

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

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

**RECITALS**

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

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

**WHEREAS**, the Intergovernmental Agreement and Lease between the City and Park District for the Naperville Riverwalk is comprised of the following agreements (cumulatively referenced herein as the “**Riverwalk Agreement**”): (a) the “Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved in 2003 by the Park District, and by the City by Resolution 03-02; (b) the 2008 “Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution No. 08-018 [which extended the term of the Riverwalk Maintenance Agreement by five years]; (c) the 2009 “First Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution 09-014 [which added the Harold and Margaret Moser statute located adjacent to the Visitor Center on the northeast corner of the Moser Tower/Millennium Carillon to the Riverwalk and provided for its maintenance]; (d) the 2012 “Second Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution 12-039 [which added the North Central College (“NCC”) Gateway Project to the Riverwalk and provided for its maintenance]; (e) the 2014 “Third

Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District, and by the City by Resolution 14-009 [which transitioned certain responsibilities regarding the Millennium Carillon, Moser Tower, and the Visitor Center to the City and Park District upon expiration of the Millennium Carillon Agreement with the Millennium Carillon Foundation, and which provided for a term beginning on January 1, 2014 and terminating on December 31, 2018]; (f) the 2017 “Fourth Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District and by City Resolution 17-018 [which added the Water Street Riverwalk Improvements maintenance area to the Riverwalk and provided for its maintenance]; and (g) the 2018 “Fifth Amendment to the Intergovernmental Agreement and Lease between the City of Naperville and the Naperville Park District for the Naperville Riverwalk” approved by the Park District and by City Resolution 18-011 [adding and clarifying the respective responsibilities of the Parties for “Naperville Jaycees Park” and adding “Rotary Harmony Park” and providing for its maintenance]; and

**WHEREAS**, under the Riverwalk Agreement, unless other provision is made therefor, the City is responsible to pay for Capital Repairs and Replacements for the Riverwalk which cost in excess of \$10,000 and which are intended to last more than two years; the Park District is responsible for costs associated with Riverwalk Operations and Maintenance west of Washington Street (unless other provision is made therefor); and the City is responsible to pay costs associated with Riverwalk Operations and Maintenance costs east of Washington Street and for all new additions to the Riverwalk; and

**WHEREAS**, the City is responsible to pay the “gap” amount created by the difference between the tax cap the Park District is subject to and inflation for operation and maintenance costs for those portions of the Riverwalk west of Washington Street; and

**WHEREAS**, the Parties now desire to provide more stable cash flows and to clarify their respective financial obligations by amending the budgeting and obligations sections to include a annual budget projection with a “true-up” procedure that will more accurately track and measure each Party’s respective share of costs in substitution for the Contribution Spread Sheet methodology previously used by the Parties; and

**WHEREAS**, the Parties desire to extend the term of the Agreement by an additional 5 years with the possibility that, subject to any further amendments, and as the third year of this extended term expires, an additional year will automatically be added—so that as the third year of this extension expires, the term of the Agreement will still be a rolling three year term--until such time as either party gives notice of termination as provided elsewhere in the Agreement.

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

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

**SECTION 2:** Section 2.2 of the Riverwalk Agreement is hereby amended by deleting Sections 2.2.1 through 2.2.6 and substituting the following:

“The annual amount paid to the Naperville Park District for Operations and Maintenance based upon the ANNUAL O&M BUDGET PROJECTION prepared by the Park District and then as finally adjusted and reconciled by the True-Up invoice presented by the Park District in the first quarter of the following fiscal year, all as set forth in Section 7.”

**SECTION 3:** Section 5.2 is hereby amended as follows:

5.2 The City shall provide partial funding for the RIVERWALK OPERATIONS AND MAINTENANCE as follows: On or before September 15 of each year, the Park District shall deliver to the City an ANNUAL O&M BUDGET PROJECTION for RIVERWALK OPERATIONS AND MAINTENANCE setting forth the respective projected obligations of each of the Parties. The projected share of the City shall be based on 21% of the annual operations and maintenance budget. As new amenities are added for which the City is responsible for 100% of maintenance costs, the City’s base commitment percentage will be recalculated. This recalculation will occur every time the City adds new improvements that are to be funded 100% by the City. The Parties shall meet and confer concerning any adjustments desired to the ANNUAL O&M BUDGET PROJECTION for RIVERWALK OPERATIONS AND MAINTENANCE and upon concurrence, the City’s obligation (“Commitment Base”) shall be incorporated by the City in the City’s budget process for the following fiscal year. The City shall pay its Commitment Base to the Park District on or before June 1 of each year of this Agreement.

**SECTION 4:** Section 5.3 is hereby amended as follows:

5.3 The Park District shall maintain appropriate records of its ACTUAL ANNUAL EXPENDITURE FOR RIVERWALK OPERATIONS AND MAINTENANCE. On or before April 1 of each year following each year this Agreement in effect, the Park District shall provide a copy of the prior year’s ACTUAL ANNUAL EXPENDITURE FOR RIVERWALK OPERATIONS AND MAINTENANCE together with a comparison to that prior year’s Commitment Base and a True-Up Adjustment that sets forth either the additional amount due from the City within 60 days of presentation of the True-Up adjustment, or the credit due to the City which the City may receive as a payment in cash or choose to apply against the payment about to become due to the Park District by June 1 as provided above in Section 5.1 for the then current year’s Commitment Base.

The City is also responsible for 100% of the cost to operate and maintain the Carillon. The same budget/true-up process as noted in sections 5.2 and 5.3 will be applied to determine the annual Carillon contribution from the City to the Park District.

**SECTION 5:** Section 5.4 is hereby added as follows:

5.4 Whenever the City expands or otherwise adds capital improvements to the Riverwalk, the Commitment Base shall be adjusted based on the additional maintenance cost agreed upon by both parties. Adjustments may be made to that agreed upon additional maintenance cost over the next two years based on actual maintenance costs experienced by the Park District in accordance with the terms of this Agreement. This adjustment shall be reflected in the True-Up and in the next ANNUAL O&M BUDGET PROJECTION.

**SECTION 6:** The Term of the Riverwalk Agreement shall be extended for 5 fiscal years from January 1, 2024 through December 31, 2028, unless sooner terminated as provided herein. Upon the expiration of the 2026 fiscal year and each fiscal year thereafter--unless terminated in accordance with the provisions herein—one additional year shall automatically be added to the Term of this Agreement so that the Term of this Agreement shall, effective each January 1 (of 2027 and thereafter) be a Term of 3 years. Either party may prevent this automatic extension of an additional year by giving written notice to the other Party on or before November 30 that consent is no longer given for the automatic extension and therefore it shall not occur.

**SECTION 7:** All other terms of the Riverwalk Agreement, including but not limited to the Exhibits thereto (except as amended herein) shall remain in full force and effect.

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

**CITY OF NAPERVILLE**

**NAPERVILLE PARK DISTRICT**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
President

**ATTEST**

**ATTEST**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Board Secretary