

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF NAPERVILLE AND THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
TO CONTINUE THE OPERATION AND MANAGEMENT OF A LONG TERM
HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY**

THIS INTERGOVERNMENTAL AGREEMENT (Agreement) is entered into this day of _____, 2024, between the City of Naperville (**City**), a municipal corporation, with offices at 400 South Eagle Street, 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 also are referred to herein each as a “**Party**” and together as the “**Parties**”.

RECITALS

1. 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

2. 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

3. 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

4. WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois encourages and provides for units of local government to contract and otherwise associate with the State to exercise, combine, or transfer any power or function; and

5. 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

6. 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

7. WHEREAS, to assist with the Illinois EPA’s statutory obligation to establish household hazardous waste collection centers in appropriate places in this State 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 household hazardous wastes (**HHW**), the City has agreed to host a household hazardous waste facility (**Facility**) on property owned by the City and to pay for operational expenses with the assistance of its partner 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 (herein **Funding Partners**) not including expenses which are the obligation of the Illinois IEPA hereunder (“**IEPA Costs**”).

8. WHEREAS, since at least 1991, the City has entered into intergovernmental Agreements with the Illinois EPA to operate an HHW collection Facility (**Facility**) within the City. The Facility is located on property owned by the City located at 156 Fort Hill Drive, Naperville, Illinois 60540 where residents of the State of Illinois can drop off their HHW; and

9. WHEREAS, the City is responsible for capital costs of the Facility; and

10. WHEREAS, the City and the Funding Partners each pay a share of the annual operating costs of the Facility; and

11. WHEREAS, Illinois EPA has entered a HHW Contract, as defined below, with a hazardous waste collection firm (**Contractor**) to pick up Acceptable HHW, as defined herein, from the Facility and transport said HHW to a Facility or facilities designated or approved by Illinois EPA for disposal, recycling or treatment of said HHW, to provide supplies and materials to the City for the partial operation of its HHW program, and to provide training to the City’s Collection Personnel (defined below) as provided therein (**Contractor’s Services**); and

12. WHEREAS, the Contract for Contractor’s Services that is currently in effect, and any subsequent such Contract entered by Illinois EPA during the term of this Agreement or any extension or renewal hereof, including any amendment or amendments, extensions, or renewals of such Contract for Contractor’s Services, is hereinafter referred to as the “**HHW Contract**”; and

13. WHEREAS, on June 22, 2018, the City and the Illinois EPA entered into the most recent intergovernmental Agreement pertaining to operation of the Facility and collection of HHW (**2018 IEPA HHW IGA**). The 2018 IEPA HHW IGA expired on June 30, 2023; and

14. WHEREAS, the Parties entered into an Interim Intergovernmental Agreement on September 13, 2023, and amended on January 2, 2024, and July 16, 2024, to continue the obligations of the 2018 HHW IGA relative to the operation of the Facility, effective from July 1, 2023, through September 4, 2024; and

15. WHEREAS, the Illinois EPA and the City wish to continue the relationship generally described above by entering into a new Intergovernmental Agreement to clarify their respective responsibilities as provided herein.

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

1.0 INCORPORATION OF RECITALS.

1.1 The foregoing recitals are incorporated by reference as though fully set forth herein.

2.0 TERM OF THIS AGREEMENT.

2.1 The term of this Agreement shall be for five (5) years beginning on July 1, 2024, and expiring on June 30, 2029, unless sooner terminated or extended, as herein provided (**Term**).

3.0 FACILITY LOCATION, DESIGN, AND OPERATION.

3.1 At its sole expense, the City shall pay all capital costs of the Facility.

3.2 The City and its Funding Partners shall each pay a share of the annual operating costs of the Facility (not including any IEPA Costs).

3.3 Subject to fulfillment by the Illinois IEPA of its obligations hereunder and continued contributions from the Funding Partners for operation of the Facility, the City shall continue to maintain and operate the Facility as herein provided.

3.4 This Agreement applies to operation of the HHW collection program at the location identified herein and shall not apply to any other location unless expressly agreed to by the Illinois EPA in writing.

3.5 The City shall comply with all applicable laws and regulations, including but not limited to, environmental laws and regulations, and obtain all necessary permits and approvals required for capital improvements to and operation of the Facility including, but not limited to, Illinois EPA non-hazardous waste storage permits. Waste shall not be received at the Facility unless all permits and approvals required by law have been obtained. The City shall maintain valid permits for the Facility.

