

EXHIBIT A

FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT GRANTING LAND USE PERMITS FROM THE CITY OF NAPERVILLE TO THE NAPERVILLE PARK DISTRICT FOR CITY PROPERTY AT THE 95TH STREET LIBRARY

THE CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of government (“**City**”), and THE NAPERVILLE PARK DISTRICT, a body politic and a unit of local government (“**Park District**”) hereby enter into this FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT GRANTING LAND USE PERMITS FROM THE CITY OF NAPERVILLE TO THE NAPERVILLE PARK DISTRICT FOR CITY PROPERTY AT THE 95TH STREET LIBRARY (“**First Amendment**”).

RECITALS

WHEREAS, pursuant to City of Naperville Resolution No. 19-010, passed on April 4, 2019, and Naperville Park District Ordinance No. 957, approved on March 14, 2019, the City and the Park District entered into an “Intergovernmental Agreement Granting Land Use Permits from the City of Naperville to the Naperville Park District for City Property at the 95th Street Library” (“**Intergovernmental Agreement**”) which provided in part for issuance of land use permits by which the City granted the Park District a non-exclusive right to use and operate a portion of Park District Plaza Facilities on City Library Property, and permitted the Park District to use a portion of the City Library Property for the Park District’s Farmers’ Market Program (as the foregoing capitalized terms are defined in the Intergovernmental Agreement); and

WHEREAS, the City, by and through its Naperville Public Library (“**Library**” or “**City Library**”) desires to install fiber optic cabling in underground conduit running from the library building located on City Library Property (“**Library Building**”), through the City Library Property and into and through the Plaza on Park District Property, to three specific Wireless Access Points (aka “**Repeaters**”) to be installed by the City on Park District Property for the purpose of providing public WiFi service to the Plaza area, all as depicted on the diagram attached hereto and incorporated herein as Exhibit FA-1 (“**WiFi Cabling**”); and

WHEREAS, the Park District desires to simultaneously install a low-voltage communication line in the same in conduit runs for purposes of connecting an AED device located on Park District Property to the telephone service lines located within the Library Building on City Library Property, all as depicted on the diagram attached hereto and incorporated herein as Exhibit FA-1 (“**Communication Line**”); and

WHEREAS, the City and the Park District desire to enter into this First Amendment to the Intergovernmental Agreement to grant each Party the necessary permission and ongoing access to accomplish the installation and maintenance of both the WiFi Cabling and the Communication Line as provided for herein; and

WHEREAS, both the Intergovernmental Agreement and this First Amendment thereto are authorized by the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, both of which provide for the execution of

agreements and implementation of cooperative ventures between units of local government of the State of Illinois.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the City of Naperville and the Naperville Park District hereby amend the Intergovernmental Agreement to grant each other the following Land Use Permits, upon the terms and conditions set forth herein, for purposes of installing the WiFi Cabling and the Communication Line.

AGREEMENT

1. **Recitals.**

1.1 The foregoing Recitals are incorporated herein as though fully set forth.

2. **Land Use Permits Granted.**

2.1 Communication Line Land Use Permit. For and in consideration of the use of one dollar and other good and valuable considerations to it paid, 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, DuPage and Will Counties, in the exercise of its home-rule powers and in accord with the authority granted to all units of government to engage in intergovernmental cooperation, does hereby grant to the Naperville Park District, an Illinois park district and local unit of government formed and operating under the Illinois Park Code and the laws and Constitution of the State of Illinois, DuPage and Will Counties, the following additional Land Use Permit:

Communication Line Land Use Permit: a non-exclusive right, permission and authority to survey, construct, reconstruct, use, operate, maintain, test, inspect, repair, replace, alter, or remove a low-voltage communication line serving the AED device located on Park District Property in the runs of conduit running through and between the Park District's Plaza Property and into the Library Building, including any and all related underground utilities and appurtenances thereto ("Cabling Facilities"), together with the right of access thereto for said purposes, in, upon, under, along, and across that portion of the City Library Property depicted on Exhibit FA-1 and identified thereon as the "**Communication Line Permit Area**".

