

20-R-19

A RESOLUTION

Authorizing the City Manager to Execute a Memorandum of Understanding with the Friends of the Robert Crown Center

WHEREAS, the Robert Crown Community Center is the site of leisure activities, early education, summer camp, sport and wellness for all Evanston's residents; and

WHEREAS, the Friends of the Robert Crown Center, an Illinois not-for-profit corporation (the "FRCC"), was established in 2016 to solicit funds for the construction, financing and maintenance of the new Robert Crown Community Center and Library (the "Center"); and

WHEREAS, the current Robert Crown Community Center was built in 1974 and located at 1701 Main Street, in part funded by the Crown Family; and

WHEREAS, the demand for additional programming and the deteriorating condition of the current Robert Crown Center necessitated the construction of a new and larger facility; and

WHEREAS, the new Center at 1801 Main Street is currently under construction and will be a two-story 130,000 square foot building with 3 adjacent turf fields; and

WHEREAS, the FRCC volunteers are residents of the City of Evanston who have given thousands of cumulative volunteer hours to reduce the cost of the Center for the taxpayers of Evanston; and

WHEREAS, the FRCC volunteers have raised more than \$12 million dollars to date for the Center and are well on their way to a goal of \$15 million dollars; and

WHEREAS, the Crown Family, through the Arie & Ida Crown Memorial and the Crown Family Philanthropies, is providing a generous donation once more to build a new Center and continuing their support of this community and the enhanced recreation opportunities that will be provided in the new facility; and

WHEREAS, the FRCC will provide \$5 million dollars in 2019 and \$1 million in 2020 to the City to fund the construction cost; and

WHEREAS, the FRCC will provide an additional \$9 million dollars over the next 10 years to directly fund debt service; and

WHEREAS, the FRCC plan to continue to fundraise to support the new Center and the cumulative donations received by FRCC in excess of \$15 million will be directed to the RCC Maintenance Fund; and

WHEREAS, the parties desire to memorialize their respective rights and obligations with respect to the donated funds and enter into a memorandum of understanding regarding the rights and obligations between the parties,

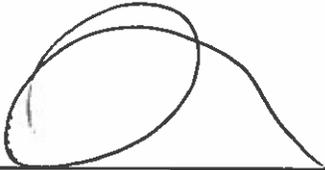
NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to execute the Memorandum of Understanding with the Friends of the Robert Crown Center, attached hereto as Exhibit 1, the terms are incorporated herein by reference.

SECTION 2: The City Manager or his designee is hereby authorized and directed to negotiate any additional terms of the Memorandum of Understanding as he may determine to be in the best interests of the City and in a form acceptable to the Corporation Counsel.

SECTION 3: That this Resolution 20-R-19 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

Attest:



Devon Reid, City Clerk

Adopted: April 8th, 2019



Stephen H. Hagerty, Mayor

Approved to form:



Michelle L. Masoncup, Corporation Counsel

EXHIBIT 1

This **MEMORANDUM OF UNDERSTANDING** ("MOU") made this ____ day of _____, 2019 (the "**Effective Date**") sets forth the principal terms by and between **THE CITY OF EVANSTON** ("**City**") and **THE FRIENDS OF THE ROBERT CROWN CENTER** ("**FRCC**") to transfer donated funds from FRCC to the City of Evanston for the new **ROBERT CROWN COMMUNITY CENTER, ICE COMPLEX and LIBRARY** ("**New RCC**") currently under construction.

City and FRCC do hereby agree to the following terms in this MOU:

A. Purpose and Term

1. The City is constructing a new modern sports, education and community complex with the addition of a new branch library to replace the existing Robert Crown Community Center (the "**New RCC**"), as depicted on the site plan dated January 23, 2019, attached hereto as Exhibit A and incorporated herein by reference. In order to help finance the New RCC, the FRCC are working to raise an estimated \$15 million dollars ("**Site Plan**"). In January of 2017, the City approved a contract with Woodhouse Tinnuci Architects, LLC to provide architectural/engineering services ("**Architect**"). In February of 2018, the City approved a contract with Bulley & Andrews to provide construction management services ("**Contractor**"). The design was approved by City Council, July 2018.
2. The general purpose of this MOU is to govern the use of the funds received to finance the construction and maintenance of the New RCC. Upon completion of the New RCC, this MOU will govern the administrative process for donations.
3. The Parties agree that the term of this MOU commences on the Effective Date and expires after 10 years (120 months) (the "**Term**"), it being understood that Sections D(3), F(2), F(4) and G (the "**Surviving Terms**") survive such expiration in accordance with their terms. The Parties will meet and confer prior to expiration of the MOU to address present conditions and future goals of the New RCC.

