

## **NAPERVILLE JAYCEES SMART PARK DONATION AGREEMENT**

This Donation Agreement (referred to herein after as the “Agreement”) is effective as of January 31, 2018, by and between the NAPERVILLE JAYCEES, an Illinois non-for-profit corporation with principal offices located at 222 South Eagle Street., Naperville, Illinois 60540 and the NAPERVILLE COMMUNITY CHARITABLE ORGANIZATION, INC., an Illinois non-for-profit corporation with principal offices located at 222 South Eagle Street, Naperville, Illinois 60540 (NAPERVILLE JAYCEES and NAPERVILLE COMMUNITY CHARITABLE ORGANIZATION, INC. are collectively referred to herein as the “Jaycees”), the NAPERVILLE RIVERWALK FOUNDATION, an Illinois non-for-profit corporation with principal offices located at 400 South Eagle Street, Naperville, Illinois 60540 (referred to herein as “Foundation”) and CITY OF NAPERVILLE, an Illinois home rule municipality (referred to herein as the “City”) with offices located at 400 South Eagle Street, Naperville, Illinois 60540, with reference to the following facts and circumstances:

### **RECITALS**

**WHEREAS**, the Naperville Riverwalk, planned in the 1970s to commemorate the City’s 150<sup>th</sup> anniversary in 1981, was a gift to the City from its citizens;

**WHEREAS**, volunteers built brick by brick, the winding path along the DuPage River that was dedicated in 1981 in conjunction with the City’s Sesquicentennial Celebration;

**WHEREAS**, the Naperville Riverwalk incorporates the three covered bridges, Riverwalk Amphitheater, Labyrinth, Millennium Wall, Free Speech Pavilion, Dandelion Fountain, Exchange Club Veterans Plaza, Exelon Garden, Moser Tower, Millennium Carillon, Fredenhagen Park, Exchange Club’s Memories Fountain, and Century Walk sculptures;

**WHEREAS**, established in 1997, the Foundation is an independent, volunteer-based, 501(c)(3) non-profit organization whose mission is to promote, educate and enhance while serving as a conduit for financial gifts that augment the annual commitments of the City and the Naperville Park District to design, build and maintain the Naperville Riverwalk;

**WHEREAS**, the Jaycees are Naperville’s young person’s organization dedicated to philanthropy and volunteerism and are committed to building Naperville’s future leaders and helping the community by volunteering time, fundraising, helping others and recognizing outstanding effort of others within the community...and we have fun doing it;

**WHEREAS**, the City, a home rule municipality pursuant to Article VII, Section 6 of the Constitution of the State of Illinois, is dedicated to preserving, enhancing and promoting the Naperville Riverwalk for the benefit and enjoyment of its residents and visitors; and

**WHEREAS**, the Foundation, Jaycees, and City are committed to working together to establish a “smart park” along the Naperville Riverwalk that provides a technologically equipped gathering place where the public may connect to Wi-Fi and have access to power supplies as provided herein (hereinafter referred to as the “Naperville Jaycees Smart Park”).

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration and in exercise of the City's home rule authority, the Parties hereby agree to the following:

### **Section 1. Recitals**

1. All recitals set forth above are incorporated herein and made a part thereof, the same constituting the factual basis for this Agreement.
2. **Scope of Agreement.** This Agreement sets forth the responsibilities of the Parties related to the Jaycees donation of two hundred thousand dollars (\$200,000.00) to partially fund the creation of the Naperville Jaycees Smart Park.
3. **Naperville Jaycees Smart Park.** The Naperville Jaycees Smart Park refers to the development concept of creating on City property along the Naperville Riverwalk, a designated outdoor public park area that is equipped with public power outlets and Wi-Fi. The area is generally described as approximately 1,000 to 3,000 square feet roughly bounded by the DuPage River to the North; the Naperville Township property at 139 Water Street to the East; and the Naperville Municipal Center Property located at 400 S. Eagle Street to the West and South. This description is subject to change and will be ultimately based on final plans approved by the Naperville City Council.

