

**AGREEMENT  
BETWEEN THE CITY OF NAPERVILLE AND  
THE NAPERVILLE HERITAGE SOCIETY  
REGARDING NAPER SETTLEMENT**  
\_\_\_\_\_, 2025

**THIS AGREEMENT** (“**Agreement**”) is dated this \_\_\_\_ day of 2025 (“**Commencement Date**”), by an between the **CITY OF NAPERVILLE**, an Illinois municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, with its principal office located at 400 South Eagle Street, Naperville, Illinois 60540 (hereafter “**City**”), and the Naperville Heritage Society, an Illinois not-for-profit corporation with its principal office located at 523 S. Webster Street, Naperville, Illinois 60540 (hereafter “**Heritage Society or NHS**”). The City and the Heritage Society may be hereinafter interchangeably referenced individually as “**Party**” or together as “**Parties**”.

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

**Section 1. RECITALS.**

A. The subject of this Agreement is a 13-acre site consisting of land and buildings now commonly referred to as the Naper Settlement. This site was transferred to the City by Caroline Martin Mitchell through her Last Will and Testament dated July 31, 1935, and pursuant to an order approving an Agreement between the City and the Trustees of Caroline Martin Mitchell’s estate approved by the Chancery Court of DuPage County on October 10, 1938.

B. The NHS was established in 1969 as a not-for-profit organization, and in 1979, entered into an agreement with the City, to operate the Naper Settlement and Museum, as well as continue to preserve Naperville’s historic landmarks located thereon and to continue to develop, maintain, and preserve materials, exhibits, intellectual property, and for exhibiting, educating, and interpreting them to the public as well as developing the City’s nationally accredited outdoor museum known as Naper Settlement.

C. The 1979 contract pertained to the management, maintenance, development, operation, and financing of the Naper Settlement. For more than forty years, this agreement, as amended, has served as a foundation to support the growth and development of the Naper Settlement.

D. The City and NHS have determined it to be in the best interest of the public and the Parties to memorialize their respective rights and responsibilities concerning the Naper Settlement through a new, updated Agreement.

E. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to promote the health, safety, and welfare of the City and its residents, and to act to achieve such objectives.

F. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to use its credit, revenues, and other resources to pay costs and service debt related to activities which involve a public purpose.

G. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of conditions detrimental to healthy economic development, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements pertaining to its government and affairs, and to otherwise associate with individuals, associations, and corporations in any manner not prohibited by law for the purpose of achieving such objectives.

H. The Naperville City Council, as the Corporate Authority of the City, after due and careful consideration, has determined that it is in the public interest to memorialize its relationship with the NHS concerning the operation of Naper Settlement, as well as acting as a philanthropic organization for charitable fundraising to provide additional resources for Naper Settlement which will enhance the quality of life for the greater Naperville community by providing citizens and visitors access to community history, educational resources, and community fellowship opportunities.

The foregoing Recitals are incorporated herein and made a part of this Agreement.

## **Section 2. DEFINITIONS.**

- 2.1. **Annual Calendar** – has the meaning set forth in Section 6.3 hereof.
- 2.2. **Capital Improvement(s)** – Any project that results in the creation of a capital asset, or significantly extends the life of an existing asset, as defined by the City's capital asset policy.
- 2.3. **City Manager** – The City Manager of the City of Naperville.
- 2.4. **Event Calendar** – has the meaning set forth in Section 3.3 hereof.
- 2.5. **Facilities** - Buildings or structures placed on permanent foundations duly permitted and inspected in accordance with City, state, and county requirements.
- 2.6. **Grant** – Funds awarded to the City of Naperville or NHS for approved Capital Improvements or other expenditures related to the operation of Naper Settlement.
- 2.7. **Mayor** – The Mayor of the City of Naperville.
- 2.8. **Master Plan** - The City maintains that the Naper Settlement facility development entitlements are controlled by the Naper Settlement Planned Unit Development Master Plan approved in 1976 by City of Naperville Ordinance 76-27. This Ordinance has been amended four times. Specifically, (1) a Major Change in 1988 per Ordinance 88-42 to rezone the site; (2) A Minor Change in 1997 per Ordinance 97-201 to establish five building areas for future development; (3) a Major Change

in 2008 per Ordinance 08-220 to establish Scott's Block; and (4) a Major Change in 2021 per Ordinance 21-020 to accommodate the Agricultural Center and Innovation Gateway. The PUD, as amended, identifies the major structures and areas for expansion.

- 2.9. **Naper Settlement Museum Board (NSMB)** – An advisory board to the Naperville City Council as described in Section 6 of this Agreement.
- 2.10. **Naper Settlement** – A 13-acre site located at 523 S. Webster Street.
- 2.11. **Naper Settlement Employees** – Naper Settlement full and part-time employees, including the Naper Settlement President and CEO, shall be and have been treated as joint employees of NHS and the City. Members of NHS's Board of Directors are not Naper Settlement Employees.
- 2.12. **Naper Settlement Fund** – A fund maintained by the City to classify, record, and report financial data related to the operation, maintenance, and management of Naper Settlement.
- 2.13. **Naperville City Council** – The nine City Council Members, including the Mayor, are elected to four-year terms as provided by Illinois State Law with powers, duties and policies contained in Chapter 5 of the Naperville Municipal Code.
- 2.14. **Naperville Heritage Society (NHS)** – A not-for-profit organization organized in 1969 to operate Naper Settlement and related undertakings and activities, including to preserve Naperville's historic landmarks and materials, exhibiting, educating, and interpreting them to the public as well as developing and enhancing the City's nationally accredited outdoor museum known as Naper Settlement.
- 2.15. **NHS Board** – The NHS Board of Directors.
- 2.16. **NHS Personal Property** – NHS Personal Property is defined in Section 8.2 of this Agreement.
- 2.17. **NHS Rentals** – Events held on Naper Settlement property by third parties for which a rental fee may be paid, does not include NHS Special Events.
- 2.18. **Real Property** – The 13 acres of real property on which Naper Settlement is located and the Facilities and permanent fixtures located thereon.