B. FRCC:

1. Friends of the Robert Crown Center is a 501(c)(3) public charity founded in 2016 for the purpose of soliciting and stewarding gifts, grants, and other funds for the construction of a New RCC, and to help support the continuing maintenance and capital needs of the new facility and park following completion of construction "FRCC".
2. FRCC is an independent, volunteer-led entity with no controlling relationship with the City of Evanston or the Evanston Public Library. FRCC is not an agent or contractor of the City or Evanston Public Library.

C. New RCC

1. Premises. The City owns the land and the existing Robert Crown Center at the corner of Dodge and Main Street with a common address of 1701 Main Street, Evanston, Illinois. The New RCC will be at 1801 Main Street, Evanston, Illinois (the "Premises"). For the avoidance of doubt, the Premises includes all facilities located thereon and all parks, gardens and other real property included at such location. The City covenants, warrants and represents that it has good, insurable fee simple title to the Premises, the Premises is free of all liens, leases, options, easements, covenants and other similar limitations and restrictions, and that it has full and unlimited authority to execute and perform this MOU.
2. The New RCC essential features, as outlined in the Site Plan, include the following: 5,950 square foot branch library, a 10,700 square foot gym, a 5,100 square foot child care suite, three turf fields consisting of roughly 226,000 square feet, a running track, art room, fitness room/dance studio, and two 200x85 ice rinks with ten locker rooms. The City shall cause the New RCC to be constructed in accordance with the Site Plan, including such essential features.
3. Authority. The City represents it has all legal authority and power to enter into and perform each and all of the provisions of this MOU, including but not limited to the naming of the Premises in memory of Robert Crown in perpetuity, and the financing, constructing, equipping, and maintaining of the Premises, all in accordance with and pursuant to the terms and provisions of this MOU. The City hereby exercises without limitation its Home Rule powers pursuant to Article VII of the Illinois Constitution. The City acknowledges and agrees that FRCC is entering into this MOU in express reliance on the City's representations and warranties contained in this MOU. FRCC acknowledges that the City is entering into this MOU in express reliance on FRCC's representations and warranties contained in this MOU. Neither party shall take

any action which will in any manner or to any extent be contrary to, or inconsistent with, its obligations hereunder. If the Crown Family or Crown Family Philanthropies elects to remove their names or the Robert Crown name from the New RCC at a later date, it is entitled to do so with at least 6 months' notice.

D. Funding of the Design and Construction of the New RCC

1. The City projects that the total cost for design and construction of the New RCC is \$53 million. FRCC is soliciting pledges from private donors with a goal of \$15 million to support the construction, financing and maintenance of the New RCC. FRCC, in conjunction with the City, is actively soliciting pledges and receiving commitments and contributions by private donors (the "**Private Donors**" or "**Donor Group**" and such funds, the "**Donor Funds**") for the construction, financing and maintenance of the New RCC. It is anticipated that the Private Donors will provide approximately \$15 million of the total project cost through cash collections, written pledges and grant awards.
2. The City will use its best efforts to complete construction of the New RCC building no later than December 1, 2019. Completion of construction shall be evidenced by a Temporary Certificate of Occupancy for the Building. In addition, substantial completion of the athletic fields will be completed by July 3, 2020.
3. The City will provide necessary funding for the design, construction, operation and maintenance of the New RCC in excess of any Available Funds provided to the City through FRCC. The City will pay the construction costs from debt financing and Available Funds after funds are transferred to the City as described in Section E.
4. It is agreed that the ownership of the New RCC will vest in the City of Evanston.

E. Allocation and Distribution of FRCC Funds:

1. **Deposit of FRCC Funds:** In accordance with the Bylaws for the FRCC, all funds received by FRCC in connection with the design, construction, debt service and/or maintenance of the New RCC must be deposited in a checking account, set up especially for the fundraising campaign. Such accounts must be kept separate and apart from any accounts of the City.
2. **Conditions Precedent to FRCC Funding:** The obligations of FRCC to provide funds hereunder shall be subject to the following (collectively, the "**Funding Conditions**"): (a) FRCC having available liquid Donor Funds from donors with whom the City has entered into agreements meeting the requirements

described in Section F(1) in excess of its current and projected third party and operational expenses (“Available Funds”), and (b) the City being in compliance in all material respects with this MOU.

