

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE CITY OF HIGHLAND PARK
AND
THE HIGHLAND PARK PUBLIC LIBRARY**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of the 9th day of December, 2013 ("**Effective Date**"), and is by and between the **CITY OF HIGHLAND PARK**, an Illinois home rule municipal corporation ("**City**"), and the **HIGHLAND PARK PUBLIC LIBRARY**, an Illinois municipal library ("**Library**"). This MOU will terminate on December 31, 2016 unless both the City and the Library agree to a renewal.

IN CONSIDERATION OF, and in reliance upon, the recitals and the mutual covenants set forth in this MOU, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Library mutually agree as follows:

SECTION 1. RECITALS.

- A.** The City is an Illinois home rule municipal corporation.
- B.** The City established the Library in 1887, pursuant to then-existing provisions of Illinois law and as now provided in the Illinois Local Library Act, 75 ILCS 5/1-0.1 *et seq.* ("**Library Act**"), as the same has been or may be amended from time to time, and as set forth in Article VII of Chapter 33 of "The Highland Park Code of 1968", as the same has been or may be amended from time to time ("**City Code**").
- C.** The Library may exercise the powers, rights, and responsibilities, and is subject to the restrictions and limitations, set forth in the Library Act and in the City Code.
- D.** Pursuant to the Library Act and the City Code, the Library is governed by a board of trustees ("**Library Board**").
- E.** The Library operates a public library on land located at the property commonly known as 494 Laurel Avenue, Highland Park, Illinois ("**Library Property**").
- F.** Portions of the Library Property are owned by the City and portions of the Library Property are owned by the Library, as depicted in **Exhibit A** attached to this MOU.
- G.** The building located on the Library Property within which the public library is operated ("**Library Building**") is owned by the Library.
- H.** The City and the Library desire to enter into this MOU in order to memorialize their agreement regarding: (i) the legal relationship between the City as a home rule municipal corporation and the Library as a municipal library; and (ii) the powers, rights, responsibilities, obligations, restrictions, and limitations applicable to the Library and its operations.

SECTION 2. ACKNOWLEDGMENT OF LEGAL RELATIONSHIP AND CONTROLLING LAW.

- A. Relationship Between The City and the Library.** The City and the Library acknowledge and agree that:

1. The Library is an Illinois municipal library subject to the provisions of the Library Act.

2. The Library is a component unit of the City of Highland Park government, and is also subject to the provisions of the City Code.

B. Controlling Law.

1. The City and the Library acknowledge and agree that the Library and the Library Board are subject to potentially conflicting provisions and restrictions set forth in the Library Act, the City Code, and this MOU. In the event of a conflict between the Library Act and this MOU, this MOU shall control. In the event of a conflict between the City Code and this MOU, this MOU shall control.

2. The Library shall, and does hereby agree to, maintain the Library Building and operate the public library on the Library Property in accordance and compliance with all applicable provisions of the Library Act, the City Code, this MOU, and any other federal, State, or local law and regulation.

SECTION 3. COMPOSITION AND POWERS OF LIBRARY BOARD.

A. Composition of Library Board.

1. Membership. The Library Board shall consist of: (a) nine voting members, who shall be appointed by the Mayor of the City, with the confirmation of a majority of the City Council of the City, in the manner set forth in Section 33.001(A) of the City Code; and (b) one *ex-officio* non-voting member, which *ex-officio* member shall be a member of the City Council appointed by the Mayor.

2. Term. As set forth in Section 33.001(B) of the City Code governing the terms of office of members of City boards and commissions, the term of office of each member of the Library Board shall be four years.

3. Officers. Notwithstanding Section 33.001(C) of the City Code, the voting members of the Library Board shall elect from among themselves a president, a vice-president, and such other officers as the voting members deem necessary and appropriate. The voting members of the Library Board shall have the right to determine, in their sole discretion, the respective powers and term length of each officer.

4. City Code Amendment. The City shall, and does hereby agree to, adopt an ordinance or ordinances amending Chapter 33 of the City Code as necessary in order to ensure consistency with Section 3.A of this MOU.

B. Powers of Library Board. The City and the Library acknowledge and agree that: (1) except as expressly provided to the contrary in the City Code (in effect as of the date of this MOU) or in this MOU, the Library Board shall have all powers, rights and responsibilities granted by, and shall be subject to all restrictions and limitations set forth in, the Library Act with respect to library boards of trustees; and (2) except as expressly provided to the contrary in this MOU, including but not limited to Section 4.C.1 hereof, Chapter 33 of the City Code (in effect as of the date of this MOU) shall apply to and control the activities of the Library Board.

