

RESOLUTION

EN-0002A-11

FIRST AMENDMENT TO THE 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

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, 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, the CITY and the Illinois Environmental Protection Agency ("AGENCY"), entered into an Agreement (hereinafter referred to as the "AGENCY AGREEMENT," a copy of which is attached hereto and incorporated herein by reference as Exhibit "A") for the continuation of cooperative funding and operation of a household hazardous waste ("HHW") collection facility on City-owned property (hereinafter referred to as the "FACILITY"); and

WHEREAS, the CITY and COUNTY have determined that it is in their best interests that the FACILITY provide HHW services to all DuPage County residents and seek to enter into an intergovernmental agreement to accomplish this purpose; and

WHEREAS, the CITY and the AGENCY adopted the AGENCY AGREEMENT which allows the FACILITY to accept HHW from residents from throughout DuPage County and further provides that the AGENCY has assumed generator status and accepts liability for the HHW once it is stored; and

WHEREAS, because DuPage County will provide additional operation funding for the expanded service area 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 through this extension of the Agreement; and

WHEREAS, the Environmental Committee has reviewed and recommends County Board approval of the attached AGREEMENT.

NOW, THEREFORE, BE IT RESOLVED, by the DuPage County Board that the attached Intergovernmental Agreement between the City of Naperville and the County of DuPage is hereby accepted and approved; and

BE IT FURTHER RESOLVED; that the County Clerk is hereby authorized and directed to transmit one (1) of the original copies of the attached AGREEMENT and one (1) certified copy of the adopting resolution to Naperville City Clerk, Pam LaFeber, City of Naperville, 400 S. Eagle St., Naperville, IL 60540.

Enacted and approved this 13th day of March, 2012 at Wheaton Illinois.

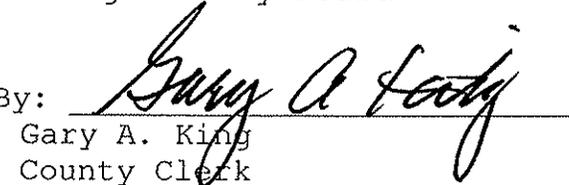
By:



Daniel J. Cronin, Chairman
DuPage County Board

Attest:

By:



Gary A. King
County Clerk

Ayes: 17
Absent: 1

**FIRST AMENDMENT TO THE 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 FIRST AMENDMENT TO THE 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 is entered into this 19th day of December, 2011, between the City of Naperville ("CITY"), a municipal corporation and home rule unit of government with offices at 400 South Eagle Street, Naperville, Illinois 60540, and the County of DuPage ("COUNTY"), a body corporate and politic, with offices at 421 N. County Farm Road, Wheaton, Illinois, 60187.

WHEREAS, the COUNTY and the CITY entered into an intergovernmental agreement ("AGREEMENT") on February 1, 2011 for the COUNTY'S provision of operation funding of the CITY'S household hazardous waste collection facility on CITY-owned property ("FACILITY") which will expire on November 30, 2011; and

WHEREAS, the CITY and COUNTY have determined that it is in their best interest that the FACILITY continue to provide household hazardous waste services to all DuPage County residents; and

WHEREAS, the CITY and the COUNTY desire and agree to extend the AGREEMENT for an additional twelve (12) months beginning December 1, 2011 and terminating November 30, 2012 pursuant to Section 2.2 of the Agreement; and

WHEREAS, the CITY and the COUNTY acknowledge that this First Amendment to the Agreement is subject to appropriation by each party; and

WHEREAS, the CITY and the COUNTY agree that the COUNTY will provide additional operation funding for the FACILITY at a cost not to exceed one hundred thousand dollars (\$100,000.00) during the term of this First Amendment to the Agreement; and

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree to amend the AGREEMENT as follows:

2.0 TERM OF THIS AGREEMENT

2.1 This AGREEMENT shall be in effect on the date of execution by the parties through November 30, ~~2011~~ 2012 unless terminated sooner in accordance with Section 12.0 of this AGREEMENT.