### **Section 2. Jaycees Responsibilities**

1. The Jaycees shall tender to the Foundation two hundred thousand dollars (\$200,000.00) over a period of no more than ten (10) years to help cover costs associated with the establishment and maintenance of the Naperville Jaycees Smart Park.
  - a. The Jaycees shall tender its first contribution, in the Agreement of twenty thousand dollars (\$20,000.00) to the Foundation within seven (7) days of the execution of this Agreement by the City and the Jaycees.
  - b. Beginning in 2019, on or before January 31, the Jaycees shall tender contributions to the Foundation in an amount not less than twenty thousand dollars (\$20,000.00), unless the Jaycees' annual donation budget totals less than \$40,000. If the Jaycees' annual donation budget totals less than \$40,000, then the Jaycees shall tender fifty percent (50%) of its annual donation budget to the Foundation for that year with the understanding that the entire two hundred thousand dollars (\$200,000.00) must be tendered to the Foundation on or before January 31, 2027.
  - c. Nothing herein inhibits the Jaycees from completing the tender of its two hundred thousand dollars (\$200,000.00) obligation to the Foundation sooner than the ten (10) year term.
2. The Jaycees' donation to the Foundation is non-refundable, except that if the Naperville City Council does not give final approval for the establishment of the Naperville Jaycees

Smart Park or if the City terminates this Agreement prior to the Naperville City Council providing final approval for the establishment of the Naperville Jaycees Smart Park, then the Foundation or the City shall refund to the Jaycees the monetary contributions, without interest, made by the Jaycees to the Foundation as part of this Agreement.

3. Upon tendering the full two hundred thousand dollars (\$200,000.00) to the Foundation to help cover costs associated with the establishment and maintenance of the Naperville Jaycees Smart Park, the Jaycees' obligations under this Agreement will be complete.
4. The Jaycees responsibility under this Agreement is strictly limited to the funding herein described. The Jaycees are not responsible for the establishment of the Naperville Jaycees Smart Park nor are the Jaycees responsible for any maintenance of the Naperville Jaycees Smart Park.

### **Section 3. Foundation Responsibilities**

1. Any and all donations received by the Riverwalk Foundation from any entity, including the Jaycees, that are intended to help fund the Naperville Jaycees Smart Park are restricted to only be used for the establishment and maintenance of the Naperville Jaycee Smart Park. Any such funds tendered to the Foundation must be held in an escrowed or restricted fund.
2. As necessary to cover costs associated with the establishment and maintenance of the Naperville Jaycees Smart Park, the Foundation shall tender to the City, within thirty (30) days of the City's request, any available Naperville Jaycees Smart Park restricted funds that the Foundation has received.
3. If the Naperville City Council does not give final approval for the establishment of the Naperville Jaycees Smart Park or if the City terminates this Agreement prior to the Naperville City Council providing final approval for the establishment of the Naperville Jaycees Smart Park, then the Foundation shall refund to the Jaycees any monetary contributions, without interest, made by the Jaycees to the Foundation as part of this Agreement that have not yet been tendered to the City.

### **Section 4. City Responsibilities**

1. The City shall name the smart park the "Naperville Jaycees Smart Park" and subject to the terms and conditions set forth herein, it shall remain so named as long as the smart park remains in operation.
2. The City shall prominently display the Jaycee's name and logo at the Naperville Jaycees Smart Park.
3. The City shall include in the Naperville Jaycees Smart Park a space to advertise and promote local community events and local not-for-profit organizations that will be managed by the Jaycees. The Jaycees may advertise any local community events and local not-for-profit organizations in the provided space, subject to approval by the City's City

Manager or his or her designee. The Jaycees may not charge a fee to third-parties in exchange for providing advertising in the space.