2.2 **WiFi Cabling and WAP Land Use Permit.** For and in consideration of the use of one dollar and other good and valuable considerations to it paid, the Naperville Park District, an Illinois park district and local unit of government formed and operating under the Illinois Park Code and the laws and Constitution of the State of Illinois, DuPage and Will Counties, in accord with the authority granted to all units of government to engage in intergovernmental cooperation, does hereby grant to the City of Naperville, an Illinois municipal corporation and home rule unit of local government formed and operating under the laws and Constitution of the State of Illinois, DuPage and Will Counties, the following Land Use Permit:

WiFi Cabling and Wireless Access Points (WAP) Land Use Permit: a non-exclusive right, permission and authority to survey, construct, reconstruct, use, operate, maintain, test, inspect, repair, replace, alter, or remove: a) the fiber optic cabling located on Park District Property in the runs of conduit running through and between the Library Building and the Wireless Access Points installed on the Park District's Plaza Property, including any and all related underground utilities and appurtenances thereto ("**Cabling Facilities**"); and b) the Wireless Access Points ("**WAPs**") located on the light poles and on the 95th Street Community Plaza Restrooms & Mechanical building , together with the right of access thereto for the aforesaid purposes, in, upon, under, along, and across that portion of the Park District Property depicted on Exhibit FA-1 and identified thereon as the "**City WiFi Permit Area**".

3. **Obligations of the Parties with Respect to the Permits.**

3.1 The underground conduits that constitute the Cabling Facilities that run from the Library Building on City Library Property to the Restrooms & Mechanical building on Park District Property have already been constructed and installed by the respective Parties. The City has contracted, at City expense, for a Contractor to install both the City's WiFi Cabling and the Park District's Communication Line in the Cabling Facilities in "Conduit Run B." The City has also contracted, at its sole expense, for the installation of the WAPs at the locations shown on Exhibit FA-1. The Park District has reviewed and approved the plans and specifications for the installation of the WiFi Cabling, the Communication Line and the WAPs. The City shall be responsible for administration of the contract for installation of the WiFi Cabling, the Communication Line and the WAPs; however, the City shall keep the Park District informed so that the work of the City's contractor may be coordinated with the Park District's forces working on the Plaza.

3.2 Following installation of the Communication Line, the Park District shall order and pay for, at its sole expense, the connection of the Communication Line. The Park District shall coordinate with the City Library for the service provider

to make the connection of the Communication Line within the Library Building. The service ordered by the Park District for the Communication Line shall be billed directly to the Park District.

3.3 Following the installation of the WiFi Cabling and WAPs, the City, through the City Library budget, shall pay for the internet service.

3.4 The Park District acknowledges that it shall be necessary for the City Library, or its contractors, from time to time, to perform maintenance on the WiFi Cabling and WAPs and the City agrees to provide reasonable notice to the Park District of the City's intent to undertake such maintenance. Likewise, the City acknowledges that it shall be necessary for the Park District (or its service provider), from time to time, to perform maintenance on the Communication Line and the Park District agrees to provide reasonable notice to the Executive Director of the Library of the Park District's intent to undertake such maintenance.

3.5 The Cabling Facilities, Communication Line, WiFi Cabling and WAPs may be changed, relocated or replaced upon the mutual written consent of the Park District, the Executive Director of the Library and the Director of the City's Department of Public Utilities - Electric, and said consent shall not be unreasonably withheld.

3.6 The Park District covenants and agrees to defend (with legal counsel approved by the City, which approval shall not be unreasonably withheld), indemnify and save harmless the City and its officers, agents, and employees, and the Naperville Board of Library Trustees, from and against any and all claims, demands, and causes, or causes of action, loss or damage which may occur by reason of Park District activities within the Communication Line Permit Area or arising out of the installation and connection of the Communication Line in the Library Building, but excepting therefrom any loss or damage arising out of negligence or willful acts on the part of the City, its successors and assigns, employees, and agents. Likewise, the City covenants and agrees to defend (with legal counsel approved by the Park District, which approval shall not be unreasonably withheld), indemnify and save harmless the Park District and its officers, agents, and employees from and against any and all claims, demands, and causes, or causes of action, loss or damage which may occur by reason of City activities within the City WiFi Permit Area or arising out of the installation and connection of the WiFi Cabling and WAPs, but excepting therefrom any loss or damage arising out of negligence or willful acts on the part of the Park District, its successors and assigns, employees, and agents.