SECTION 4. LIBRARY FINANCES AND BUDGETS.

A. Annual Report. Prior to the end of each calendar year, the Library shall deliver to the City the annual report required pursuant to Section 4-10 of the Library Act ("**Annual Report**"). The Library acknowledges and agrees that the Annual Report delivered to the City shall be in the form of the report delivered annually by the Library to the Illinois State Library.

B. Budget.

1. For the 2014 budget year and all subsequent years, the Library shall submit its annual budget ("**Annual Budget**") to the City Manager in accordance with the schedule determined by the City Manager for the submission of budgets by the primary departments of the City government.

2. Each Annual Budget must include, without limitation: (a) a five-year capital improvement program for all then-current and new assets of the Library, including all proposed Capital Projects for the budgetary year to which the Annual Budget applies; and (b) the annual recommended tax levy ("**Recommended Levy**"), which Recommended Levy must comply with the requirements set forth in Section 4.C of this MOU.

3. The Annual Budget shall be presented to the City Council at a scheduled meeting thereof, in accordance with the schedule for consideration of the Annual Budget and the City's annual budget, as determined by the City Manager.

4. The Library acknowledges and agrees that, except as expressly provided in this MOU, the City has no obligation to provide to the Library, and that the Library has no reasonable expectation that it will receive, any City funds for use by the Library.

C. Property Tax Levy.

1. The Library acknowledges and agrees that, pursuant to Section 33.708 of the City Code and the home rule authority of the City, the City Council has the authority to accept, reject, or modify the Library's annual Recommended Levy, and to levy taxes for Library purposes in an amount that the City Council determines to be both appropriate and sufficient for the Library to fulfill its obligations to maintain the Capital Facilities and operate the Library as required by Sections 2.B.2 and 5.B of this MOU.

2. The City Council has determined that it will be appropriate to approve, as part of the Annual Budget and the resulting annual property tax levy for the Library, a Capital Levy Amount for Major Capital Projects (as that term is defined in Section 5.A.1 of this MOU). For calendar year 2014, the Capital Levy Amount shall be \$365,000 ("**2014 Capital Levy Amount**"). For calendar year 2015 and all subsequent years, the City Council has determined that it will be appropriate to approve, as part of the Annual Budget and the resulting annual property tax levy for the Library, an amount equal to the 2014 Capital Levy Amount, as adjusted in accordance with the most recently calculated annual change in the Construction Cost Index, as reported as part of the American City and County Municipal Cost Index ("**CCI**"), for those Major Capital Projects (as that term is defined in Section 5.A.1 of this MOU) that are approved in accordance with the process set forth in Section 5.A.2 of this MOU. The amount of the annual Capital Levy Amount may be increased above, or decreased below, the 2014 Capital Levy Amount, as adjusted, so as to reflect the cost of approved Major Capital Projects. This

Section 4.C.2 shall not be deemed or interpreted as a limitation on the amount of taxes levied by the City for other Library purposes that do not specifically relate to a Major Capital Project.

3. The Library agrees that the City will have the right to retain all taxes collected by the City that correspond to the tax levy for Capital Projects identified in Section 4.C.2 of this MOU, and the obligation to use such collected taxes solely in connection with the performance of such Capital Projects.

SECTION 5. LIBRARY BUILDING AND FACILITIES.

A. Capital Repairs, Improvements, and Additions. All repairs, improvements, and additions to existing capital facilities of the Library, including, without limitation, the Library Building, the parking lots, utilities, landscaping, and infrastructure located on the Library Property (collectively, the "**Capital Facilities**"), shall be completed in accordance with the following:

1. Responsibility.

a. If the estimated cost of a project for the repair, improvement, or addition to any Capital Facility (each a "**Capital Project**") is greater than \$10,000 (for calendar year 2014, and as adjusted annually thereafter in accordance with the CCI), as determined by the City Engineer, the Capital Project shall be considered a "**Major Capital Project**" subject to the approval and completion procedures set forth in Section 5.A.2 of this MOU.

b. If the estimated cost of a Capital Project is \$10,000 (for calendar year 2014, and as adjusted annually thereafter in accordance with the CCI) or less as determined by the City Engineer, the Capital Project shall be considered a "**Minor Capital Project**" subject to the maintenance provisions set forth in Section 5.B of this MOU.