### **Section 3. NAPER SETTLEMENT.**

- 3.1. **Primary Purpose.** The primary purpose of Naper Settlement is to collect, document, educate the public and preserve the history of Naperville by operating an interactive museum and providing quality programming so the public can gain a better understanding and appreciation of history and Naperville's place in history, and to preserve, promote and enhance the objectives and obligations arising under

the Will, and related agreements, arising under and pursuant to the Will of Caroline Martin Mitchell.

- 3.2. **Secondary Purposes.** Secondary purposes of Naper Settlement include festivals, concerts, and similar cultural events which are open to the public. Private events, such as weddings, may also be undertaken.
- 3.3. **Event Calendar.** Naper Settlement Employees shall annually present to the NSMB a calendar of community events to be hosted at Naper Settlement. The Event Calendar shall be prepared by Naper Settlement Employees subject to review and recommendation of NHS prior to presentation to the NSMB. The Event Calendar should include all festivals, concerts, camps, and related community events for which an admission fee will be charged to visitors, and which are known to NHS at the time such Event Calendar is presented to the NSMB. The Event Calendar shall be updated, as additional events are scheduled by NHS, and periodically the updated Event Calendar shall be provided to the NSMB. The Event Calendar shall include NHS Events as described in Section 4.1.4.2. below. This Event Calendar shall not be required to include school group visits or private events such as weddings. Significant additions to the calendar shall be shared with the NSMB. All events shall be in harmony with the Primary and Secondary Purposes described above.

#### **Section 4. CITY RESPONSIBILITIES.**

- 4.1. **Financial Responsibilities.** As a valued asset and fiduciary responsibility of the City of Naperville, the City has the ultimate financial responsibility for the operation and maintenance of Naper Settlement.

##### **4.1.1. Budget.**

- 4.1.1.1. **Annual Budget.** An annual budget for Naper Settlement shall be established in alignment with the City's fiscal year. Said budget shall be prepared by the Naper Settlement Employees, reviewed by the NSMB and City staff, which may propose revisions, additions, and reductions thereto and recommend approval thereof, and then said Annual Budget shall be submitted to the Naperville City Council for consideration. Prior to formal submittal to the Naperville City Council, disputes or differences of opinion regarding appropriate budget needs, expenditures of levels of expenditure, between City staff and Naper Settlement Employees or NHS, over the Budget, may be submitted to the NSMB for potential resolution, giving due consideration to the reports of Naper Settlement Employees and NHS as to the need and necessity of any and all expenses and capital needs reflected in the NHS budget submission. The Naperville City Council shall have the final vote on approval of the proposed Annual Budget.

- 4.1.1.2. **Naper Settlement Fund.** The City maintains the Naper Settlement Fund to classify, record and report financial data related to the operation, maintenance, and management of Naper Settlement.

If, for any reason, the Fund exhibits an excess of the Naperville City Council authorized revenue over actual expenses, expended and accrued for a given year, any such excess shall be applied to the next year's Annual Budget with a corresponding decrease in said future Annual Budget request. Revenue consisting of third-party private donations to NHS or any program, building or other undertaking arising from NHS fund raising activities, shall not be considered excess revenue for these purposes.

4.1.2. **Expenses.**

- 4.1.2.1. **Operating Expenses.** The City will fund operating expenses for Naper Settlement at its discretion through its annual budget allocation process, pursuant to the Budget Process outlined in Section 4.1.1.1 above. Operating expenses shall include personnel, supplies, and services necessary to operate Naper Settlement, including non-capital maintenance costs.

- 4.1.2.2. **Capital Expenses.** A five-year capital improvement plan, which prioritizes capital improvements necessary to maintain the existing assets of Naper Settlement, shall be submitted by NHS to the NSMB, which may propose revisions, reductions, or additions thereto, and submitted to the Naperville City Council for consideration as a part of the annual budget process. Capital improvements will be funded at the discretion of the Naperville City Council. Funding sources for the five-year capital improvement plan will include the Naper Settlement Fund and may also include other City funds as well.

- 4.1.2.3. **Storage Costs.** As described in Section 8 of this Agreement, the City shall store a reasonable number of Naper Settlement artifacts and relics, including NHS Personal Property as detailed in **Exhibit A**, free of charge at the facility within the Public Works Service Center located at 180 Fort Hill Drive, or any other location agreed to by the Parties. Any future expansion or modification of this space, proposed by the NHS or Naper Settlement Employees, will be subject to review and affirmative recommendation of the NSMB, and if additional costs are required shall also be subject to approval by the Naperville City Council.

4.1.2.4. **NHS Office Space.** The City shall provide reasonable office and meeting space, initially no less than currently occupied by NHS upon execution of this Agreement, free of charge, within the Naper Settlement. Any future additions thereto shall be by agreement of NHS and the NSMB.

4.1.2.5. **Naper Settlement Employee Costs.** Naper Settlement Employees are considered joint employees of NHS and the City of Naperville, under the direct supervision of NHS, and their compensation and benefits shall be managed and paid by the City in a manner consistent with other City employees. Naper Settlement Employees shall be entitled to the same benefits available to other similarly situated City Employees including, but not be limited to time off, health, dental and life insurance, and Illinois Municipal Retirement Fund (IMRF) pension benefits. NHS changes to the compensation or benefits of Naper Settlement Employees shall be consistent with other City employees. The NHS President may, without review by the City or the NSMB, periodically award stipends or bonuses which are performance based, subject to the same limitations that apply to City employees. When NHS recommends other changes to the compensation or benefits of Naper Settlement Employees, the City Manager shall have the discretion to either (1) administratively approve the changes if the City Manager finds the changes to be consistent with other City employees; or (2) refer the changes to the NSMB for its review. In the event of a review by the NSMB, a majority vote of the NSMB finding that the changes are consistent with other City employees or are otherwise appropriate will be necessary for the changes to be adopted.

4.1.2.5.1. **Payroll.** The City shall administer the bi-weekly payroll process for all Naper Settlement Employees. To ensure accurate and timely payroll, Naper Settlement shall use the City's designated timekeeping system.

