mill (DuPage River Park/Knoch Knolls)	Park District
2020	51	Sculpture: Ladder of Light (West of the River on Jefferson)	Park District
2023	53	Gold Star Memorial (Veterans Park)	Park District

Exhibit C
Century Walk Public Art Located on Private Property

Year	No.	Artwork Description & Location	Owner
1996	1	Relief: Municipal Band (Bank at Washington & Jefferson streets)	Private
1996	2	Plaque: Printing Industry (Former Sun Building/Pottery Barn)	Private
1996	3	Sculpture: Mosaic Benches (Jackson St. near Egg Harbor)	Private
1997	4	Mural: Mosaic Wall of Naperville Farms (Main & Jefferson/Two Bostons)	Private
1997	5	Sculpture: Various Tools (Jefferson Hill Shops)	Private
1997	6	Mural: Naperville in Transit (Washington & Chicago/Lantern Wall)	Private
1999	10	Sculpture: Genevieve Towsley (Barnes & Noble)	Private
1999	11	Mural: School Children Mosaics (4) (West Wall Anderson's Bookshop)	Private
2000	12	Sculpture: Golden Rule Days (Christian Science Reading Room)	Private
2001	13	Mural: Pillars of Community (Sullivan's south wall)	Private
2001	15	Sculpture: Athlete/WWII Hero (North Central College)	Private
2003	22	Sculpture: Symbiotic Sojourn (Main Street Promenade/Hugo's)	Private
2005	24	Mural: Way We Were (Washington St. across from old library)	Private
2005	26	Mural: Service Clubs (North wall of Catch 35 building on Washington)	Private
2009	34	Mural: World's Greatest Artists (Naperville Art League Building)	Private
2009	35	Sculpture: Dick Tracy (Riverwalk at Naperville Township)	Private
2010	36	Sculpture: The Spirit of the Y (Fry Family Y)	Private
2011	38	Mural: Parade of The Century (Talbots Building)	Private
2011	40	Mural: Faith, Hope and Charity (Russell Cleaners Building)	Private
2011	41	Mural: Naperville Loves a Parade (Gap Building Main Street)	Private
2014	45	Sculpture: Tragedy to Triumph (BNSF Naperville Train Station)	Private
2017	48	Mural: Streaming History (Water Street)	Private
2021	52	Mural: Notable Naperville Athletes (Sullivan's North Wall)	Private