3.6 The Facility shall include one or more storage/containment structure(s) for the HHW that meets or exceeds all permit criteria for design and operation of such structures as required by 35 Ill. Adm. Code Part 807 or any superseding regulations. All operations and any modification or expansion of the Facility and storage/containment building(s) shall comply with permit requirements and applicable laws. In addition to compliance with permit criteria, the Facility shall satisfy the following requirements:

3.6.a. The size and configuration of the property shall allow for efficient unloading, segregating, and storage of wastes;

3.6.b. The size and configuration of the property shall allow for easy entry and exit by residents wishing to drop off Acceptable HHW (as defined in Section 6.1) at the Facility, their vehicles, and the vehicles of the Contractor.

- 3.6.c. All unloading zones, waste handling and storage areas shall be located on a level, intact asphalt or concrete surface.
- 3.6.d. The active portion of the Facility shall be properly secured at all times, and all Acceptable HHW shall be stored in a locked storage room located within the Facility. Except for unloading areas, residents shall not be allowed access to the active portion of the Facility.
- 3.6.e. Traffic shall be directed to move freely and safely within the Facility and the City shall use its best efforts to prevent queuing and traffic hazards on streets surrounding the Facility.
- 3.6.f. All collected Acceptable HHW shall be placed in a storage building located at the Facility that is lockable, vented, labeled, properly secured, and in compliance with all permit requirements and applicable laws. All collected Acceptable HHW shall be placed inside the storage building at the close of each collection day.
- 3.6.g. The City shall appoint a local project manager (**HHW Facility Manager**) to be the main contact with the Illinois EPA for purposes of this Agreement. That person shall be an employee or contractual employee of the City, a high school graduate, and possess credit for at least eight (8) semester hours of college-level chemistry or a Bachelor of Science Degree in one of the life or natural science disciplines from an accredited institution. The City shall promptly notify the Illinois EPA if the HHW Facility Manager is changed and provide information detailing the new HHW Facility Manager's education and experience.
- 3.6.h. The City may, but shall under no circumstances be obligated to, contract with other entities to carry out collection services at the Facility (City Contractors). All collection personnel employed by the City or by any City Contractor or subcontractor at the Facility (collectively the Collection Personnel) shall obtain a physician's certification of physical ability to handle waste materials, wear safety equipment, and perform light physical labor. All Collection Personnel shall successfully complete the training required under Section 7.0. Except as provided in Section 7.0, the City or the City Contractor shall be responsible for all costs for the Collection Personnel including, but not limited to, salary, benefits, travel, and personal protective equipment.
- 3.6.i. The City shall maintain safety and emergency contingency plans to protect the health and safety of Collection Personnel, Illinois EPA personnel, the Contractor, and the public at the Facility. All Collection Personnel shall be familiar with the plans and comply with them fully. A red bulletin board shall be placed in a conspicuous area, within clear view from the unloading

area, and have the phrase “Emergency Information” printed large enough to be seen from the unloading area and in a contrasting color. At a minimum, the following shall be attached to the bulletin board:

- (i) Location of the nearest telephone or other communication device;
- (ii) Phone numbers for all emergency services, including but not limited to, ambulance, hospital, poison information center, fire department, police department, sheriff, airport, and state police; and
- (iii) A map to the nearest medical center that is open during the Facility’s normal operating hours as well as a map to the nearest 24-hour medical center.

The Facility shall be equipped with safety equipment (e.g., personal protective gear, eye wash, fire extinguishers, first aid supplies) necessary to prevent or treat injury to anyone at the Facility, including but not limited to Collection Personnel and public participants. The Facility shall be equipped with at least one easily accessible communication device (e.g., telephone, cellular telephone, two-way radio) to summon emergency assistance in case of an accident.

3.6.j. The City shall submit to the Illinois EPA quarterly reports, and maintain at the Facility legible, detailed, and accurate records, of all activities related to the HHW collection operation including:

- (i) Written summaries of the dates of collection at the Facility, number of participants, amounts and types of wastes received, a drum or cubic yard box inventory of collected waste, and the manifest numbers of the drums, cubic yard boxes, or other waste receptacles removed from the Facility;
- (ii) Any proposed changes to the HHW collection operation; and
- (iii) Such other records, reports, and documents as may be reasonably required by Illinois EPA related to the HHW collection operation.

3.6.k. The City shall notify Illinois EPA, as soon as reasonably practical under the circumstances, of all incidents at the Facility that involve a release of waste, spill, injury, fire, or explosion. The City shall provide Illinois EPA with written descriptions of the incidents and such other information requested by Illinois EPA.

4.0 HOURS OF OPERATION OF THE FACILITY.

- 4.1 Subject to provisions contained herein, the City shall provide HHW collection services at the Facility at least ten (10) hours per week and at least one (1) Saturday each month. Saturday hours shall be counted towards the 10-hour minimum for the applicable week.
- 4.2 The City may modify the Facility's schedule of HHW collection operations upon written approval of the Illinois EPA.
- 4.3 HHW collection services provided by the City at the Facility shall be available to any resident of the State of Illinois.