2.2 By agreement of the parties, this AGREEMENT may be extended for two one additional one-year terms.

8.0 COUNTY FUNDING OF CITY EXPENSES

8.1 The COUNTY shall pay the CITY an amount not to exceed \$100,000.00 (One Hundred Thousand and no/100 Dollars) for FACILITY operational expenses during the term of this First Amendment to the AGREEMENT.

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, \$25,000 per payment to the CITY. All invoices must be received no later than December 1, 2011 2012.

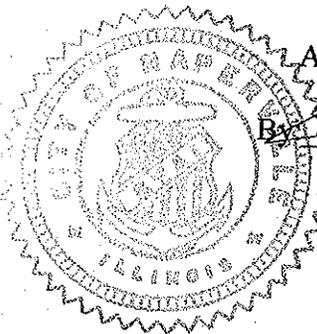
IN WITNESS WHEREOF, the parties set their hands and seals as of the first date written above.

CITY of NAPERVILLE

By: Douglas A. Krieger
Douglas A. Krieger
City Manager

COUNTY of DuPAGE

By: Dan Cronin
Dan Cronin
DuPage County Chairman



Attest: Pam LaFeber
By: Pam LaFeber
Pam LaFeber, Ph.D.
City Clerk

Attest: Gary A. King
By: Gary A. King
Gary A. King
County Clerk

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS AND CREATIVE
RECYCLING SERVICES TO PROVIDE ELECTRONIC RECYCLING TO RESIDENTS
OF DU PAGE COUNTY

This is An Electronic Recycling Agreement ("Agreement"), entered into as of March 2, 2010 by and between DuPage County, a body of corporate and politic, with principal offices at 421 County Farm Rd., Wheaton, IL 60187 ("Customer") and Creative Recycling Services., a Florida corporation with principal offices at 8108 Krauss Blvd., Tampa, Florida ("Recycler").

WHEREAS, the Illinois General Assembly has granted the County of DuPage ("COUNTY") authority to enter into agreements and do all other acts in relation to the concerns of the County necessary to the exercise of its corporate powers (55 ILCS 5/5-1005); and

WHEREAS, the Local Solid Waste Disposal Act (415 ILCS 10/1 et seq.) recognizes recycling as an important objective for counties in the State of Illinois and requires the development of solid waste management plans to protect the public health and welfare; and

WHEREAS, the COUNTY has developed a solid waste management plan that provides for, among other things, the County to assist with recycling; and

WHEREAS, the COUNTY has solicited by a Request for Information entities provide information on providing recycling of electronics to residents of the County; and

WHEREAS, the RECYCLER submitted information which will result in the proper recycling of electronics at various locations in the County.

NOW THEREFORE, the COUNTY enters into this AGREEMENT TO provide electronic recycling to residents within the COUNTY:

1.0 RECITALS INCORPORATED

1.1 All recitals set forth above are incorporated herein and made part hereof, the same constituting the factual basis for this AGREEMENT.

1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference

only and shall not be deemed to constitute part of the AGREEMENT or to affect the construction hereof.

2.0 SCOPE OF SERVICES

2.1 RECYCLER will pick up electronics from designated locations and provide necessary supplies including but not limited to gaylord boxes and pallets for shipment.

2.2 RECYCLER will comply with all local, state and federal shipping regulations when transporting electronics for recycling.

2.3 RECYCLER will properly shred and sort for recycling all electronics not deemed to be reusable and will provide verification of recycling to COUNTY. As described in Exhibit A, RECYCLER will utilize NIST800-88 standard of data sanitization for data containing devices. Any device where NIST standards cannot be utilized will be destroyed and recycled.

2.4 The RECYCLER will provide recycling service at a minimum to those collection sites listed in the attached Exhibit B and will review and approve additional sites upon request of COUNTY.

2.5 The COUNTY shall assist with staffing at one-day collection events by providing traffic control beyond the designated collection area.

