

Feb 4, 2020 City Council Q&A

Wednesday, January 29, 2020 3:51 PM

I. CONSENT AGENDA:

1. **20-142** Approve the regular City Council meeting minutes of January 21, 2020

Q:	Please double check J1 as I recall the public hearing was held open for community comments. Thought the mayor clarified. Please clarify?	Gustin
A:	Staff has reviewed the video. At 1:12:46 a motion was made by Hinterlong, seconded by Gustin, to open the public hearing. At 1:13:05 a motion was made by Hinterlong, seconded by Gustin, to close the public hearing. Chirico stated that the item would come back to Council at a later date. No further action was taken or direction given.	Gallahue

2. **20-149** Approve the City Council meeting schedule for February, March and April 2020

3. **19-1262** Approve the award of RFP 19-258, Landscape Design and Planting, to Christy Webber and Company for an amount not to exceed \$348,510 and for a two-year term

Q:	We just passed the 2020 budget a couple of months ago, and yet three projects we're asked to approve right out of the gate are over budget, and say that the difference will be made up by underspend in other areas to make up for the difference. Please comment as to what projects we expect underspend on that will make up the difference for each of these.	Sullivan
A:	After further review of the award amount, staff discovered a computation error in the award amount. The new total two year award amount is \$221,188 and the approval should reflect this amended amount. The revised contract award amount is within the budgeted amount for this service.	Dublinski
Q:	A. The qualification scores were given, but what were the amounts of each bid?	Sullivan

	<p>B. Do we usually use these criteria and weights for evaluating landscaping projects?</p> <p>C. Why is the 'outcomes to be achieved' portion of the project only weighted 15%, and how is it evaluated prior to project completion?</p> <p>D. The replacement planters and Washington underpass work - were those known to us during the 2020 budgeting process, or is this new information?</p>	
A:	<p>A. Landscape Concepts Management \$65,136; Clarence Davids \$74,680; Christy Webber \$67,162.</p> <p>The initial proposals were for a one year cost and did not include extra work, replacement planters or funding for the new streetscape elements in the downtown as part of the Main Street construction project.</p> <p>B. Staff has traditionally used the RFP process for the landscaping design and planting contract for the CBD, Train Station, and Municipal Center because we want to be able to evaluate the flower design for each season from experienced and qualified vendors capable of handling a contract of this magnitude. These criteria have been used to evaluate the over all experience and qualifications of the vendors, as well as their designs and project approach and the weights place the greatest importance on these items.</p> <p>C. The outcomes to be achieved portion of the project is evaluated based on whether or not staff felt that the project approach and designs would meet the goal of having an immediate visual impact upon planting that would beautify these areas and support the vitality of the downtown business community.</p> <p>D. Staff anticipated replacing the planters in the next couple of years, but the assessment of the planters during the RFP process showed that the planters should be replaced sooner than anticipated. We were not aware of this when the budget was prepared in August.</p>	Dublinski
Q:	<p>Do the bulbs removed after the Spring bloom get donated or housed for recycling the next year? Also please provide the three bids dollar amounts.</p>	Gustin
A:	<p>When Tulip bulbs are removed they are staged in a location downtown and given away to any resident who wants them.</p> <p>Landscape Concepts Management \$65,136; Clarence Davids \$74,680; Christy Webber \$67,162.</p>	Dublinski

4. **20-031** Approve the award of Bid 19-325, Bridge and Retaining Wall Railing Maintenance, to Northern Contracting, Inc. for an amount not to exceed \$102,778, plus a 5% contingency

Q:	We just passed the 2020 budget a couple of months ago, and yet three projects we're asked to approve right out of the gate are over budget, and say that the difference will be made up by underspend in other areas to make up for the difference. Please comment as to what projects we expect underspend on that will make up the difference for each of these.	Sullivan
A:	The awarded amount exceeds the amount budgeted in the CIP by \$778. The additional funds will come from CIP Project SC099, the Street Safety Improvement Fund. Staff has complete control on how much is spent from this fund every year so we have no concerns with using the other project's funds.	Novack
Q:	Can we use CDBG funds for this?	Hinterlong
A:	Because this contract covers work at many locations throughout the City we cannot use CDBG funds.	Novack
Q:	Will there be a guarantee or warranty on product and labor?	Gustin
A:	Yes, there is a one year warranty on workmanship and materials.	Novack

5. **20-044** Approve the award of Cooperative Procurement 20-045, Unit 332 Ambulance Replacement, to Foster Coach for an amount not to exceed \$261,800

Q:	We just passed the 2020 budget a couple of months ago, and yet three projects we're asked to approve right out of the gate are over budget, and say that the difference will be made up by underspend in other areas to make up for the difference. Please comment as to what projects we expect underspend on that will make up the difference for each of these.	Sullivan
A:	Staff anticipates that there will be savings in vehicle replacement capital accounts as vehicles are specified in more detail. For example, the Trackless Unit for DPW came in \$57,000 under budget.	Dublinski

6. **20-045** Approve the award of Sole Source Procurement 20-046, Navistar Parts and Repairs, to Rush Truck Centers for an amount not to exceed \$160,000 and for a one-year term

7. **20-037** Approve the award of Sole Source Procurement 20-044, Bearcat Armored Rescue Vehicle, to Lenco for an amount not to exceed \$320,000
8. **20-059** Approve the award of Bid 19-013, Job Order Contracting Services, to Robe, Inc. for an amount not to exceed \$3,000,000 and for a two-year term

Q:	Are there penalties in the contract in case there are prevailing wage issues?	Hinerlong
A:	Similar to all other construction contracts, the JOC contract does not include penalties if there are prevailing wage issues. Per the Prevailing Wage Act, it is the City's responsibility to notify the contractor that it is a prevailing wage project and to be the repository for prevailing wage documentation. Any concerns about prevailing wage not being followed are submitted to and addressed by the Illinois Department of Labor. Any action resulting from a prevailing wage violation is under the jurisdiction of the Illinois Department of Labor.	Rachel Mayer

9. **20-078** Approve the award of Cooperative Procurement 20-064, Trackless MT7 Leaf Loader, to EJ Equipment for an amount not to exceed \$182,778.45
10. **20-096** Approve the award of Cooperative Procurement 20-069, Unit 829 Equipment Replacement, to Exprolink for an amount not to exceed \$115,619
11. **20-099** Approve the award of Option Year One to Contract 18-025, Motor Fuel to Luke Oil for an amount not to exceed \$1,000,000

Q:	Does staff foresee the use of alternative fuels and a change in use and costs by the addition of alternative fuels?	Gustin
A:	Fleet Services continues to look at ways to implement alternative fuels and/or more fuel efficient vehicles. As these new vehicles enter the fleet they will have an impact on the amount of fuel consumed. This will be a gradual reduction in fuel consumption over the years to come as more alternative vehicles are added to the fleet.	Dublinski

- 12. 20-100** Approve the award of Option Year One to Contract 18-024, Generator Maintenance Services, to Interstate Power Systems, Inc. for an amount not to exceed \$120,000 to exceed \$120,000
- 13. 20-112** Approve the award of Bid 20-002, 2020 Distribution System Leak Detection Survey Program, to ADS LLC for an Amount not to exceed to exceed Detection Survey Program, to ADS LLC for an amount not to exceed \$492,558 and for a three-year term

Q:	Do we pay out this contract one year at a time, or is the total contract amount for three years required up front?	Sullivan
A:	The work will be paid for as it is completed. Typically the work is performed twice a year. \$155,396 is budgeted in CY2020 for this work. The remaining amount of this contract will be budgeted appropriately in CY2021 and CY2022.	Blenniss

- 14. 20-012** Approve the award of Change Order #2 to Contract 17-208, Traffic Signal Maintenance and Combination Street Lighting Maintenance, to Meade Electric for an amount not to exceed \$9,282.84 and a total award of \$530,708.11
- 15. 20-106** Approve the award of Change Order #3 to Contract 16-259, Actuarial Services, to Foster & Foster Inc. for an amount not to exceed \$5,000 and a total award of \$115,682
- 16. 19-1247** Waive the first reading and pass the ordinance establishing a 35 MPH speed limit for 91st Street between Normantown Road and Schoger Drive (Requires six positive votes)
- 17. 20-115** Pass the ordinance to establish temporary traffic controls and issue Special Event and Amplifier permits for the St. Paddy's Day 5K and The St. Patrick's Day Parade on Saturday, March 14, 2020
- 18. 20-139** Adopt the resolution authorizing a workers' compensation Settlement with Mike Hull in the amount of \$61,040.25

- 19. **20-140** Adopt the resolution authorizing a workers' compensation Settlement with John Stefanik in the amount of \$59,298.00
- 20. **20-143** Adopt the resolution approving and authorizing the execution of the settlement agreement between Frances Reitz and the City of Naperville

L. ORDINANCES AND RESOLUTIONS:

- 1. **20-141** Consider two options for an amendment to the City's municipal code pertaining to the local sale of dogs and cats and consider passing either the Option "A" ordinance or the Option "B" ordinance amending the Naperville Municipal Code.