5.0 TRANSPORTATION AND DISPOSAL.

- 5.1 Subject to the funding, appropriations, suspension, termination, and Maximum Payment Amount provisions set forth in Section 10.4 below, and subject to the provisions set forth herein, the Illinois EPA shall, at its sole expense: i) provide an HHW Contractor to pick up Acceptable HHW (*see* Section 6.1) collected at the Facility and transport the Acceptable HHW to a facility or facilities designated or approved by Illinois EPA for disposal, recycling, or treatment of said Acceptable HHW pursuant to the HHW Contract; and ii) cause the Contractor to provide all necessary packing materials, supplies, and shipping labels for the Acceptable HHW in accordance with Section 5.5 below.
- 5.2 The City shall not be required to pay any fees incurred by the Contractor in picking up, transporting, disposing, recycling, or treatment of the Acceptable HHW that has been collected at the Facility or for the cost of related supplies under Section 5.5 of this Agreement, as herein provided. Notwithstanding any provision in this Agreement to the contrary, the Illinois EPA reserves the right to change the Contractor in its sole and absolute discretion.
- 5.3 All Acceptable HHW received at the Facility for pickup, transportation, and disposal, recycling, or treatment under this Agreement shall be packed by Collection Personnel for transportation in accordance with the Contractor's specifications and applicable laws. The Contractor may reject Unacceptable Waste, Rejected Waste (as defined in Section 6.3 below) and improperly packed Acceptable HHW.
- 5.4 Notwithstanding any provision to the contrary in this Agreement, the frequency with which the Contractor picks up collected Acceptable HHW from the Facility shall be determined by the City, provided that the City uses its best efforts to minimize Contractor's Services costs, and further provided that the City operates the Facility and maintains the collected Acceptable HHW in a safe manner and in accordance with applicable laws and permit requirements.

5.5 The Contractor shall provide all drums and other materials for packaging and transportation of the collected Acceptable HHW to a treatment, recycling, or disposal facility or facilities designated or approved by the Illinois EPA. The Contractor shall inspect packing lists to ensure they meet all applicable requirements, check drums for proper packing for transportation, seal and label drums, and load them for shipment. The Contractor shall provide replacements for placards and labels, shipping containers, manifests, packing materials, and any other necessary supplies for the management of collected Acceptable HHW.

5.6 Prior to execution of this Agreement, the Illinois EPA provided the City with a copy of the HHW Contract which defines Acceptable HHW as “Acceptable Waste” (Section 1.3.5) and Unacceptable Waste (1.3.6). Each time the definition of Acceptable Waste or Unacceptable Waste changes in the HHW Contract during the Term of this Agreement, the Illinois IEPA shall give the Department of Public Works Budget and Administrative Manager not less than sixty (60) days prior written notice of such change.

6.0 ACCEPTABLE HHW AND UNACCEPTABLE WASTE.

6.1 Acceptable HHW: The Illinois EPA authorizes its Contractor to only accept from the Facility properly packaged Acceptable HHW, as defined by the HHW Contract as “Acceptable Waste”. Through its Contractor, Illinois EPA will provide for the pick-up, transportation, and disposal, recycling, or treatment of, and related supplies for the management of HHW that is Acceptable HHW as defined by the HHW Contract for Contractor’s Services.

6.2 Unacceptable Waste: The City will use reasonable and diligent efforts to reject Unacceptable Waste and Rejected Waste as defined herein if it is brought to the Facility. The Illinois EPA will not provide for, and is not otherwise responsible for, the pick-up, transportation, or disposal, recycling, or treatment of Unacceptable Waste, as defined by the Contract for Contractor Services. Nor will the Illinois EPA provide for, or otherwise be responsible for, any related supplies for the management of said Unacceptable Waste, or any costs or liabilities attributable thereto.

6.3 Rejected Waste: The City shall reject, for purposes of collection under this Agreement, all non-household hazardous waste, including but not limited to wastes from business, institutional, industrial, agricultural, governmental, commercial, or other non-household entities, facilities, or locations (**Rejected Waste**). Illinois EPA will not provide, or otherwise be responsible for, the pick-up, transportation, or disposal, recycling, or treatment of Rejected Waste, nor will the Illinois EPA provide for, or otherwise be responsible for, supplies related to the management of the same, or any costs or liabilities attributable thereto.