4. **Insurance.**

The City Library shall maintain insurance for at least the same coverages and limits of coverage required of the Park District under the Intergovernmental Agreement. The City Library shall likewise require its contractor(s) performing work on Park

District Property to install the WiFi Cabling, the Communication Line, and the WAPs to name the Park District as an additional insured in the same way said contractor(s) names the City and the Library as additional insureds.

5. **Miscellaneous.**

5.1 Nothing herein shall constitute a waiver of any immunities against liability available to either party under law.

5.2 Whenever either the terms “Executive Directors of the District and Library” is used, it is intended to mean the Executive Directors of the District and Library or their designees.

5.3 This First Amendment shall be recorded in the Office of the Will County Recorder, and shall be binding upon and/or in use to the benefit of both the City’s and the District’s successors and assigns, but all rights granted herein are expressly non-transferable and shall not be assigned.

5.4 The Permits granted herein may be revoked if the Parties agree, or if either Party ceases to use their respective Permit Area for the purposes described herein for a period of eighteen (18) months (“abandonment”). Absent agreement or abandonment, revocation of either Permit shall not be permitted for a period of ten (10) years after the Effective Date of the Intergovernmental Agreement after which it may be terminated by either Party for any reason but shall automatically renew each year unless notice of termination is given by either Party. Notwithstanding the foregoing, the Library may notify the Park District that it no longer desires to use the WiFi Cabling and WAP Land Use Permit after a period of not less than five (5) years from the date this First Amendment takes effect if the Library determines, in its sole discretion, that said Permit is no longer needed or that such use interferes with the use or operation of the Library, and notifies the Park District in writing that it voluntarily relinquishes its rights under said Permit.

5.5 All notices to the Park District shall be sent by overnight mail addressed to the Executive Director, Naperville Park District, 320 West Jackson Avenue, Naperville, Illinois 60540. All notices to the City and the Naperville Public Library shall be sent by overnight mail addressed to the City Manager, City of Naperville, 400 S. Eagle Street, Naperville, Illinois, 60540, and to the Executive Director of the Naperville Public Library, 200 West Jefferson Street, Naperville, IL 60540.

5.6 The City of Naperville, under the laws of the State of Illinois, hereby certifies that it is the Owner of the Communication Line Permit Area and that as such Owner hereby grants to the District the Land Use Permits described herein for the uses and purposes therein set forth as allowed and provided for by statutes and does hereby acknowledge and adopt the same under the style and title aforesaid.

5.7 The City agrees that if it sells any portion of the Communication Line Permit Area in the next thirty (30) years, an easement shall attach to the portion of the Communication Line Permit Area so conveyed for whatever period of the thirty (30) years remains, after which such easement shall expire and be of no further force or effect. While in effect, the easement shall be subject to the terms and conditions set forth herein.

5.8 The Naperville Park District, under the laws of the State of Illinois, hereby certifies that it is the Owner of the City WiFi Permit Area and that as such Owner hereby grants to the City the Land Use Permits described herein for the uses and purposes therein set forth as allowed and provided for by statutes and does hereby acknowledge and adopt the same under the style and title aforesaid.

5.9 The Naperville Park District agrees that if it sells any portion of the City WiFi Permit Area in the next thirty (30) years, an easement shall attach to the portion of the City WiFi Permit Area so conveyed for whatever period of the thirty (30) years remains, after which such easement shall expire and be of no further force or effect. While in effect, the easement shall be subject to the terms and conditions set forth herein.

6. **Effective Date.**

This First Amendment to the Intergovernmental Agreement shall be effective upon its completed execution by the Parties hereto.

7. **Effect of First Amendment.**

All terms set forth in the Intergovernmental Agreement not amended by this First Amendment shall remain in full force and effect.

/SIGNATURES ON FOLLOWING PAGES/

NAPERVILLE PARK DISTRICT

By: _____
Rich Janor
President, Board of Park Commissioners

By: _____
Secretary, Board of Park Commissioners

Date: _____

CITY OF NAPERVILLE

By: _____
Steve Chirico
Mayor

Attest: _____
Pam Gallahue, Ph.D.
City Clerk

Date: _____

**APPROVED BY THE BOARD OF TRUSTEES OF THE
NAPERVILLE PUBLIC LIBRARY**

By: _____
Nina M. Menis
Its: Board President

Attest:

By: _____
Jeanine O'Meara, Secretary
Its: Secretary
Date: _____

Prepared by:
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Ancel Glink
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