O. REPORTS AND RECOMMENDATIONS:

- 1. **20-116** Concur with the SECA Commission recommendation and approve the Calendar Year 2020 SECA Grant Fund Program allocations

Q:	Can we have the contract for the year by year and terms of our current contract with the children's museum. Also, the current going rates by square foot for like properties?	Hinterlong
A:	<p>Overall, the Children's Museum pays the City about \$1.50 per square foot per year for their lease of the building.</p> <p>The following three documents are attached for your review:</p> <p>Packet #1 – 2010</p> <ol style="list-style-type: none"> 1. Agenda item for purchase and lease of property where DCM is located 2. Ordinance #10-121 authorizing the execution of a purchase and sale agreement between the City and DCM 3. Ordinance #10-122 authoring the execution of a lease agreement between the City and DCM 4. Minutes from October 5, 2010 authorizing the purchase and sale agreement and directing staff to negotiate final lease terms within three months. <p>Packet #2 – 2011</p> <ol style="list-style-type: none"> 1. Agenda item for the lease of property to DCM 	Gallahue/ Novack

	<p>2. Ordinance #11-021 authorizing the execution of a lease agreement between the City and DCM</p> <p>3. Minutes from January 18, 2011 approving the lease of property to DCM</p> <p>Overall, the City leases the building to the DCM for about \$1.38 per square foot. Looking at commercial leases in the area they have a wide range, from lows around \$2 per square foot to highs around \$9 per square foot. The majority of the leases are in the \$5 per square foot range.</p> <p>DCM SECA Grant Awards 2006-Present</p>	
<p>Q:</p>	<p>A. Since the SECA recommendations were given to Council from the commission, Century Walk has lobbied all Council members about allocating SECA funding to them, since they were awarded no SECA funds this year from the commission. Since that time, they've asked for \$50K specifically to enhance the Fireman's Memorial. Have they produced to staff or the SECA Commission an accounting for how much City money they are requesting to complete that project and has anybody been able to vet it?</p> <p>B. Has Naperville ever had an independent Public Art task force or commission that would guide city decisions on what/where/when art should be installed and how much (if any) funding the City would donate toward those efforts on an ongoing basis?</p>	<p>Sullivan</p>
<p>A:</p>	<p>A. Neither staff nor the SECA Commission have been provided a revised request from Century Walk.</p> <p>B. The City of Naperville has not had a Public Art Task Force or commission charged with planning or guiding City decisions on location/medium/schedule of art pieces.</p>	<p>Gallahue</p>

**SECA Grant Fund Awards
DCM Operating Expenses**

FY2006	\$	250,000
FY2007	\$	250,000
FY2008	\$	250,000
FY2009	\$	250,000
FY2010	\$	250,000

**SECA Grant Fund Awards
DCM Debt Service**

FY2011	\$	250,000
FY2012	\$	140,000
FY2013	\$	140,000
FY2014	\$	150,000
FY2015	\$	150,000
FY2016	\$	140,000
FY2017	\$	150,000
SY2017	\$	100,000
CY2018	\$	150,000
CY2019	\$	150,000
CY2020	\$	150,000

**SECA Grant Fund Awards
DCM Projects/Initiatives**

FY2016	\$	25,000	AWEsome Energy
FY2017	\$	10,000	AWEsome Energy
SY2017	\$	50,000	Art is Instrumental
CY2018	\$	13,500	Artist in Residence
CY2019	\$	30,058	Art in Hand
*CY2020	\$	40,000	How People Make Things

** recommended for award*



Naperville

CITY COUNCIL AGENDA ITEM

SUBJECT: Lease of Property to DuPage Children’s Museum.

TYPE OF VOTE: Simple Majority

ACTION REQUESTED:

Pass the Ordinance Authorizing the Execution of a Lease Agreement between the City of Naperville and the DuPage Children’s Museum.

BOARD/COMMISSION REVIEW: N/A

COUNCIL ACTION PREVIOUSLY TAKEN:

Date	Item No.	Action
10/5/10	N1	Passed Ordinance to purchase the property and directed staff to redraft lease.

DEPARTMENT: Legal Department

SUBMITTED BY: Margo Ely, City Attorney

FISCAL IMPACT:

The lease will provide the City with annual rental income, starting in year 6, of \$62,056 increased yearly by CPI, prohibits the DuPage Museum from requesting and receiving any SECA funds and the City will own 57 parking spaces for commuter uses.

BACKGROUND/DISCUSSION: In October, the City purchased the museum property for \$3 million, as part of an intergovernmental effort whereby the State of Illinois contributed \$1.94 million, private donors contributed approximately \$700,000, DuPage County provided \$250,000 and the Museum’s financing institution reduced its debt significantly.

At the October 5, 2010 City Council meeting, the Council directed staff to revise the lease and present it for Council approval in January, 2011. The attached twenty year lease requires the Museum to pay \$62,056 annual rent starting in year 6 and increasing each year by CPI. It also prohibits the Museum from access to SECA funds, provides the City will use 57 parking spaces for commuter uses and requires the Museum to provide the City with audited financial statements.

RECOMMENDATION: Pass the Ordinance Authorizing the Execution of a Lease Agreement between the City of Naperville and the DuPage Children’s Museum.

ATTACHMENTS:

1. Ordinance Authorizing the Execution of a Lease Agreement

ORDINANCE NO. 11 - 021

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
BETWEEN THE CITY OF NAPERVILLE AND DUPAGE CHILDREN'S MUSEUM**

WHEREAS, the DuPage Children's Museum [hereinafter Museum] and the City of Naperville entered into a Purchase Agreement whereby the City acquired ownership of the real property consisting of approximately 3 acres legally described in **Exhibit A**, [hereinafter Subject Property] which property is located at 301 North Washington Street in Naperville, Illinois; and

WHEREAS, in accordance with the terms and conditions contained in the Lease of the Property, attached hereto as Exhibit B, the City will lease the building to the Museum for its continued use and the Museum will pay the City rent in accordance with the terms and conditions in said Lease; and

WHEREAS, the City of Naperville, as a home rule municipality, is authorized pursuant to Article 7, Section 6 of the Illinois Constitution to Lease said property for public purposes; and

WHEREAS, by approval of this Ordinance City of Naperville hereby invokes its home rule powers and authority to enter into this Lease.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DuPAGE AND WILL COUNTIES, ILLINOIS, in the exercise of its home rule authority as follows:

SECTION 1: The foregoing recitals are incorporated herein as though fully stated.

SECTION 2: The City Council of the City of Naperville has determined that it is in the best interests of the citizens of Naperville to Lease the Subject Property described in **Exhibit A** subject to the terms and conditions contained in the Lease attached as **Exhibit B**.

SECTION 3: The Lease attached to this Ordinance as **Exhibit B** is hereby approved.

SECTION 4: The City Manager and the City Clerk are hereby authorized and directed to execute the Lease and all documents necessary or desirable to effectuate the lease of the Subject Property in accordance with the terms and conditions contained in the Lease Agreement.

SECTION 5: The Ordinance shall be in full force and effect upon its passage and approval in accordance with law.

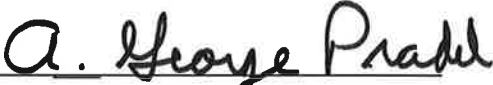
PASSED this 18TH day of JANUARY, 2011.

AYES: MILLER, PRADEL, BOYAJIAN, FIESELER, FURSTENAU,
HINTERLONG, KRAUSE

NAYS: WEHRLI

ABSENT: BRODHEAD

APPROVED this 19TH day of JANUARY, 2011.


A. George Pradel
Mayor


ATTEST:

Pam LaFeber, Ph.D.
City Clerk



EXHIBIT A-Legal Description

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 2 IN STENGERS ADDITION TO NAPERVILLE AND PROCEEDING THENCE NORTH ALONG THE WEST LINE OF WASHINGTON STREET, 158.3 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE WESTERLY ALONG SAID SOUTH LINE, 278.7 FEET TO THE EAST LINE OF STENGER STREET; THENCE SOUTH ALONG THE EAST LINE OF STENGER STREET, BEING COINCIDENT WITH THE WEST LINE OF LOTS 13 AND 14 IN SAID ADDITION, 136 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 13; THENCE EAST ALONG A LINE COINCIDENT WITH THE SOUTH LINES OF LOT 2 AND LOT 13 IN SAID ADDITION 278 FEET TO THE POINT OF BEGINNING, REFERENCE BEING HAD TO THE PLAT OF SAID ADDITION RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

ALSO

THAT PART OF LOT 12 IN STENGERS ADDITION, LYING NORTH OF THAT PART THEREOF DEDICATED FOR AN ALLEY IN INSTRUMENT RECORDED JUNE 21, 1950 AS DOCUMENT 596138 BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF STENGER STREET LYING NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF SPRING STREET AND SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF CHICAGO, BURLINGTON AND QUINCY RAILROAD, ADJACENT AND CONTIGUOUS TO LOTS 10, 11, 12, 13 AND 14, AND LOTS 15, 16, 17, 18 AND 19 IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON THE PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING WITHIN LOT 12 OF STENGERS ADDITION AND THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING NORTH OF THE NORTHERLY RIGHT OF WAY OF SPRING AVENUE AND ADJACENT AND CONTIGUOUS TO LOTS 3 TO 7, INCLUSIVE ON THE EAST AND LOTS 8, 11 AND 12 ON THE WEST IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580.

PARCEL 4:

LOTS 3, 4, 5, 6, 7, 8, 9, 10, 11 AND THE SOUTH 2 FEET OF LOT 12, ALL IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DU PAGE COUNTY, ILLINOIS.

Common Address: 301 North Washington Street, Naperville, IL 60540

EXHIBIT A-Legal Description

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 2 IN STENGERS ADDITION TO NAPERVILLE AND PROCEEDING THENCE NORTH ALONG THE WEST LINE OF WASHINGTON STREET, 158.3 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE WESTERLY ALONG SAID SOUTH LINE, 278.7 FEET TO THE EAST LINE OF STENGER STREET; THENCE SOUTH ALONG THE EAST LINE OF STENGER STREET, BEING COINCIDENT WITH THE WEST LINE OF LOTS 13 AND 14 IN SAID ADDITION, 136 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 13; THENCE EAST ALONG A LINE COINCIDENT WITH THE SOUTH LINES OF LOT 2 AND LOT 13 IN SAID ADDITION 278 FEET TO THE POINT OF BEGINNING, REFERENCE BEING HAD TO THE PLAT OF SAID ADDITION RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

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Common Address: 301 North Washington Street, Naperville, IL 60540

EXHIBIT B

AMENDED AND RESTATED LEASE BETWEEN THE CITY OF NAPERVILLE AND THE DUPAGE CHILDREN'S MUSEUM LOCATED AT 301 NORTH WASHINGTON STREET, NAPERVILLE, ILLINOIS

THIS AMENDED AND RESTATED LEASE is made and entered into this 18 day of January, 2011 between the City of Naperville, a municipal corporation and a home rule unit of local government, having an address at 400 South Eagle Street, Naperville, Illinois 60540, as landlord (the "Landlord"), and the DuPage Children's Museum, an Illinois not-for-profit corporation, having an address at 301 North Washington Street, Naperville, Illinois 60540, as tenant ("Tenant") for rental of the Land, legally described on the attached Exhibit A and improvements to the Land (the "Building") known as and located at 301 North Washington Street, Naperville Illinois 60540. The parties entered into a lease dated October 6, 2010, which is hereby superseded and amended and restated by this Lease.

SCHEDULE

1. Premises: The Land and Building.
2. Rent: Years 1-5: \$1.00 per year.

 Years 6-20: \$62,056 subject to annual increases based on the Consumer Price Index – Urban (CPI-U).
3. Commencement Date: September 30, 2010.
4. Termination Date: September 30, 2030.
5. Other Material Requirements of the Lease:

Landlord access to 57 parking spaces for commuters at the Premises.

