

**CHICAGO AVENUE ALLEY REFUSE ENCLOSURE
ENCROACHMENT LICENSE AGREEMENT**

THIS CHICAGO AVENUE ALLEY REFUSE ENCLOSURE ENCROACHMENT LICENSE AGREEMENT ("**Agreement**") is entered by and between the City of Naperville, a municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois, with offices located at 400 South Eagle Street, Naperville, IL 60540 ("City" or "Licensor"), and

_____ ("**Licensee**" as defined herein). The City of Naperville ("**City**" or "**Licensor**") and Licensee are together hereinafter referred to as the "Parties" and sometimes individually as "Party".

RECITALS

- A. The Licensee is a commercial (residential) tenant of real property located at _____, PIN # _____ ("Subject Property").
- B. The Subject Property backs up to an alley ("**Alley**") where the City maintains an enclosed area for Refuse and Recycling (cumulatively referenced hereinafter as "**Refuse Enclosure**" or "**License Premises**") for City use. The location of the Refuse Enclosure is described and depicted on **Exhibit A** attached hereto and made part hereof.
- C. In an effort to reduce multiple refuse and recycling containers used by tenants which are located adjacent to or in close proximity to the Alley, and to reduce the number of refuse and recycling pick-ups from the Alley, the City has agreed to permit the Licensee, and other licensees as determined at the discretion of the Director of the Department of Public Works, to utilize the Refuse Enclosure subject to the terms and conditions set forth herein.
- D. The License granted herein is revocable at will subject to the notice provisions set forth herein.

WITNESSETH

- 1. Recitals Incorporated.
 - 1.1 The Recitals above are hereby incorporated into and made a part of this this paragraph 1 as though fully set forth herein.
- 2. Definitions.
 - 2.1 "**Alley**".
 - 2.2 "**City**". The City of Naperville, and its officers, agents, and employees; also referenced herein as Licensor.

- 2.3 **“Construction and demolition debris”**. Waste materials from interior and exterior construction, including but not limited to drywall, plywood, paneling pieces, lumber, windows, doors, cabinets, carpeting, bathroom and kitchen fixtures, and other similar materials.
- 2.4 **“Director”**. The Director of the Department of Public Works of the City of Naperville, or his or her designee.
- 2.5 **“Dumpster or Dumpsters”**. The Dumpster for Refuse and the Dumpster for Recycling Materials (one each) located within the Refuse Enclosure; the size of each Dumpster shall be determined, and may be changed, at the sole discretion of, the Director.
- 2.6 **“Grease”**. Waste fats and oils created by the preparation of food.
- 2.7 **“Grease Container”**. An enclosed, leakproof receptacle located inside or outside a food establishment for the storage of commercially generated grease.
- 2.8 **“Hazardous Waste”**. As defined in Section 5/3.220 of the Illinois Environmental Protection Act, as amended from time to time. [415 ILCS 5/1 *et seq.*]
- 2.9 **“Landscape Waste”**. Grass clippings, leaves, branches, brush, yard and garden trimmings, and similar materials.
- 2.10 **“License Premises”** The enclosure described in Recital B above, including but not limited to the Dumpsters; synonymous with Refuse Enclosure.
- 2.11 **“Recyclable Materials”**. Materials that would otherwise become residential or commercial waste, including, but not limited to, metals, glass, paper, leaves and plastics, which are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.
- 2.12 **“Refuse”**. Wastes resulting from the handling, processing, preparation, cooking and consumption of food, and wastes from the handling, processing, storage and sale of produce other than Grease.
- 2.13 **“Refuse Enclosure”** The enclosure described in Recital B above, including but not limited to the Dumpsters; synonymous with License Premises.
- 2.14 **“Waste Hauler”**. The single Waste Hauler which picks up Refuse and Recyclable Materials from the Refuse Enclosure. Said Waste Hauler shall be licensed to perform such work in the State of Illinois.
- 2.15 **“White Goods”**. All discarded refrigerators, ranges, water heaters, freezers, air conditioners, humidifiers, and other similar domestic and commercial large appliances.
- 2.16 **“White Good Components”**. Includes any: 1) chlorofluorocarbon refrigerant gas; 2) any electrical switch containing mercury; and 3)

any device that contains or may contain PCBs in a closed system, such as a dielectric fluid for a capacitor, ballast or other component.

3. Grant of License.

3.1 Refuse Enclosure License. Subject to the terms and conditions set forth and referenced herein, and in consideration of the agreements set forth herein, the City hereby grants a non-exclusive, revocable at will license (“**License**”) for Licensee to enter upon the License Premises for the purposes of disposal of Refuse and Recyclable Materials in the Refuse Enclosure as defined and provided herein.