6.4 Notwithstanding the foregoing provisions, if despite reasonable and diligent efforts by the City to accept only Acceptable Waste, for any Unacceptable Waste or

Rejected Waste that cannot reasonably be identified, is inadvertently accepted by the City, and that is subsequently picked by the Contractor, the Illinois EPA shall become the generator of record and take title to the waste picked up by the Contractor at the time the Contractor signs the completed Uniform Hazardous Waste Manifest.

7.0 PERSONNEL TRAINING.

- 7.1 The Illinois EPA shall, through its Contractor, provide annual training for the Facility's on-site Collection Personnel in the proper method of operating the HHW collection operation subject to this Agreement, including all aspects of receiving, identifying, segregating, and packing the Acceptable HHW in a proper and safe manner.
- 7.2 The training shall consist of a minimum two (2)-day course of no less than fifteen (15) hours including:
 - 7.2.a. Federal and state legal requirements pertaining to HHW handling;
 - 7.2.b. The methods of collecting Acceptable HHW from the public and identifying Unacceptable Waste;
 - 7.2.c. Bulking procedures, the use of different types of containers, record keeping, storage procedures, fire safety, and emergency precautions and procedures;
 - 7.2.d. Procedures for waste shipment, including packaging, labeling and manifest preparation;
 - 7.2.e. Procedures for long-term record keeping, including wastes received, manifests, and disposal information;
 - 7.2.f. The development of an emergency plan addressing first aid and clean-up in the event of a release or spill, and police and fire protection; and
 - 7.2.g. Field practice in waste segregation, bulking, packaging, and record keeping.
- 7.3 The Illinois EPA shall not be responsible for paying the salaries, wages, benefits, and miscellaneous expenses of Collection Personnel undergoing training or assigned to the Facility.

8.0 LIABILITY, INDEMNIFICATION, AND INSURANCE REQUIREMENTS.

8.1 Indemnification.

- 8.1.1 To the extent permitted by law, the City shall indemnify and hold harmless the Illinois EPA, the State of Illinois (“**State**”), and their respective officials, officers, employees, and authorized representatives (collectively,

“Indemnified Parties” which Indemnified Parties shall not include the Illinois EPA’s Contractor or its subcontractors) for any and all liability, claims, damages, and cleanup costs arising directly or indirectly out of the City’s operation of its HHW program or the City’s use or operation of the Facility, including but not limited to exposure to wastes, spills or releases of wastes, fires, or explosions occurring at the Facility resulting from acts or omissions caused by, arising out of, or occurring in connection with, any activities performed at the Facility by the City’s employees, contractors, subcontractors, representatives, or agents and the clean-up costs and restoration work attributable thereto. However, nothing herein abrogates, eliminates, or otherwise affects any claim or defense the City may have against any individual, entity, contractor (including the Illinois EPA’s Contractor providing the Contractor’s Services or subcontractor, other than the Indemnified Parties.) In addition, nothing contained herein shall be construed as a limitation or waiver of defenses available to the City, including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101, *et seq.*), as to third party claims.

8.1.2 Notwithstanding anything stated in this Agreement to the contrary, the City shall not assume any responsibility for the portions of damages, attorney’s fees, or costs that are proximately caused by and attributable to the comparative negligence of the Indemnified Parties or the Illinois EPA’s Contractor providing the Contractor’s Services.

8.2 Insurance.

8.2.1 During the Term of this Agreement, and any extension or renewal thereof, the City shall self-insure with a limit of not less than two million dollars (\$2,000,000) per occurrence for general liability, auto liability, public officials E&O, and employment practices liability; and shall self-insure against worker’s compensation claims with coverages required by law. The City’s self-insurance shall cover claims, liabilities, and damages for all risks associated with its obligations as specified herein, including, but not limited to, all claims arising from acts or omissions by the City, its Collection Personnel, agents, representatives, officers, officials, or employees related to the collection or management of HHW, use and operation of the Facility, and acts or omissions by third party participants in the collection program (except for the Illinois EPA’s Contractor providing the Contractor’s Services), including, but not limited to, claims for damages and cleanup costs resulting from spills or releases of wastes, fires, or explosions that may occur during the conduct of any activity at the Facility.

8.2.2 Except as to insurance provided by the HHW Contractor, the City’s self-insurance for the purposes described in Section 8.2 herein shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the State or the Illinois EPA and shall not require exhaustion of

any other coverage or tender of any claim or action to any other insurer providing coverage to the State or the Illinois EPA. Any insurance or self-insurance maintained by the State or the Illinois EPA shall be in excess of the City's insurance and shall not contribute with it.