3. Invoices for Transfer of Available Funds: In May 2019, the City will issue an invoice to FRCC for \$5 million of Available Funds to fund the construction cost. In February 2020, the City will issue an invoice for \$1 million to fund the construction cost. Starting in January 2021, all future invoices from the City to FRCC will following these steps:

- Step One: On an annual basis, the City will invoice FRCC in an amount not to exceed 95% of Available Funds.
- Step Two: FRCC shall review such invoice for draw purposes at a FRCC board meeting.
- Step Three: After FRCC approves the invoice, and subject in all cases to the satisfaction of the Funding Conditions, FRCC shall wire the full invoice amount to the City. All Available Funds provided by FRCC to the City hereunder must be used for construction of the New RCC, debt service on indebtedness incurred for the design and construction of the New RCC, or maintenance of the New RCC (including payment of third party expenses associated therewith), and for no other purpose. No portion of the FRCC funds shall be used by the City to fund any other losses or expenses (including any losses or expenses incurred in connection with any actual or threatened litigation or actual or alleged violation of law). The City will exercise its discretion on allocation of FRCC funding within the parameters of the uses permitted herein. In the event that FRCC is not able to pay an invoice properly submitted and approved hereunder due to a lack of Available Funds, FRCC will fund such shortfall (on a first-in-first-out basis) in the event that it later obtains Available Funds, subject to continuing satisfaction of the Funding Conditions.

4. Wire of Funds: The City agrees to act as administrator of all financial activities associated with the design, construction, maintenance and operation of the New RCC, except with respect to the deposits of Donor Funds received by FRCC. FRCC agrees to hire a certified public accountant to perform a review and audit of its accounts. FRCC must not unreasonably withhold Available Funds for distribution to the City pursuant to Step Three of Section E(3).

5. Financial Reports: City will produce and deliver to FRCC annual financial reports on the New RCC project and maintenance activities and Maintenance Fund. FRCC must provide annual financial reports regarding funds collected, pledged and disbursed in accordance with FRCC Bylaws. FRCC and the City

must keep records of all donations received for a minimum of 5 years after the time of donation.

6. **Dissolution of FRCC:**

- If FRCC is dissolved prior to the completion of construction, FRCC will (a) provide a full accounting and financial report of Available Funds and pledges to the City prior to dissolution; and (b) distribute all Available Funds in its accounts, after payments are made or reserves are established for third party expenses, to the City of Evanston for use exclusively in the New RCC, subject to the terms and conditions contained herein. FRCC has an obligation to convert cash-equivalent donations (such as marketable securities) into cash for deposit with the City.
- If FRCC is dissolved following construction of the New RCC, FRCC will (a) provide a full accounting and financial report of Available Funds and pledges to the City prior to dissolution; and (b) distribute all Available Funds, after payments are made or reserves are established for third party expenses, to the City of Evanston for use exclusively in the New RCC, subject to the terms and conditions contained herein.

F. Donors to the New Robert Crown Community Center

1. The City has agreed to enter into eight agreements ("Major Donor Agreements") with the following large donors for the New RCC: Arie & Ida Crown Memorial (through Crown Family Philanthropies), Wintrust Bank, Evanston Soccer Association, Evanston Hockey Association, Valli Produce, Northwestern University, Beacon Academy, and Chicago Young Americans Hockey Association (the "Major Donors"). The terms of the investments made by the respective Major Donors are part of separate agreements between the City and the respective group. Accordingly, the Major Donor Agreements shall specifically supercede and terminate the agreements and letters of intent such Major Donors have with FRCC.
2. The City agrees to defend, indemnify, and hold harmless the FRCC, the Arie & Ida Crown Memorial, the Crown Family Philanthropies, and their successors, assigns and their respective officers, directors, trustees, agents, employees and volunteers, of and from all damages, claims and charges that may arise out of or related in any way to the performance under any agreements with Private Donors, including the Major Donor Agreements (including any actual or alleged breach of any such agreement), from any breach of any representation, warranty or obligation hereunder, or from the design, construction, operation or maintenance of the New RCC. For purposes of clarification, this

indemnification and hold harmless provision in this Agreement does not include the Private Donors, other than the Arie & Ida Crown Memorial and the Crown Family Philanthropies.

3. As new pledges, commitments and donations are received from FRCC by Private Donors, FRCC will work with the City to negotiate any new donor agreements which, upon execution by the City, shall be governed by Section F(2) above.
4. Robert Crown Center Naming. The building and park will continue to be referred to as the "Robert Crown Community Center" and "Robert Crown Park" in perpetuity, subject to the right of Arie & Ida Crown Memorial or The Crown Family Philanthropies to cause the City to cease using the Robert Crown name in the event of a breach by the City of any of its representations, warranties and covenants contained herein. The parties will meet and confer on any additional naming rights agreements, other than the New RCC facility, which include any interior and exterior areas within the New RCC.
5. The Parties will meet and confer to approve all recognition of Agreed Donor Commitments, including signage for all rooms and building components named by Private Donors, the naming wall, and all other permanent recognition of Private Donors on, in or around the New RCC.

