

ATTACHMENT 1

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF NAPERVILLE AND THE COUNTY OF DUPAGE TO PROVIDE FUNDING FOR THE OPERATION OF A HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

THIS AGREEMENT is between the City of Naperville, a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois with offices at 400 South Eagle Naperville, Illinois 60540, and the County of DuPage, a body corporate and politic, with offices at 421 N. County Farm Road Wheaton, Illinois 60187.

RECITALS

WHEREAS, the Illinois General Assembly has granted the County of DuPage, Illinois ("COUNTY") authority to plan for the management of the COUNTY'S waste stream pursuant to the Solid Waste Planning and Recycling Act (415 ILCS 15/1, *et seq.*); and

WHEREAS, the County of DuPage in 1996 adopted the "DuPage County Solid Waste Plan"; amended in 2001, which recommends that the toxicity of the residential waste stream be reduced through the diversion and appropriate management of household hazardous waste ("HHW"), which is the subject of this Intergovernmental Agreement; and

WHEREAS, the City of Naperville ("CITY") and the COUNTY are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified at 5 ILCS 220/1, *et seq.*, and are authorized by Article 7, Section 10 of the Constitution of the State of Illinois to cooperate for public purposes; and

WHEREAS, the purpose of the Intergovernmental Cooperation Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, on December 6, 2012 the CITY and the Illinois Environmental Protection Agency ("IEPA") entered into an Intergovernmental Agreement (the "2012 IEPA Agreement") for the continuation of cooperative funding and operation of a regional household hazardous waste collection facility on City-owned property ("FACILITY"); and

WHEREAS, THE 2012 IEPA Agreement expired on December 31, 2017; and

WHEREAS, the CITY and the IEPA have entered into an addendum ("ADDENDUM") to the 2012 IEPA Agreement which ADDENDUM shall be effective from January 1, 2018 through June 30, 2018, and which ADDENDUM modifies certain terms of the 2012 IEPA Agreement and requires the CITY to operate the FACILITY within a maximum cap ("CAP") for the waste hauling services paid for by the IEPA; and

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WHEREAS, the 2012 IEPA Agreement and the ADDENDUM are cumulatively referenced hereinafter as the "IEPA AGREEMENT" and are attached hereto and made part hereof as Exhibit A1 and A2; and

WHEREAS, the CITY and COUNTY have determined that it is in their best interests that the FACILITY provide HHW services, including but not limited to all DuPage County residents, and seek to enter into this Intergovernmental Agreement to accomplish this purpose; and

WHEREAS, the CITY and the IEPA adopted the IEPA AGREEMENT which allows the FACILITY to accept HHW from residents, including but not limited to residents of DuPage County, and further provides that the IEPA has assumed generator status and accepts liability for the HHW once it is stored; and

WHEREAS, because DuPage County will provide funding for operation of the FACILITY at a cost not to exceed \$100,000.00 (One-Hundred Thousand and no/100 Dollars) during the term of this Intergovernmental Agreement ("AGREEMENT"), it is in the parties' best interests to clarify their rights and responsibilities with respect to the FACILITY.

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.
- 1.3 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience or reference only and shall not be deemed to constitute part of the AGREEMENT or to affect the construction hereof.

2.0 TERM OF THIS AGREEMENT

- 2.1 This AGREEMENT shall be in effect on December 1, 2017 and shall expire on December 31, 2018 unless terminated sooner in accordance with Section 12.0 or Section 19.1 of this AGREEMENT.
- 2.2 By agreement of the parties, this AGREEMENT may be extended for two additional one-year terms.

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3.0 SITE LOCATION, DESIGN AND CONSTRUCTION

- 3.1 At its sole expense, the CITY will maintain a site for the FACILITY at 156 Fort Hill Drive Naperville, Illinois, 60540, property that is owned and maintained by the CITY.
- 3.2 The FACILITY boundaries are those defined by the permit issued by the IEPA and all subsequent permit modifications.
- 3.3 The CITY maintains a storage/containment building on the FACILITY site, meets all IEPA permit criteria set forth in 35 Ill. Adm. Code 807, 35 Ill. Adm. Code 811, AGENCY Permit Log No. 2002-175 and all subsequent modifications to such permit.
- 3.4 The CITY shall provide prominent signage at the FACILITY indicating that the COUNTY is providing operational funding. Signage provided pursuant to this Section shall be subject to the COUNTY'S review and prior written approval.
- 3.5 If the IEPA AGREEMENT terminates for any reason, this AGREEMENT shall immediately be null and void and have no further effect.