TERMS AND CONDITIONS

- I. **RENTAL.** Landlord leases to Tenant and Tenant leases from Landlord the Premises described in Item 1 of the Schedule, subject to the covenants and conditions set forth in this

Lease for the lease term described in Section II below. The Tenant shall pay Landlord annual Rent of \$1.00 for years 1-5 of this lease. The Tenant shall pay Landlord annual Rent of \$62,056 effective September 30, 2016. Thereafter, the annual Rent of \$62,056 shall be increased each year but only to the extent that there is an increase in the Consumer Price Index – Urban (CPI-U). Effective September 30, 2016, and for every year thereafter until September 30, 2030, the annual Rent shall be paid in twelve equal monthly payments each of which shall be due on the last day of the month.

II. TERM, TERMINATION AND AUTOMATIC RENEWAL. The original term of this Lease shall be for 20 years, commencing on the Commencement Date described in Item 3 of the Schedule and ending on the Termination Date described in Item 4 of the Schedule, unless renewed or earlier terminated as provided herein. The Tenant may terminate this Lease for any reason at any time upon twelve months prior written notice to Landlord. Landlord may terminate this Lease only upon a material breach of a provision of the Lease which has not been cured by Tenant and after Tenant has been provided with a reasonable opportunity to do so. As used herein “a reasonable opportunity to cure” shall mean failure to cure after twelve month’s prior written notice. Provided Tenant is not then in default hereunder (after the expiration of any applicable notice and cure period), this Lease shall be automatically renewed, unless Tenant provides at least ninety (90) days prior written notice to Landlord of intent to terminate at the end of the term or any renewal term, for ten (10) successive terms of five (5) years each, for a total of fifty (50) years of renewal terms after the original twenty (20) year term.

III. LANDLORD ACCESS TO PARKING SPACES FOR COMMUTERS. During the term of this lease, the Landlord shall have access to 57 parking spaces. The Landlord’s access to parking spaces shall not impair or affect the Tenant’s compliance with parking requirements

under the Naperville Municipal Code. The parties agree that the initial phase will be that effective January 1, 2011, or as soon thereafter as feasible, the City may convert 28 spaces to daily fee commuter usage for cars parked in the spaces prior to 9 a.m. After that time the spaces may be used each day at no charge for Museum purposes. The City agrees to use reasonable efforts to prevent commuters from using Museum retained parking spaces. In addition to the phase I conversion of 28 spaces to commuter parking uses as provided herein, the City shall also convert the remainder of the spaces (29 for a total of 57), for such commuter uses as the City chooses, no later than July 30, 2012.

IV. PROHIBITION REGARDING TENANT'S ACCESS AND USE OF SECA FUNDS.

The Tenant shall forego any and all future funds currently referred to as "SECA" (Special Events and Cultural Amenities) funds pursuant to the Naperville Municipal Code. It is understood and agreed that Tenant shall not apply for and shall not request any SECA funds during the term of this Lease.

V. LANDLORD'S ACCESS TO AUDITED FINANCIAL STATEMENTS OF TENANT.

During the term of this lease, the Tenant shall provide to Landlord audited financial statements on an annual basis within thirty (30) days of Tenant's receipt of the annual audited financial statement.

VI. OPERATION, MAINTENANCE AND REPAIRS. Tenant shall operate the Premises in a reasonable and safe manner and shall maintain the Premises in good order and repair at all times. Tenant shall, at its sole expense, maintain, repair and replace the interior of the Building, as well as maintain, repair and replace the exterior of the Building, roof, heating ventilation and air conditioning systems, elevators, signage, parking lot (except any spaces utilized by the Landlord as further provided herein) and landscaping, including without limitation snow removal

and such other exterior areas of the Building as necessary for the safety and preservation of the Premises at Tenant's sole cost. Tenant shall be solely responsible for all maintenance, repair and replacement costs provided herein. It is understood and agreed that the Landlord shall be responsible for its proportionate share of maintenance, snow removal and repair costs for any parking spaces for commuters as provided in Section III, Landlord's Access to Parking Spaces for Commuters.

VII. COOPERATION AND COST SAVINGS. Landlord and Tenant agree to work together during the Term of this Lease to identify and implement measures to save costs relating to the operation and maintenance of the Premises-relating to contracts with third parties, so long as the change results in no incremental cost to the Landlord. The parties shall work cooperatively to obtain grant funds to increase the parking supply at the Premises, including but not limited to assistance to provide storm water in a manner that will allow such an increase. Nothing contained in this section shall be construed as a limitation or restriction on the Tenant's primary objective to obtain grant money for operating purposes.

VIII. USE. Tenant agrees that it shall use and occupy the Premises only as a children's museum and for such ancillary uses lawfully permitted. Tenant shall comply with all federal, state and municipal laws, ordinances and regulations and all covenants, conditions and restrictions of record applicable to Tenant's use or occupancy of the Premises. Without limiting the foregoing, Tenant shall not cause nor permit, any hazardous or toxic substances to be brought upon, stored, used, discharged or disposed of in or about the Premises or Building in violation of applicable laws.

IX. ALTERATIONS. Landlord in its municipal capacity has previously approved construction of Phase II of Tenant's original building plan ("Phase II"). During the term, Tenant

may construct Phase II at its expense provided that Phase II complies with Landlord's then current ordinances and codes. Tenant shall have the right, without Landlord's consent, to make other alterations, additions, modifications, and expansions to the Building provided Tenant complies with Landlord's then current ordinances and codes. Upon completion of any such work, Tenant shall promptly furnish Landlord with sworn owner's and contractors statements and full and final waivers of lien covering all labor and materials included in such alteration. Tenant shall not permit any mechanic's lien in excess of \$20,000 to be filed against the Building, or any part thereof, arising out of any work performed, or alleged to have been performed, by or on behalf of Tenant. If any lien is filed, Tenant shall, within 30 days after notice thereof, have such lien released of record or deliver to Landlord a bond in a form, an amount, and issued by a surety satisfactory to Landlord, indemnifying Landlord against all costs and liabilities resulting from such lien and the foreclosure or attempted foreclosure thereof.

X. INDEMNIFICATION AND INSURANCE. The Tenant shall, during the term of this Lease, indemnify and hold the Landlord harmless against any liability, judgments, expenses, attorney's fees or claims, including personal injury, death and property damage, arising out of or occurring on or about the Premises and subject property; provided, however, no such indemnification shall be required with respect to losses or liabilities caused by the negligent acts or omissions of the Landlord. Landlord shall be liable, as provided by law, for any liability, judgments, expenses, attorney's fees or claims, including personal injury, death and property damages, arising out of or occurring on or about the Premises and subject property as a result of its use of and access to, parking spaces for commuters as provided in Section III, Landlord's Access to Parking Spaces for Commuters.

The Tenant, at its sole expense, shall provide insurance coverage as may be agreed to by the parties from time to time on condition that:

- a. The Landlord shall be named as an additional insured on all policies.
- b. The Tenant shall provide fire and casualty insurance in an amount equal to the replacement value of the Building.
- c. The Tenant shall provide premises liability insurance in an amount no less than \$2,000,000.
- d. Certificates of insurance evidencing coverages required hereunder shall be provided at Landlord's request.

XI. FIRE AND CASUALTY. In the event that the Premises shall suffer any loss or damage or if the Premises is destroyed by any fire, explosion, or other casualty, Landlord and Tenant agree to use the following procedure:

- a. Tenant shall decide whether to repair, rebuild or demolish the Building within ninety (90) days of the date of loss or damage to, or destruction of the Premises, and shall notify Landlord of its decision no later than ten (10) days after the expiration of that ninety (90) day period. Landlord and Tenant may mutually agree to extend that ninety (90) day period as necessary and as agreed. Any repairs or reconstruction shall return the Building at least to the size and condition immediately prior to damage or destruction in conformance with then applicable law and codes. All costs or repairs or reconstruction over and above insurance proceeds shall be borne by the Tenant.

- b. All funds or proceeds from policies of insurance from damage or loss due to fire, explosion or other casualty shall be deposited into an account at a depository agreed upon by Landlord and Tenant. Any disbursements of funds or proceeds from said account shall be for the purposes of repair, rebuilding or demolition of the damaged Building. Disbursements shall be made only with the approval of the City Manager of the Landlord and the Executive Director of the Tenant which shall be consistent with the decision of the Tenant whether or not to repair pursuant to subsection a of this Section XI.
- c. If Tenant elects to repair or rebuild the damaged or destroyed Building, Tenant shall procure and maintain, at Tenant's own cost and expense, appropriate policies of insurance to protect Landlord during the repair or rebuilding. Any such policies shall name the Landlord as an insured and shall comply with other provisions of this Lease relating to insurance.
- d. If Tenant chooses not to repair or rebuild the Building on the Premises for its continued tenancy, the Lease shall be considered terminated, unless Landlord and the Tenant otherwise agree.

XII. CONDEMNATION. If the Premises, or the Building, is rendered unusable for Tenant's purposes by reason of a condemnation (or by a deed given in lieu thereof) by an entity other than Landlord in its municipal capacity, then either party may terminate this Lease by giving written notice of termination to the other party within thirty (30) days after such condemnation, in which event this Lease shall terminate effective as of the date of such condemnation. If this Lease so terminates, Rent shall be paid through and apportioned as of the date of such condemnation. If such condemnation does not render the Premises or the Building unusable for Tenant's purposes,

this Lease shall continue in effect and Landlord shall promptly restore the portion not condemned to the extent reasonably possible to the condition existing prior to the condemnation and the Rent shall be abated proportionally. In such event, however, Landlord shall not be required to expend an amount in excess of the proceeds received by Landlord from the condemning authority. Landlord shall not condemn the Premises.

XIII. CERTAIN RIGHTS RESERVED TO CITY. Landlord reserves the following rights, each of which Landlord may exercise without notice to Tenant and without liability to Tenant, and the exercise of any such rights shall not be deemed to constitute an eviction or disturbance of Tenant's use or possession of the Premises and shall not give rise to any claim for set-off or abatement of rent or any other claim: (a) to retain at all times, and to use in appropriate instances, keys to all doors within and into the Building; and (b) upon reasonable prior notice, to inspect the Premises at reasonable times and, if vacated or abandoned, to prepare the Premises for re occupancy.

XIV. ASSIGNMENT AND SUBLETTING.

- a. Landlord's Consent. Tenant shall not, without the prior written consent of Landlord: (i) assign, convey, mortgage or otherwise transfer this Lease or any interest hereunder, whether voluntarily or by operation of law; or (ii) permit the use of the Premises by any person other than Tenant, its employees and visitors. Any such transfer or use described in the preceding sentence (a "Transfer") occurring without the prior written consent of Landlord shall be void and of no effect. Landlord's consent to any Transfer shall not constitute a waiver of Landlord's right to withhold its consent to any future Transfer. Landlord's consent to any Transfer, or acceptance of rent from any party other than Tenant,

shall not release Tenant from any covenant or obligation under this Lease. Landlord may require as a condition to its consent to any assignment of this Lease that the assignee execute an instrument in which such assignee assumes the obligations of Tenant hereunder.

