

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
CITY OF NAPERVILLE AND THE COUNTY OF WILL  
FOR THE CONTINUED OPERATION OF A  
HOUSEHOLD HAZARDOUS WASTE FACILITY**

**THIS AGREEMENT** (“AGREEMENT”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), between the City of Naperville, (hereinafter referred to as the “**CITY**”), a municipal corporation and home rule unit of local government under the laws and the Constitution of the State of Illinois, with offices at 400 South Eagle Street, Naperville Illinois 60540, and the County of Will (hereinafter referred to as the “**COUNTY**”), a body corporate and politic, with offices at 58 East Clinton Street, Suite 500, Joliet, Illinois 60432.

**RECITALS**

**WHEREAS**, the CITY and the COUNTY are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., as amended; and

**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

**WHEREAS**, the City of Naperville is a home rule municipal corporation situated in Will and DuPage Counties under and by 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 this AGREEMENT; and

**WHEREAS**, on June 22, 2018 the CITY and the Illinois Environmental Protection Agency (the “IEPA” or “AGENCY”) entered into a five (5) year intergovernmental agreement (the “**2018 IEPA AGREEMENT**”), for the purpose of cooperative funding, construction, and operation of a facility on CITY-owned property (hereinafter referred to as FACILITY) to collect household hazardous waste from the members of the public, including Will County residents; and

**WHEREAS**, the former Intergovernmental Agreement Between the City of Naperville and the County of Will for the Operation of a Household Hazardous Waste Collection Facility expired on December 31, 2018; and

**WHEREAS**, in order to protect against environmental damage, the continuing destruction of the environment, and harm to the public health, safety and welfare which may result from the improper and unsafe transportation, treatment, storage, disposal and dumping of household hazardous waste (hereinafter referred to as “**HHW**”), the CITY and the COUNTY have determined to continue to promote the CITY’S HHW collection program to COUNTY residents; and

**WHEREAS**, since the COUNTY will provide funding as provided for herein for the operation of the FACILITY, it is in the parties' best interests to clarify their rights and responsibilities with respect to the FACILITY; and

**WHEREAS**, for the first time since the inception of the CITY's HHW program, the IEPA has imposed a cap on the amount of funds it will provide for collection and disposal of HHW from the CITY's HHW Facility (hereinafter referred to as the "**IEPA CAP**").

**NOW THEREFORE**, in consideration of the premises and mutual covenants contained herein, the parties agree that:

**1.0 RECITALS INCORPORATED.**

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

1.2 If there is a conflict between the terms and provisions of this AGREEMENT and the IEPA AGREEMENT, the terms and provisions of the IEPA AGREEMENT shall control.

**2.0 TERM OF THIS AGREEMENT.**

2.1 Subject to the provisions of Section 2.2 below, this AGREEMENT shall be in effect from January 1, 2019 through December 31, 2019 unless terminated sooner in accordance with Section 15 or Section 21 of this Agreement.

2.2 This AGREEMENT shall automatically renew on January 1, 2020 and for two (2) successive years thereafter, subject to and contingent upon the IEPA, CITY and COUNTY each appropriating adequate funding for their respective obligations for each of the following annual terms under this AGREEMENT and, or, the 2018 IEPA AGREEMENT. In the event of a non-appropriation by any of those parties before the beginning of the fiscal year covering a successive renewal year, this AGREEMENT shall terminate.

**3.1 SITE LOCATION, DESIGN AND CONSTRUCTION.**

3.1 At its sole expense, the CITY will maintain a site for the FACILITY. The FACILITY is located at the City's Department of Public Works site located at 156 Fort Hill Drive, Naperville, Illinois, 60540.

3.2 The CITY will maintain a storage/containment building on the FACILITY site, which shall meet all AGENCY permit criteria set forth in 35 Ill. Adm. Code 807 and 35 Ill. Adm. Code 811 as amended from time to time.

3.3 The CITY will list the COUNTY on any signs at the FACILITY that acknowledge sources of funding.

#### **4.0 HOURS OF OPERATION OF THE FACILITY.**

4.1 Except in cases of emergency, and except as otherwise provided in Sections 21.1 and 21.1.1 below, the CITY shall provide two (2) HHW drop-off days each week, those days being Saturday and Sunday from 9:00 A.M. to 2:00 P.M. The FACILITY shall be available on a first come first served basis as determined by the capacity of the FACILITY.