4.1.2.5.2. **Human Resources.** All Naper Settlement Employees are processed through the City of Naperville Human Resources Department and are subject to the City's pay ranges and position classifications. NHS shall provide NHS employees with an NHS Employee Handbook, which will be similar to the City of Naperville Employee handbook, in all material respects, including requiring compliance with the City's IT Policy Manual and City IT policies referenced in the City's

Employee Policy Manual, as amended from time to time. NHS will notify the City of Naperville Human Resources Department if any Naper Settlement Employee is hired, terminated, or is party to a severance agreement with NHS.

4.1.2.5.3. **Indemnification Against Naper Settlement Employee Claims.** NHS shall, to the extent of its insurance coverage, indemnify, defend, and hold harmless the City, from and against any and all claims made by any Naper Settlement Employee, to the extent such claims arise from the acts or omissions of NHS, including, but not limited to: (i) NHS's management of Naper Settlement Employees, including Naper Settlement Employees' employment actions (human resources) and rights under the Fair Labor Standards Act (FLSA); and (ii) any claim brought by any Naper Settlement Employee against the City based upon the employer-employee relationship, to the extent such claims arise from the acts or omissions of NHS; but said indemnification obligation shall not apply or arise for any such claims and related losses that arise out of or result from any acts or omissions of the City.

4.1.2.5.4. **Workers' Compensation / Insurance.** NHS indemnifies and holds harmless the City, to the extent of its insurance coverage, from all liability concerning Naper Settlement Employees claims for workers' compensation, with said assumption of risk insured by an appropriate NHS-procured insurance policy.

4.1.3. **Procurement.** The City of Naperville's Procurement Code is applicable to the procurement of goods and services paid for with public City funds supplied by the Annual Budget. NHS is not an agent of the City and its purchases made with other funds not a part of the Annual Budget are not subject to the City's Procurement Code.

4.1.3.1. **Anti-Conflict of Interest Policy.** NHS shall adopt and at all times during the duration of this Agreement have in effect an anti-conflict of interest policy applicable to all members of the NHS Board of Directors as well as all NHS officers with the purpose of said policy being to protect the interests of the City and NHS by: (a) preventing the personal interest of members of the NHS Board of Directors and NHS officers from interfering with their duties to NHS or the City and (b) avoiding any

unethical financial, professional, or political gain on the part of such individuals. The intent of the policy is to supplement, not replace, any applicable federal, state, or local laws regarding conflicts of interest.

4.1.4. **Revenues.** Except as provided in Section 4.1.4.1. through Section 4.1.4.3. below, all revenues generated by Naper Settlement or on Naper Settlement grounds, by NHS Rentals, operations and fees administered or undertaken by NHS, shall be collected by NHS and paid to the City for use promoting and improving Naper Settlement. Naper Settlement revenue sources include, but are not limited to program admission, tours, events, food and beverages, rental fees, and merchandise sales. Said revenues shall be deposited in the Naper Settlement Fund for uses related to the promotion and improvement of Naper Settlement. A report, certified by the Treasurer of NHS, of said revenues, collected in a fiscal year period, shall be provided to the NSMB within 90 days after the close of any such fiscal year period.

4.1.4.1. **NHS Fundraising Activities.** NHS may host fundraising activities at Naper Settlement at NHS' sole cost. Revenues from donations generated from NHS fundraising activities shall be retained by NHS for uses related to the promotion, exhibition, curriculum, development, and improvement of Naper Settlement.

4.1.4.2. **NHS Special Events.** NHS may host special events at Naper Settlement at NHS. Revenues from special events held by NHS at Naper Settlement shall be retained by NHS for uses related to the promotion, development, and improvement of Naper Settlement. There are currently, as of the date of this Agreement, six (6) such events per year: Three (3) weekends of Naper Nights, Oktober Fest, 'Howlin' at the Moon, and All Hollows Eve.

4.1.4.3. **NHS Liquor Sales.** NHS may engage in permitted liquor sales at Naper Settlement at NHS' sole cost. Revenues from liquor sales generated through a liquor license held by NHS during activities or events at Naper Settlement shall be retained NHS for uses related to the promotion, development, and improvement of Naper Settlement.

4.2. **Operation/Maintenance Responsibilities.** The City is responsible for the Maintenance and Insurance of the Naper Settlement Real Property and may take any action, at its discretion, using Naper Settlement Employees, City employees, volunteers, or contracted services to maintain the property located at Naper Settlement. NHS shall be responsible for the operation of said Real Property. The City shall have no responsibility for the Maintenance, Operation, or Insurance of any NHS-owned Personal Property, including, but not limited to, the property listed



in **Exhibit A**. The Maintenance or Insurance of NHS Personal Property, including the property listed in **Exhibit A**, shall be the responsibility of the NHS. Nothing contained in this Agreement shall prohibit the NHS, in its discretion, from transferring Maintenance responsibilities of its Personal Property to any third-party, or to the City with its written agreement.

Maintenance and Operation responsibilities include, but are not limited to:

- 4.2.1. **General Duties.** Performing general day-to-day operation and management including development and operation of educational programs, workshops, tours, camps, facility rentals and other year-round activities
  - 4.2.2. **Qualified Employees.** Place persons duly qualified to operate the Naper Settlement in charge at all times it is open for public use, including BASSET trained employees when alcohol is being served.
  - 4.2.3. **Bill Payments.** Make timely payment of bills for approved items purchased and services rendered.
  - 4.2.4. **Building and Grounds Maintenance.** Provide through a combination of Naper Settlement Employees and independent contractors, routine building and grounds maintenance, including building systems, on-going cleaning and janitorial services, pest control services, landscaping, mowing, planting, and winter operations.
- 4.3. **Information Technology Responsibilities.** Technology plays a fast-expanding and central role to the future operations and visitor experience at Naper Settlement. Technology needs have changed significantly for Naper Settlement overtime. Technology has a transformative impact on Naper Settlement's future vision and must be carefully planned from the supporting infrastructure to the user interface. Technology services fall into separate and distinct categories related to their City employee support requirements, costs, security needs, and other factors as described herein.
- 4.3.1. **Internal Staff Services Technologies.** The City of Naperville information technologies (IT) and public building operations (PBO) employees will provide necessary hardware, software, support infrastructure, and support services to serve the business functions, human resource management, and internal communication needs of Naper Settlement Employees. Any independent network dedicated to NHS's sole use shall be maintained by NHS ("NHS Network").
  - 4.3.2. **Customer (Public) – Facing Technologies.** Services such as point of service sales transactions that are PCI compliant, public WIFI, and specialized technology services to support unique visitor experiences, shall be provided on a separate network, on a closed (technologically isolated) network, and served by Naper Settlement Employees or third-party

consultants approved by the City. NHS will provide the City with access to review the content on its network that is not public-facing, on request and at times reasonably agreed to by the Parties. The cost of such services and infrastructure shall be included in the Annual Budget.