G. Operations of the New RCC

1. The City agrees that it will maintain in a good state of repair and operating condition the New RCC, including all facilities and equipment based on life expectancy and current condition.
2. Maintenance Funds: On July 24, 2017, the City Council adopted Resolution 65-R-17, *A Resolution Creating a Separate Fund entitled the 'Robert Crown Community Center Maintenance Fund' and Directing Certain Donation Funds to be Deposited and Utilized after the Construction of the New Facility*. Commencing in 2021, the City will provide annual deposits of at least \$175,000 to the Robert Crown Community Center Maintenance Fund (the "Maintenance Fund") for 30 years to ensure that the new RCC will be viable in the long term. The Maintenance Fund shall not be used or borrowed from or posted as collateral for any purpose other than the maintenance of New RCC.
3. The funds to pay for the design and construction costs must be fully funded prior to deposits into the Maintenance Fund. All Available Funds that are provided to the City in excess of \$15 million shall be deposited into the Maintenance Fund.
4. Allocation of Available Funds, subject to the satisfaction of the Funding Conditions:

- In May 2019, FRCC will, subject to the terms and conditions contained herein, transfer \$5 million of Available Funds to the City for the cost of construction of the New RCC. In February 2020, FRCC will transfer \$1 million of Available Funds to the City for the cost of construction.
 - The next \$9 million of Available Funds provided by FRCC hereunder will be used by the City to pay debt service on bonds issued for the design and construction of the New RCC.
 - All FRCC Available Funds provided to the City in excess of \$15 million will be deposited into the Maintenance Fund.
5. The City and FRCC shall meet and confer on an annual basis regarding the maintenance needs of the New RCC and the use of the Maintenance Fund.

H. Miscellaneous

1. FRCC shall ensure that it remains in good standing with the Illinois Secretary of State and will maintain its 501(c)(3) status. FRCC represents that it is authorized to negotiate and execute this MOU and take all appropriate actions to honor the covenants and representations contained herein.

2. The parties to this MOU will bear their own respective expenses incurred in connection with the negotiation, preparation, execution, delivery, and performance of this MOU and the consummation of the transactions it contemplates. This includes, without limitation, all fees and expenses of agents, representatives, legal counsel, accountants and financing providers.

3. This MOU, including all Exhibits, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral with respect to the subject matter hereof.

4. No provision of this MOU may be modified or waived unless in writing signed by both parties. Waiver or modification of any one provision shall not be deemed to be a waiver or modification of any other provision hereof.

5. The City and FRCC agree that the Arie & Ida Crown Memorial and The Crown Family Philanthropies are intended third party beneficiaries of the rights of FRCC hereunder, with the power to enforce such rights directly against the City, and has the rights hereunder granted to it hereunder pursuant to Section F(4) hereof.

6. All notices, demands, claims and other communications hereunder shall be in writing and addressed to the parties at the address specified below:

If to the City: City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: City Manager

With a copy to: City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: Corporation Counsel

If to FRCC: Friends of the Robert Crown Center
PO Box 8064
Evanston, IL 60204-8064
Attn: Daniel Stein

If to Crown Family
Philanthropies: Crown Family Philanthropies
222 North LaSalle Street, Suite 1000
Chicago, IL 60601

7. This MOU shall be governed by and construed under the laws of the United States and the State of Illinois as applied to agreements entered into and to be performed entirely within Illinois between Illinois residents, notwithstanding any provisions relating to conflict of laws.

8. If there is any dispute between the Parties relating to the terms or performance of this agreement, then the parties agree to the following dispute resolution process. Before initiating any formal proceeding, the Party seeking resolution shall first give written notice to the other of the nature of the dispute and request non-binding mediation before a mutually agreed upon mediator. The Parties agree to cooperate with each other in the mediation process with regard to prompt scheduling and participation in good faith. If the Parties are unable to resolve their dispute through mediation, that dispute shall be resolved by arbitration administered in accordance with the American Arbitration Association's Commercial Arbitration Rules. The arbitration hearing shall take place in Evanston, Illinois, or such other location on which the Parties shall agree before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may immediately bring a proceeding seeking preliminary injunctive relief or other relief in a court having jurisdiction thereof, which shall remain in effect until a final award is rendered in the arbitration proceeding.

AGREED, this the _____ day of _____, 2019.

CITY OF EVANSTON

FRIENDS OF ROBERT CROWN CENTER

By: _____

By: _____

Its: City Manager

Its: _____

Wally Bobkiewicz

Print: _____

ACKNOWLEDGED AND AGREED:

THE ARIE & IDA CROWN MEMORIAL
THE CROWN FAMILY
PHILANTHROPIES

By: _____

Its: _____

Print: _____

EXHIBIT A

**ROBERT CROWN COMMUNITY CENTER SITE PLAN DATED JANUARY
23, 2019**