4.2 The COUNTY shall work with the CITY in an effort to maximize the efficiency of the HHW Facility and to stay under the IEPA CAP.

4.3 Notwithstanding the provision contained in Section 4.1 above, the FACILITY shall not operate on New Year's Eve and New Year's Day, Easter Sunday, July 4th, Christmas Eve and Christmas Day, or on other holidays that would cause a rise in the normal per hour labor rate.

4.4 The FACILITY will be available for use by residents of the COUNTY during the term of this AGREEMENT ~~and~~ pursuant to the terms of this AGREEMENT. The CITY shall not charge residents of Will County any fee for utilizing the FACILITY.

#### **5.0 TRANSPORTATION AND DISPOSAL CONTRACTOR.**

5.1 Pursuant to the 2018 IEPA AGREEMENT, the IEPA shall provide a hazardous waste collection firm (hereinafter the CONTRACTOR) to safely collect, transport, and dispose of the HHW collected at the FACILITY as set forth in the IEPA AGREEMENT.

5.2 The IEPA shall pay all fees incurred by the CONTRACTOR in collecting, safely transporting and properly disposing of the HHW collected from the FACILITY. Notwithstanding the foregoing, this AGREEMENT is subject to the IEPA CAP described herein.

5.3 The COUNTY shall not be responsible for the transport and/or disposal of the HHW collected at the Facility or for the costs of the transport and/or disposal of such HHW.

#### **6.0 ACCEPTABLE WASTE.**

6.1 The CITY shall determine the household hazardous waste to be collected at the FACILITY except that the FACILITY shall not accept ammunition, explosives, latex paint, radioactive materials, compressed cylinders, non-special, non-contaminated wastes, including trash and non-hazardous debris, potentially infectious medical waste and any wastes generated by businesses, institutions, industries or agricultural, commercial or governmental facilities, unless agreed to in writing by the CITY and the AGENCY. Copies of such agreements shall be submitted to the COUNTY immediately, and no COUNTY funds can be used for such activities until approved by the COUNTY by amendment to this AGREEMENT.

## **7.0 PERSONNEL TRAINING.**

7.1 FACILITY personnel shall be CITY employees, and shall not be considered COUNTY employees for any purposes, and shall be trained in accordance with the provisions of the IEPA AGREEMENT as modified from time to time.

## **8.0 FEES AND REPORTS.**

8.1 In consideration of the services provided by the CITY described herein for calendar year 2019, the COUNTY shall pay the CITY two (2) payments of twelve thousand, five hundred dollars (\$12,500.00) within thirty (30) days of receipt of an invoice from the CITY which invoices shall be issued by the CITY on approximately August 1, 2019 and December 1, 2019. Each invoice shall be accompanied by a Report as described in Section 8.2 below.

In consideration of the services provided by the CITY described herein during each subsequent renewal term as provided in Section 2.2 above, the CITY shall submit Reports to the COUNTY on a quarterly basis, (approximately March 31, June 30, September 30, and December 31), and shall submit invoices to the COUNTY on the same quarterly basis in the amount of six thousand, two hundred and fifty dollars (\$6,250.00). The COUNTY shall remit payment to the CITY within thirty (30) days of receipt of such Reports and invoices.

8.2 The CITY shall use funds paid by the COUNTY only for costs and expenses related to the FACILITY and shall submit written reports to the COUNTY (herein "Report" or "Reports") which Reports shall include:

8.2.1 The number of COUNTY residents by town and/or township using the FACILITY. This means that when a participant arrives at the FACILITY, they will be asked to provide the town and county where they reside. Since reporting of COUNTY residents utilizing the FACILITY is crucial to the planning of the COUNTY'S household hazardous waste program, payment will not be submitted by the COUNTY to the CITY until such reports have been received. This information may also be used by both CITY and the COUNTY to seek funding from other governmental entities.

8.2.2 Statistics, including but not limited to a monthly breakdown of the number of service days, number of cars per operational day, and the amount of household hazardous waste collected by county and municipality, and the volume of waste received.