4.3.3. **Data Storage.** The City IT Department will provide storage to support those services described 4.3.1. Said storage shall not be construed to include storage demands for digital histories, digitized preservation records and artifacts; Naper Settlement Employees will either provide such storage through a separate network or software service.

4.4. **Development Responsibilities.** NHS, unless otherwise agreed to in writing by the City, is responsible for the permitting and construction of facilities at Naper Settlement in accordance with the approved Naper Settlement Planned Unit Development, as amended, in a timeframe and manner determined to be appropriate by the City. Naper Settlement Employees and contractors will seek zoning entitlements and manage on-site construction activities, including obtaining required permits, and scheduling of necessary inspections.

4.5. **Accreditation.** The City shall at all times use reasonable efforts to insure that the Naper Settlement, its Museum, and content offerings, shall obtain, maintain, and preserve any and all accreditations which said Naper Settlement, its Museum and content offerings either has already obtained, or that NHS may seek to obtain in the future.

## **Section 5. NAPERVILLE HERITAGE SOCIETY RESPONSIBILITIES.**

As it pertains to the Naper Settlement, the NHS shall perform its duties and exercise the powers, and authorities set out in this Section in a competent, efficient, and economical manner subject to City review and input.

5.1. **Communication.** Establish a regular meeting calendar to support communications with the NSMB and or its designee. This may be accomplished by the attendance of an NSMB member at NHS Board Meetings.

5.2. **Financial Responsibilities.**

5.2.1. **Fundraising.** As a separate IRC Section 501(c)(3) entity, NHS will solicit donations and grants to enhance and improve upon the programs and offerings of NHS at the Naper Settlement. NHS will also solicit donations and grants to enhance improvements and add to the properties and improvements located on the grounds of Naper Settlement when those opportunities arise in the charitable fundraising environment. Notwithstanding the forgoing, NHS shall not be under a primary obligation to solicit donations, solely or primarily focused on defraying or reducing the City's obligation to fund operations otherwise provided for in the

Annual Budget. Nothing herein shall prohibit NHS from utilizing donations for the purpose of enhancing operations and programs, based on the directions provided by Donors to NHS. These efforts may include hosting fundraising events at Naper Settlement. There shall be no facility rental charge for such events at Naper Settlement.

5.2.2. **Financial Records.** The NHS's records pertaining to the construction and financing of any Capital Improvement located at the Naper Settlement, shall be subject to and available for inspection and audit by the City during regular business hours upon thirty (30) days' written notice.

5.2.3. **Grant Funds.** NHS shall give notice to the NSMB prior to the solicitation of any Grants NHS intends to apply for related to Naper Settlement. NHS shall routinely provide updates to the NSMB regarding NHS Grants related to Naper Settlement. The existing funding agreements between the City and the NHS for the Agricultural Center the Innovation Gateway shall remain in full force and effect.

5.2.3.1. **Grant Activities Reporting.** NHS shall maintain accurate and complete records relative to any Grants received in compliance with any legal and regulatory requirements and shall prepare a report detailing the use of any Grant funds on an annual basis, or more frequently if requested by the NSMB.

5.2.3.2. **Shared Recognition.** For any City Grant, defined as any grant or donation partially or fully funded by the City of Naperville, for any Capital Improvement located at the Naper Settlement, the NHS shall acknowledge the City's participation in all releases or announcements in the electronic or print media as well as in any educational flyers, brochures or other materials promoting or explaining said Capital Improvement. NHS shall plan and coordinate a ceremony to announce and celebrate the opening of any City Grant Capital Improvement located at the Naper Settlement upon its satisfactory completion. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

5.2.3.3. **Capital Improvement Ownership.** Unless otherwise agreed to by the Parties in writing, NHS shall tender to the City ownership of any City Grant Capital Improvement located at the Naper Settlement, including any written memorialization of the ownership or transfer of ownership required or requested by the City, within a reasonable time after completion of the construction of said Capital Improvement. This provision shall survive the expiration or termination of this Agreement.

- 5.3. **Operations and Maintenance Responsibilities.** NHS shall provide input and make recommendations to the NSMB, at its meetings, concerning the following:
- i. Mission and vision
  - ii. Programming
  - iii. Capital improvements
  - iv. Building maintenance
  - v. User fees
  - vi. Grants
- 5.4. **Liquor Licenses.** NHS, as a separate Internal Revenue Code Section 501(c)(3) entity, is responsible for the application and maintenance of liquor licensing, as appropriate, at Naper Settlement. NHS shall faithfully monitor actions that are taken in compliance with its licenses through communications with the NSMB. NHS shall report annually to the NSMB on liquor license status, annual use, training compliance, partnerships with other not-for-profits with liquor licenses to accommodate additional special events, operations by caterers on-site, and such in accordance with Section 6.2.
- 5.5. **Development Responsibilities.** NHS development responsibilities shall be focused on capital planning and private funding campaigns through drives, events, donations, and the like to leverage private funds to support construction of specifically City-approved capital improvements (including infrastructure) as well as Naper Settlement program offerings and events. These efforts shall include seeking grants and lobbying for public funds. To provide transparency, all funding campaigns should provide transparency with respect to the “total cost of ownership” to appreciate costs of construction, supporting infrastructure, and operation costs, including but not limited to maintenance and staffing requirements.
- 5.5.1. **Prevailing Wage.** The construction of any Capital Improvement at Naper Settlement is a construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. (“the Act”). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current “prevailing rate of wages” (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates, and the contractor/subcontractor has an obligation to check the Department’s web site for revisions prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor’s website. All contractors and subcontractors rendering services must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties. NHS shall comply with all aspects of the Act, including, but not limited to notifying all contractors and subcontractors of the same.