- b. Sublease. Notwithstanding anything contained in this Section XIV, Tenant may only sublease any portion of the Building or Premises as provided in this subsection b. Tenant may sublease no greater than 5,000 square feet to an entity for the purpose of offering food and non-alcoholic beverages to its visitors and patrons, without Landlord's consent. Any other sublease shall be subject to the written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed.
- c. Standards for Consent. If Tenant desires the consent of Landlord to a Transfer, Tenant shall submit to Landlord, at least ninety (90) days prior to the proposed effective date of the Transfer, a written notice which includes such information as Landlord may require about the proposed Transfer and the transferee. Landlord shall not unreasonably withhold or delay its consent to any assignment or sublease. However, it is understood and agreed that the Landlord has broad discretion in its decision whether to consent to a Transfer or assignment.

XV. SURRENDER OF POSSESSION. The Tenant shall surrender possession of the premises at the termination of this lease in a state of good repair.

XVI. REAL ESTATE TAXES. The Tenant shall pay any and all real estate taxes and special assessments which may be assessed against the Landlord due to the existence of this Lease and/or any sublease or use.

XVII. QUIET ENJOYMENT. As long as no default exists after the expiration of the applicable notice and cure period, Tenant shall peacefully and quietly have and enjoy the Premises for the term.

XVIII. DEFAULTS AND REMEDIES. In the event of a breach or default of the terms of this Lease by either party, the defaulting party shall have thirty (30) days after written notice of such default to cure such default, or with respect to a default which cannot be reasonably be cured within thirty (30) days, such cure period shall be extended to a reasonable time period as is appropriate under the circumstances. If such default is not cured within the applicable cure period, then the non-defaulting party shall have all rights and remedies available at law and in equity. Landlord and Tenant waive trial by jury in the event of any action, proceeding or counterclaim brought by either Landlord or Tenant against the other in connection with this Lease. Venue shall be the Eighteenth Judicial Circuit, DuPage County, Illinois.


XIX. NOTICES. All notices and demands to be given by one party to the other party under this Lease shall be given in writing, mailed or delivered to Landlord or Tenant, as the case may be, at the address set forth above or at such other address as either party may hereafter designate. Notices shall be delivered by hand or by United States certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two (2) business days after posting in the United States mail.

XX. MISCELLANEOUS. Subject to Section XV of this Lease, each provision of this Lease shall extend to, bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns; and all references herein to Landlord and Tenant shall be deemed to include all such parties. This Lease, and the riders and exhibits, if any, attached

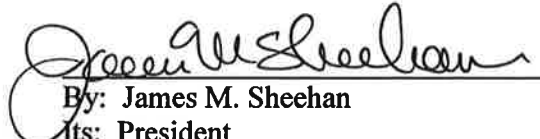
hereto which are hereby made a part of this Lease, represent the complete agreement between Landlord and Tenant; and Landlord has made no representations or warranties except as expressly set forth in this Lease. No modification or amendment of or waiver under this Lease shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant. Time is of the essence of this Lease and each and all of its provisions. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provisions. This Lease shall be governed by and construed in accordance with the laws of the State of Illinois. Landlord shall not be in default hereunder and Tenant shall not be excused from performing any of its obligations hereunder if Landlord is prevented from performing any of its obligations hereunder due to any accident, breakage, strike, shortage of materials, acts of God or other causes beyond Landlord's reasonable control. Either party may record a memorandum of this Lease.

IN WITNESS whereof, the Landlord and the Tenant have authorized the execution of and agreed to this Lease this 24 day of January, 2011.


CITY OF NAPERVILLE


By: Douglas A. Krieger
Its: City Manager

DUPAGE CHILDREN'S MUSEUM


By: James M. Sheehan
Its: President

ATTEST:


By: Pam LaFeber
Its: City Clerk

ATTEST:



By: Lenore M. Johnson
Its: Secretary



EXHIBIT A-Legal Description

PARCEL 1:
THAT PART OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF LOT 2 IN STENGERS ADDITION TO NAPERVILLE AND PROCEEDING THENCE NORTH ALONG THE WEST LINE OF WASHINGTON STREET, 158.3 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE WESTERLY ALONG SAID SOUTH LINE, 278.7 FEET TO THE EAST LINE OF STENGER STREET; THENCE SOUTH ALONG THE EAST LINE OF STENGER STREET, BEING COINCIDENT WITH THE WEST LINE OF LOTS 13 AND 14 IN SAID ADDITION, 136 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 13; THENCE EAST ALONG A LINE COINCIDENT WITH THE SOUTH LINES OF LOT 2 AND LOT 13 IN SAID ADDITION 278 FEET TO THE POINT OF BEGINNING, REFERENCE BEING HAD TO THE PLAT OF SAID ADDITION RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

ALSO
THAT PART OF LOT 12 IN STENGERS ADDITION, LYING NORTH OF THAT PART THEREOF DEDICATED FOR AN ALLEY IN INSTRUMENT RECORDED JUNE 21, 1950 AS DOCUMENT 596138 BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:
THAT PART OF STENGER STREET LYING NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF SPRING STREET AND SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF CHICAGO, BURLINGTON AND QUINCY RAILROAD, ADJACENT AND CONTIGUOUS TO LOTS 10, 11, 12, 13 AND 14, AND LOTS 15, 16, 17, 18 AND 19 IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON THE PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:
THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING WITHIN LOT 12 OF STENGERS ADDITION AND THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING NORTH OF THE NORTHERLY RIGHT OF WAY OF SPRING AVENUE AND ADJACENT AND CONTIGUOUS TO LOTS 3 TO 7, INCLUSIVE ON THE EAST AND LOTS 8, 11 AND 12 ON THE WEST IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580.

PARCEL 4:
LOTS 3, 4, 5, 6, 7, 8, 9, 10, 11 AND THE SOUTH 2 FEET OF LOT 12, ALL IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DU PAGE COUNTY, ILLINOIS.

Common Address: 301 North Washington Street, Naperville, IL 60540



**FINAL AGENDA
CITY COUNCIL MEETING
JANUARY 18, 2011
PAGE 9**

- M1c** Ordinance No. 11-017, annexing DuPage Unitarian Universalist Church, PC 10-1-062
Council moved to waive first reading and pass Ordinance No. 11-017, annexing DuPage Unitarian Universalist Church, PC 10-1-062. **ORDINANCE NO. 11-017,
ANNEXING DUPAGE
UNITERIAN
UNIVERSALIST CHURCH**
- M1d** Ordinance No. 11-018, zone DuPage Unitarian Universalist Church, PC 10-1-062
Council moved to pass Ordinance No. 11-018, to zone the property to R1 (low-density single-family residence district) upon annexation. **ORDINANCE NO. 11-018,
ZONING**
- M1e** Ordinance No. 11-019, preliminary/final plat of subdivision for DuPage Unitarian Universalist Church, PC 10-1-062
Council moved to pass Ordinance No. 11-019, approving a preliminary/final plat of subdivision. **ORDINANCE NO. 11-019,
PRELIMINARY/FINAL
PLAT OF SUBDIVISION**
- M1f** Ordinance No. 11-020, conditional use and parking variance for DuPage Unitarian Universalist Church, PC 10-1-062
Council moved to pass Ordinance No. 11-020, approving a conditional use for a religious institution and parking variance for DuPage Unitarian Universalist Church, subject to conditions. **ORDINANCE NO. 11-020,
CONDITIONAL USE AND
PARKING VARIANCE**
- N1** Ordinance No. 11-021, Lease of Property to DuPage Children's Museum
Furstenau moved to pass Ordinance No. 11-021, authorizing the execution of a lease agreement between the City of Naperville and the DuPage Children's Museum. Second, Miller. **ORDINANCE NO. 11-021,
DUPAGE CHILDREN'S
MUSEUM**

ROLL CALL:

Ayes: Miller, Pradel, Boyajian, Fieseler, Furstenau, Hinterlong, Krause
Nays: Wehrli
Absent: Brodhead
Motion declared carried.

O NEW BUSINESS:

O1 Dick's Sporting Goods

Hinterlong questioned the north facing façade and suggested breaking up that part of the building to make it more attractive.

Laff stated that the third elevation on the agenda item shows that the north facing façade is broken up and that the blank elevation faces Home Depot.

O2 Plank Road

Furstenau asked the zoning classification for medium and low density.

Laff explained that medium density can be up to 8 units per acre) and low density is 2.5 units per acre.



Naperville

CITY COUNCIL AGENDA ITEM

SUBJECT: Purchase and Lease of Property where DuPage Children’s Museum is located.

TYPE OF VOTE: Simple Majority

ACTION REQUESTED:

Pass the Ordinance Authorizing the Execution of a Purchase and Sale Agreement between the City of Naperville and the DuPage Children’s Museum;
Pass the Ordinance Authorizing the Execution of a Lease Agreement between the City of Naperville and the DuPage Children’s Museum.

BOARD/COMMISSION REVIEW: N/A

COUNCIL ACTION PREVIOUSLY TAKEN:

Date	Item No.	Action
N/A		

DEPARTMENT: City Manager’s Office

SUBMITTED BY: Douglas A. Krieger, City Manager

FISCAL IMPACT:

Construction contract awards have delivered savings of \$2 million from the CIP budget, which will be used along with \$1 million from the Burlington Fund to finance the purchase. Thereafter, the annual SECA allocation for the Museum will decrease by 50% and be used to repay the purchase price.

BACKGROUND:

For many years, the DuPage Children’s Museum has struggled financially due to a significant capital debt. During those years, the Museum has depended on the City’s financial assistance through SECA funds to maintain operations. The Museum has made efforts to reduce its debt and reach financial solvency, but its significant capital debt has precluded its success. Recently, the Museum succeeded in obtaining significant financial assistance from the State of Illinois, in the amount of \$1.94 million. In addition, the Museum has also raised significant contributions from private donors amounting to approximately \$700,000 and has achieved a commitment from DuPage County to contribute \$250,000. In order to extinguish the existing capital debt, the Museum’s financing institution has agreed to reduce its debt significantly. All of these actions has resulted in an opportunity for the City to acquire the Museum property for approximately half of the value of the property by payment of \$3 million.

