

**ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF NAPERVILLE AND THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY TO OPERATE A LONG-TERM  
HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY**

**THIS ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT** (defined below) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, between the City of Naperville, (CITY), a home rule municipal corporation with offices at 400 South Eagle, Naperville, Illinois 60540, and the Illinois Environmental Protection Agency, (ILLINOIS EPA), 1021 North Grand Avenue East, Springfield, Illinois 62794-9276, an agency of the Executive Branch of the government of the State of Illinois created by the Illinois General Assembly under the Illinois Environmental Protection Act, 415 ILCS 5/4. The CITY and the ILLINOIS EPA are together hereinafter referred to as "Parties".

**RECITALS**

WHEREAS, Section 5 of the Intergovernmental Cooperation Act provides, in part, that “[a]ny one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform,” 5 ILCS 220/5; and

WHEREAS, the CITY and the ILLINOIS EPA are public agencies within the meaning of Section 2 of the Intergovernmental Cooperation Act, 5 ILCS 220/2; and

WHEREAS, the CITY is a home rule municipal corporation under and by virtue of the Constitution and laws of the State of Illinois, and has acted in the exercise of its statutory and home rule authority in the exercise of the AGREEMENT; and

WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois encourages and provides for municipalities and units of local government to cooperate, contract and otherwise associate with other agencies for their mutual benefit, and expressly authorizes units of local government to contract with the State to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, the Illinois General Assembly has found that there is a need for household hazardous waste collection centers throughout the State that can be operated to augment existing and future hazardous waste storage facilities, (415 ILCS 90/2); and

WHEREAS, Section 22.16b(d) of the Illinois Environmental Protection Act mandates that ILLINOIS EPA establish household hazardous waste collection centers in appropriate places in the State to ensure that said wastes collected are properly disposed of, and authorizes the ILLINOIS EPA to contract with other parties for that purpose, 415 ILCS 5/22.16b(d); and

WHEREAS, in order to protect against environmental damage and harm to public health, safety and welfare that may result from improper and unsafe transportation, treatment, storage, disposal, and dumping of commonly used household hazardous wastes (HHW), the City Council

agreed to operate a regional HHW collection program with assistance and financing from the ILLINOIS EPA and the CITY's other local government entities including, but not limited to, the County of DuPage, the County of Kane, the County of Will, and the City of Aurora ("FUNDING PARTNERS"); and

WHEREAS, to that end, the CITY submitted its "Proposal for Providing a Household Hazardous Waste Collection Program" ("Proposal") in response to the ILLINOIS EPA's "Request for Proposals to Co-Host a Long-Term Household Hazardous Waste Collection Facility," dated December 4, 1991; the ILLINOIS EPA accepted that proposal, and the agreement was extended in 1998, 2004, 2007, and 2012, and was amended in 2014, a copy of which is attached hereto ("INTERGOVERNMENTAL AGREEMENT or "AGREEMENT"); and

WHEREAS, the AGREEMENT provides for the CITY's operation of a HHW collection program at a CITY owned facility located at 156 Fort Hill Drive, Naperville, 60540 ("FACILITY"); and

WHEREAS, ILLINOIS EPA has entered a Contract with an HHW hauler ("CONTRACTOR") to pick up, transport and dispose of HHW from the FACILITY, to provide supplies and materials to the CITY for the operation of its HHW program, and to provide training to the CITY's collection personnel as provided in the AGREEMENT ("CONTRACTOR's SERVICES"); and

WHEREAS, the ILLINOIS EPA and the CITY have mutually agreed to extend the term of the AGREEMENT as herein provided in order for the Parties to finalize a new Agreement and for the CITY to negotiate any necessary amendments or new Agreements with its FUNDING PARTNERS while endeavoring not to disrupt the CITY's operation of its HHW collection program.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties agree as follows:

- 1.0 The foregoing Recitals are incorporated by reference as though fully set forth herein.
- 2.0 The AGREEMENT is hereby amended as follows:
  - 2.1 The term of the AGREEMENT is extended through June 30, 2018, unless sooner terminated as therein provided or as provided in accordance with Section 2.3 below.
  - 2.2 During the period of January 1, 2018 through June 30, 2018, ILLINOIS EPA's payments to CONTRACTOR for CONTRACTOR's SERVICES and any other payments required by ILLINOIS EPA to CONTRACTOR required under the AGREEMENT shall not exceed \$250,000 ("MAXIMUM PAYMENT AMOUNT" or "AMOUNT"), except as expressly provided in Section 2.2.1 or 2.2.2 below, subject to the availability of sufficient funds and appropriations as provided in Section 2.3 below.