5.5.2. **Non-Discrimination.** NHS agrees that no person shall on the grounds of race, color, religion, national origin, sex, disability, sexual orientation, or age, while otherwise qualified, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any project or activity including employment supported in whole or in part by funds provided under any Grant, all within the parameters of State and Federal laws applicable to such matters.

5.6. **Limitation of NHS Authority.** By agreement of the Parties, unless expressly authorized by prior written agreement with the City, NHS shall not have the authority to do any of the following:

- 5.6.1. Obtain loans for the Facilities or Real Estate, whether secured or unsecured, or give grant options, rights of first refusal, deeds of trusts, mortgages, pledges, security interests, or otherwise encumber the Facilities or any portion thereof or any interest in the Naper Settlement;
- 5.6.2. Prepay in whole or in part, refinance, increase, modify, consolidate, or extend any obligation affecting the Facilities or any portion thereof, except to the extent contemplated and approved by the City;
- 5.6.3. Cause the City to extend credit or to make loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or corporation;
- 5.6.4. Cause the City to enter into any contracts with respect to the Facilities or Real Estate;
- 5.6.5. Sell, exchange, or convey the Facilities or any portion thereof;
- 5.6.6. Release, compromise, assign or transfer any claim, right, or benefit of the City, except with the written authorization of the City;
- 5.6.7. Allow a default judgement to be entered against the Facilities or any assets associated with the Facilities or the Real Estate;
- 5.6.8. Grant easements or other property rights in the Facilities or the Real Estate;
- 5.6.9. Purchase or sell any real property, including the Facilities or the Real Estate, or any part thereof, on behalf of the City;
- 5.6.10. Intentionally damage or destroy any part of the Facilities, Real Estate, City personal property, or make any alteration to the Facilities that materially financially burdens the City; or
- 5.6.11. Commence or respond to any claim of liability or any litigation related to Naper Settlement operation and facility management, without coordinating with the City Attorney, on timely, prior written notice to the City Attorney.

**Section 6. NAPER SETTLEMENT MUSEUM BOARD (NSMB).**

The Naper Settlement Museum Board (NSMB) is an advisory body to the Naperville City Council established under Title 2 of the Naperville Municipal Code, as amended. The NSMB shall oversee the City's interests under this Agreement and communicate with NHS regarding the management of the Naper Settlement, pursuant to the powers granted the NSMB by the Naperville City Council. The NSMB shall operate in a manner consistent with the primary and secondary purposes established within Section 3 of this agreement.

- 6.1. **Powers & Duties.** The NSMB is charged with the task of managing the City's interests in Naper Settlement. Its members shall act as the agent for the City to oversee compliance with this Agreement with NHS. NSMB shall also provide recommendations to the Naperville City Council with respect to any proposed development modifications to the Master Plan which will require the Naperville City Council action in accordance with Municipal Code PUD requirements (e.g., site acreage, access, facility additions and removal).
- 6.2. **Composition.** The NSMB shall include seven (7) Members. Total Members shall include:
  - i. The Mayor (Chair);
  - ii. One (1) Council Liaison, chosen by the Mayor;
  - iii. The then acting NHS Board Chair;
  - iv. The then acting NHS Treasurer; and
  - v. Three (3) community members, who shall be appointed as follows: two (2) by the Mayor and one (1) by NHS. All three (3) community members shall be subject to approval by the Naperville City Council. Each of the three (3) community members must be a resident of the City and possess experience and expertise in areas relevant to the successful operation and maintenance of the Naper Settlement, including, but not limited to, land development, financial management, historic preservation, or similar relevant fields..,
- 6.3. **Annual Calendar.** The NSMB shall convene at least quarterly at a time and location duly posted in accordance applicable law to maintain transparency in its deliberations. NSMB shall seek to cover the following topics annually:
  - i. Public Safety, including Liquor Licensing
  - ii. Annual Event Calendar Review and Approval
  - iii. Naper Settlement Staff Performance Review
  - iv. Facilities Planning, Maintenance and Sustainability
  - v. Budget and Annual Special Events Plans
  - vi. Budget Recommendation
  - vii. Budget Re-Review and Special Events Recommendation
  - viii. Grant Solicitations and Status Updates

**Section 7. NAPER SETTLEMENT PRESIDENT AND CEO.**

The Naper Settlement President and CEO, shall serve as the leader of the Naper Settlement. The Naper Settlement President and CEO shall devote full time to management of the Naper Settlement. To maintain a professional relationship and clear division of responsibilities and loyalties, the Naper Settlement President and CEO shall serve as officer of the NHS but may not serve in any official capacity for the City, other than to serve on other City Boards or Commissions, so long as there are no conflicts of interest.

**7.1. Recruitment, Selection and Evaluation.**

7.1.1. **Hiring Process.** The Board of NHS, or a subcommittee thereof agreed upon by the majority of its Board of Directors, shall, when there is a vacancy in the office of Naper Settlement President and CEO, recruit, and interview qualified candidates for the position of Naper Settlement President and CEO, and shall appoint said Naper Settlement President by majority vote of the Board of NHS. The NSMB may offer suggestions and potential candidates to the NHS Board to consider for this appointment, and its recommendations shall be considered in good faith by the NHS Board.

7.1.2. **Communication.** The City Manager, or his/her designee, and a representative of the NSMB, shall communicate regularly with the Naper Settlement President and CEO, to remain informed about the management and oversight of Naper Settlement. The NHS Board shall conduct annual written performance evaluations of the Naper Settlement President and CEO, with input from the City Manager and the NSMB concerning the Naper Settlement President and CEO's performance. The NHS shall share the Naper Settlement President and CEO's written performance evaluation, in strictest confidence, with the City Manager, who may only share said performance evaluation with the City Attorney and the Mayor.