8.2.3 A summary of expenses related to operations of the FACILITY incurred during the previous Reporting Period shall be sufficiently detailed to allow the COUNTY to determine eligibility for release of payment. Reportable operational expenses shall include but are not limited to: personnel training, supplies, the purchase of equipment and supplies necessary to operate the FACILITY (such as personal protective equipment, latex gloves, absorbent pads, labor costs, and utilities), and other expenses directly related to the FACILITY'S operation.

8.3 If the CITY receives funds from other sources for FACILITY operational expenses, the CITY shall apply such donations to FACILITY reportable operational expenses. The CITY shall provide adequate documentation to the COUNTY that it has complied with this Section upon the request of the COUNTY.

## **9.0 PARTIES' LIABILITY.**

9.1 The CITY shall be solely liable for any and all damages or cleanup costs resulting from spills or releases of wastes, fires, or explosions which result from any activity caused by, or arising out of, or occurring in connection with the CITY'S employees' unloading, bulking, lab packing and placement of HHW in the storage building.

9.2 The COUNTY shall not be liable for any damages, regardless of cause, to the storage building.

9.3 Except for any negligent or willful act on the part of CITY employees, the IEPA and/or its CONTRACTOR shall be solely liable for the HHW at the FACILITY from the time the HHW is correctly and properly placed in the storage building in accordance with the IEPA'S AND CONTRACTOR'S specifications.

9.4 The IEPA shall become and remain the generator of record and take title to all HHW, including F027 designated wastes, collected at the FACILITY, from the time the HHW is correctly and properly placed in the storage building in accordance with AGENCY'S and CONTRACTOR' specifications.

9.5 The terms of this Section 10 shall not create any liability for the COUNTY.

## **10.0 PUBLIC INFORMATION PROGRAM.**

10.1 At its sole cost and expense, the COUNTY shall develop and print public information in a form acceptable to the CITY, promoting the HHW program and FACILITY. The COUNTY shall distribute such information to its respective residents.

10.2 The COUNTY shall seek and welcome the IEPA'S assistance in improving the quality of information reaching CITY and COUNTY residents concerning the importance of waste minimization and alternatives to the use of hazardous materials.

10.3 The CITY and the COUNTY will work together to promote the availability of the FACILITY for residents of Will County.

## **11.0 DEVELOPMENT OF ADDITIONAL HOUSEHOLD HAZARDOUS WASTE COLLECTION EVENTS.**

11.1 The COUNTY shall use its best efforts to offer one-day household

hazardous waste collection events capable of accepting material from residents from throughout the COUNTY in an effort to ease the burden on the FACILITY. The COUNTY may develop its own HHW Facility at a convenient location to its residents, and then may or may not continue the one-day collection events.

11.2 If the capacity of the FACILITY is taxed beyond its limits, the CITY may limit its use in any way the CITY sees fit in order to protect the public's health, welfare, and safety. If this action is deemed necessary, Will County residents will be treated in a similar manner to other residents using the Facility, but in no event shall Will County residents be charged for use of the FACILITY.

**12.0 ENTIRE AGREEMENT.**

12.1 This AGREEMENT represents the entire agreement between the parties with respect to the operation of the FACILITY, and supersedes all previous communications or understandings whether oral or written.

**13.0 NOTICES.**

13.1 Any notice required hereunder shall be deemed properly given to the party to be notified at the time it is personally delivered, mailed by certified mail, return receipt requested, to the party's address or sent by facsimile. The address of each party is as specified below; either party may change its address for receiving notices by giving notice thereof in compliance with the terms of this Subsection.

**FOR THE CITY**

City Manager  
City of Naperville  
400 South Eagle Street  
Naperville, IL 60540  
Attn: Public Works Director  
Facsimile: (630) 420-4100

**FOR THE COUNTY**

Director  
R R & E Division  
Will County Land Use Department  
58 East Clinton Street Suite 100  
Joliet, IL 60432  
Facsimile: (815) 722-3410

**14.0 AUTHORITY TO ADMINISTER THE AGREEMENT.**

14.1 The Public Works Director for the CITY, or his or her designee, and the Director of the COUNTY'S Resource Recovery & Energy Division, or his or her designee, shall have complete authority to transmit instructions, receive information, and administer the work covered by this AGREEMENT and send any notices required by this AGREEMENT under their respective signatures.