4. Use of Refuse Enclosure.

4.1 Single Waste Hauler. At all times this Agreement is in effect, Licensee agrees to contract with the same Waste Hauler as used by other licensees using the Refuse Enclosure for pick-up of Licensee’s Refuse and Recyclable Materials.

4.2 Waste Hauler Payment. Licensee shall directly pay the Waste Hauler for pick-up of all Refuse and Recyclable Materials.

4.3 Limitation on Use of Refuse Enclosure. Only Refuse and Recyclable Materials, as defined herein, may be disposed of in the Refuse Enclosure. Recyclable Materials and Refuse shall only be disposed of in the Dumpster designated for each such purpose. At no time shall any other materials, including but not limited to Grease, Construction and Demolition Debris, Landscape Waste, White Goods, White Good Components, or Hazardous Waste, be disposed of in the Refuse Enclosure.

4.3.1 Nothing may be disposed of in the Refuse Enclosure that is not fully contained (with Dumpster lid closed) within the appropriate Dumpster.

4.4 Number and Timing of Pick-Ups. The number and timing of pick-ups of Refuse and Recyclable Materials from the Refuse Enclosure by the Waste Hauler shall be determined by the Director at his sole discretion. Notwithstanding the foregoing, unless this Agreement is amended, there shall not be fewer than four (4) pick-ups of Refuse per week and not fewer than one (1) pick-up of Recyclable Materials per week.

4.5 Right of Inspection. The Director shall have the right at any time to inspect the Refuse Enclosure and the Dumpster to confirm compliance with the provisions of this Agreement.

- 4.6 No Interest in City Property. Licensee acknowledges and agrees that its use of the License Premises in no way gives it any lease, easement, or other property rights or interests in the License Premises or in the Dumpsters, and that its use of the License Premises and Dumpsters is subject to the revocation or modification of the License granted herein by the City.
- 4.7 License Premises/AS IS condition. Use of the License Premises by Licensee, and by Licensee's officers, agents, employees, and representatives, shall be conclusive evidence against the Licensee, and Licensee's officers, agents, employees, and representatives, that the License Premises are in good and satisfactory condition. Further, Licensee accepts the License Premises, on Licensee's behalf and on behalf of Licensee's officers, agents, employees, and representatives, on an "AS-IS" basis, and is completely at risk with respect to all attributes and conditions, latent or otherwise, of the License Premises.
- 4.8 Clean Condition. Licensee's disposal of Refuse and/or Recyclable Materials within the Refuse Enclosure shall be done in a manner that maintains the Refuse Enclosure in a neat and clean condition. Leakage of any liquids caused by Licensee, or by Licensee's officers, agents, employees, or representatives shall be immediately cleaned and removed.

5. City Obligations and Authority.

- 5.1 The City shall repair and maintain the Refuse Enclosure.
- 5.2 The Director may permit additional licensees to utilize the Refuse Enclosure at his sole discretion.
- 5.3 The size of each Dumpster shall be determined, and may be changed, at the sole discretion of, the Director.
- 5.4 Licensee shall not permit any mechanics or other lien to attach to the Licensed Premises, or any part thereof. If any such lien is filed, Licensee shall immediately notify the City Attorney in writing that it either intends to satisfy such lien or shall promptly defend, indemnify, and hold the City and its officers, agents and employees harmless from such lien.

6. Term

- 6.1 Subject to the suspension, revocation, and termination provisions set forth herein, this License Agreement shall be effective for a period commencing on the Effective Date as defined in paragraph 16.1

herein and ending thirty-six (36) months later. Thereafter, unless revoked as provided herein, this License Agreement shall automatically renew for additional one (1) year periods subject to the same terms and conditions set forth herein unless amended as provided herein.

7. Suspension

7.1 If the Director determines that Licensee is in violation of the provisions of this Agreement, this Agreement, and the License provided for herein, may be suspended at the discretion of the Director.

8. Revocation and Termination.

8.1 The License granted herein is revocable, and this Agreement may be terminated, at the will of Licensor without penalty or claim of any kind accruing to Licensee; however, Licensor agrees to provide three (3) months advance written notice to Licensee if practical.