**7.2. Duties & Responsibilities.** The primary duties and responsibilities of the Naper Settlement President and CEO shall be as determined by the Board of NHS, and shall include:

7.2.1. Oversee and manage the operation of the Naper Settlement as outlined by Section 4 of this Agreement.

7.2.2. Lead Naper Settlement Employee efforts to prepare information for NSMB review.

7.2.3. Support efforts to pursue private grants, donations, and activities identified in Section 5 of this Agreement.

7.2.4. Identification and pursuit of public grant funds and public lobbying for state and federal funds.

- 7.2.5. Oversee the hiring of Naper Settlement Employees, with input from the City's Human Resources Department, and filling positions defined therein with qualified candidates.
- 7.2.6. Facilitate efforts to prepare and lead communications relative to any modifications to the Master Plan (e.g., site acreage, access, facility additions and removal) which require the Naperville City Council approval, including obtaining the recommendation of NSMB.
- 7.2.7. Maintain a financial management system, and acceptable accounting records that provide for accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional service agreements, purchases, and other documentation as required by the City) and shall consistently meet the then current Generally Accepted Accounting Principles issued by the Federal Accounting Standards Advisory Board. Such financial records, or any part thereof, and those shall be made available to the City Manager, upon written request.
- 7.2.8. Provide the City Manager (or designee) with an audited income statement and balance sheet.
- 7.2.9. Provide and present to the City Manager (or designee) and NSMB a report on the activities and building uses together with a report of the income and expenditures. The report shall include a discussion and analysis of fiscal year- end results highlighting significant variances and, if applicable, a report explaining any deficit realized. The report shall describe any plans and proposals such as operations, developments, improvements, and enhancements for at least the next two fiscal years.
- 7.3. **Compensation.** Compensation of the Naper Settlement President and CEO shall be set by NHS consistent with the City's human resource practices, and based on a then-current industry-based compensation analysis. The Naper Settlement President and CEO shall be entitled to the same benefits available to other similarly situated City Employees including, but not be limited to time off, health, dental and life insurance, and Illinois Municipal Retirement Fund (IMRF) pension benefits. NHS's setting of and changes to the Naper Settlement President and CEO's compensation and benefits are subject to review. The City Manager shall have the discretion to either (1) administratively approve the compensation and benefits if the City Manager finds NHS's recommendation to be consistent with the City's human resource practices; or (2) refer NHS's recommendation to the NSMB for its review. In the event of a review by the NSMB, a majority vote of the NSMB finding that NHS's recommendation is consistent with the City's human resource practices or is otherwise appropriate will be necessary for NHS's recommendation to be adopted. In either case, such discretion shall not be unreasonably withheld. All compensation shall be paid solely by the City of Naperville and included in the Annual Budget. The Naper Settlement President and CEO shall be eligible for the



same employee stipends, bonuses and other compensation benefits available to all Naper Settlement employees.

- 7.4. **Termination and Discipline.** The City Manager may recommend to the NHS Board President discipline up to and including termination, concerning the Naper Settlement President and CEO, and the NHS Board shall consider said recommendation and respond to the City Manager's recommendation in writing. Notwithstanding the foregoing, no discipline or termination recommendation or review by the City Manager shall be based on or involve the content, or the perceived community impact, of any exhibit, presentation, activity or other offering of NHS at or associated with Naper Settlement and Museum, this provision not being intended as a means of City censorship of such content, either directly or indirectly.

**Section 8. OWNERSHIP OF REAL, PERSONAL, AND INTELLECTUAL PROPERTY.**

- 8.1. **Real Property.** Unless otherwise agreed to by the Parties in writing, all Real Property located at Naper Settlement is the property of the City, including Real Property procured or funded, in part or in whole, by the NHS, unless the City took such property subject to a contrary agreement with NHS or the prior owner or owners, and subject to any restrictions from private or institutional donors regarding the Real Property inconsistent with this provision. Any such contrary agreements or restrictions in existence prior to the effective date of this Agreement must be disclosed in writing to the City by NHS. Any such contract agreements or restrictions after the effective date of this Agreement must be agreed to in advance by the City, in writing.

- 8.1.1. **Ownership Transfer of Capital Improvements.** Unless otherwise agreed to by the Parties in writing, or unless restricted by the donor funding the Capital Improvement, the transfer of ownership from the NHS to the City of a Capital Improvement on existing Naper Settlement real estate shall be deemed to have occurred once the installation of a Capital Improvement on Naper Settlement property is completed. Upon the City's request, the NHS shall cooperate with the City to establish or memorialize the City's ownership of the real property, and any Facilities located thereon, including providing written memorialization of the ownership or transfer of ownership required or requested by the City, within a reasonable time after completion of the installation of the Capital Improvement.

- 8.2. **Personal Property.** The Parties agree and acknowledge that the City has no ownership interest in the Personal Property that is owned by NHS, either by title, or purchased or developed by NHS with funds contributed to NHS. The ownership of the artifacts listed in **Exhibit A**, and all other Personal Property owned by NHS shall be under the control of the NHS. Nothing contained in this Agreement shall prohibit the NHS, in its discretion, from transferring ownership of the NHS Personal Property listed in **Exhibit A** to the City, with the City's written consent,

or to a third-party. **Exhibit A** may be administratively amended from time to time to add additional NHS Personal Property. Any personal property located on Naper Settlement property that is not NHS Personal Property shall be presumed to be the City's personal property.

- 8.3. **Documents, Drawings, and Intellectual Property.** Any documents, including but not limited to intellectual property (hereinafter "Documents") defined herein without limitation as drawings, survey data, reports, studies, processes, specifications, estimates, maps, plans, computations, photographs, audio and video recordings, electronic data, and software and any original work of authorship fixed in a tangible medium of expression within the meaning of the Copyright Act of the United States Code, and all other materials, regardless of physical form or characteristics, prepared, created, or discovered by Naper Settlement Employees or by the NHS or its consultants and subcontractors, created on or after January 1st, 1979, in the operation and administration of Naper Settlement, is and shall be deemed to be the property of the City, unless otherwise agreed by the Parties in writing.

Any Documents, as defined above, prepared, created, or discovered by the NHS or by its consultants and subcontractors, for or in relation to NHS Personal Property shall also be and shall be deemed to be the joint property of the NHS and the City. The provisions of this Section shall survive the expiration or termination of this Agreement.