In 1997, the Museum acquired the property for \$4.7 million and thereafter made significant investments in the property resulting in the current Museum, which attracts 330,000 visitors each year. The Museum has partnered with our community through programs with the School District and the Park District. It has received awards and has been recognized as one of the most visited cultural attractions in the State of Illinois.

DISCUSSION: The two ordinances attached authorize the purchase of the Museum property by the City for payment of \$3million, and the lease of the property for a 20 year term to the Museum. The Lease requires that the City retain 2 members on the Museum Board and that the City Council approve the Museum budget annually. In addition, the City will have the opportunity to utilize up to 57 commuter parking spaces at the Museum property.

The City will finance this transaction through a combination of funds from the Burlington Fund and through revenues in the SECA fund. The City will not raise taxes and the City's operating budget will have no impact. For several years, the Museum has been granted financial assistance from the City. The Lease prohibits such financial assistance during the term of the lease, in order to assure the SECA revenues are directed toward financing this transaction. In addition, the Museum will be required to pay the City lease payments during years 6-20 of the lease, which will be increased annually based on CPI.

RECOMMENDATION: Pass the Ordinance Authorizing the Execution of a Purchase and Sale Agreement between the City of Naperville and the DuPage Children's Museum;
Pass the Ordinance Authorizing the Execution of a Lease Agreement between the City of Naperville and the DuPage Children's Museum.

ATTACHMENTS:

1. Ordinance Authorizing the Execution of a Purchase and Sale Agreement
2. Ordinance Authorizing the Execution of a Lease Agreement

ORDINANCE NO. 10 - 121

AN ORDINANCE AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF NAPERVILLE AND DUPAGE CHILDREN'S MUSEUM FOR THE PURCHASE OF CERTAIN PROPERTY

WHEREAS, the DuPage Children's Museum [hereinafter Museum] owns the real property consisting of 3 acres legally described in Exhibit A, [hereinafter Subject Property] which property is located at 301 North Washington Street in Naperville, Illinois; and

WHEREAS, for 13 years, the Museum has been located at the Subject Property; is visited by approximately 330,000 children, parents and teachers each year; and has been recognized as one of the most visited cultural attractions in the State of Illinois; and

WHEREAS, the Museum acquired the Subject Property in 1997 for \$4.7 million and has made significant investments in the property; and

WHEREAS, the City of Naperville is a home rule municipality pursuant to Article 7, Section 6 of the Illinois Constitution and has powers to purchase property for public purposes; and

WHEREAS, the Museum has suffered financial difficulties over the years and has relied on the City for assistance through grant money funded by the City's SECA (Special Events and Cultural Amenities) fund; and

WHEREAS, if the Museum were located on publicly owned property, it would be eligible for significantly more grant money from many sources other than the City; and

WHEREAS, the State of Illinois has contributed almost \$2 million for this transaction to occur; and

WHEREAS, DuPage County will contribute \$250,000 for this transaction to occur; and

WHEREAS, many private donors have contributed over \$700,000 for this transaction to occur; and

WHEREAS, the corporate authorities of the City of Naperville have determined that it is advisable, necessary and in the public interest that the City purchase the Subject Property for payment of \$3 million and that said acquisition is for a public purpose; and

WHEREAS, the corporate authorities of the City of Naperville have determined that it furthers the City's best interests, and it is in the public interest and a public purpose to acquire the Subject Property in order to retain the Museum in the City because of its positive impact in the community; to decrease the City's annual financial contribution to the Museum's operating and capital costs; and to increase the Museum's eligibility for additional grant money; and to increase the City's commuter parking supply; and

WHEREAS, in addition to the acquisition of the Subject Property, the City will also lease the building to the Museum for its continued use and the Museum will pay the City rent in accordance with the terms and conditions in said lease; and

WHEREAS, the City Council of the City of Naperville has determined that it is advisable and necessary for the health, safety and welfare of the residents of the City to provide for the purchase of approximately 3 acre of real property depicted in Exhibit A (Subject Property) in accordance with the terms and conditions contained in the attached Purchase and Sale Agreement Between the City of Naperville and DuPage Children's Museum (hereinafter, Purchase Agreement) and simultaneously lease the Subject Property to the Museum pursuant to the terms of a Lease Between The City Of Naperville And The DuPage Children's Museum (herinafter, Lease) : and

WHEREAS, the City of Naperville, as a home rule municipality, is authorized pursuant to Article 7, Section 6 of the Illinois Constitution to purchase property for public purposes; and

WHEREAS, by approval of this Ordinance City of Naperville hereby invokes its home rule powers and authority to enter into this Purchase Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DuPAGE AND WILL COUNTIES, ILLINOIS, in the exercise of its home rule authority as follows:

SECTION 1: The foregoing recitals are incorporated herein as though fully stated.

SECTION 2: The City Council of the City of Naperville has determined that it is in the best interests of the citizens of Naperville to acquire the Subject Property described in **Exhibit A** subject to the terms and conditions contained in the Purchase Agreement attached as **Exhibit B**.

SECTION 3: The Purchase Agreement attached to this Ordinance as **Exhibit B** is hereby approved.

SECTION 4: The City Manager and the City Clerk are hereby authorized and directed to execute the Purchase Agreement and all documents necessary or desirable to effectuate the acquisition of the Subject Property in accordance with the terms and conditions contained in the Purchase Agreement.

SECTION 5: The Ordinance shall be in full force and effect upon its passage and approval in accordance with law.

PASSED this 5th day of October, 2010.

AYES: PRADEL, BOYAJIAN, BRODHEAD, FIESELER, FURSTENAU,
HINTERLONG, KRAUSE, MILLER

NAYS: WEHRLI

ABSENT: NONE

APPROVED this 6th day of October, 2010.


Douglas Krause
Mayor Pro Tem

ATTEST:



Pam LaFerber, Ph.D.
City Clerk



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Common Address: 301 North Washington Street, Naperville, IL 60540



PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF NAPERVILLE AND DUPAGE CHILDREN'S MUSEUM

THIS PURCHASE AND SALE AGREEMENT is entered into as of the _____ day of _____, 2010 (hereinafter referred to as the EFFECTIVE DATE), by and between the CITY OF NAPERVILLE, an Illinois Municipal Corporation and home rule unit of government, with its principal offices at 400 South Eagle Street, Naperville, Illinois 60540 (hereinafter referred to as the CITY) and DUPAGE CHILDREN'S MUSEUM, an Illinois Not for Profit Corporation (hereinafter referred to as DCM) with offices located at 301 North Washington, Naperville, Illinois.

RECITALS

WHEREAS, the CITY has determined that it is in the best interests of the citizens of Naperville to acquire the real property that is the subject of this Agreement in order to retain the Museum in the City, to increase the City's commuter parking supply, and for such other public purposes as the CITY may determine are appropriate;

WHEREAS, DCM is the owner of a 3 acre property located on Washington Street in Naperville, which is improved with a building currently operating as a children's museum, which property is legally described on **Exhibit A** (hereinafter Subject Property) attached hereto and made part hereof; and

WHEREAS, the CITY agrees to purchase and DCM agrees to sell to the CITY the Subject Property under the terms and conditions provided for herein; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree that:

1. **RECITALS INCORPORATED BY REFERENCE**
 - 1.1. The recitals set forth above are incorporated herein by reference.
2. **PURCHASE PRICE**
 - 2.1. The purchase price (hereinafter "PURCHASE PRICE") of the SUBJECT PROPERTY shall be three million dollars (\$3,000,000) to be paid by the City as the sole consideration for this purchase.
3. **DEED AND TITLE**
 - 3.1. DCM shall convey or cause to be conveyed to the CITY by a recordable, General Warranty Deed, good title to the SUBJECT PROPERTY subject only to the following permitted exceptions (hereinafter "Permitted Exceptions"), if any:
 - a) Zoning laws and ordinances;
 - b) Easements for public utilities;



- c) Public roads and highways and easements pertaining thereto;
- d) The Lease between DCM, as tenant, and the CITY, as landlord, as hereinafter described; and
- e) Such other title matters as the CITY agrees in writing to accept.

4. **DCM REPRESENTATIONS AND COVENANTS**

4.1. DCM represents, covenants and warrants that it will convey the SUBJECT PROPERTY free from any and all liens and encumbrances excepting only the Permitted Exceptions.

4.2. DCM represents, covenants and warrants that it has received, or prior to Closing will have received, \$1,940,000 from the State of Illinois to be used for the purpose of paying down the debt currently due and owing to Chase.

4.3. DCM represents, covenants and warrants that it has in escrow \$735,000 from private donors to be used for the sole purpose of eliminating the debt currently due and owing to Chase.

4.4. DCM represents, covenants and warrants that it has received, or prior to Closing will have received, \$250,000 from DuPage County to be used for the purpose of paying down the debt currently due and owing to Chase.

4.5. DCM warrants and represents that it has good title to the Subject Property except for the Permitted Exceptions and that it shall not permit any mechanic lien, judgment lien or mortgage lien to attach to the SUBJECT PROPERTY prior to Closing. If a mechanic lien, judgment lien, mortgage lien, or other lien is filed on the SUBJECT PROPERTY after the Closing relating to obligations or circumstances occurring prior to Closing, DCM agrees that it shall either satisfy such liens or shall be liable to defend and indemnify the CITY against such liens. It is further understood and agreed that the CITY may terminate this agreement and have no obligation to purchase the property if DCM fails to present good title as provided herein.

4.6. The provisions of this Paragraph 4 shall survive the Closing.

5. **GENERAL TERMS AND CONDITIONS**

5.1. This Agreement is subject to the general terms and conditions contained in this Paragraph 5.

5.2. DCM has heretofore furnished the CITY with a title commitment for the SUBJECT PROPERTY issued by Chicago Title Insurance Company (Title Company) on the current form of the American and Title Association Owner's Policy (or equivalent policy) in the amount of the PURCHASE PRICE through the date thereof. At Closing, DCM shall provide the CITY with a marked up title commitment in the amount of the PURCHASE PRICE, showing

DCM in title, subject only to the Permitted Exceptions set forth in paragraph 3 above and the usual general exceptions contained in Owner's Policies issued by the title company. The CITY shall pay for the cost of the title commitment and the premium for any title insurance policy to be issued. The CITY shall also be solely responsible to pay for any endorsements thereto requested by the CITY. If a New York Style closing is requested, a pro forma title policy will be provided to the CITY at Closing showing the CITY in title, subject only to the Permitted Exceptions and the usual general exceptions contained in Owners' Policies issued by the title company.