4.0 HOURS OF OPERATION OF THE FACILITY

- 4.1 Except in cases of emergency, the CITY shall provide a minimum of 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 first come first served basis as determined by the capacity of the FACILITY.
- 4.2 The CITY shall have the right to modify the days and hours during which the FACILITY will operate, provided that the CITY first obtains approval from the AGENCY and the Director Public Works & Operations of the COUNTY for such modification. Notwithstanding the foregoing provision, in the event that the CITY adds additional hours during which the FACILITY will operate, the City need only obtain the approval of the AGENCY.
- 4.3 The FACILITY shall operate at least ten (10) hours per week.
- 4.4 Notwithstanding Section 4.3, the FACILITY shall not operate on New Year's Eve, New Year's Day, Easter Sunday, July 4th, Christmas Eve and Christmas Day or any other holiday that would cause a rise in the normal per hour labor rate.

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- 4.5 The CITY shall not charge residents of DuPage County any fee for utilizing the FACILITY.
- 5.0 TRANSPORTATION AND DISPOSAL CONTRACTOR
- 5.1 Pursuant to the 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 In accordance with the IEPA AGREEMENT, the IEPA shall pay all fees incurred by the CONTRACTOR in collecting, safely transporting and properly disposing of the HHW collected from the FACILITY.
- 5.3 The COUNTY shall not be responsible for the transport and/or disposal of the HHW collected at the FACILITY.
- 6.0 ACCEPTABLE WASTES
- 6.1 The FACILITY shall accept HHW as defined in the AGENCY AGREEMENT (See Section 6.1 of the AGENCY AGREEMENT), or as amended by the AGENCY'S agreement with its CONTRACTOR, and may typically include such items as aerosol containers, corrosives, oxidizers, solvents, oil-based paints, inorganic poisonous solids, organic poisons and pesticides F027-like pesticides, household batteries, and fluorescent tubes.
- 6.2 It shall be the FACILITY'S policy not to accept ammunition, explosives, radioactive materials, non-special, non-contaminated wastes, including trash and non-hazardous debris, potentially infectious medical waste, sharps and/or needles, radioactive or controlled medicines, and any wastes generated by businesses, institutions, industries or agricultural, commercial or governmental facilities unless agreed to in writing by the CITY and the IEPA. 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 for all purposes and shall be trained in accordance with the provisions of the IPEA AGREEMENT as modified from time to time.

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8.0 COUNTY FUNDING OF CITY EXPENSES

- 8.1 The COUNTY shall pay the CITY an amount not to exceed \$100,000.00 for FACILITY operational expenses related to HHW FACILITY services.
- 8.2 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.
- 8.3 The CITY shall submit documentation of reportable operational expenses. Documentation provided by the CITY shall itemize expenditures by type (*i.e.* personnel, training, supplies and other expenses directly related to FACILITY operation) and shall be sufficiently detailed to allow the COUNTY to determine eligibility for release of payment.
- 8.4 Reportable operational expenses shall include, but not be limited to, purchase of equipment/supplies necessary to operate the FACILITY, such as personal protective equipment, latex gloves, absorbent pads, labor costs, utilities, and other expenses directly related to the FACILITY'S operation.
- 8.5 The CITY shall submit reports that include the reportable operational expenses, volume of waste received and tallies of participation no less than quarterly. Upon receipt of an invoice and the above-mentioned reports, the COUNTY shall make four (4) quarterly payments to the CITY. All invoices must be received no later than December 31st, 2018.

9.0 STATISTICAL REPORTING

- 9.1 The CITY shall provide to the COUNTY statistics including but not limited to the number of service days, number of cars per operational day, the amount of household hazardous waste collected and a breakdown of resident participation by COUNTY and City of Naperville.

10.0 PARTIES' LIABILITY

- 10.1 The CITY shall be solely liable for any and all damages or cleanup costs resulting from spills or release of wastes, fires, or explosions

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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.

- 10.2 The CITY shall defend the COUNTY or any of its officers, board members, employees, agents, or assigns against any claims arising from or related to the operation of the FACILITY.

