

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF NAPERVILLE AND THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
TO ESTABLISH A LONG TERM
HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM**

THIS INTERGOVERNMENTAL AGREEMENT (AGREEMENT) is entered into this _____ day of _____, 2018, between the City of Naperville (CITY), with offices located 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" and sometimes individually as "Party.

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, amended in 2014, and extended and amended in 2018; 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 herein ("CONTRACTOR's SERVICES"); and

WHEREAS, the ILLINOIS EPA and the CITY have mutually agreed that it is appropriate to clarify the CITY's responsibilities regarding the operation of the FACILITY for the collection, temporary storage, and transfer of collected HHW and the ILLINOIS EPA's payment requirements for CONTRACTOR's SERVICES as herein provided;

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

1.0 RECITALS INCORPORATED

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

2.0 TERM OF THIS AGREEMENT

The term of this AGREEMENT shall commence on July 1, 2018 and expire on June 30, 2023, unless sooner terminated as provided herein ("Term").

3.0 FACILITY LOCATION, DESIGN, CONSTRUCTION AND OPERATION

3.1 At no cost to the ILLINOIS EPA, and subject to the contributions from other participating government entities as set forth in the Recitals, the CITY shall operate its HHW collection program as herein provided at the FACILITY. Any change in the location of the FACILITY shall be subject to approval by the ILLINOIS EPA in writing.

3.2 The CITY shall comply with all applicable federal, state, and local laws and regulations, including but not limited to environmental laws and regulations and obtain all necessary permits and local approvals including, but not limited to, ILLINOIS EPA non-hazardous waste storage permits. Waste shall not be collected or stored unless all necessary permits and local approvals have been obtained. The CITY shall maintain valid permits for the FACILITY and comply with all requirements therein.

- 3.3 The FACILITY shall include one or more storage/containment building(s) for the HHW that meets or exceeds all permit criteria for design, construction and operation of such structures as provided at 35 Ill. Adm. Code 807 and any other applicable regulations. Any modification or expansion of the structure(s) shall be in compliance with applicable laws, regulations, permit requirements, and any applicable local requirements. In addition to compliance with permit criteria, the FACILITY shall satisfy the following requirements:
- 3.3.a. The size and configuration of the property shall allow for efficient unloading, segregating, and storage of wastes and easy entry and exit for all hazardous waste collection firm (CONTRACTOR) vehicles. Traffic shall be directed to move safely within the FACILITY and to prevent traffic hazards in the areas surrounding the FACILITY.
 - 3.3.b. All unloading zones, waste handling and storage areas shall be located on a level, intact asphalt or concrete surface.
 - 3.3.c. The site on which the FACILITY is located shall have a berm on each side of the FACILITY as depicted on Permit #2014-520-DE/OP issued by the IEPA. Gates to control entry to the FACILITY shall be functional at all times and secured during non-operating hours. In the alternative, fencing and gates are not required if the site is supervised 24 hours per day, seven days per week and the waste storage building(s) is secured during non-operating hours. Except for designated unloading areas, residents shall not be allowed access to the active portion of the FACILITY.
 - 3.3.d. All collected 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. All collected HHW shall be placed inside the storage building at the close of each day.

- 3.3.e. The CITY shall appoint a local project manager to be the main contact with the ILLINOIS EPA. That person shall be an employee or contractual employee of the CITY, a high school graduate, and possess credit for at least eight semester hours of college-level chemistry. The CITY shall promptly notify the ILLINOIS EPA if the project manager is changed and provide a resume detailing the new project manager's education and experience.
- 3.3.f. All COLLECTION PERSONNEL shall obtain a physician's certification of physical ability to handle waste materials, wear safety equipment, and perform light physical labor. All COLLETION PERSONNEL shall successfully complete the training required under Section 7.0. Except as provided in Section 7.0, the CITY shall be responsible for all costs for the COLLECTION PERSONNEL including, but not limited to, salary, benefits, travel, and personal protective equipment.
- 3.3.g. 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. A red bulletin board shall be placed in a conspicuous area of the FACILITY, within clear view from the unloading area, and have the phrase "Emergency Information" printed large enough to be seen from the unloading zone and in 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 ambulance, hospital, poison information center, fire department, police department, sheriff, airport and state police; and
 - iii) 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 COLLECTION PERSONNEL and public participants. The FACILITY shall be equipped with at least one accessible communication device (e.g., telephone, cellular telephone, two-way radio) to summon emergency assistance in case of an accident. The CITY shall be responsible for securing and maintaining the safety and emergency contingency plans for the FACILITY. All COLLECTION PERSONNEL shall be familiar with the plans and comply with them fully.