5.3. The CITY has heretofore notified DCM of certain exceptions disclosed in the Title Commitment that are not Permitted Exceptions. DCM shall then have until October 8, 2010 to have the said exceptions waived, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions, and to provide evidence of same to CITY. The Closing date shall be delayed, if necessary, to allow DCM time to have said exceptions waived or insured over.

5.4. At Closing, DCM shall provide the CITY with evidence that any unpermitted exceptions have been waived, or in the alternative, shall provide CITY with a commitment for title insurance specified above as to such exceptions. If this condition is not met by DCM, the CITY may elect to terminate this Agreement or to take the title as it then is.

5.5. DCM shall furnish the CITY at the Closing an Affidavit of Title, covering the date of Closing, subject only to the Permitted Exceptions or as to those exceptions, if any, as to which the title insurer commits to extend insurance in the manner specified herein.

5.6. DCM has heretofore provided the CITY with an ALTA/ACSM Land Title Survey (hereinafter "Survey") for SUBJECT PROPERTY which Survey was prepared and certified by a Professional Land Surveyor in accordance with the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Survey.

6. **ASSIGNMENT**

6.1. Prior to Closing DCM shall not assign, transfer or pledge this Agreement, nor shall it lease or sublet the SUBJECT PROPERTY, without the CITY's prior written consent.

7. **CLOSING DATE**

7.1. When used herein, the term "Closing" shall mean the conveyance of the SUBJECT PROPERTY to the CITY and the payment of the purchase price upon the issuance to the CITY of a policy of title insurance to the SUBJECT PROPERTY subject only to the Permitted Exceptions, or as otherwise agreed to by the CITY in writing, and subject to all terms and conditions set forth herein.

7.2. Closing shall occur on October 6, 2010 at the Wheaton, Illinois office of Chicago Title Insurance Company at 11 a.m. unless the parties otherwise mutually agree. In no event shall the Closing be after October 8, 2010. The Closing shall occur, via Closing Escrow, at the offices of the Title Company identified above.

8.
THE PARTIES

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF

8.1. The obligation of the City to purchase the SUBJECT PROPERTY is expressly conditioned upon delivery to the Closing Escrow of the following:

- a) The sum of \$1,940,000 representing the grants from the State of Illinois;
- b) At least \$735,000 representing private donations; and
- c) The sum of \$250,000 representing the grants from the County of DuPage.

8.2. The obligation of DCM to sell the SUBJECT PROPERTY is expressly conditioned upon delivery to the Closing Escrow of the following:

- a) The sum of \$1,940,000 representing the grants from the State of Illinois;
- b) At least \$735,000 representing private donations;
- c) The sum of \$250,000 representing the grants from the County of DuPage; and
- d) Delivery to Title Company in an escrow of executed releases of mortgage, assignment of rents and all other security interests of JP Morgan Chase Bank, N.A., as successor by merger to Bank One N.A., as successor by merger to American National Bank & Trust Company of Chicago, all of which shall be in form sufficient to cause the Title Company to issue its Title Insurance policy in favor of City in the amount of \$3,000,000.

9.
ENTIRE AGREEMENT

9.1. This Agreement contains the entire agreement between the parties for purposes of the purchase and sale of the Subject Property.

9.2. All negotiations between the parties are merged in this Agreement, and there are no understandings or agreements, verbal or written, other than those incorporated in this Agreement.

10.
BINDING EFFECT

10.1. This Agreement shall be binding upon the parties hereto, their assigns, successors and grantees.

11.
NOTICES

11.1. Notices or other writings which any party is required to, or may wish to serve upon any other party in connection with this Agreement, shall be in writing and shall be delivered either personally, by facsimile or by certified mail, return receipt requested, postage prepaid, addressed as follows:

FOR THE CITY

Legal Department
CITY OF NAPERVILLE
400 S. Eagle St.
P.O. Box 3020
Naperville, Illinois 60566-7020
Fax No.: (630) 305-5355

FOR DCM

James M. Sheehan
One Tellabs Center
1415 W. Diehl Road
Naperville IL 60563
(630) 798-3456

WITH A COPY TO

Dykema Gossett PLLC
Attn: George N. Gilkerson, Jr.
4200 Commerce Ct., Suite 300
Lisle, Illinois 60532
Facsimile No.: (866) 261-4333

11.2. Notice by facsimile transmission shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event facsimile notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission. Notice served by certified mail shall be effective on the date of mailing if it relates to termination of this Agreement. Notice as to any issue other than termination which is served by certified mail shall be deemed effective three (3) days after being sent.

12.

WARRANTIES

12.1. The corporate authorities of the CITY warrant that they have the authority to enter into this Agreement.

12.2. DCM warrants that it has the authority to enter into this Agreement.

13.

SEVERABILITY

13.1. If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and

such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any paragraph, subparagraph, sentence or clause not adjudged to be invalid.

14. VENUE

14.1. Venue for any action taken by the CITY or DCM, whether in law or in equity, to enforce the terms of this Agreement shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois or the United States District Court, Northern District of Illinois, Eastern Division.

THE PARTIES TO THIS AGREEMENT by their signatures acknowledge they have read and understand this agreement and intend to be bound by its terms.

CITY OF NAPERVILLE

DUPAGE CHILDREN'S MUSEUM

By: Douglas A. Krieger
Its: City Manager

By: James M. Sheehan
Its: President

ATTEST:

By: Pam LaFeber
Its: City Clerk

MFS: ATTESTATION BY
DCM ISN'T NECESSARY

ORDINANCE NO. 10 - 122

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
BETWEEN THE CITY OF NAPERVILLE AND DUPAGE CHILDREN'S MUSEUM**

WHEREAS, the DuPage Children's Museum [hereinafter Museum] and the City of Naperville have entered into a Purchase Agreement whereby the City will acquire ownership of the real property consisting of approximately 3 acres legally described in Exhibit A, [hereinafter Subject Property] which property is located at 301 North Washington Street in Naperville, Illinois; and

WHEREAS, for 13 years, the Museum has been located at the Subject Property, is visited by approximately 330,000 children, parents and teachers each year, has been recognized as one of the most visited cultural attractions in the State of Illinois; and

WHEREAS, the Museum acquired the Subject Property in 1997 for \$4.7 million and has made significant investments in the property; and

WHEREAS, the City of Naperville is a home rule municipality pursuant to Article 7, Section 6 of the Illinois Constitution and has powers to purchase property for public purposes; and

WHEREAS, the Museum has suffered financial difficulties over the years and has relied on the City for assistance through grant money; and

WHEREAS, once the City acquires the property and the Museum is located on publicly owned property, it will be eligible for significantly more grant money from many sources other than the City; and

WHEREAS, the State of Illinois has contributed almost \$2 million to assist in the City's acquisition of the Subject Property; and

WHEREAS, DuPage County will contribute \$250,000 to assist in the City's acquisition of the Subject Property; and

WHEREAS, many private donors have contributed over \$700,000 to assist in the City's acquisition of the Subject Property; and

WHEREAS, the corporate authorities of the City of Naperville have determined that it is advisable, necessary and in the public interest that the City purchase the Subject Property for payment of \$3 million and that said acquisition is for a public purpose; and

WHEREAS, the corporate authorities of the City of Naperville have determined that it furthers the City's best interests, and it is in the public interest and a public purpose to acquire the Subject Property and to Lease said Property in order to retain the Museum in the City because of its positive impact in the community; to decrease the City's annual financial contribution to the Museum's operating and capital costs; and to increase the Museum's eligibility for additional grant money; and to increase the City's commuter parking supply; and

WHEREAS, in accordance with the terms and conditions contained in the Lease of the Property, attached hereto as Exhibit B, the City will lease the building to the Museum for its continued use and the Museum will pay the City rent in accordance with the terms and conditions in said Lease; and

WHEREAS, during the term of the Lease, the Museum will not receive SECA funds to assist in Museum operating expenses or debts. It is the intention of the City Council to allocate SECA funds to finance the purchase price of the Museum.

WHEREAS, the City Council of the City of Naperville has determined that it is advisable and necessary for the health, safety and welfare of the residents of the City to Lease

said property to the Museum in accordance with the terms and conditions contained in the attached Lease Agreement Between the City of Naperville and DuPage Children's Museum; and

WHEREAS, during the term of the Lease, the City will maintain oversight of the Museum through the provision of membership on the Museum Board and annual City Council approval of the Museum Budget as further delineated in the Lease; and

WHEREAS, the City of Naperville, as a home rule municipality, is authorized pursuant to Article 7, Section 6 of the Illinois Constitution to Lease said property for public purposes; and

WHEREAS, by approval of this Ordinance City of Naperville hereby invokes its home rule powers and authority to enter into this Lease.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DuPAGE AND WILL COUNTIES, ILLINOIS, in the exercise of its home rule authority as follows:

SECTION 1: The foregoing recitals are incorporated herein as though fully stated.

SECTION 2: The City Council of the City of Naperville has determined that it is in the best interests of the citizens of Naperville to Lease the Subject Property described in **Exhibit A** subject to the terms and conditions contained in the Lease attached as **Exhibit B**.

SECTION 3: The Lease attached to this Ordinance as **Exhibit B** is hereby approved.

SECTION 4: The City Manager and the City Clerk are hereby authorized and directed to execute the Lease and all documents necessary or desirable to effectuate the lease of the Subject Property in accordance with the terms and conditions contained in the Lease Agreement.

SECTION 5: The Ordinance shall be in full force and effect upon its passage and approval in accordance with law.


PASSED this 5th day of October, 2010.

AYES: BOYAJIAN, BRODHEAD, FIESELER, FURSTENAU, HINTERLONG,
KRAUSE, MILLER, WEHRLI, PRADEL

NAYS: NONE

ABSENT: NONE

APPROVED this 6th day of October, 2010.


Douglas Krause
Mayor Pro Tem

ATTEST:



Pam LaFeber, Ph.D.
City Clerk



EXHIBIT A-Legal Description

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 2 IN STENGERS ADDITION TO NAPERVILLE AND PROCEEDING THENCE NORTH ALONG THE WEST LINE OF WASHINGTON STREET, 158.3 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE WESTERLY ALONG SAID SOUTH LINE, 278.7 FEET TO THE EAST LINE OF STENGER STREET; THENCE SOUTH ALONG THE EAST LINE OF STENGER STREET, BEING COINCIDENT WITH THE WEST LINE OF LOTS 13 AND 14 IN SAID ADDITION, 136 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 13; THENCE EAST ALONG A LINE COINCIDENT WITH THE SOUTH LINES OF LOT 2 AND LOT 13 IN SAID ADDITION 278 FEET TO THE POINT OF BEGINNING, REFERENCE BEING HAD TO THE PLAT OF SAID ADDITION RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

ALSO

THAT PART OF LOT 12 IN STENGERS ADDITION, LYING NORTH OF THAT PART THEREOF DEDICATED FOR AN ALLEY IN INSTRUMENT RECORDED JUNE 21, 1950 AS DOCUMENT 596138 BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF STENGER STREET LYING NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF SPRING STREET AND SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF CHICAGO, BURLINGTON AND QUINCY RAILROAD, ADJACENT AND CONTIGUOUS TO LOTS 10, 11, 12, 13 AND 14, AND LOTS 15, 16, 17, 18 AND 19 IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON THE PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580, IN DUPAGE COUNTY, ILLINOIS.