2.6 The RECYCLER shall provide staffing at one-day collection events as noted in Exhibit A that will adequately service the event and ensure traffic flow. Staffing will be decided upon by agreement with the COUNTY and host community.

2.7 The COUNTY shall provide all advertising for collection sites and events.

2.8 RECYCLER will not landfill or incinerate, any electronics or electronics parts obtained as part of this recycling program. If such becomes necessary to comply with any applicable law, notification will be submitted to COUNTY 7 days prior to shipment to such waste facility.

2.9 To the extent recognized and permitted by law, all rights, title and interests to any material, of whatever nature, delivered to the recycling facility pursuant to this AGREEMENT and accepted by the RECYCLER shall vest in the RECYCLER immediately upon such acceptance.

2.10 RECYCLER shall pick up electronics from permanent drop off locations as soon as practicable, but no later than 10 calendar days after notification of pickup request unless a later date is agreed to by the parties and the County is informed of such agreement.

2.11 COUNTY will inform all partnering entities that they are to notify RECYCLER of the need for pickup when 75% storage capacity is reached.

2.12 Acceptable and non-acceptable items shall be as set forth in Exhibit A.

3.0 NOTICE TO PROCEED

3.1 Authorization to proceed with tasks described in Exhibit "A" shall be given on behalf of the COUNTY by the Chief of Staff and Director of the Department of Economic Development & Planning (hereinafter referred to as the "Director"), in the form of a written notice to proceed immediately following the execution of the AGREEMENT.

4.0 TECHNICAL SUBCONTRACTORS

4.1 The prior written approval of the COUNTY shall be required before RECYCLER hires any technical SUBCONTRACTOR(s) to complete COUNTY ordered tasks, which consent shall not be unreasonably withheld.

4.2 The RECYCLER shall supervise any SUBCONTRACTOR(s) hired by the RECYCLER and the RECYCLER shall be solely responsible for any and all work performed by said SUBCONTRACTOR, or SUBCONTRACTOR, in the same manner and with the same liability as if performed by the RECYCLER.

5.0 TIME FOR PERFORMANCE

5.1 The RECYCLER shall commence work immediately

after the COUNTY issues its written Notice to Proceed. The COUNTY is not liable for any work performed before the date of the Notice to Proceed.

5.2 RECYCLER shall provide electronic recycling services for one-year from the effective date. The AGREEMENT shall be deemed dated and become effective on the date the last of the Parties signs as set forth below the signature of their duly authorized representatives.

6.0 COMPENSATION

6.1 The RECYCLER will collect, transport, shred, and dismantle electronics at no charge to COUNTY.

7.0 DELIVERABLES

7.1 The RECYCLER shall provide information to enable the COUNTY to comply with 415 ILCS 150/55(c) no later than August 1st of the program year.

7.2 The RECYCLER shall provide data no later than April 10th of the program year to enable the COUNTY to comply with 415 ILCS 150/55(d). This information includes: (1) the total weight of computers, the total weight of computer monitors, the total weight of televisions, and the total weight of EEDs collected or received for each manufacturer during the program year; (2) a list of each recycler and refurbisher that received CEDs and EEDs from the collector and the total weight each recycler and refurbisher received; (3) the address of each collector's facility where the CEDs and EEDs were collected or received.

7.3 If RECYCLER fails to provide the above information to allow COUNTY to comply, RECYCLER will pay for any and all penalties issued the COUNTY for non-compliance.

8.0 RECYCLER'S INSURANCE

8.1 The RECYCLER shall maintain throughout the term of this AGREEMENT, at its sole expense, insurance coverage including:

8.1.a Worker's Compensation Insurance in the statutory amounts.

8.1.b Employer's Liability Insurance in an amount not less than one million (\$1,000,000) dollars each accident/injury and one million (\$1,000,000) dollars each employee/disease.