- 3.3.h. The CITY shall report quarterly to the ILLINOIS EPA and maintain legible, detailed, and accurate records and reports of all activities completed at the FACILITY and collection sites including:
- i) Written summaries of the dates of public drop-off collections at the FACILITY, numbers of participants and amounts and types of wastes received, a drum inventory, and the manifest numbers of the drums;
 - ii) Written summaries of any and all incidents at the FACILITY that involve releases of wastes, spills, injuries, fires or explosions;
 - iii) Logs of all publicity types utilized and methods of determining the effectiveness of each;
 - iv) Proposed changes and suggested improvements for the collection program; and
 - v) Such other records, reports, and documents as may be reasonably required by ILLINOIS EPA.

4.0 PARTICIPATION AND HOURS OF OPERATION OF THE FACILITY.

- 4.1 At no cost to the ILLINOIS EPA (except as otherwise provided herein for CONTRACTOR's SERVICES), and subject to the contributions from other participating government entities as set forth in the Recitals, the CITY shall pay all capital construction, maintenance, COLLECTION PERSONNEL, transportation and operating costs for the FACILITY, including but not limited to HHW collections on Saturday and Sunday of each week.
- 4.2 The FACILITY shall operate at least ten (10) hours per week.
- 4.3 The CITY may modify the days and hours during which the FACILITY operates upon written approval of the ILLINOIS EPA, notwithstanding the provisions of Sections 4.1 and 4.2 above. All written approvals from the ILLINOIS EPA which relate to hours and days of operation of the FACILITY shall expire at the end of the state fiscal year ("SFY") in which the approval was authorized.
- 4.4 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, and termination provisions set forth in Section 10, the ILLINOIS EPA, at its sole expense, shall: i) provide a CONTRACTOR to pick up, transport, and dispose of the acceptable HHW collected by the CITY and stored at the FACILITY; and ii) cause CONTRACTOR to provide all necessary packing materials, supplies and shipping labels for the HHW in accordance with Section 5.3. Notwithstanding any provision in this AGREEMENT to the contrary, the Illinois EPA reserves the right to change the CONTRACTOR.
- 5.2 All wastes collected or received at the FACILITY for pickup, transportation and disposal by the CONTRACTOR shall be packed for transportation by the

COLLECTION PERSONNEL in accordance with the ILLINOIS EPA's specifications for its CONTRACTOR. The CONTRACTOR may reject improperly packed wastes.

- 5.3 Notwithstanding any provision to the contrary in this AGREEMENT, 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 minimize CONTRACTOR's SERVICES costs, and further provided that the CITY operates the FACILITY and maintains the HHW in a safe manner and in accordance with applicable laws and permit requirements. The CONTRACTOR shall provide all drums, materials for packaging, and transportation for the packaged wastes to the treatment or disposal sites designated 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.

6.0 ACCEPTABLE AND UNACCEPTABLE WASTES

- 6.1 Except as provided in Section 6.2, the ILLINOIS EPA shall authorize its CONTRACTOR to accept from the FACILITY hazardous substances, including but not limited to aerosol containers, corrosives, oxidizers, solvents, oil-based paints, inorganic poison solids, organic poisons, pharmaceuticals that are not controlled substances, pesticides, waste oils, Pentachlorophenol, Silvex, 2,4,5-Trichlorophenol, household batteries, fluorescent tubes, and other unknown wastes (any wastes exhibiting undetermined characteristics). The ILLINOIS EPA, at its sole expense, shall require its CONTRACTOR to provide pick-up, transportation, disposal and related supplies only for the wastes listed in this Section 6.1.
- 6.2 The ILLINOIS EPA shall prohibit its CONTRACTOR from accepting ammunition, explosives, radioactive materials, lead-acid batteries, latex paints, compressed gas containers (other than aerosol containers), controlled substances, potentially

infectious medical wastes, and non-special, non-contaminated wastes, including trash and non-hazardous debris. ILLINOIS EPA will not pay its CONTRACTOR and is not otherwise responsible for the pick-up, transportation, disposal and related supplies for the wastes and materials set forth in this Section 6.2.

6.3 The CITY may accept other wastes for recycling upon written approval from the ILLINOIS EPA. The CITY shall endeavor to pursue options to recycle empty paint cans and all other non-hazardous waste (e.g., cardboard boxes) delivered to the collection sites. The CITY may secure outlets (e.g., non-profit groups, charitable organizations) for any unopened, useable consumer products brought to the FACILITY for disposal. ILLINOIS EPA will only pay its CONTRACTOR for the pick-up, transportation, disposal and related supplies for the wastes set forth in Section 6.1 above.