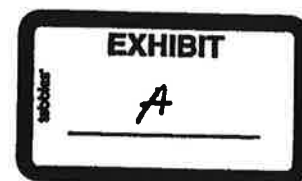
PARCEL 3:

THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING WITHIN LOT 12 OF STENGERS ADDITION AND THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING NORTH OF THE NORTHERLY RIGHT OF WAY OF SPRING AVENUE AND ADJACENT AND CONTIGUOUS TO LOTS 3 TO 7, INCLUSIVE ON THE EAST AND LOTS 8, 11 AND 12 ON THE WEST IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580.

PARCEL 4:

LOTS 3, 4, 5, 6, 7, 8, 9, 10, 11 AND THE SOUTH 2 FEET OF LOT 12, ALL IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DU PAGE COUNTY, ILLINOIS.

Common Address: 301 North Washington Street, Naperville, IL 60540



FINAL AGENDA
CITY COUNCIL MEETING
OCTOBER 5, 2010
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E5 Chicago Avenue Traffic

Jeff Oken, 400 E. Chicago, shared information from a 1992 traffic study which addressed the amount of traffic and speed limits on Chicago Avenue. He said that the study identified safety concerns and that no further research be done on traffic flow on Chicago Avenue. He concluded that Chicago Avenue is a gateway to the city and shouldn't be changed.

F **HOLDOVER ITEMS:**

G **PETITIONS AND COMMUNICATIONS TO THE COUNCIL:**

N1 DuPage Children's Museum

**DUPAGE CHILDREN'S
MUSEUM**

John Schmitt, Naperville Chamber of Commerce at 55 S. Main Street, stated that he is not advocating for or against the purchase, that it is a wonderful amenity, however there has been ample debate and discussion by various community stakeholders about the purchase. He said there is also confusion about the purchase. Mr. Schmitt reviewed the questions that were asked in a letter that the Chamber sent to the Council which was included in the agenda packet.

Mary Ann Bobosky, 948 Anne Road, believes the DuPage Children's Museum (DCM) is an educational resource, spoke about its history, stated that kids learn by having fun, and urged Council to approve the purchase.

David Kelsch, 112 Bridgewater, stated that museum visitors provide great economic impact to the area and urged Council to approve the sale.

Steve Rubin, 990 Timber Lee Court, believes the DCM is important, that our most precious asset is the children, that the museum serves as the north side anchor in past and future strategic plans, and urged Council to approve the sale.


Kathryn Pegorsch, 1410 Chestnut Ridge Court, urged Council to approve the sale.

Marc Blackman, 728 Colorado Court, recognized the tremendous efforts of the city, DuPage County, State of Illinois, Chase Bank and the museum donors.

Tim Messer, 6 N. Huffman Street, spoke in favor of the city's purchase of the property and highlighted the benefits of the purchase.

Council discussed renegotiating the lease when the rent goes to \$1/year and questioned the phased-in commuter parking option, the subtle language, and board representation.

Krieger explained that the existing parking configuration goes north to south and that spaces can be picked up in 15 space increments, that the eastern most row of 15 parking spaces would be added first and then spaces would continue to be added to the west. The city is cognizant of parking premiums and will continue to arrive at solutions that don't have an adverse affect on either party.



FINAL AGENDA
CITY COUNCIL MEETING
OCTOBER 5, 2010
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N1 DuPage Children's Museum Continued

**DUPAGE CHILDREN'S
MUSEUM**

Council stated that while the DCM is for the children the purchase cannot be turned into an emotional decision, that the impact of the purchase on the city should be examined, that the museum has not presented a business plan, that the strategic plan goals that have been presented are not the same as a business plan, that other not-for-profit organizations may begin to expect similar financial partnerships, that the money used for the purchase should be used to pay down the CIP debt, that six days is not enough time for public deliberation, and that the DCM may eventually begin to transfer operating responsibilities to the city to save more money.

Council further discussed the purchase of the museum property and said that the city is buying a piece of property far in excess of what is being paid, that the city is providing a mechanism for the museum to exist, that roughly 40% of those that come to the DCM do not live in Naperville and they shop/dine in town, and that it is a proven enterprise that brings more than 300,000 visitors from 280 different zip codes to the city each year.

Council said that the lease warrants further review and should not be finalized.

Council stated that there are few museums of any kind that operate without public support and that it is still the responsibility of the DCM to operate efficiently. Council also said that the location is very critical as it is the gateway to downtown and is next to the railroad, that it has been in the black for the last three years and quite possibly will continue to be in the black without the overhead mortgage.

N1a Ordinance No. 10-121, Purchase and Sale Agreement with DuPage Children's Museum

**ORDINANCE NO. 10-121,
PURCHASE AND SALE
AGREEMENT WITH
DUPAGE CHILDREN'S
MUSEUM**

Furstenau moved to pass Ordinance No. 10-121, authorizing the execution of a Purchase and Sale Agreement between the City of Naperville and the DuPage Children's Museum. Second, Boyajian.

ROLL CALL:

Ayes: Pradel, Boyajian, Brodhead, Fieseler, Furstenau,
 Hinterlong, Krause, Miller

Nays: Wehrli
 Motion declared carried.

FINAL AGENDA
CITY COUNCIL MEETING
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N1b Ordinance No. 10-122, Lease Agreement with DuPage Children's Museum

ORDINANCE NO. 10-122,
LEASE AGREEMENT WITH
DUPAGE CHILDREN'S
MUSEUM

Boyajian moved to pass an ordinance authorizing the execution of a three month lease agreement between the City of Naperville and the DuPage Children's Museum as presented and further instructed staff to negotiate final lease terms for approval by the City Council within three months. Second, Miller.

ROLL CALL:

Ayes: Boyajian, Brodhead, Fieseler, Furstenau, Hinterlong, Krause, Miller, Wehrli, Pradel

Nays: None
Motion declared carried.

CLERK'S NOTE: Mayor Pradel ended his teleconferencing at 9:16 p.m.

BREAK: 9:16 p.m.

Mayor Pro Tem Krause called the meeting back to order at 9:26 p.m.

H **CONSIDERATION OF MOTION TO USE OMNIBUS METHOD FOR REMAINING ITEMS:**

Miller moved to use the Omnibus method to approve the Consent Agenda. Second, Wehrli.

VOICE VOTE: Motion declared carried.

I **CONSENT AGENDA:**

Miller moved to approve the Consent Agenda with the exception of item I2, I4, I8, I9, I11. Second, Wehrli.

ROLL CALL:

Ayes: Boyajian, Fieseler, Hinterlong, Krause, Miller, Wehrli

Nays: None

Absent: Pradel, Brodhead, Furstenau
Motion declared carried.

CLERK'S NOTE: Councilman Brodhead and Furstenau returned to the dais at 9:28 p.m.

I1 Cash Disbursements – 9/15/10

Council moved to approve the cash disbursements of 9/15/10 in the amount of \$23,329,613.97.

CASH DISBURSEMENTS –
9/1/10

I3 Fire Suppression Agreements

Council moved to delay the enforcement of Section 5-1A-3; 3403.1 of the Naperville Municipal Code to provide up to a three-year extension for ten properties with fire suppression deferral agreements in consideration of recording a uniform fire suppression agreement against each property.

FIRE SUPPRESSION
AGREEMENTS

PURCHASE AND SALE AGREEMENT
BETWEEN THE CITY OF NAPERVILLE AND DUPAGE CHILDREN'S MUSEUM

THIS PURCHASE AND SALE AGREEMENT is entered into as of the 6th day of October, 2010 (hereinafter referred to as the EFFECTIVE DATE), by and between the CITY OF NAPERVILLE, an Illinois Municipal Corporation and home rule unit of government, with its principal offices at 400 South Eagle Street, Naperville, Illinois 60540 (hereinafter referred to as the CITY) and DUPAGE CHILDREN'S MUSEUM, an Illinois Not for Profit Corporation (hereinafter referred to as DCM) with offices located at 301 North Washington, Naperville, Illinois.

RECITALS

WHEREAS, the CITY has determined that it is in the best interests of the citizens of Naperville to acquire the real property that is the subject of this Agreement in order to retain the Museum in the City, to increase the City's commuter parking supply, and for such other public purposes as the CITY may determine are appropriate;

WHEREAS, DCM is the owner of a 3 acre property located on Washington Street in Naperville, which is improved with a building currently operating as a children's museum, which property is legally described on **Exhibit A** (hereinafter Subject Property) attached hereto and made part hereof; and

WHEREAS, the CITY agrees to purchase and DCM agrees to sell to the CITY the Subject Property under the terms and conditions provided for herein; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree that:

1. RECITALS INCORPORATED BY REFERENCE

1.1. The recitals set forth above are incorporated herein by reference.

2. PURCHASE PRICE

2.1. The purchase price (hereinafter "PURCHASE PRICE") of the SUBJECT PROPERTY shall be three million dollars (\$3,000,000) to be paid by the City as the sole consideration for this purchase.

3. DEED AND TITLE

3.1. DCM shall convey or cause to be conveyed to the CITY by a recordable, General Warranty Deed, good title to the SUBJECT PROPERTY subject only to the following permitted exceptions (hereinafter "Permitted Exceptions"), if any:

- a) Zoning laws and ordinances;
- b) Easements for public utilities;

- c) Public roads and highways and easements pertaining thereto;
- d) The Lease between DCM, as tenant, and the CITY, as landlord, as hereinafter described; and
- e) Such other title matters as the CITY agrees in writing to accept.

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4.1. DCM represents, covenants and warrants that it will convey the SUBJECT PROPERTY free from any and all liens and encumbrances excepting only the Permitted Exceptions.

4.2. DCM represents, covenants and warrants that it has received, or prior to Closing will have received, \$1,940,000 from the State of Illinois to be used for the purpose of paying down the debt currently due and owing to Chase.

