

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF NAPERVILLE AND
COMMUNITY UNIT SCHOOL DISTRICT 200
PERTAINING TO LAND CASH LAND AND LAND CASH FUNDS**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and 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 ((hereinafter “**CITY**”)), having an address at 400 South Eagle Street, Naperville, Illinois 60540, and Community Unit School District 200 ((hereinafter “**DISTRICT**”) having an address of 130 West Park Avenue, Wheaton, Illinois 60189 as set forth herein. The **CITY** and the **DISTRICT** are together hereinafter referred to as the "**Parties**" and sometimes individually as “**Party**”.

RECITALS

1. **WHEREAS**, Article VII, Section 10, of the Constitution of the State of Illinois of 1970 provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or by ordinance; and
2. **WHEREAS**, intergovernmental cooperation is further authorized by 5 ILCS 220/1-220/7; and
3. **WHEREAS**, the **CITY** is a home rule unit of local government under the laws and Constitution of the State of Illinois; and
4. **WHEREAS**, the **DISTRICT** is a school district under the laws and Constitution of the State of Illinois; and
5. **WHEREAS**, Section 7-3-5 of the Naperville City Code entitled “Dedication of Park Lands and School Sites For Payment or Fees In-Lieu-Of”, as may be amended from time to time, provides that as a condition of approval of a final plat of subdivision or of a final plat of a planned unit development, each subdivider or developer is required to dedicate land for school sites to serve the immediate and future needs of the residents of the development, or a cash contribution in lieu of land dedication, or a combination of both (hereinafter the “**Land Cash Ordinance**”); and
6. **WHEREAS**, said land (“**Land**”) or cash contributions in lieu thereof (“**Land Cash Funds**”) will be transferred or paid, as applicable, to the **DISTRICT** pursuant to the **CITY**’s Land Cash Ordinance requiring dedication of school sites and/or cash contributions in lieu thereof; and
7. **WHEREAS**, the Land Cash Ordinance sets forth the purposes for which Land and Land Cash Funds may be used.

NOW THEREFORE IT IS AGREED by and between the CITY and the DISTRICT, in consideration of the mutual covenants contained herein, and in the exercise of the CITY's home rule powers, as follows:

1. Recitals Incorporated. The above Recitals are substantive and are incorporated in this Section 1 by reference in their entirety.
2. Conveyance of Land and Payment of Land Cash Funds. Subject to the provisions set forth and referenced herein, the CITY will collect Land and/or Land Cash Funds pursuant to the provisions set forth in its Land Cash Ordinance. Unless otherwise agreed to by resolution or ordinance of the City, no Land or Land Cash Funds to be conveyed or which are due and payable under said Land Cash Ordinance shall be received directly by the DISTRICT. Conveyances of land between the CITY and the DISTRICT may be made pursuant to the "Local Government Property Transfer Act" 50 ILCS 605/0.01 *et seq.*, as amended from time to time, or in any manner not inconsistent with law.
 - 2.1 Disposition of Land Cash Funds received by the CITY pursuant to the Land Cash Ordinance shall be accomplished within (3) three months after receipt thereof by the CITY. Conveyance of Land to the DISTRICT received by the CITY pursuant to the Land Cash Ordinance shall be accomplished as soon as practicable after its conveyance to the CITY. Notwithstanding the foregoing, the CITY may convey such land with such easements, covenants, and restrictions (including but not limited to public utility and drainage easements) as the CITY deems appropriate; however, in no event shall such easements, covenants, and restrictions substantially impair the DISTRICT's ability to use such Land.
3. Limitation. The CITY's obligations under Section 2 and 2.1 above are limited to Land conveyed and Land Cash Funds collected pursuant to the City's Land Cash Ordinance. Payment of Land Cash Funds made hereunder shall be paid solely from said Land Cash Funds. This Agreement shall not be construed as creating any obligation upon the CITY to make payments to the DISTRICT from any other funds or revenue.
4. Use of Land and Land Cash Funds. All Land and Land Cash Funds received by the DISTRICT pursuant to this Agreement shall be held in trust and shall at all times be used in conformance with the CITY's Land Cash Ordinance; the DISTRICT shall be solely responsible to and liable for ensuring such compliance.
5. Record-Keeping. The DISTRICT shall keep an accurate record of all Land and Land Cash Funds received under this Agreement and the uses made thereof. This record shall include identification of the development generating such Land and/or Land Cash Funds and the specified uses thereof. On or before the last Friday in January of each year, or such other timeframe as may be agreed to in writing by

the Director of the CITY's Transportation, Engineering, and Development Department ("**Director of T.E.D.**"), the DISTRICT shall provide the Director of T.E.D. with a report detailing the status and use of any Land and/or Land Cash Funds previously received by the DISTRICT pursuant to the CITY's Land Cash Ordinance. This report shall include, at a minimum, a description of any existing balance and the use of the Land Cash Funds in the prior calendar year as well as the use of any Land in the prior calendar year.