## **Section 9. TERM AND TERMINATION.**

- 9.1. **Term.** This Agreement shall be effective on the Commencement Date hereof and continue in full force, and effect unless earlier terminated as set forth below. The Parties agree in good faith to honor this Agreement and may continue to make adjustments as might be required from time-to-time, upon the mutual written agreement of both Parties. This Agreement shall renew itself automatically from year- to-year on the Commencement Date except as provided in section 9.2., and 9.3..
- 9.2. **Termination for Any Reason.** Either Party may terminate this Agreement without cause and at any time upon giving ninety (90) days written notice to the other. In the event the City exercises its right to terminate this Agreement, said termination shall be approved by a majority vote of the Naperville City Council, at an open meeting.
- 9.3. **Termination for Breach or Cause.** Each of the Parties hereto shall have the right to terminate this Agreement at any time upon ninety (90) days' written notice of such cancellation being given to the other Party, in the event of the other Party committing an act or failure to act that constitutes Cause. Cause shall be any act of illegality that materially impacts the other Party's rights or obligations under this Agreement. A material breach of obligations under this Agreement that constitutes a substantial failure to perform in accordance with the terms hereof by the other

Party through no fault of the terminating Party, shall also constitute Cause. Upon receipt of notice of a Cause violation arising from failure to perform, ninety days shall be provided to remedy the breach. Should the attempted remedy not remedy the breach, or if the party receiving said notice makes no attempt to remedy the breach, in the opinion and ruling of a court of competent jurisdiction, the aggrieved Party may terminate this Agreement. Termination of this Agreement does not release either of the Parties from any obligations which accrued when the Agreement was in force, and which, by its terms, is intended to survive the termination of this Agreement.

- 9.4. **Record Availability After Termination.** From the Commencement Date forward, the City and NHS and their agents, shall maintain for a minimum of three (3) years after the completion or expiration of this Agreement, or for three (3) years after the termination of this Agreement, whichever comes later, books, records and supporting documents which verify the activities of the Party pursuant to this Agreement, if such records were maintained in the ordinary course of business. Further, the Parties agree to cooperate fully with any audit or other examination of prior administration or control, ownership, or operation pursuant to this Agreement, and each Party shall have reasonable access, at the requesting Party's cost, to all materials related to any aspect of this Agreement.

**Section 10. HOLD HARMLESS, DEFENSE AND INDEMNIFICATION.**

- 10.1. The City shall indemnify, defend, and hold harmless the NHS and its officers and directors from and against any and all claims or judgments of any kind relating to harm or damage to person or property related to or arising from the negligence, recklessness or intentional misconduct by City or its employees.
- 10.2. To the extent of its liability insurance coverage, the NHS shall indemnify, defend, and hold harmless the City and its officers, agents, and employees from and against any and all claims or judgments of any kind relating to harm or damage to person or property related to or arising from the negligence, recklessness or intentional misconduct by NHS or its officers or directors or Naperville Settlement Employees relating to NHS's use of Naper Settlement. Said indemnity shall, in all respects, be limited to the extent of liability insurance maintained by NHS which applies to such conduct and losses.
- 10.3. Nothing contained herein shall be construed as prohibiting the NHS or the City, or its insurers, officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions, or suits brought against them at the City's or NHS's sole cost, as the case may be.
- 10.4. Nothing herein shall be construed as a limitation or waiver of defenses available to the City or NHS and their employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.

- 10.5. Acceptance of work performed by the NHS, or the NHS's agents, consultants, contractors, and subcontractors, by the City will not relieve the NHS or its agents, consultants, contractors, or subcontractors for the responsibility for correcting any errors or omissions subsequently discovered.
- 10.6. Notwithstanding anything in this Agreement to the contrary, the obligations contained in this Section 10 and each paragraph of Section 10 shall survive the expiration or termination of the Agreement.

## **Section 11. INSURANCE.**

- 11.1. **City.** The City shall be responsible for appropriately insuring its Real Property at Naper Settlement.
- 11.2. **NHS.** The NHS shall be responsible for appropriately insuring its Personal Property at Naper Settlement.

### **11.2.1. NHS Insurance.** NHS shall maintain the following insurance:

- 11.2.1.1. Commercial General Liability insurance in at least the amount of no less than two million dollars (\$2,000,000.00) per occurrence, and said insurance shall cover any and all claims made by any Naper Settlement Employee against the City, or City employee against Naper Settlement, to the extent such claims arise from the acts or omissions of NHS, or the City, including, but not limited to: (i) NHS's management of Naper Settlement Employees, including Naper Settlement Employees' employment actions (human resources) and rights under the Fair Labor Standards Act (FLSA); and (ii) any claim brought by any Naper Settlement Employee against the City based upon the employer-employee relationship, to the extent such claims arise from the acts or omissions of NHS, and except for any such claims and related losses that arise out of or result from any acts or omissions of the City; and
- 11.2.1.2. Automobile Liability insurance in the amount of no less than two million dollars (\$2,000,000.00) per occurrence; and
- 11.2.1.3. Workers' Compensation insurance covering all Naper Settlement Employees in the amount of no less than that required by the laws of the State of Illinois.
- 11.2.1.4. NHS shall name the City as an additional insured on all applicable policies and tender to the City original and updated endorsements and certificates of insurance reflecting the same .

- 11.2.1.5. For any claims related to NHS's duties and responsibilities per this Agreement and/or related to Naper Settlement Employees, NHS's insurance coverage shall be primary insurance.
- 11.2.1.6. Any insurance or self-insurance maintained by the City shall be in excess of NHS's insurance and shall not contribute with it. NHS's Workers' Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Naper Settlement Employees, and/or NHS and their agents and subcontractors.

