

# **Library Negotiating Committee Meeting**

**Thursday, January 30, 2014**

**7:00 p.m., Meeting Room A**

## **Agenda**

1. CALL TO ORDER
2. CITIZENS' COMMENTS
3. APPROVAL OF NOVEMBER 25, 2013 MINUTES
4. LIBRARY LEASE
5. ADJOURN

**DRAFT**

**Library Negotiating Committee Meeting  
Monday, November 25, 2013  
7:00 p.m., Meeting Room A  
Minutes**

**CALL TO ORDER**

Meeting was called to order at 7:00 p.m. Committee members in attendance were Aldermen Dennis Baricevic, Pat Baeske, and Scott Greenwald. City Attorney Kevin Hoerner, Library Board President Don Baden, Library Director Jill Pifer, City Administrator Jim Snider, Alderman Denise Williams (arrived at 7:04 p.m.), and Becky Short were also present.

**CITIZENS' COMMENTS**

No comments.

**APPROVAL OF OCTOBER 24, 2013 REGULAR SESSION MINUTES**

The October 24, 2013 regular session minutes were approved as submitted.

**LIBRARY LEASE**

The draft agreement the Library's Attorney, Phil Lenzini, put together and red-lined by the City Attorney, Kevin Hoerner, was handed out to the Committee. There were two items on the draft agreement that needed to be discussed. They were Section 10 and Section 14.

There was a lengthy discussion about the value of the lease and the section about special circumstances in regards to termination or renegotiation. It was suggested to establish a fair market value now, instead of down the road, that way there would be no need to include Section 14 in the agreement.

Committee discussed having the Library give the City a Letter of Intent for interior renovations and the Library would like the City to give the Library a Letter of Intent for exterior renovations.

The Library will talk to their attorney to discuss changes and then their attorney will contact the City Attorney.

Alderman Greenwald made a motion to accept the amendments to the agreement as identified except for Section 14. Seconded by Alderman Baeske.

Roll call on the motion showed Aldermen Greenwald, Baeske, and Baricevic voting "Yea." Motion passed. The amendments to the agreement are attached and made part of these minutes.

There will be no Library Negotiating Committee meeting in December. The next meeting will be scheduled in January.

**ADJOURN**

The Committee adjourned at 8:28 p.m.

Respectfully submitted,

Alderman Dennis Baricevic  
Chairman

DB/rss

Attachment

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement made this \_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Fairview Heights, Illinois Municipal Corporation, herein referred to as “City,” and the Fairview Heights Public Library, a unit of local government organized and existing under the Local Library Act of the State of Illinois, herein referred to as “Library.”

### RECITALS

**WHEREAS**, pursuant to Article VII, Section 10 of the Constitution of the State of Illinois of 1970, together with the powers and authority granted to the parties under the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), the parties hereto have the authority to enter into this Intergovernmental Agreement for the proper purposes of their respective governments and specifically to facilitate the occupancy, operation, maintenance, repair, and remodeling of a public library on property located in the City of Fairview Heights, Illinois;

**WHEREAS**, it is in the best interests of the health, safety and welfare of the residents of the Library, and the City that the relationship between the parties be established and continue under a formal written arrangement;

1. The City currently owns that real estate described in “Exhibit A” attached hereto, together with the improvements thereon in the City of Fairview Heights, St. Clair County, Illinois, commonly known as the Public Library Building.
2. By operation of prior agreements or leases, the Library has occupied and operated, on behalf of the citizens and taxpayers of the City, the library facilities and building on the real estate upon which it sets upon completion of its building program in 1990.
3. The Library and the City, with the prior lease agreement having expired, desire to enter into a new agreement allowing the Library to keep and maintain the library building within said area, and therefore desire to grant a possessory interest to the building, improvements and facility which is commonly recognized as the library building, to the Library.

**NOW, THEREFORE**, for and in consideration of the mutual and several promises and undertakings herein contained, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties freely and voluntarily agree as follows:

### **SECTION ONE.**

**LEASED PREMISES.** City grants to the Library, and Library accepts possession from the City of that building and those improvements to the real estate located in the City of Fairview Heights, St. Clair County, Illinois, and legally described in “Exhibit A,” attached hereto and incorporated herein by this reference, pursuant to and in accordance with the terms and conditions set forth herein.

## **SECTION TWO.**

### **TERM.**

A. The initial term of this Intergovernmental Agreement shall be for Twenty (20) years, beginning on the date of the approving action of the last of the Parties to act as reflected in the respective resolutions of approval or motions excerpted and attached hereto as Group Exhibit B, and ending on the date Twenty (20) years thereafter.

B. The expression "term of this agreement" as used in this Agreement refers to the initial term and to any renewal of the Agreement pursuant to Section Ten hereof.