8.2 Licensee may terminate this Agreement upon not less than ninety (90) days written Notice to the Director.

9. Insurance/Defense and Indemnification.

9.1 Insurance. At all times this Agreement is in effect, Licensee shall, at a minimum, carry and maintain the following insurance in compliance with the provisions set forth below:

-General Liability:

Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01 or equivalent):

Limits:

General Aggregate

\$2,000,000.00

Products/Completed Liability Aggregate

\$2,000,000.00

Each Occurrence

\$1,000,000.00

Personal Injury

\$2,000,000.00

-Worker's Compensation:

i. Worker's Compensation Insurance in accordance with the provisions of the laws of the State of Illinois, including occupational

disease provisions, for all Licensee's employees, and in the event work is sublet, the Consultant shall require each subconsultant to provide Worker's Compensation Insurance. In the event employees engaged in hazardous work are not protected under the Worker's Compensation statute, the Consultant shall provide, and cause each subconsultant to provide, adequate and suitable insurance coverage for the protection of each employee not otherwise provided.

- ii. Employer's Liability
Per occurrence for Bodily Injury or Disease
\$500,000.00

-Automobile Liability:

Coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

Limits:

- i. Hired and now-owned vehicles
\$1,000,000

-Umbrella coverage for each of the above-named insurance policies, except worker's compensation.

- i. Limits:
Each Occurrence/Aggregate
\$1,000,000.00

9.1.1. Any self-insured retentions of Licensee in excess of twenty-five thousand dollars (\$25,000) shall be declared to and approved by the City.

9.1.2 The City of Naperville and its officers, agents, employees, and volunteers are to be covered as insureds with respect to liability arising out of the use of the Refuse Enclosure by Licensee, and Licensee's officers, agents, employees, volunteers, and representatives. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the Licensee's insurance policies.

9.1.3 For any claims related to use of the Refuse Enclosure

by Licensee, and Licensee's officers, agents, employees, volunteers, and representatives, the Licensee's insurance coverage shall be primary insurance as respects the City and its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City or its officers, agents, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

9.1.4 Licensee agrees to waive subrogation which any insurer of such Licensee may acquire from said Licensee by virtue of the payment of any loss. Licensee shall obtain any endorsement that may be necessary to effectuate this waiver of subrogation. The Workers' Compensation policy of each Licensee shall be endorsed with a waiver of subrogation in favor of the City, and its officers, agents, employees, and volunteers for use of the Refuse Enclosure by Licensee, and Licensee's officers, agents, employees, volunteers, and representatives.

9.2 Defense, Indemnification, and Hold Harmless. Licensee shall defend (with legal counsel approved by the City, which approval shall not be unreasonably withheld), indemnify, and hold the City of Naperville and its officers, agents, employees, volunteers, and representatives, harmless from and against any cost, liability, judgment, expenses, attorneys' fees, claims, actions or damages of any kind, including but not limited to personal injury, death, property damage, and any mechanics or other lien or encumbrance of any kind, arising out of any act or omission of Licensee or Licensee's officers, agents, representatives, invitees, and contractors in the use of the License Premises. Nothing contained herein shall be construed as a limitation or waiver of defenses available to the Licensor and its officers, agents, and employees, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act. Licensee shall reimburse the City for any costs, including but not limited to attorney's fees and interest, resulting from Licensee's failure to omission to comply with the provisions of this paragraph.

10. Damages.

10.1. Licensee shall be responsible for damages to the License Premises caused by Licensee or Licensee's officers, agents, representatives, invitees, and contractors in the use of the License Premises, and shall promptly restore the License

Premises to the condition they were in prior to such damage to the satisfaction of the Director. Failure to do so may result in the City undertaking such restoration. Any costs expended by the City for such restoration purposes shall be fully reimbursed by Licensee.

11. Taxes.

- 11.1 Licensee shall be responsible to timely pay any real property tax assessment resulting in whole or in part from its use of the License Premises. Failure to do so may result in the City undertaking such payment in which event the City shall be fully reimbursed by Licensee within thirty (30) days of the City's issuance of a bill therefor.

12. Right to Lien/Other Remedies.

- 12.1 Wherever costs, fees, or reimbursements to the City are provided for herein, the same shall be promptly paid in full by Licensee within thirty (30) days of the City's issuance of a bill therefor, or any extension of time agreed to in writing by the Director. If Licensee fails to make prompt payment in full, the City may take such action as it deems appropriate at law or in equity; such action shall include but is not limited to recording a lien on the Subject Property with the DuPage County Recorder if the Subject Property is owned by Licensee.