- 8.2.3 The City shall cause each of its contractors, subcontractors, and consultants employed by or acting on behalf of the City (if any) with respect to the operation of the Facility to maintain insurance coverages acceptable to the Illinois EPA. When requested by the Illinois EPA, the City shall furnish copies of certificates of insurance evidencing the types and amounts of coverages for any such contractors, subcontractors, and consultants.
- 8.3 The City shall be the point of contact for the Illinois EPA concerning all issues relating to this Agreement including, but not limited to, issues related to work subcontracted by the City, if any. The City shall be solely responsible for its contractors and subcontractors' adherence to all provisions of the Agreement and for any claims or damages that may arise as a result of acts or omissions of any such contractors and subcontractors.
- 8.4 The Illinois EPA shall require its Contractor to maintain (i) commercial general liability insurance covering liability arising out of Contractor's acts or omissions in the performance of its ongoing operations and naming the City and the Illinois EPA as additional insureds, and (ii) pollution liability (or contractors pollution liability (CPL) or transportation pollution liability) insurance providing coverage for claims for remediation/cleanup costs in connection with Contractor's work. The City and its officers, agents, and employees shall be named as additional insureds on such coverages.
- 8.5 The Illinois EPA shall become the generator of record and take title all waste picked up by the Contractor at the time the Contractor signs the completed Uniform Hazardous Waste Manifest.
- 8.6 No officer, official, employee, or authorized representative of the City, the Illinois EPA, or the State shall be individually or personally liable in connection this Agreement.

9.0 PUBLIC INFORMATION PROGRAM.

- 9.1 The City, at its sole expense, shall continue to encourage public participation and to inform and educate the public about alternatives to household hazardous materials, the proper disposal of household hazardous materials, and environmental and resource recovery issues.

10.0 SUSPENSION OR TERMINATION OF THIS AGREEMENT.

“Suspend” or “Suspension”, as used in this Agreement, means that the Parties shall temporarily cease performing their obligations under this Agreement. “Suspension Date”,

as used herein, means the date upon which these obligations temporarily cease. **“Reinstate”** or **“Reinstatement”**, as used in this Agreement, means that the Parties’ obligations to be performed under this Agreement that were suspended shall resume. **“Reinstatement Date”**, as used herein, means the date upon which the Parties’ obligations resume. Notwithstanding any other provision herein, the obligations set forth in Section 8 above shall remain in full force and effect during any Suspension of this Agreement.

10.1 Suspension/Reinstatement.

10.1.1 The City shall provide not less than sixty (60) days prior written notice to the Illinois EPA of its intent to Suspend this Agreement.

10.1.2 In addition to Illinois EPA’s right to Suspend or terminate this Agreement under Sections 10.2 and 10.3, Illinois EPA may Suspend this Agreement by providing not less than sixty (60) days prior written notice to the City of its intent to Suspend this Agreement.

10.1.3 Notice of Suspension pursuant to this Section 10.1 shall be made in accordance with Section 12.0.

10.1.4 The Illinois EPA, at its sole expense, subject to the appropriation and funding contingency in Subsection 10.3.1, shall provide Contractor’s Services and related supplies for Acceptable HHW collected and stored at the Facility up to, but not including the effective date of Suspension regardless of when said HHW is finally disposed in the event that this Agreement is Suspended pursuant to Subsections 10.1.2 or 10.1.3.

10.1.5 If this Agreement is Suspended, the Illinois EPA shall update its website to reflect the Facility’s operating status.

10.1.6 The Suspension may be terminated and the obligations under this Agreement Reinstated by the written agreement of the Parties hereto. The Illinois EPA shall provide written notification to the City of its desire to Reinstate this Agreement. The Illinois EPA and the City shall agree upon a timeframe for Reinstatement of the services provided hereunder.

10.1.7 If this Agreement is Reinstated, the Illinois EPA shall update its website to reflect the Reinstatement of the Facility’s operations.

10.2 Termination.

10.2.1 Either the Illinois EPA or the City may terminate this Agreement with or without cause during the Term set forth in Section 2.0 or during any renewal or extension thereof for any reason by providing not less than sixty (60) days prior written notice of its intent to terminate to the other Party.

- 10.2.2 Notice of termination of the Agreement shall be provided in accordance with the requirements of Section 12.0.
- 10.2.3 The right of termination set forth in Subsections 10.2.1 is in addition to Illinois EPA's right to terminate the Agreement as provided in Section 10.3.
- 10.2.4 If this Agreement is terminated pursuant to Subsections 10.2.1 or Section 10.3, the Illinois EPA shall update its website to reflect the termination of the Facility's operations.
- 10.2.5 The Illinois EPA, at its sole expense, subject to the appropriation and funding contingency in Section 10.3, shall provide Contractor's Services and related supplies for Acceptable HHW collected and stored at the Facility up to, and including, the effective date of termination, regardless of when said Acceptable HHW is finally disposed of, if this Agreement is terminated pursuant to Subsection 10.2.1.