4.3. DCM represents, covenants and warrants that it has in escrow \$735,000 from private donors to be used for the sole purpose of eliminating the debt currently due and owing to Chase.

4.4. DCM represents, covenants and warrants that it has received, or prior to Closing will have received, \$250,000 from DuPage County to be used for the purpose of paying down the debt currently due and owing to Chase.

4.5. DCM warrants and represents that it has good title to the Subject Property except for the Permitted Exceptions and that it shall not permit any mechanic lien, judgment lien or mortgage lien to attach to the SUBJECT PROPERTY prior to Closing. If a mechanic lien, judgment lien, mortgage lien, or other lien is filed on the SUBJECT PROPERTY after the Closing relating to obligations or circumstances occurring prior to Closing, DCM agrees that it shall either satisfy such liens or shall be liable to defend and indemnify the CITY against such liens. It is further understood and agreed that the CITY may terminate this agreement and have no obligation to purchase the property if DCM fails to present good title as provided herein.

4.6. The provisions of this Paragraph 4 shall survive the Closing..

5. GENERAL TERMS AND CONDITIONS

5.1. This Agreement is subject to the general terms and conditions contained in this Paragraph 5.

5.2. DCM has heretofore furnished the CITY with a title commitment for the SUBJECT PROPERTY issued by Chicago Title Insurance Company (Title Company) on the current form of the American and Title Association Owner's Policy (or equivalent policy) in the amount of the PURCHASE PRICE through the date thereof. At Closing, DCM shall provide the CITY with a marked up title commitment in the amount of the PURCHASE PRICE, showing

DCM in title, subject only to the Permitted Exceptions set forth in paragraph 3 above and the usual general exceptions contained in Owner's Policies issued by the title company. The CITY shall pay for the cost of the title commitment and the premium for any title insurance policy to be issued. The CITY shall also be solely responsible to pay for any endorsements thereto requested by the CITY. If a New York Style closing is requested, a pro forma title policy will be provided to the CITY at Closing showing the CITY in title, subject only to the Permitted Exceptions and the usual general exceptions contained in Owners' Policies issued by the title company.

5.3. The CITY has heretofore notified DCM of certain exceptions disclosed in the Title Commitment that are not Permitted Exceptions. DCM shall then have until October 8, 2010 to have the said exceptions waived, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions, and to provide evidence of same to CITY. The Closing date shall be delayed, if necessary, to allow DCM time to have said exceptions waived or insured over.

5.4. At Closing, DCM shall provide the CITY with evidence that any unpermitted exceptions have been waived, or in the alternative, shall provide CITY with a commitment for title insurance specified above as to such exceptions. If this condition is not met by DCM, the CITY may elect to terminate this Agreement or to take the title as it then is.

5.5. DCM shall furnish the CITY at the Closing an Affidavit of Title, covering the date of Closing, subject only to the Permitted Exceptions or as to those exceptions, if any, as to which the title insurer commits to extend insurance in the manner specified herein.

5.6. DCM has heretofore provided the CITY with an ALTA/ACSM Land Title Survey (hereinafter "Survey") for SUBJECT PROPERTY which Survey was prepared and certified by a Professional Land Surveyor in accordance with the 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Survey.

6. ASSIGNMENT

6.1. Prior to Closing DCM shall not assign, transfer or pledge this Agreement, nor shall it lease or sublet the SUBJECT PROPERTY, without the CITY's prior written consent.

7. CLOSING DATE

7.1. When used herein, the term "Closing" shall mean the conveyance of the SUBJECT PROPERTY to the CITY and the payment of the purchase price upon the issuance to the CITY of a policy of title insurance to the SUBJECT PROPERTY subject only to the Permitted Exceptions, or as otherwise agreed to by the CITY in writing, and subject to all terms and conditions set forth herein.

7.2. Closing shall occur on October 6, 2010 at the Wheaton, Illinois office of Chicago Title Insurance Company at 11 a.m. unless the parties otherwise mutually agree. In no event shall the Closing be after October 8, 2010. The Closing shall occur, via Closing Escrow, at the offices of the Title Company identified above.

8.

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE PARTIES

8.1. The obligation of the City to purchase the SUBJECT PROPERTY is expressly conditioned upon delivery to the Closing Escrow of the following:

- a) The sum of \$1,940,000 representing the grants from the State of Illinois;
- b) At least \$735,000 representing private donations; and
- c) The sum of \$250,000 representing the grants from the County of DuPage.

8.2. The obligation of DCM to sell the SUBJECT PROPERTY is expressly conditioned upon delivery to the Closing Escrow of the following:

- a) The sum of \$1,940,000 representing the grants from the State of Illinois;
- b) At least \$735,000 representing private donations;
- c) The sum of \$250,000 representing the grants from the County of DuPage; and
- d) Delivery to Title Company in an escrow of executed releases of mortgage, assignment of rents and all other security interests of JP Morgan Chase Bank, N.A., as successor by merger to Bank One N.A., as successor by merger to American National Bank & Trust Company of Chicago, all of which shall be in form sufficient to cause the Title Company to issue its Title Insurance policy in favor of City in the amount of \$3,000,000.

9.

ENTIRE AGREEMENT

9.1. This Agreement contains the entire agreement between the parties for purposes of the purchase and sale of the Subject Property.

9.2. All negotiations between the parties are merged in this Agreement, and there are no understandings or agreements, verbal or written, other than those incorporated in this Agreement.

10.

BINDING EFFECT

10.1. This Agreement shall be binding upon the parties hereto, their assigns, successors and grantees.

11.

NOTICES

11.1. Notices or other writings which any party is required to, or may wish to serve upon any other party in connection with this Agreement, shall be in writing and shall be delivered either personally, by facsimile or by certified mail, return receipt requested, postage prepaid, addressed as follows:

FOR THE CITY

Legal Department
CITY OF NAPERVILLE
400 S. Eagle St.
P.O. Box 3020
Naperville, Illinois 60566-7020
Fax No.: (630) 305-5355

FOR DCM

James M. Sheehan
One Tellabs Center
1415 W. Diehl Road
Naperville IL 60563
(630) 798-3456

WITH A COPY TO

Dykema Gossett PLLC
Attn: George N. Gilkerson, Jr.
4200 Commerce Ct., Suite 300
Lisle, Illinois 60532
Facsimile No.: (866) 261-4333

11.2. Notice by facsimile transmission shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event facsimile notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission. Notice served by certified mail shall be effective on the date of mailing if it relates to termination of this Agreement. Notice as to any issue other than termination which is served by certified mail shall be deemed effective three (3) days after being sent.

12.

WARRANTIES

12.1. The corporate authorities of the CITY warrant that they have the authority to enter into this Agreement.

12.2. DCM warrants that it has the authority to enter into this Agreement.

13.

SEVERABILITY

13.1. If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and

such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any paragraph, subparagraph, sentence or clause not adjudged to be invalid.

14. VENUE

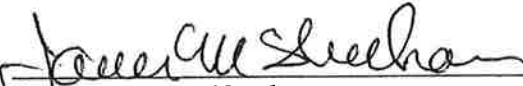
14.1. Venue for any action taken by the CITY or DCM, whether in law or in equity, to enforce the terms of this Agreement shall be in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois or the United States District Court, Northern District of Illinois, Eastern Division.

THE PARTIES TO THIS AGREEMENT by their signatures acknowledge they have read and understand this agreement and intend to be bound by its terms.

CITY OF NAPERVILLE

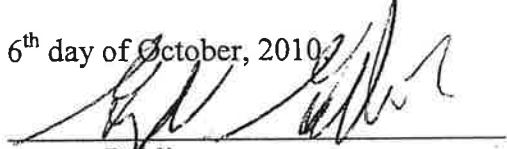

By: Douglas A. Krieger
Its: City Manager

DUPAGE CHILDREN'S MUSEUM


By: James M. Sheehan
Its: President

ATTEST:


By: Pam LaFeber
Its: City Clerk

Subscribed and Sworn to before me this
6th day of October, 2010

Notary Public

Date: October 6, 2010

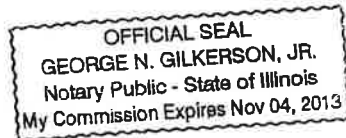


EXHIBIT A-Legal Description

PARCEL 1:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 2 IN STENGERS ADDITION TO NAPERVILLE AND PROCEEDING THENCE NORTH ALONG THE WEST LINE OF WASHINGTON STREET, 158.3 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE WESTERLY ALONG SAID SOUTH LINE, 278.7 FEET TO THE EAST LINE OF STENGER STREET; THENCE SOUTH ALONG THE EAST LINE OF STENGER STREET, BEING COINCIDENT WITH THE WEST LINE OF LOTS 13 AND 14 IN SAID ADDITION, 136 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 13; THENCE EAST ALONG A LINE COINCIDENT WITH THE SOUTH LINES OF LOT 2 AND LOT 13 IN SAID ADDITION 278 FEET TO THE POINT OF BEGINNING, REFERENCE BEING HAD TO THE PLAT OF SAID ADDITION RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

ALSO

THAT PART OF LOT 12 IN STENGERS ADDITION, LYING NORTH OF THAT PART THEREOF DEDICATED FOR AN ALLEY IN INSTRUMENT RECORDED JUNE 21, 1950 AS DOCUMENT 596138 BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF STENGER STREET LYING NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF SPRING STREET AND SOUTH OF THE SOUTHERLY RIGHT OF WAY LINE OF CHICAGO, BURLINGTON AND QUINCY RAILROAD, ADJACENT AND CONTIGUOUS TO LOTS 10, 11, 12, 13 AND 14, AND LOTS 15, 16, 17, 18 AND 19 IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON THE PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING WITHIN LOT 12 OF STENGERS ADDITION AND THAT PART OF THE PUBLIC ALLEY (NOW VACATED) LYING NORTH OF THE NORTHERLY RIGHT OF WAY OF SPRING AVENUE AND ADJACENT AND CONTIGUOUS TO LOTS 3 TO 7, INCLUSIVE ON THE EAST AND LOTS 8, 11 AND 12 ON THE WEST IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN ON PLAT OF VACATION RECORDED JUNE 5, 1962 AS DOCUMENT R62-17580.

PARCEL 4:

LOTS 3, 4, 5, 6, 7, 8, 9, 10, 11 AND THE SOUTH 2 FEET OF LOT 12, ALL IN STENGERS ADDITION, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 31, 1914 AS DOCUMENT 117778, IN DU PAGE COUNTY, ILLINOIS.

Common Address: 301 North Washington Street, Naperville, IL 60540