6.4 The CITY shall reject all wastes from business, institutional, industrial, agricultural, government, or commercial entities unless otherwise agreed in writing by the ILLINOIS EPA and the CITY, if the CITY is aware that such wastes have been brought to the FACILITY. The City shall use reasonable efforts to determine whether wastes are from business, institutional, industrial, agricultural, government, or commercial entities. Failure of the CITY to use such reasonable efforts to make such determinations will result in the CITY being responsible for all costs attributable to such wastes, including pick-up, transportation, disposal and related supplies for all such wastes.

7.0 PERSONNEL TRAINING

7.1 Subject to the funding, appropriations, suspension, and termination provisions set forth in Section 10, the ILLINOIS EPA, at its sole expense, shall require the CONTRACTOR to provide training for the COLLECTION PERSONNEL in the proper method of operating HHW collection at the FACILITY and in all aspects of

receiving, identifying, segregating and packing the wastes in a safe manner.

- 7.2 The training shall consist of a minimum two-day course of no less than fifteen hours including:
 - 7.2.a. Federal and state legal requirements pertaining to HHW handling;
 - 7.2.b The methods of collecting HHW from the public and identifying unknown materials;
 - 7.2.c. Bulking procedures, the use of different types of containers, record keeping, storage procedures, and 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 records of wastes received, manifests, and disposal information;
 - 7.2.f. The development of an emergency plan addressing spill clean-up and first aid 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 any salaries, wages, benefits, and miscellaneous expenses of the CITY's COLLECTION PERSONNEL undergoing training or assigned to the FACILITY.

8.0 LIABILITY, INDEMNIFICATION AND INSURANCE REQUIREMENTS

8.1 Indemnification.

- 8.1.1 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") 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 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 lawsuits, damages, attorney's fees or costs that they are proximately caused by the sole 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 thereof, the CITY shall self-insure against all claims with limits of not less than two million dollars (\$2,000,000) per occurrence (and 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 of collecting HHW and operating the CITY's HHW program, including but not limited to any and all claims arising from acts or omissions by the CITY, its 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 The CITY's self-insurance 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 CITY's HHW program or operations 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 the AGREEMENT including, but not limited to, issues related to work subcontracted by the CITY. The CITY shall be solely responsible for 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 subcontractors.
- 8.4 The ILLINOIS EPA shall require the CONTRACTOR to maintain comprehensive liability insurance indemnifying the CITY and the ILLINOIS EPA against any claims for damages or cleanup costs relating to exposure to wastes, spills or releases of wastes, fires or explosions resulting from any acts or omissions caused by, arising out of, or occurring in connection with the CONTRACTOR picking up HHW from

the FACILITY, transporting, or disposing of the HHW.

- 8.5 The ILLINOIS EPA shall become the generator of record and take title to the waste picked up by the CONTRACTOR at the time the ILLINOIS EPA or the CONTRACTOR signs the completed Uniform Hazardous Waste Manifest.

9.0 PUBLIC INFORMATION PROGRAM

- 9.1 The CITY, at its sole expense, shall continue its program for encouraging public participation and for informing and educating the public about alternatives to household hazardous materials, the proper disposal of these materials, and environmental and resource recovery issues.
- 9.2 The ILLINOIS EPA's assistance shall be sought in improving the quality of information reaching the City's residents relating to the importance of waste minimization and alternatives to using hazardous materials.
- 9.3 For the purpose of encouraging the appropriate recycling or disposal of latex paint at locations other than the FACILITY, the CITY, at no cost to the ILLINOIS EPA, and subject to the contributions from other participating government entities as set forth in the Recitals, shall develop and distribute brochures, leaflets, etc., including information concerning the proper use and storage of latex paint. Such information shall include, without limitation, alternative disposal methods and recycling opportunities.

10.0 TERMINATION OF THIS AGREEMENT

10.1 Suspension/Reinstatement

- 10.1.1 "Suspend" or "Suspension" as used in this AGREEMENT means that the Parties shall temporarily cease performing their obligations under this Agreement.

- 10.1.2 The CITY shall provide not less than sixty (60) days prior written notice to the ILLINOIS EPA of its intent to Suspend this AGREEMENT (“Notice of Suspension”).
- 10.1.3 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.
- 10.1.4 Notice of Suspension shall be made in accordance with Section 12.0.
- 10.1.5 The ILLINOIS EPA, at its sole expense, subject to the appropriation and funding contingency in Section 10.3.1, shall provide CONTRACTOR SERVICES and related supplies for HHW collected and stored at the FACILITY up to, but not including, the effective date of suspension regardless of when the HHW is finally disposed in the event that this AGREEMENT is suspended pursuant to Section 10.1.2 or 10.1.3.
- 10.1.6 In the event that this Agreement is suspended, ILINOIS EPA shall update its website to reflect the FACILITY’s operating status.
- 10.1.7 The Suspension may be terminated and the obligations under this AGREEMENT reinstated (“Reinstated”) by the written agreement of the Parties hereto. The ILLINOIS EPA shall provide written notification to the CITY of its desire to Reinstated this AGREEMENT. The ILLINOIS EPA and the CITY shall agree upon a timeframe for Reinstatement of the services provided hereunder.
- 10.1.8 In the event that this Agreement is reinstated, ILINOIS EPA shall update its website to reflect the reinstatement of the FACILITY’s operations.
- 10.1.9 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.