Additionally, the CITY shall indemnify, hold harmless, and defend the COUNTY or any of its officers, board members, employees, agents or assigns from and against all liability, and including but not limited to, claims, demands, and causes of action arising out of or related to any loss, damage, injury, death, or loss or damage to property resulting from the CITY'S performance of this AGREEMENT to the fullest extent the CITY is so authorized under the law.

The CITY shall provide legal counsel pursuant to the indemnity, hold harmless and defense provisions of this Contract. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY under this Agreement is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008, and said counsel shall be approved by the State's Attorney's Office. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. The COUNTY's participation in its defense shall not remove CITY's duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

- 10.3 The COUNTY shall not be liable for any damages, regardless of cause, to the storage building.
- 10.4 Except for any negligent or willful act on the part of CITY employees, the AGENCY 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 AGENCY and CONTRACTOR specifications.
- 10.5 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 IEPA and CONTRACTOR

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specifications. The COUNTY shall not assume generator status as to any of the HHW.

11.0 PUBLIC INFORMATION PROGRAM

- 11.1 The CITY and the COUNTY will coordinate simultaneous advertising regarding the availability of the FACILITY for residents of DuPage County.

12.0 TERMINATION

- 12.1 The COUNTY reserves the right to terminate this AGREEMENT at any time in the event of default by CITY upon thirty (30) days written notice to the CITY and failure by the CITY to commence and continue correction of any such default within thirty (30) days of said notice.
- 12.2 The CITY reserves the right to terminate this AGREEMENT at any time in the event of default by COUNTY upon thirty (30) days written notice to the COUNTY and failure by the COUNTY to commence and continue correction of any such default within thirty (30) days of said notice. The CITY further reserves the right to terminate this AGREEMENT as set forth in Section 19.1 below.
- 12.3 Notwithstanding the above, 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 null and void and of no further effect.
- 12.4 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 AGENCY for this program, this AGREEMENT shall terminate in accordance with termination of IEPA funding under the IEPA AGREEMENT. Operational expenses already expended but not yet reported to the COUNTY shall be submitted within thirty (30) days of the termination of the Agreement.
- 12.5 Additionally, the COUNTY, at its sole discretion, has the right to terminate this AGREEMENT if the IEPA and CITY fail to execute the IEPA AGREEMENT within thirty (30) days of the renewal date.
- 12.6 In the event of a termination of this AGREEMENT as described in 12.5, the COUNTY and the CITY reserve the right to enter into negotiations

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to establish an alternative means of disposing of the household hazardous waste collected at the FACILITY.

13.0 MISCELLANEOUS

13.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

14.0 ENTIRE AGREEMENT

14.1 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.

15.0 NOTICES

15.1 All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance with the amendment procedures set forth in Paragraph 16.1 below.

15.2 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 subsection.

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FOR THE CITY

City Manager
City of Naperville
400 South Eagle Street
Naperville, IL 60540
Facsimile: (630) 420-6083

FOR THE COUNTY

DuPage County
Director of Public Works & Operations
421 N. County Farm Road
Wheaton, IL 60187
Facsimile: (630) 407-6702

FOR THE IEPA

Manager, Waste Reduction and Compliance Section
Bureau of Land
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
Springfield, IL 62794-9276

16.0 AMENDMENT OR MODIFICATION

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

17.0 NON-ASSIGNMENT

17.1 Neither party shall assign this AGREEMENT without the written consent of the other party, which consent shall not be unreasonably withheld.

17.2 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the 18th Judicial Circuit Court for DuPage County.

18.0 GOVERNING LAW

18.1 The laws of the State of Illinois as to both interpretation and performance shall govern this Agreement.

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19.0 CAP PROVISION

19.1 Notwithstanding any other provision herein, if the CITY determines that measures need to be taken to avoid exceeding the 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 are necessary in order to avoid exceeding the CAP, the City shall give not less than fourteen (14) days' notice to the COUNTY of such action. If the CITY determines that termination of all services at the FACILITY is necessary in order to avoid exceeding the CAP, the City shall give not less than fourteen (14) days' notice to the COUNTY of such action at which point the COUNTY shall be entitled to a refund of a proportionate share of its contribution for operational expenses.

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

COUNTY of DUPAGE

By: _____
Steve Chirico
Mayor

By: _____
Daniel J. Cronin
DuPage County Chairman

Attest:

Attest:

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

By: _____
Paul Hinds
County Clerk