8.1.c Commercial (Comprehensive) General Liability Insurance, (including contractual liability) with a limit of not less than three million (\$3,000,000) dollars total; including limits of not less than one million (\$1,000,000) dollars per occurrence, and two million (\$2,000,000) dollars excess liability in the annual aggregate injury/property damage combined single limit.

8.1.d Commercial (Comprehensive) Automobile Liability Insurance with minimum limits of at least one million (\$1,000,000) dollars for any one person and one million (\$1,000,000) dollars for any one occurrence of bodily injury or property damage in the aggregate annually.

8.2 It shall be the duty of the RECYCLER to provide to the COUNTY, copies of the RECYCLER'S Certificates of Insurance before issuance of a Notice to Proceed.

8.3 The insurance required to be purchased and maintained by RECYCLER shall be provided by an insurance company acceptable to the COUNTY; licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to COUNTY.

8.4 RECYCLER'S insurance required by subparagraph above, shall name the COUNTY, its officers, employees and agents as additional insured parties. The Certificate of Insurance shall state: "The County of DuPage, its officers, employees and agents are named as additional insureds as defined in the Commercial (Comprehensive) General Liability Insurance policy with respect to claims arising from RECYCLER'S performance under this AGREEMENT." The Certificate of Insurance shall also reference the name of the AGREEMENT.

8.5 All of the above-specified types of insurance shall be obtained from companies that have at least an A-VII rating in Best's Guide or the equivalent. Upon execution of this AGREEMENT, certificates should be faxed and mailed to:

DuPage County
Department of Economic Development & Planning
421 North County Farm Road
Wheaton, IL 60187-3978
TX: (630) 407-6700
FX: (630) 407-6702

9.0 INDEMNIFICATION

9.1 The RECYCLER shall indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the RECYCLER'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT.

9.2 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. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraph 9.1, is to be appointed a Special Assistant State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove RECYCLER'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. RECYCLER'S indemnification of COUNTY shall survive the termination, or expiration, of this AGREEMENT.

10.0 SATISFACTORY PERFORMANCE

10.1 The COUNTY is engaging this RECYCLER because the RECYCLER professes to the COUNTY that it will employ the standard of care within its profession in the performance of the services herein contracted. Accordingly, the RECYCLER'S, and SUBCONTRACTOR(s), standard of performance under the terms of this AGREEMENT shall be that which is to the satisfaction of the COUNTY and meets the quality and standards commonly provided by similar professional firms practicing in DuPage County.

10.2 The RECYCLER'S services shall be performed in a manner consistent with the customary skill and care of its profession.

10.3 If any errors, omissions, or acts, intentional or negligent, are made by the RECYCLER, or SUBCONTRACTOR(s), in any phase of the work, the correction of which requires additional field or office work, the RECYCLER shall be required to perform such additional work as may be necessary to remedy same without undue delay and without charge to the COUNTY.

10.4 Acceptance of the work shall not relieve the RECYCLER of the responsibility for the quality of its work, nor its liability for loss or damage resulting therefrom.

11.0 CONFLICT OF INTEREST

11.1 The RECYCLER covenants that it has no conflicting public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of RECYCLER'S services under this AGREEMENT.

12.0 COMPLIANCE WITH STATE AND OTHER LAWS

12.1 The RECYCLER, and SUBCONTRACTOR(s), will comply with Federal, State and Local statutes, ordinances and regulations and obtain permits, or other mandated approvals, whenever applicable.

12.2 The RECYCLER, and SUBCONTRACTOR(s), shall not discriminate against any worker, job applicant, employee or any member of the public, because of race, creed, color, sex, age, handicap, or national origin, or otherwise commit

an unfair employment practice. RECYCLER shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/-101, et seq., and with all rules and regulations established by the Department of Human Rights. The RECYCLER, by its signature on this AGREEMENT, certifies that it has not been barred from being awarded a contract or subcontract under the Illinois Procurement Code, 30 ILCS 500/1-1, et seq.; and further certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of the Illinois Criminal Code, 720 ILCS 5/33E-3 or 5/33E-4.