## **SECTION THREE.**

### **RENT.**

A. The total rent for the initial term hereof shall be One Dollar (\$1.00) payable annually on or before the last day of the year preceding, for each year during said initial term.

B. The rent for any renewal or extension hereof shall be One Dollar (\$1.00), per year, for each year of the term of any renewal or extension hereof.

C. All rents shall be paid by the Library to the City by delivery to the City ~~Treasurer~~ Clerk on or before the date due.

## **SECTION FOUR.**

### **USE.**

A. The Library shall use the premises for expansion, replacement or remodeling of its current library building.

B. The Library shall maintain a primary library operation upon the described premises throughout the term of this Agreement.

C. The Library acknowledges that the described premises are currently used as the library facility open to general public library use. The Library agrees to keep the demised premises open to the public for such library uses and services, subject only to those restrictions necessitated by health and safety considerations, the law, and the Library's use for its own purposes.

## **SECTION FIVE.**

### **IMPROVEMENTS.**

A. The Library shall prepare, at its sole expense, plans and specifications for any improvements constructed upon the described premises, including any expansion of the existing building. Said plans and specifications shall be submitted to City for code compliance review i.e. Building Code, Fire Code, etc.

B. All Improvements shall conform to all applicable building or construction codes.

C. All improvements shall conform to the appropriate and applicable developmental standards set forth in City's Plan and Zoning Code.

D. As of the time this Agreement is in preparation, the Library intends, given the current needs which exist, to engage certain remodeling upgrades to the library building, and written notice of that intended upgrade is set forth in Exhibit C attached hereto.

## **SECTION SIX.**

### **MAINTENANCE AND UTILITIES.**

A. The City shall be responsible for keeping and maintaining the premises and all improvements thereon.

B. The City shall be responsible for providing ~~for~~ all utilities furnished to the premises.

## **SECTION SEVEN.**

**MECHANICS LIENS.** The Library shall keep all and every part of the premises and all improvements thereon free and clear of any and all mechanics', material suppliers' and any other liens for or arising out of or in connection with the Library's use of the premises.

## **SECTION EIGHT.**

**CITY USAGE.** The Library agrees that the City may use the meeting spaces and other appropriate improvements which are part of the Library leased premises as long as said uses do not interfere with Library's programs and the scheduled use thereof. The parties agree to make every reasonable attempt to coordinate such scheduling as to avoid any time conflicts and facilitate usage of the meeting space by the City.

## **SECTION NINE.**

**INSURANCE.** The Library shall be responsible for the purchase and acquisition of insurance to cover any loss, injury, death or damage to persons or property that at any time may

be suffered or sustained by or in or upon the Library or by any person who may at any time be using, occupying or visiting the described premises or be in, on or about those premises, for any cause, with such insurance naming the City as an “additional insured.”

A. The City shall, at all times during this Agreement, keep all improvements now existing or hereafter constructed upon the premises, insured against loss or damage by fire or other calamity.

B. The Library shall, at all times during this Agreement, keep and maintain in effect adequate and sufficient liability insurance covering the described premises, in an adequate and appropriate amount as recommended by the insurance provider. Such insurance shall specifically insure the Library against any and all liability assumed by it under this agreement, and include the Library, its trustees and employees and the City and its officials and employees as additional “insureds” for any and all liabilities as set out above.

#### **SECTION TEN.**

~~**RENEWAL.**— This Intergovernmental Agreement may renew for up to two (2) successive additional terms of twenty (20) years each, if the Library gives the City written notice of its intent to so renew this Agreement, and the City does not give timely written notice of objection to such renewal. Said notice to renew must be in writing and delivered to City not more than 120 days nor less than 60 days prior to the end of the then current term. Said notice of objection by the City must be in writing and delivered to the Library within 30 days of receipt of the notice to renew from the Library.~~

#### **SECTION ELEVEN.**

**INDEMNIFICATION.** The City and the Library hereby each completely releases and waives any and all rights of recovery, including any insurer’s subrogation rights against the other, their officials, ~~c~~ Council members, trustees, employees or agents, for loss or damage arising from or relating to any claim of personal injury, death or property damage (including without limitation damage to the City’s or Library’s property) in or about the leased premises or resulting from any condition or activity thereon or any act or omission of City or Library or any person or entity for whom the City or Library is legally responsible, to the extent of any insurance coverage maintained by the City or the Library under this Agreement or otherwise. Library shall defend, indemnify and hold City harmless from and against any loss or liability, including attorney fees and other litigation expenses, arising out of or in any way connected with any claim for death, personal injury or property damage occurring on, in or about the leased premises or resulting from any condition or activity thereon, unless such injury, death or damage is caused solely by the active negligence of City, its agents or servants occurring after the effective date hereof.