## **Section 12. GENERAL PROVISIONS**

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

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

City of Naperville  
Attention: City Manager  
400 South Eagle Street  
Naperville, Illinois 60540  
E-mail: [KriegerD@naperville.il.us](mailto:KriegerD@naperville.il.us)

With a copy to:

City of Naperville  
Attention: City Attorney  
400 South Eagle Street  
Naperville, Illinois 60540  
E-mail: [DiSantoM@naperville.il.us](mailto:DiSantoM@naperville.il.us)

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

Naperville Heritage Society  
Attention: President and CEO  
523 S. Webster St.  
Naperville, IL 60540  
E-mail: [CalabreseM@naperville.il.us](mailto:CalabreseM@naperville.il.us)  
With a copy to: [PistorioH@naperville.il.us](mailto:PistorioH@naperville.il.us)

- 12.2. **Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 12.3. **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.
- 12.4. **Entry and Inspection.** The City, as the owner of the property, shall be permitted to enter upon the Naper Settlement and the Facilities thereon at all reasonable times to examine the condition of the same.
- 12.5. **Non-Waiver.** The Parties shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of a Party to exercise at any time any right granted to the Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Party's right to enforce that right or any other right, except as otherwise set forth herein.
- 12.6. **Written Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party, or of any duly authorized officer, employee, agent, or representative of any Party, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.
- 12.7. **Choice of Law/Venue.** This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. Venue for disputes arising from or related to this Agreement, the Development, or the Subject Property shall be in the Illinois Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 12.8. **Severability.** It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

- 12.9. **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, other than any obligations arising under the Will, and related agreements, of Caroline Martin Mitchell.
- 12.10. **Interpretation.** This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties participated equally in the drafting of this Agreement. 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.
- 12.11. **Exhibits.** All exhibits attached to this Agreement are incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.
- 12.12. **Amendments and Modifications.** An amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all Parties in accordance with all requirements of law.
- 12.13. **Changes in Laws.** Unless otherwise provided in this Agreement, any reference to the requirements of law shall be deemed to include any modifications of, or amendments to, the requirements of law that may occur in the future.
- 12.14. **Compliance with Laws.** The City and NHS agree to comply with all requirements of Law when performing any service under this Agreement.
- 12.15. **Authority to Execute.** The City and NHS hereby warrant and represent to each other that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement, that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and that neither the execution of this Agreement nor the performance of the obligations assumed by the City or NHS will (a) result in a breach or default under any agreement to which NHS or the City is a party or to which either is bound or (b) violate any statute, law, restriction, court order, or agreement to which the City or NHS is subject.
- 12.16. **No Third-Party Beneficiaries.** Nothing herein, express, or implied, is intended to or shall confer upon any other person, entity, company, or organization, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 12.17. **Counterparts.** This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

- 12.18. **Freedom of Information Act.** NHS and the City agree to maintain, all records and documents concerning or relating to this Agreement and otherwise relating in any way to Naper Settlement, required to be maintained in accordance with the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1, et seq.; however, NHS shall be under no obligation to respond to or produce documents or information solely by virtue of a FOIA request being delivered to the City. NHS is not, independent of this agreement, legally subject to responding to FOIA requests. The City and the NHS shall cooperate to determine what records are subject to a relevant FOIA request and whether or not any exemptions to the disclosure of such records, or part thereof, are applicable. The City shall follow its established protocol and procedures to properly process inquiries and FOIA requests. NHS shall produce records requested by the City that are subject to FOIA within the reasonable timeframe requested by the City or otherwise required to be produced pursuant to FOIA, and if additional time is needed to compile the requested records, NHS shall promptly notify the City subject to compliance with response timeframes set forth in FOIA. In the event that either Party is found to have not complied with FOIA due to the other Party’s failure to produce documents or otherwise appropriately respond to a request under the Act, then the Party failing to produce and/or respond shall indemnify and hold harmless the other Party, and pay all amounts determined to be due, including, but not limited to, fines, costs, attorneys’ fees and penalties.

The NHS may seek to have proprietary information submitted by it to the City withheld from disclosure to third-parties to the extent that such information falls within the definition and provisions of Section 7(1)(g) of FOIA so long as such information has been furnished to the City under a proprietary claim as provided in said Act. Proprietary information of contractors and subcontractors or consultants of the NHS may be submitted to the City as proprietary under 7(1)(g) of FOIA if such information was submitted to the NHS under a proprietary claim as provided in 7(1)(g) of said Act.

Nothing in the foregoing shall prevent or restrict any Party to this agreement from challenging whether any specific content, item of information, communication or record is not producible or otherwise required to be produced or disclosed pursuant to a particular FOIA request, or from FOIA, generally.

- 12.19. **Savings Clause.** If any provision of this Agreement, or the application of such provision, is rendered or declared invalid by a court of competent jurisdiction, the remaining parts or portions of this Agreement shall remain in full force and effect.
- 12.20. **Ambiguities.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 12.21. **Calendar Days.** Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday,



then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

- 12.22. **Captions.** The captions used herein are for convenience of reference only and do not define or limit the contents of each paragraph.
- 12.23. **Legal Relationship.** The City and NHS are independent contracting bodies, not legal partners nor joint employers, nor are they in an agent-principal relationship or a tenant-landlord relationship.
- 12.24. **No Assignment.** Neither the City nor the NHS shall assign or in any way transfer its interest in this Agreement without the written consent of the other.
- 12.25. **Personal Liability.** Nothing herein shall be construed as creating any personal liability on the part of any officer, agent, or employee of the City or any individual officer, agent, or employee of the NHS.

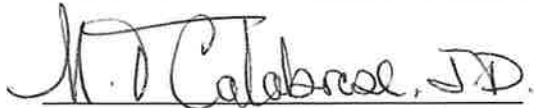
IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed on the date first above written.

**CITY OF NAPERVILLE**

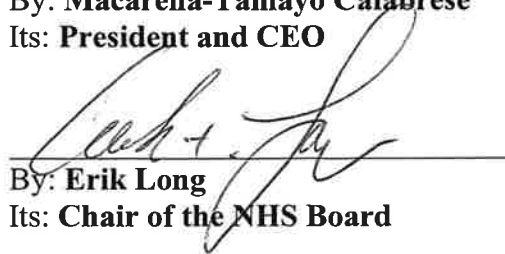
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By: **Douglas A. Krieger**  
Its: **City Manager**

**NAPERVILLE HERITAGE SOCIETY**



By: **Macarena-Tamayo Calabrese**  
Its: **President and CEO**



By: **Erik Long**  
Its: **Chair of the NHS Board**