4. The City shall include in the Naperville Jaycees Smart Park a plaque displaying the names of the officers and directors of the Jaycee's who were in office when this Agreement was approved by the Jaycees. The names to be included on the plaque shall be provided to the City by the Jaycees within seven (7) days of the Jaycee's execution of this Agreement.
5. The City shall provide the Jaycees the opportunity to have prominent participation in any groundbreaking, ribbon cutting, and dedication ceremonies related to the Naperville Jaycees Smart Park.
6. The City shall provide the Jaycees with an opportunity to fund any significant future developments at the Naperville Jaycees Smart Park prior to providing funding opportunities to any other entity ("right of first refusal"). Upon being notified by the City of a funding opportunity the Jaycees shall respond, in writing, accepting or rejecting the opportunity within thirty (30) days, unless a longer time frame is agreed to by the Jaycees and the City, after which the City may offer said funding opportunity to other entities.
7. The Jaycees shall have the exclusive right to set the cost and sell all available brick pavers used within the Naperville Jaycees Smart Park. The Jaycees may assign this right to the Foundation or the City. The City shall have the right, in its sole discretion, to determine the number and placement of the brick pavers that will be included in the Naperville Jaycees Smart Park.
8. The City is responsible for the establishment and maintenance of the Naperville Jaycees Smart Park and all associated costs as it determines appropriate in its sole discretion.
9. The City shall be solely responsible, at its sole discretion for the design of the Naperville Jaycees Smart Park, for any improvements thereto, and for any alterations thereto. Furthermore, the City shall be solely responsibly and shall provide for the operations of the Naperville Jaycees Smart Park.
10. In the event that the City chooses not to fund the cost of City services necessary for the Jaycee's Last Fling special event via the City's Special Events and Cultural Amenities (SECA) fund, nothing in this Agreement prohibits the Jaycees from applying to the Naperville City Council to fund or waive the cost of City services for the Last Fling.

#### **Section 5. Default and Termination**

1. Nothing in this agreement obligates the City or the Naperville City Council to build the Naperville Jaycees Smart Park.
  - a. If the Naperville City Council chooses not to build the Naperville Jaycees Smart Park or if the City terminates this Agreement prior to the Naperville City Council providing final approval for the establishment of the Naperville Jaycees Smart Park,

then the City shall refund to the Jaycees, directly or through the Foundation, any monetary contributions, without interest, that were provided to the City by the Foundation from the Jaycees as part of this Agreement.

- b. The Jaycees shall have no right to a refund or reimbursement of any of its pledged or contributed funds after the Naperville City Council gives final approval for the establishment of the Naperville Jaycees Smart Park.
2. The City may terminate this Agreement at any time and for any or no reason, prior to the Naperville City Council's final approval of the establishment of the Naperville Jaycees Smart Park.
3. The Naperville City Council's final approval shall be deemed to have occurred once the Naperville City Council or the Foundation executes the primary construction contract to build the Naperville Jaycees Smart Park.
4. If the City Council does not grant final approval for the Naperville Jaycees Smart Park on or before February 1, 2019, this Agreement shall be deemed automatically terminated and the Foundation and the City shall refund to the Jaycees, directly or through the Foundation, any monetary contributions, without interest, that were provided to the Foundation or the City by the Foundation from the Jaycees as part of this Agreement.
5. Failure of the Jaycees to tender its annual contribution as provided for in Section 2 of this Agreement shall constitute a default. The City shall provide written notice to the Jaycees of any default and if said default is not cured by the Jaycees within thirty (30) days of the City's mailing of said notice, the City, within its sole discretion, may terminate this Agreement for cause. Said termination shall be accomplished by the City providing written notice to the Jaycees of the City's termination for cause and said termination shall be effective as of the date said notice of termination is mailed by the City. If the City terminates this Agreement for cause pursuant to this subsection, the Jaycees shall not be entitled to any refund or reimbursement of any funds donated or otherwise contributed by the Jaycees to the Foundation or the City that are related to the Naperville Jaycees Smart Park. Additionally, upon termination for cause, the City shall have a legal cause of action against the Jaycees for recovery of any remaining unpaid portion of the pledged two hundred thousand dollars (\$200,000.00) provided for in Section 2 of this Agreement plus the costs of recovery including legal and attorney fees and costs. This right of recovery shall survive the expiration or termination of this Agreement. Upon termination of this Agreement, the City will no longer be obligated to continue to name the smart park "Naperville Jaycees Smart Park" or to take the remaining actions described in Section 4 above.
  - a. If this Agreement is terminated for cause by the City due to the Jaycees' default, as described in Section 5.4., the City shall make reasonable efforts to sell the naming rights and other rights belonging to the Jaycees under this Agreement to a third-party and any revenues received by the City in exchange for said rights will be

applied as an off-set against the Jaycee's outstanding, unpaid contribution obligations.