10.3 Suspension or Termination by Illinois EPA for Insufficient Funds or Appropriations.

- 10.3.1 Notwithstanding any provision to the contrary in this Agreement, the payments to Contractor and any other obligation provided or required by Illinois EPA herein are expressly contingent upon and subject to the availability of sufficient funds appropriated for the Agreement, the HHW Contract, and the services and supplies being paid for hereunder by Illinois EPA. The Illinois EPA may Suspend or terminate this Agreement, 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.
- 10.3.2 The Illinois EPA shall provide notice, in writing, to the City of and its election to terminate or Suspend the Agreement pursuant to Subsection 10.3.1 as soon as reasonably practicable after such determination is made. Any Suspension or termination pursuant to this Section 10.3 will be effective upon the City's receipt of said notice notwithstanding any provision herein to the contrary.
- 10.3.3 The Illinois EPA's right to Suspend or terminate the Agreement as provided in Subsection 10.3.1 is in addition to Illinois EPA's right to suspend or terminate the Agreement as provided in Sections 10.1 and 10.2, respectively.
- 10.3.4 Notice of any Suspension or termination of the Agreement shall be provided in accordance with the requirements of Section 12.0 herein; however, notice

shall be effective upon the City's receipt of said notice as provided in Subsection 10.3.2 above.

10.3.5 In the event that this Agreement is Suspended or terminated pursuant to Subsection 10.3.1 above, the Illinois EPA shall update its website to reflect the suspension or termination of the Facility's operations.

10.3.6 If this Agreement is terminated or Suspended pursuant to the provisions of this Section 10.3, the Illinois EPA, at its sole expense, subject to the appropriation and funding contingency above, shall provide Contractor's Services and related supplies for Acceptable HHW collected and stored at the Facility through, and including, the effective date of Suspension or termination.

10.3.7 In the event that: i) sufficient State funds have been re-appropriated to the Illinois EPA, ii) the Governor or the Illinois EPA determines that appropriated funds may be available for payment of Contractor's Services, or iii) the Illinois EPA determines that there are otherwise sufficient funds available, a Suspension may be Reinstated pursuant to Subsection 10.3.7.1 or a new intergovernmental agreement entered into pursuant to Subsection 10.3.7.2, as follows:

10.3.7.1 If this Agreement was Suspended, the Suspension may be terminated and the obligations under this Agreement Reinstated by the written agreement of the Parties hereto. The Illinois EPA and the City shall agree upon a timeframe for Reinstatement of the services provided hereunder.

10.3.7.2 If this Agreement was terminated, the Parties may enter into a new intergovernmental agreement pertaining to operation of the Facility and collection of HHW.

10.4 Maximum Payment Amount.

10.4.1 The Maximum Payment Amount (**MPA**) is the amount of funding that the Illinois EPA has committed in a given year to provide for the pick-up, transportation, and disposal, recycling, or treatment of, and related supplies for the management of, Acceptable HHW that is collected at the Facility each State fiscal year (i.e., July 1 through June 30) of this Agreement, and any extension thereof. The Illinois EPA's determination of the MPA shall be subject to factors such as the previous State fiscal year HHW Contract costs relative to the Facility and other long-term HHW collection facilities, one-day HHW collection events supported by the Illinois EPA, available funding, and State appropriations. For State fiscal year 2025 (July 1, 2024, through June 30, 2025), the MPA is nine hundred and fifty thousand, eight hundred and seventy-one dollars (\$950,871).

10.4.2 On or before April 30 of each calendar year during the Term of this Agreement, and any extension or renewal thereof, the Illinois EPA shall notify the City per the notice provisions set forth in Section 12 hereof as to the City's estimated MPA for the upcoming State fiscal year based on the proposed State budget.

When that State budget is thereafter enacted into law, the Illinois EPA shall notify the City per the notice provisions set forth in Section 12 hereof as to its final determination of the City's MPA for the upcoming State fiscal year based on the enacted State budget.

10.4.3 The Illinois EPA will provide its technical and programmatic expertise to assist the City in making operational changes to function under the MPA. Illinois EPA staff will be available to meet with the City to discuss operational efficiencies of the Facility at reasonable times and with reasonable frequency during the term of this Agreement.