#### **SECTION TWELVE.**

**CITY’S RIGHT OF ENTRY.** City, its officials, council members, agents or employees shall be permitted to enter the leased premises at any reasonable time, without abatement, rent, or

prior notice, for the purposes of inspecting, repairing, adding to, or altering the leased premises as deemed necessary by the City for the safety, preservation, or restoration of the leased premises, or for any other purpose or reason, including, but not limited to, running telephone or other electrical wires and other conduits, tubes, and pipes. The City agrees that whenever possible, it will furnish the Library as much notice of the entry as it can and will make reasonable efforts to avoid or minimize disruption of Library programs or use.

#### **SECTION THIRTEEN.**

**TERMINATION.** If a default occurs, the City may serve written notice upon the Library that that City elects to terminate the Agreement upon a specified date not less than thirty (30) days after the date of serving said notice. This Agreement shall expire on the date so specified as if that date had been originally fixed as the expiration date of the term herein granted. No defaults shall be deemed waived unless in writing and signed by the City, except that a default under this paragraph shall be deemed waived if such default is made good and cured before notice of termination of this Agreement is served on Library or within the thirty (30) days thereafter. The City's exercise of the right to terminate shall be in addition to any other available remedy at law, including any action for breach of contract.

#### **SECTION FOURTEEN.**

**SPECIAL CIRCUMSTANCES TERMINATION OR RENEGOTIATION.** In the event that the Library converts to or becomes a public library district, or the City is unable to, or decides and takes official action to no longer abate the Library's annual property tax levy with non-property tax dollars, this Agreement may be terminated by either party, with thirty (30) days written notice, or its terms and provisions reopened for renegotiation of the leasehold. ~~However, notwithstanding this provision, the first Fifteen (15) years of the initial term of this Agreement is a minimum leasehold period or term, which, unless both parties agree in writing to waive that minimum period, must continue regardless of any such "special circumstances," early termination or renegotiation hereunder.~~

#### **SECTION FIFTEEN.**

**RE-DELIVERY OF LEASED PREMISES.** Upon termination of this ~~A~~agreement, by default or otherwise, the Library shall convey to the City all buildings and improvements on the demised premises or remove all such equipment, fixtures, and improvements at its sole expense.

#### **SECTION SIXTEEN.**

**ATTORNEY'S FEES.** In any suit or other proceeding to enforce any covenant or ~~agreement~~ section of this Agreement or for the breach of any covenant or agreement herein contained, the City or the Library respectively shall be entitled to recover litigation expenses incurred, including reasonable attorneys' fees and court costs, if it prevails.

## **SECTION SEVENTEEN.**

**COMPLIANCE WITH LAWS.** The Parties will promptly comply with all applicable and valid laws, ordinances and regulations, as now or hereafter amended, of Federal, state, county, municipal or other lawful authorities pertaining to the use and occupancy of the leased premises, including (without limitation) any laws, ordinances, rules or regulations relating to environmental protection, health or public safety.

## **SECTION EIGHTEEN.**

**GRANT OF RIGHT OF FIRST REFUSAL.** The City agrees herein and hereby grants to the Library a right of first refusal to purchase and acquire the described property within Exhibit A, commonly known as the Public Library Building. In the event the City, during the term of this Agreement, ever decides to sell or transfer ownership thereof, it shall give the Library written notice thereof including the terms of such, and the Library shall have sixty (60) days there-from to make its election to exercise such right on those same ~~or better~~ terms, by delivering a written notice to the City of such election.

## **SECTION NINETEEN.**

**GOVERNING LAW.** This Agreement shall be construed under and pursuant to the laws of the State of Illinois. This Agreement is binding upon and inures to the benefit of the parties hereto, their successors and assigns. The exclusive jurisdiction for litigation of any dispute relating to this Agreement shall be the Circuit Court of St. Clair County, Illinois. The City and the Library hereby irrevocably waive the right to jury trial in litigation of any dispute arising out of or relating to this Agreement.

## **SECTION TWENTY.**

**COMPLETE AGREEMENT.** ~~—~~This instrument contains a complete and final expression of the agreement between the parties. Neither party has made or relied on any promise, warranty, representation or inducement which is not expressly stated herein. In the event any term of this Agreement shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of the remaining part of that term nor the validity of any other terms of this Agreement shall in any way be affected thereby. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute a single document.

No change or modification of this Agreement shall be valid unless it is in writing and is signed by the parties hereto. The parties have participated jointly in negotiating and drafting this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**SECTION TWENTY-ONE.**

**FURTHER EXECUTIONS.**

Each party hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the date and year first above written.

**CITY OF FAIRVIEW HEIGHTS**, an Illinois  
municipal corporation

**FAIRVIEW HEIGHTS PUBLIC LIBRARY**,  
an Illinois public library

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

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

ATTEST:

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**CITY**

**LIBRARY**