6. The Parties expressly recognize, understand, and acknowledge that a time may come in the future when the City may decide it is in the best interest of the public to demolish, remove, repurpose, or otherwise eliminate the Naperville Jaycees Smart Park. Therefore, the City Council may choose, in its sole discretion, to terminate or amend this Agreement at any time for any or no reason after January 31, 2037. If Naperville City Council terminates this Agreement under this subsection, the Jaycees shall have no right to refund or reimbursement of any of its pledged or contributed funds related to the Naperville Jaycees Smart Park. However, if all or a portion of the Naperville Jaycees Smart Park remains public property that is accessible to the public, the Jaycees shall continue to be entitled to have the "Naperville Jaycees" name affixed to any future park or amenity in said location.

## **Section 6. General Provisions**

1. **Notices.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid to the Party at its principal office address listed in this Agreement. Unless otherwise provided in this Agreement, notices shall be deemed received after the date that is three (3) business days after deposit in the U.S. Mail, as evidenced by a return receipt.
2. **Time of the Essence.** Time is of the essence in the performance of this Agreement.
3. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.
4. **Non-Waiver.** No party shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of any party to exercise at any time any right granted to such party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the party's right to enforce that right or any other right.
5. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.
6. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. The Parties agree that any disputes which arise as a result of this Agreement will be heard in a court of competent jurisdiction located in the Eighteenth Judicial Circuit, DuPage County Illinois.

7. **Severability.** It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.
8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.
9. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
10. **Amendments and Modifications.** No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all Parties to this Agreement in accordance with applicable law.
11. **Changes in Laws.** Unless otherwise provided in this Agreement, any reference to laws, statutes, ordinances, rules, or regulations shall be deemed to include any modifications of, or amendments to, such laws, statutes, ordinances, rules, or regulations that may occur in the future.
12. **Authority to Execute.** Each party hereby warrants and represents to the other parties that the persons executing this Agreement on its behalf have been properly authorized to do so by the corporate authorities of such party.
13. **No Third-Party Beneficiaries.** No claim as a third-party beneficiary under this Agreement by any person shall be made, or be valid, against the Jaycees, the Foundation or the City.
14. **Force Majeure.** Neither the Jaycees, the Foundation nor the City will be obligated to perform any of their obligations hereunder if prevented from doing so by reasons outside of their reasonable control, including, but not limited to, events of force majeure.
15. **Assignment.** Neither the Jaycees, the Foundation nor the City will assign, delegate or otherwise transfer all or any part of their rights or obligations under this Agreement, or any part hereof, unless as approved in writing by the other party. The absence of written consent will void the attempted assignment, delegation or transfer and will render it of no effect.

16. **Cooperation.** The Jaycees, the Foundation and the City agree at all times to use their best efforts to cooperate fully with one another in the implementation of this Agreement.
17. **Counterparts.** This Agreement may be comprised of several identical counterparts, each of which may be fully executed by the Parties hereto and, once executed, will be deemed an original having identical legal effect.
18. **Non Liability of Public Officials and Individuals.** No official, employee or agent of the Jaycees, the Foundation or the City will be charged personally by the other party with any liability or expense of defense or be held personally liable under any term or provision of this Agreement or because of the Jaycees, the Foundation or the City's execution or attempted execution or because of any breach hereof.

**We, the undersigned, understand and agree to the terms of this Agreement and are hereby bound to the same.**

**SIGNATURES ARE ON THE NEXT PAGE**



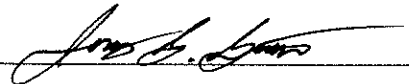
CITY OF NAPERVILLE

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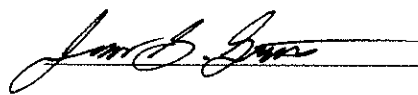
THE NAPERVILLE JAYCEES

 \_\_\_\_\_

Title President of Naperville Jaycees

Date 12/11/17

NAPERVILLE COMMUNITY CHARITABLE ORGANIZATION

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Title President of NCCOI

Date 12/17/17

RIVERWALK FOUNDATION

\_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_