10.2 Termination

10.2.1 Either the ILLINOIS EPA or the CITY may terminate this AGREEMENT during the Term set forth in Section 2.0 or during any renewal 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 Section 10.2.1 is in addition to ILLINOIS EPA's right to terminate the AGREEMENT as provided in Section 10.3.

10.2.4 The ILLINOIS EPA, at its sole expense, subject to the appropriation and funding contingency in Section 10.3.1, shall provide CONTRACTOR SERVICES and related supplies for HHW collected and stored at the FACILITY up to, but not including, the effective date of termination regardless of when the HHW is finally disposed in the event that this AGREEMENT is terminated pursuant to Section 10.2.1.

10.2.5 In the event that this Agreement is terminated pursuant to paragraph 10.2.1 above, ILLINOIS EPA shall update its website to reflect the termination of the FACILITY's operations.

10.2.6 This AGREEMENT shall not be affected in the event that one or more of the participating government entities terminates its support of the FACILITY unless either Party hereto terminates this AGREEMENT as provided herein.

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 and the services and supplies being paid for hereunder by ILLINOIS EPA. The ILLINOIS EPA may terminate or suspend 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. 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 as soon as 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.

10.3.2 ILLINOIS EPA's right to suspend or terminate the AGREEMENT as provided in Section 10.3.1 is in addition to ILLINOIS EPA's right to suspend or terminate the AGREEMENT as provided in Sections 10.1 or 10.2.

10.3.3 Notice of 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 paragraph 10.3.1 above.

10.3.4 In the event that this Agreement is terminated pursuant to paragraph 10.3.1 above, ILLINOIS EPA shall update its website to reflect the termination of the FACILITY's operations.

11.0 ENTIRE AGREEMENT

Unless otherwise provided herein, this AGREEMENT represents the entire agreement between the Parties with respect to the CITY's operation of the collection program and ILLINOIS EPA's obligation to pay CONTRACTOR for CONTRACTOR'S SERVICES and supersedes all previous communications or understandings whether oral or written.

12.0 NOTICES

Unless otherwise provided 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. 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 Section.

FOR the CITY:

Director of Public Works
City of Naperville
180 Fort Hill Drive
Naperville, Illinois 60540

FOR the ILLINOIS EPA:

Manager
Waste Reduction and Compliance
Section Division of Land Pollution
Control Bureau of Land
Illinois Environmental Protection
Agency 1021 North Grand Avenue East
Springfield, Illinois 62794-9276

13.0 AMENDMENT OR MODIFICATION

This AGREEMENT shall not be altered, modified, or amended except by written instrument signed by all Parties hereto.

14.0 GOVERNING LAW AND SEVERABILITY

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

15.0 PARTIES' INTEREST/NO THIRD PARTY BENEFICIARIES

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 to this AGREEMENT (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.

16.0 HEADINGS

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

17.0 CONSTRUCTION OF WORDS

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.

18.0 NO PERSONAL LIABILITY

No officer, official, employee, or authorized representative of the CITY, the ILLINOIS EPA, or the State shall be individually or personally liable in connection with this AGREEMENT.

19.0 COMPLIANCE WITH APPLICABLE LAWS

The Parties shall at all times observe and comply with all applicable federal, State, and local laws, regulations and codes which may in any manner affect the performance of this AGREEMENT.

20.0 ILLINOIS EPA's RESERVATION OF RIGHTS

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"), 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, pollutants, wastes, or contaminants at or from the FACILITIES, or to enforce any federal or state law or regulation, Board Order, consent order, consent decree or other settlement agreement entered by ILLINOIS EPA.

21. **GENERAL PROVISIONS.**

- 21.1 Any and all claims and disputes arising out of this AGREEMENT against the STATE, 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.*). Nothing in this Section 21.1 shall negate any of the provisions set forth in Section 18 above.
- 21.2. 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.
- 21.3. 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.
- 21.4 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.
- 21.5 This AGREEMENT shall not be assigned by either Party. Any such assignment shall be null and void.
- 21.6. 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: _____

By: _____

Douglas A. Krieger
City Manager

Alec Messina
Director

Attest:

Attest:

By: _____

By: _____

Pam Gallahue, Ph.D.
City Clerk

James Jennings
Manager, Waste Reduction and
Compliance Section

Date: _____

Date: _____