10.4.4 Notwithstanding any provision to the contrary in this Agreement, and in an effort to stay within the City's MPA and comply with the Section 5.4 above, the City, with advance written notice to the Illinois EPA, may implement the following with respect to the operation of the Facility: i) revise the dates and hours that the Facility will operate; ii) revise the methods of accepting HHW, including, but not limited to, an appointment-based schedule; and iii) further restrict the types of HHW that will be accepted at the Facility (provided that, for purposes of this Agreement, only Acceptable HHW, as defined in Section 6.1 of the Agreement, may be accepted and no wastes or other items prohibited under Sections 6.2 and 6.3 of this Agreement may be accepted). The City shall not charge fees for Acceptable HHW collected at the Facility or establish the amount and type(s) of fees charged for different types of Acceptable HHW without the prior written approval of the Illinois EPA.

10.4.5 To assist the City in tracking the remaining balance of the MPA available to support its Facility throughout the State fiscal year the Illinois EPA will provide the City with a statement the last week of each month reflecting the amount invoiced to date under the HHW Contract in relation to the Facility and the City's MPA.

10.4.6 If the City decides to suspend collection of HHW, whether due to the amount of the MPA available or for any other reason, the City may suspend operations at the Facility and not accept any further HHW (hereinafter the **MPA Suspension Date**). The Contractor shall pick up, transport, and dispose of, recycle, or treat all HHW collected at the Facility through the MPA Suspension Date, subject to available funding. The IEPA and the City shall update their respective websites to reflect the Suspension of operations at the Facility.

10.4.7 If, at any time, the Illinois EPA determines, in its sole and absolute discretion, that additional funds (i.e., more than the MPA) are available to pay the Contractor for Contractor's Services related to the City's HHW program at the Facility, then Illinois EPA may increase the MPA. If the City has suspended operations pursuant to Subsection 10.4.6, operations at the Facility may be reinstated upon notice to the IEPA that operations have resumed, or such other timeframe agreed upon by the Parties (hereinafter the **MPA Reinstatement Date**). The IEPA and the City shall update their respective websites to reflect the MPA Reinstatement Date.

10.4.8 Nothing herein shall be construed as relieving the City of its obligation to comply with all permit requirements and applicable law or to allow all residents of the State of Illinois to utilize its collection services at the Facility for Acceptable HHW.

10.4.9 Nothing herein is a limitation on either Party's right to suspend or terminate this Agreement pursuant to Sections 10.1 and 10.2 or on the Illinois EPA's right to suspend or terminate this Agreement pursuant to Section 10.3.

11.0 ENTIRE AGREEMENT.

11.1 This Agreement represents the entire Agreement between the Parties with respect to the City's operation of the Facility, as provided herein, and Illinois EPA's obligations to pay the Contractor for Contractor's Services and supersedes all previous communications or understandings whether oral or written other than the HHW Contract (defined above). Nothing herein amends or modifies Illinois EPA's or Contractor's obligations under the HHW Contract.

12.0 NOTICES.

12.1 Unless otherwise provided for herein, any notice required hereunder shall be deemed properly given to the Party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, to the Party's address, or by e-mail. The address and e-mail address of each Party is as specified below. Either Party may change its address and/or e-mail address for receiving notices by giving notice thereof in compliance with the terms of this Section.

FOR THE CITY:

Christine Schwartzhoff
Department of Public Works
Budget and Administrative Manager
180 Fort Hill Drive
Naperville, Illinois 60540
schwartzhoffc@naperville.il.us

WITH A COPY TO:

City Attorney
City of Naperville
400 South Eagle Street
Naperville, IL 60540
Disantom@naperville.il.us

FOR THE ILLINOIS EPA:

Section Manager
Materials Management and Compliance Section
Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
EPA.Recycling@illinois.gov

and

Deputy General Counsel, Land Regulatory Unit
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
EPA.DLC@illinois.gov

13.0 AMENDMENT OR MODIFICATION.

13.1 This Agreement shall not be altered, modified, or amended except by written instrument signed by both Parties hereto.

14.0 SITE ACCESS; CORRECTIVE ACTION.

14.1 The City shall provide the Illinois EPA and its officials, officers, employees, and authorized representatives with unrestricted access to the Facility throughout the Term of this Agreement and any renewal or extension hereof.

14.2 The Illinois EPA shall have full authority to enter the Facility and inspect the operations at all times while the Facility is open during business hours for collection and as otherwise authorized by law. The City recognizes that the Illinois EPA has the right to stop the operations immediately and take reasonable and necessary corrective action if said operations are not substantially in accordance with the requirements herein, or that a condition exists which creates an imminent and substantial threat to human health, welfare, or the environment.