2. Major Capital Projects. The process for the approval and for the completion of all Major Capital Projects shall be as follows:

a. The Library shall identify all proposed Major Capital Projects in the Annual Budget submitted to the City.

b. The City Council shall consider all Major Capital Projects proposed by the Library. In the event that the City Council approves a Major Capital Project and of the necessary portion of the Annual Budget related thereto, the City shall enter into a contract or contracts for the performance of the Major Capital Project, in the name of the City. The Library shall have no obligation to execute, be a party to, or guarantee any such contract or agreement.

c. The City shall administer the contract for, and performance of, each Major Capital Project. Specifically, and without limitation of the foregoing, the City shall cause all contractors and vendors providing services or supplies for a Major Capital Project to be paid with tax funds levied and retained by the City pursuant to Section 4.C.3 of this MOU. Major Capital Projects for the Library shall be prioritized in accordance with the procedures and policies for prioritization of capital projects for the City.

d. In the event of a bona fide emergency requiring performance of a Major Capital Project that was not identified during the review of the Annual Budget, the City

Manager and the Executive Director of the Library shall coordinate in good faith the completion of such emergency Major Capital Project using Library funds, subject to the ratification by the City Council and the Library Board of the Major Capital Project.

e. The Library agrees not to cause any Major Capital Project to be performed except in strict compliance with this Section 5.A.2.

B. General Maintenance and Minor Capital Projects. Except as provided in Section 7.A of this MOU regarding the Library parking lot, the Library shall be responsible, at its sole cost and expense, for: (1) the maintenance of all Capital Facilities in a condition of good repair; and (2) the completion of all Minor Capital Projects consistent with standards of recognized professional firms in performing work of a similar nature, and with the greatest economy, efficiency, and expedition consistent therewith, with only undamaged, and first quality equipment, materials, and supplies. To the extent practicable, all such maintenance and Minor Capital Projects shall be completed in a manner consistent with sustainable environmental policies and practices.

C. Annual Assessment. Once per calendar year, the City shall conduct an assessment and review of the condition of the Library Building and of the other Capital Facilities, and shall recommend to the Library Board the performance of Capital Projects as necessary to complete any repairs or maintenance identified in the course of such assessment and review.

D. Property Insurance.

1. For calendar year 2014, the City shall be responsible, at its sole cost and expense, for procuring and maintaining property insurance for the Capital Facilities in coverages and amounts sufficient for the assumption of all risk that results from the use of the Capital Facilities. This Section 5.D.1 shall not be deemed or construed as requiring the City to procure or maintain any workers compensation, employer practices liability, casualty, contents, or other insurance policies or coverages on behalf of the Library or in connection with the Capital Facilities.

2. For calendar year 2015 and thereafter, the Library shall be responsible, at its sole cost and expense, for procuring and maintaining property insurance for the Capital Facilities in coverages and amounts sufficient for the assumption of all risk that results from the Library's ownership and use of the Capital Facilities. The Library shall explore joint purchasing of insurance policies in accordance with Section 6.B of this MOU.

SECTION 6. LIBRARY PURCHASING.

A. Compliance with City Purchasing Manual. The Library agrees that all purchases of goods or services by the Library shall be made by the Library Board and Library personnel pursuant to procedures substantially similar to those procedures set forth in the City's Purchasing and Fixed Asset Policies and Procedures Manual.

B. Joint Cooperation. The City and the Library agree to cooperate in good faith to exercise joint purchasing of goods and services, and to share services, whenever practicable, in order to achieve cost savings and economies of scale. Specifically, and without limitation of the foregoing, the City and the Library agree to jointly explore joint purchasing of: (1) information technology services; and (2) casualty, general liability, vehicle, and other insurance policies.

The Library shall pay its proportionate share of any goods or services provided or purchased by the City for the joint benefit of the City and Library.

SECTION 7. PARKING.

A. Library Parking Lot.

1. The City shall be responsible for the provision of maintenance and ordinary repair services for the parking lot and parking lot facilities on the Library Property ("**Library Parking Lot**"), which services shall include, without limitation: maintenance of the lighting and signage within the Library Parking Lot; parking space striping, pavement patching; snow removal; and sweeping ("**Parking Lot Maintenance Services**"). The Library shall reimburse the City for the costs incurred by the City in connection with the provision of the Parking Lot Maintenance Services, within 30 days after receipt of an invoice therefor.