**15.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT.**

15.1 No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

15.2 If the COUNTY fails to make any payment required pursuant to Section 8.0 of this AGREEMENT, the CITY may, at its option, declare this AGREEMENT to be immediately null and void and of no further effect. The CITY shall give notice that such termination has occurred.

15.3 In addition to the procedure set forth in Subsection 15.2 above, this AGREEMENT may be terminated at any time, for any reason, by either party by the delivery to the other party of thirty (30) days written notice. Upon termination, the COUNTY shall be entitled to a pro-rated refund of its annual fee for the remainder of the year the FACILITY would not be available to the COUNTY, less any costs associated with the termination of this AGREEMENT as deemed necessary by the CITY.

15.4 Mailing of the notice specified in Subsections 15.2 and 15.3 above shall constitute personal notice and shall be deemed to have been given at the time of mailing.

15.5 Should the IEPA decide, at its sole discretion, to cease cooperative funding pursuant to the IEPA AGREEMENT, or should the Illinois General Assembly fail to allocate sufficient funds to the IEPA for this program, this Agreement shall terminate in accordance with termination of the IEPA funding. The COUNTY, however, shall pay its share of the FACILITY'S expenses pursuant to Section 8.0 of this AGREEMENT through the effective date of such termination. The COUNTY and the CITY reserve the right to enter into negotiations to establish an alternative means of disposing of the household hazardous waste collected at the FACILITY.

**16.0 NON-ASSIGNMENT.**

16.1 This AGREEMENT shall not be assigned by either party without the written consent of the other party, which consent shall not be unreasonably withheld.

**17.0 GOVERNING LAW AND VENUE.**

17.1 This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

**18.0 SAVINGS CLAUSE.**

18.1 If any provision of this AGREEMENT, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this AGREEMENT shall remain in full force and effect.

**19.0 CAPTIONS AND PARAGRAPH HEADINGS.**

19.1 Captions and paragraph headings are for convenience only and are not a part of this AGREEMENT and shall not be used in construing it.

**20.0 NON-WAIVER OF RIGHTS.**

20.1 No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**21.0 CAP PROVISION.**

21.1 Notwithstanding any other provision herein, if the CITY determines that measures need to be taken to avoid exceeding the IEPA CAP, the CITY shall contact the COUNTY to discuss options to prevent exceeding the CAP and shall use good faith efforts to maintain the services described herein. However, if the CITY determines that appointment based drop-offs at the FACILITY, and/or reduction or elimination of services and/or hours of operation at the FACILITY are necessary to avoid exceeding the IEPA CAP, the City shall give not less than fourteen (14) days' notice to the COUNTY of such action(s). In the event the CITY receives notice from the IEPA regarding any change to the amount or availability of funds the IEPA will provide for the collection and disposal of household hazardous waste at the CITY'S HHW Facility, the CITY shall forward such notice to the COUNTY within one-business day. If the CITY determines that termination of all services at the FACILITY is necessary in order to avoid exceeding the IEPA CAP, the City shall give not less than fourteen (14) days' notice to the COUNTY of such action. The CITY's final bill to the COUNTY shall be apportioned on per diem basis through the date of termination. Further, the COUNTY shall not be liable to make future payments hereunder unless the AGREEMENT is reinstated by mutual agreement of the CITY and the COUNTY.

21.1.1 Notwithstanding any other provision herein, if the IEPA suspends or terminates the IEPA AGREEMENT with the CITY under a provision in said IEPA AGREEMENT which provides that IEPA notice of suspension or termination is effective upon the City's receipt thereof, the CITY shall have the right to immediately close the FACILITY. If such closure occurs, the CITY shall notify the COUNTY within not less than twenty-four (24) hours thereof. The CITY's final bill to the COUNTY shall be apportioned on per diem basis through the date of termination or suspension. Further, the COUNTY shall not be liable to make future payments hereunder unless the AGREEMENT is reinstated by mutual agreement of the CITY and the COUNTY.

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

/SIGNATURES ON FOLLOWING PAGES/



**COUNTY OF WILL**

**By:** \_\_\_\_\_  
Lawrence M. Walsh  
County Executive

**ATTEST**

**By:** \_\_\_\_\_  
Lauren Staley Ferry  
County Clerk

**CITY OF NAPERVILLE**

**By:** \_\_\_\_\_  
Steve Chirico  
Mayor

**ATTEST**

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