14.3 Notwithstanding the forgoing, it shall remain the City's obligation to perform its HHW operations with respect to the Facility and to maintain and properly secure the Facility in a safe manner, and in strict compliance with applicable law, permit requirements, and the requirements herein. Nothing herein shall be construed as imposing any obligation on the Illinois EPA, or its officials, officers, employees, or authorized representatives to identify any defects in the City's operation of the City's HHW program or the Facility, unsafe conditions, or to otherwise assume any liability or obligation of the City or any other person or entity.

15.0 GOVERNING LAW AND SEVERABILITY.

15.1 This Agreement shall be construed and governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

16.0 PARTIES' INTEREST/NO THIRD-PARTY BENEFICIARIES.

16.1 This Agreement shall be binding on the Parties and shall inure to the benefit of the Parties. This Agreement shall not run to the benefit of, or be enforceable by, any person other than a Party (other than the Illinois Attorney General on behalf of the Illinois EPA). This Agreement shall not be deemed, expressly or impliedly, to confer upon third parties any remedy, claim, right of reimbursement, or other right whatsoever. Nothing contained in this Agreement, nor any act of the Parties, shall be deemed or construed by any of the Parties hereto or by third parties to create any relationship of third-party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties. The employees of the City are therefore not entitled to any benefits provided to employees of the State by virtue of this Agreement and/or any services or work performed under this Agreement.

17.0 HEADINGS.

17.1 The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

18.0 CONSTRUCTION OF WORDS.

18.1 The use of the singular form of any word herein also shall include the plural, and vice versa. The use of the neuter form of any word herein also shall include the

masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter. If any term of this Agreement is ambiguous, it shall not be construed for or against either Party on the basis that the Party did or did not write it.

19.0 FORCE MAJEURE

19.1 Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence, including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring Party may cancel this Agreement without penalty if performance does not resume within thirty (30) days of the declaration.

20.0 COMPLIANCE WITH APPLICABLE LAWS.

20.1 The Parties shall, at all times, observe and comply with all applicable federal, State, and local laws, regulations, and codes applicable to the performance of this Agreement.

21.0 ILLINOIS EPA'S RESERVATION OF RIGHTS.

21.1 Nothing in this Agreement shall limit or otherwise affect Illinois EPA's right of entry and access or any other right or authority under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*) (RCRA), the National Contingency Plan ("NCP"), the Environmental Protection Act, as amended (415 ILCS 5/1 *et seq.*), or other federal and/or State law. Nothing in this Agreement shall limit or otherwise affect Illinois EPA's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances, wastes, pollutants, or contaminants at or from the Facility, or to enforce any federal or state law or regulation, Board Order, consent order, consent decree or other settlement Agreement entered by Illinois EPA.

22.0 GENERAL PROVISIONS.

22.1 Any and all claims and disputes arising out of this Agreement against the State of Illinois, the Illinois EPA, or any of their respective officials, officers, employees, or authorized representatives shall be adjudicated in the Illinois Court of Claims and shall be governed by the Court of Claims Act (705 ILCS 505/1 *et seq.*). Neither the State nor Illinois EPA shall enter binding arbitration to resolve any dispute arising out of this Agreement. Neither the State nor Illinois EPA waives sovereign immunity by entering this Agreement. Nothing in this Section 22.1 shall negate any of the provisions set forth in Section 8.6 above.

- 22.2 If a Party waives a breach of any provision of this Agreement by the other Party, that waiver shall not operate or be construed as a waiver of any subsequent breach by said Party or prevent the non-breaching Party from enforcing such provisions.
- 22.3 This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute one and the same instrument.
- 22.4 The Parties acknowledge that this Agreement was freely negotiated by each of the Parties hereto, each of whom was represented by separate counsel; accordingly, this Agreement shall be construed according to the fair meaning of its terms, and not against any Party.
- 22.5 This Agreement shall not be assigned by either Party. Any such assignment shall be null and void.
- 22.6 Each of the undersigned signing as an officer, representative, or agent on behalf of the respective Party to this Agreement warrants and represents that he or she holds such capacity as is specified beneath his or her name and further warrants and represents that he or she is authorized to execute and effectuate this Agreement, and to bind the Party on whose behalf he or she is signing this Agreement to the terms and conditions herein, and that he or she does so voluntarily and in his or her official capacity.

[SIGNATURE PAGE TO FOLLOW]

THE PARTIES TO THIS AGREEMENT by their signatures acknowledge they have read and understand this Agreement and intend to be bound by its terms.

CITY OF NAPERVILLE:

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY:**

By: _____
Douglas A. Krieger
City Manager

By: _____
James M. Jennings
Interim Director

Attest by: _____
Dawn C. Portner
City Clerk

Attest by: _____
Sunil Suthar
Section Manager
Materials Management and
Compliance Section

Date: _____

Date: _____