12.3 The RECYCLER, and SUBCONTRACTOR(s), shall comply with the DuPage County Ethics Ordinance and provide any and all documents necessary to ensure compliance with this Ordinance.

13.0 MODIFICATION OR AMENDMENT

13.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties.

13.2 The RECYCLER acknowledges receipt of a copy of the COUNTY'S Purchasing Procedures and Guidelines Ordinance, which is hereby incorporated in this AGREEMENT, and has had an opportunity to review it. RECYCLER agrees to submit changes in accordance with said Ordinance.

14.0 TERM OF THIS AGREEMENT

14.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:

14.1.a The termination of this AGREEMENT in accordance with the terms of Section 15.0; or

14.1.b One year from date of execution or to a new date agreed upon in writing by the parties.

14.2 The RECYCLER shall not perform any work under this AGREEMENT after the expiration date set forth in Paragraph 14.1.b, above. The COUNTY is not liable for any

work performed after the AGREEMENT'S expiration or termination.

14.3 The COUNTY may extend this AGREEMENT for two additional one-year terms. In any case, this AGREEMENT shall expire no later than March 15, 2013.

15.0 TERMINATION

15.1 Except as otherwise set forth in this AGREEMENT, either party shall have the right to terminate this AGREEMENT for any cause upon serving sixty (60) days' prior written notice upon the other party, except in the event of RECYCLER'S insolvency, bankruptcy or receivership, in which case termination shall be effective immediately upon receipt of notice.

15.2 Upon such termination, except for RECYCLER'S obligation under Paragraph 9.0, the liabilities of the parties to this AGREEMENT shall cease, but they shall not be relieved of the duty to perform their obligations up to the date of termination, or to pay for services rendered prior to termination. There shall be no termination expenses except those set forth in paragraph 7.

15.3 Upon termination of this AGREEMENT, all data, reports and documents required of the COUNTY to submit to the State shall be submitted to the COUNTY within 10 days of termination.

16.0 DEFINITIONS

16.1 All definitions listed in 415 ILCS 150/1 et seq. are hereby made part of this agreement.

17.0 ENTIRE AGREEMENT

17.1 This AGREEMENT, including matters incorporated herein, contains the entire agreement between the parties.

17.2 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, other than those contained herein.

17.3 In event of a conflict between the terms or

conditions or this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

18.0 ASSIGNMENT

18.1 Either party may assign this AGREEMENT provided, however, such assignment shall be first approved, in writing, by the other party.

19.0 SEVERABILITY

19.1 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

20.0 GOVERNING LAW

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

20.2 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.

21.0 NOTICES

21.1 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 to the amendment procedures set forth in Section 14.1, above.

21.2 Any required notice shall be sent to the following addresses and parties:

For the RECYCLER:
Creative Recycling Services

For the COUNTY:
DuPage County Department of
of Economic Development
Planning
Wheaton, IL 60187
421 N. County Farm Road
Wheaton, IL 60187

22.0 WAIVER OF/FAILURE TO ENFORCE BREACH

22.1 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.

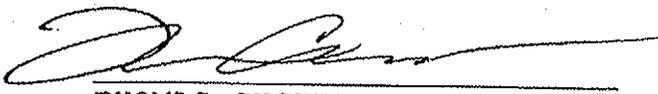
23.0 FORCE MAJEURE

23.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

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

COUNTY OF DUPAGE

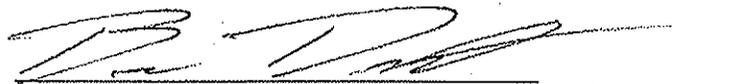
CREATIVE RECYCLING SERVICES



THOMAS CUCULICH
CHIEF OF STAFF

3/10/10

DATE



JAMES KRISTOF VP - Marketing
VICE PRESIDENT of SALES &
PROCUREMENT

RD
#3-10-10

DATE