6. Defense, Indemnification and Hold Harmless. To the fullest extent allowed by law the DISTRICT shall defend, indemnify and hold harmless the City of Naperville and its officers, employees, agents and representatives from any claim, suit, demand or liability whatsoever arising out of or related to the City's Land Cash Ordinance, the legality or enforceability of said Ordinance, or the use of the Land and/or Land Cash Funds, when the DISTRICT is the recipient, or intended recipient, of the Land and/or Land Cash Funds pursuant to the Land Cash Ordinance. Notwithstanding the foregoing, the DISTRICT'S defense, indemnification, and hold harmless obligations shall not extend to the CITY's independent negligent acts or omissions or willful misconduct relative to payment of Land Cash Funds or relative to the conveyance of Land. The DISTRICT agrees that it shall employ competent and skilled legal counsel to represent the DISTRICT and the CITY, and the CITY's officers, employees, agents and representatives, and further covenants and agrees that it shall keep the CITY fully advised as to the progress and status of the litigation. The DISTRICT shall provide the CITY with copies of all pleadings filed in the litigation and shall consult regularly (and shall cause its attorneys to consult regularly) with the CITY or its attorneys, as applicable, as to the strategy for defending the litigation. In no event shall the DISTRICT compromise or settle any claim or litigation described above without at least thirty (30) days prior written notice to the City Attorney.
7. Land Cash Refunds. If refunds of any Land Cash Funds received by the DISTRICT pursuant to the CITY's Land Cash Ordinance are subject to being refunded because: (i) they were not expended for the purposes allowed by the Land Cash Ordinance within ten (10) years from the date of receipt as provided by the Land Cash Ordinance; or because (ii) a refund thereof is required pursuant to a ruling issued by a court of competent jurisdiction, the DISTRICT agrees to make such refund(s) as directed by the CITY within sixty (60) days of a written demand made by the CITY.
8. Term. This term of this Agreement shall be for a period of twelve (12) months commencing on the Effective Date set forth in Section 16 hereof and shall automatically renew thereafter for additional twelve (12) month periods unless not less than sixty (60) days' written notice is given by either Party to the other Party of their intent to cease participation in this Agreement, or until the CITY's Land Cash Ordinance is repealed or declared invalid.

9. Survival/Remaining Land or Land Cash Funds. The provisions of Sections 1, 3, 4, 6, 7, 9, 10, 11, 12, 14, and 15 of this Agreement shall survive the expiration or termination of this Agreement. If the CITY is holding any unencumbered and undisputed Land and/or Land Cash Funds collected for the DISTRICT pursuant to its Land Cash Ordinance at the time of termination or expiration of this Agreement, those Funds shall be paid to the DISTRICT in conformity with the terms of this Agreement.
10. Severability. If any provision of this Agreement, or the application of any provision hereof, is rendered or declared invalid by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.
11. Choice of Law/Venue. This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
12. Ambiguity. 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.
13. Amendment. No modification or amendment to this Agreement shall be effective until approved by the Parties in writing.
14. Entire Agreement. This Agreement sets forth and constitutes the entire agreement between the Parties with respect to the subject matter described herein and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each Party to the other concerning the subject matter.
15. Binding Nature. This Agreement is binding on the Parties and their successors and assigns.
16. Effective Date. The effective date of this Agreement (“**Effective Date**”) shall be the date upon which it is fully executed by both Parties hereto.
17. Authority to Execute. Each of the signatories to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of his or her respective Party and by such signature to bind that Party to this Agreement.

IN WITNESS whereof, the CITY and the DISTRICT have authorized the execution of this Agreement as provided herein.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE

**COMMUNITY UNIT SCHOOL
DISTRICT 200**

By: Steve Chirico
Its: Mayor

By: _____
Printed Name _____
Its: _____

ATTEST:

ATTEST:

Pam Gallahue, Ph.D.
Its: City Clerk

Printed Name: _____
Its: _____

Date

Date