- 2.2.1 The CITY will use its best efforts to operate its HHW collection program in such a manner as not to exceed the MAXIMUM PAYMENT AMOUNT. If the CITY has any remaining HHW at the FACILITY i) after the ILLINOIS EPA has received invoices from CONTRACTOR reflecting the performance of CONTRACTOR's SERVICES that will result in an aggregate payment of the MAXIMUM PAYMENT AMOUNT (or pro-rated amount as the case may be), or ii) ILLINOIS EPA receives an invoice (or HHW approval form) from CONTRACTOR that will result in the aggregate payment to CONTRACTOR that exceeds the MAXIMUM PAYMENT AMOUNT (or pro-rated amount as the case may be) to remove the remaining HHW at the FACILITY, notwithstanding the CITY's exercise of its best efforts not to exceed said AMOUNT, then the ILLINOIS EPA will pay CONTRACTOR to pick up, transport and dispose of said HHW from the FACILITY (i.e., make a payment in excess of the MAXIMUM PAYMENT AMOUNT), provided that the CITY ceases collecting HHW within one business day of receipt of notice from ILLINOIS EPA that ILLINOIS EPA has received such invoices from the CONTRACTOR.
- 2.2.2 In the event that the ILLINOIS EPA determines, in its sole and absolute discretion, that additional funds (i.e., in excess of the MAXIMUM PAYMENT AMOUNT) are available to pay CONTRACTOR for CONTRACTOR's SERVICES related to the CITY's HHW program, then ILLINOIS EPA may increase the MAXIMUM PAYMENT AMOUNT.
- 2.3 Notwithstanding any provision to the contrary in the AGREEMENT or this Addendum, the payments to CONTRACTOR and any other obligation provided or required by ILLINOIS EPA under the AGREEMENT, as herein amended, are expressly contingent upon and subject to the availability of sufficient funds appropriated for the AGREEMENT and the services being reimbursed for thereunder, as amended herein. The ILLINOIS EPA may terminate or suspend the AGREEMENT and Addendum, in whole or in part, without penalty or further payment being required, if: i) sufficient State funds have not been appropriated to the ILLINOIS EPA, ii) the Governor or the ILLINOIS EPA reserves appropriated funds, iii) the Governor or the ILLINOIS EPA determines that appropriated funds may not be available for payment, or iv) the ILLINOIS EPA determines that there are otherwise insufficient funds available. The ILLINOIS EPA shall provide notice, in writing, to the CITY of any such funding failure and its election to terminate or suspend the AGREEMENT and Addendum as soon as practicable after such determination is made. Any suspension or termination pursuant to this Section will be effective upon the CITY's receipt of said notice notwithstanding any provision in the AGREEMENT or this Addendum to the contrary.
- 2.4 The ILLINOIS EPA will use its best efforts to i) email copies of all CONTRACTOR invoices for FACILITY hauling costs to the CITY's project manager (or such other person designated in writing by the project manager) within five business days of receipt, and ii) provide the CITY with a statement in the last week of each month reflecting the amount invoiced to date under the MAXIMUM PAYMENT AMOUNT.

- 2.5 The ILLINOIS EPA will provide technical and programmatic expertise to assist the CITY in making operational changes to function under the MAXIMUM PAYMENT AMOUNT and any subsequent maximum payment amount included under a new Agreement between the Parties. ILLINOIS EPA staff will be available to meet with the CITY to make recommendations concerning operational efficiencies of the FACILITY at reasonable times and with reasonable frequency during the term of this Addendum.
- 2.6 Notwithstanding any provision to the contrary in the AGREEMENT or this Addendum, the frequency with which the CONTRACTOR picks up waste from the FACILITY shall be determined by the CITY, provided that the CITY uses its best efforts to prevent CONTRACTOR's SERVICES costs from exceeding the MAXIMUM PAYMENT AMOUNT.
- 2.7 Notwithstanding any provision to the contrary in the AGREEMENT or this Addendum, and in an effort to comply with the provisions of Section 2.6 above, the CITY, with not less than fourteen (14) days advance written notice to the ILLINOIS EPA, may implement the following with respect to the operation of its HHW collection program: i) revise the dates and hours that the FACILITY will operate; ii) revise the methods of accepting household hazardous waste, including but not limited to an appointment-based schedule; and iii) further restrict the types of household hazardous waste that will be accepted at the FACILITY (provided that only HHW set forth in Section 6.1 of the AGREEMENT may be accepted, and no wastes or other items prohibited under Section 6.2 of the AGREEMENT may be accepted). The CITY shall not charge fees for HHW collected at the FACILITY, or establish the amount and type(s) of fees charged for different types of HHW, without the prior written approval of the ILLINOIS EPA.
- 3.0 The AGREEMENT shall remain in full force and effect as amended herein.

[SIGNATURE PAGE TO FOLLOW]

CITY OF NAPERVILLE:

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY:

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

By: \_\_\_\_\_  
Alec Messina  
Director

Attest:

Attest:

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

By: \_\_\_\_\_  
James Jennings  
Manager, Waste Reduction and  
Compliance Section

Date: \_\_\_\_\_

Date: \_\_\_\_\_