2. Any reconstruction of the pavement of the Library Parking Lot shall be performed in accordance with Section 5.A of this MOU, and shall not be considered to be Parking Lot Maintenance Services.

3. The City and the Library acknowledge and agree that the Police Department of the City shall be responsible for the enforcement of hourly parking restrictions and other applicable parking regulations (collectively, "**Parking Regulations**") within the Library Parking Lot.

4. The Library hereby grants to the City, and the City hereby accepts, a non-exclusive license to enter the Library Parking Lot, and other portions of the Property as necessary, for the purpose of providing: (a) the Parking Lot Maintenance Services in accordance with Section 7.A.1 of this MOU; and (b) the enforcement of Parking Regulations in accordance with Section 7.A.3 of this MOU.

B. Provision of Parking Permits. The City shall continue to provide to the Library, at no expense to the Library: (1) Employee (E) Parking Permits for use by Library employees in the east Central Business District Parking Garage; and (2) one Garage Overnight (GO) Parking Permit for the overnight parking in the east Central Business District Parking Garage of that certain "READ" vehicle owned and maintained by the Library.

SECTION 8. ACKNOWLEDGMENT OF OWNERSHIP AND LIABILITY.

The Library acknowledges and agrees that the Library owns the Library Building and the Capital Facilities, and has all of the responsibilities and liabilities that pertain to such ownership. The Library further acknowledges and agrees that neither this Agreement nor any action taken by the City pursuant to this Agreement shall be deemed or interpreted as an assumption by the City of any liability for the condition, use, operation, maintenance, and repair of the Library Building or of any other Capital Facility.

SECTION 9. WAIVER OF BREACH.

A waiver by the City or the Library of a breach by any party to this MOU of any covenant or condition of this MOU shall not impair the right of the party or parties not in default to avail itself or themselves of any subsequent breach thereof. Leniency, delay, or failure of the party or parties to insist upon strict performance of any agreement, covenant, or condition of this MOU,

or to exercise any right within this MOU given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

SECTION 10. ENFORCEMENT.

The parties to this MOU may enforce or compel the performance of this MOU, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance.

SECTION 11. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement shall be given by the parties by: (i) personal delivery; (ii) deposit in the United States Registered Mail, return receipt requested, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 11.A. The address of any party may be changed by written notice to the other parties. Any mailed notice shall be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier shall be deemed to have been given and received within 24 hours after deposit. Notices and communications to the parties shall be addressed to, and delivered at, the following addresses:

If to the City: City of Highland Park
 1707 St. Johns Avenue
 Highland Park, IL 60035
 Attention: City Manager

If to the Library: Highland Park Public Library
 494 Laurel Avenue
 Highland Park, IL 60035
 Attention: Executive Director

B. Time of the Essence. Time is of the essence in the performance of all of the terms and conditions of this Agreement.

C. Governing Law. This MOU shall be governed by, construed, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

D. Amendments and Modifications. No amendment or modification to this MOU shall be effective until it is reduced to writing and approved and executed by the City and the Library in accordance with all applicable statutory procedures; provided, however, that this Section 11.D shall not be deemed or interpreted as prohibiting future collaboration between the City and the Library without an amendment to this MOU regarding matters of shared interest to which this MOU does not apply.

E. No Third Party Beneficiaries. No claim as a third party beneficiary under this MOU by any person, firm, or corporation shall be made, or be valid, against the City or the Library.

F. Headings. The headings, titles, and captions in this MOU have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this MOU.

G. Counterpart Signatures. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the Library have executed this Memorandum of Understanding as of the Effective Date.

CITY OF HIGHLAND PARK, an Illinois home rule municipal corporation

ATTEST:

Ghida S. Neukirch, City Clerk

By: _____
Nancy R. Roterling, Mayor

HIGHLAND PARK PUBLIC LIBRARY, an Illinois municipal library

ATTEST/WITNESS:

By: _____
Its: _____

By: _____
Its: _____

EXHIBIT A

DEPICTION OF OWNERSHIP OF THE LIBRARY PROPERTY



0 50 100 Feet

Library Parcels



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W E
S
12/12/2013