13. Notice.

- 13.1. When notice ("**Notice**") is required herein, it shall be given by FedEx or overnight mail addressed to the individuals or entities set forth below, or to subsequent owners of the Licensee Properties as provided in paragraph 13.2 below:

IF TO THE CITY/LICENSOR:

City of Naperville
Attention: City Manager
400 South Eagle Street
Naperville, IL 60540

WITH COPIES TO:

City of Naperville
Attention: Director of Department of Public
Works
180 Fort Hill Drive

Naperville, IL 60540

IF TO THE LICENSEE:

14. General Provisions.

- 14.1. Amendment. No amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.
- 14.2. Choice of Law and Venue. The laws of the State of Illinois shall govern the terms of this Agreement as to both interpretation and performance. Venue for action arising out the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- 14.3. Days. Unless otherwise provided, whenever the word “days” is used herein, days shall refer to calendar days.
- 14.4. Severability. In the event that one or more of the provisions contained in this Agreement should for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 14.5. Ambiguity. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 14.6. No Waiver. No waiver or any breach of any one or more of the conditions or covenants of this Agreement by any Party hereto shall be deemed to imply or constitute a waiver of any succeeding or other breach under this Agreement.
- 14.7. Subordination. Licensor’s rights and interests under this License Agreement shall not be subordinated to any other interest without the prior written approval of the City Manager.
- 14.8. Attorneys’ Fees. Licensee shall be responsible to pay Licensor’s reasonable attorneys’ fees and costs (whether in-house or outside counsel) associated with enforcement of any aspect of this Agreement.

- 14.9. Exhibits Incorporated. Any exhibit referenced herein is incorporated herein and made part hereof.
- 14.10. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.
- 14.11. Binding Effect. This Agreement shall be binding upon the Licensee and Licensor.
- 14.12. Assignment. Neither Party may transfer or assign its rights under this Agreement without the prior written consent of the other Party.
- 14.13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings, commitments and representations concerning the subject matter hereof.
- 14.14. Cumulative Remedies/No Waiver. The Parties' rights and remedies hereunder shall be cumulative, the exercise of any right or remedy shall neither preclude enforcement of other rights nor waive other rights and remedies; the failure of any Party to exercise any rights or remedies shall neither preclude enforcement of any rights or remedies nor constitute a waiver of any rights or remedies. Nothing herein precludes the City from taking other action at law or in equity as it may deem appropriate, including but not limited to issuance of ordinance violations for failure to comply with the requirements of the Naperville Municipal Code, as amended from time to time, and revocation of the License granted herein.
- 14.15. Survival. The obligations of the Parties under this Agreement, to the extent that they arose while this Agreement was in effect, shall survive the revocation of the License granted herein and the expiration or termination of this Agreement. Any expiration, revocation, or termination of this Agreement shall not release any Party from any liabilities, claims, or obligations arising hereunder including, but not limited to, indemnities which may have accrued or are accruing prior to or at the time of revocation and termination. In addition, the provisions of paragraphs 1, 2, 9.1.3, 9.1.4, 9.2, 10.1, 11.1, 12.1, and each subsection of paragraph 15 shall survive the revocation of the License granted herein and the expiration or termination of this Agreement.
15. Authorization to Execute. The undersigned warrant and represent that they have read this Agreement and that they are authorized to execute this

Agreement on behalf of their respective Parties.

16. Effective Date. The effective date of this Agreement (“**Effective Date**”) shall be the date it is fully executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto by their signatures affirmatively represent and acknowledge they have authority to sign this Agreement and intend to be bound by its terms.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE/LICENSOR

By: _____
Douglas A. Krieger
City Manager

Attest:

By: _____
Pam Gallahue, Ph.D.
City Clerk

State of Illinois)
)
ss County of DuPage
)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Douglas A. Krieger, personally known to me to be the City Manager of the City of Naperville, and Pam Gallahue, personally known to me to be the City Clerk for the City of Naperville, appeared before me this day in person and acknowledged that they signed this instrument in their respective capacities as the City Manager and City Clerk of the City of Naperville pursuant to authority granted to them by the City Council of the City of Naperville.

Given under my hand and official seal this ____ day of _____, 2019.

(seal)

Notary Public

LICENSEE

By: _____

Name: _____

Its: _____

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, appeared before me this day in person and acknowledged the signature(s) set forth above.

Given under my hand and official seal this ____ day of _____, 2019

(seal)

Notary Public

https://cityofnaperville-my.sharepoint.com/personal/lordp_naperville_il_us/Documents/Chicago Avenue Refuse Enc. Agreement FIN. 10-25-2019.docx

EXHIBIT A
DESCRIPTION/DEPICTION OF
LICENSED PREMISES