

December 31st;

WHEREAS, on the dates listed in the table below, the City’s Department of Public Health (“CDPH”) issued Notices of Violation (“NOVs”) to MAT Asphalt, citing MAT Asphalt for violating the below listed paragraphs of the Municipal Code of Chicago (“Code”);

WHEREAS, said NOVs gave rise to cases in the City’s Department of Administrative Hearings, having the Docket Numbers listed below (“Cases”);

<u>Date of NOV</u>	<u>NOV Number</u>	<u>Muni. Code Paragraph</u>	<u>Case Docket Number</u>
August 3, 2022	E000040002	11-4-730	22DE000309
August 31, 2020	E000035292	11-4-760(a)	20DE000486
April 23, 2020	000034588	11-4-760(a)	20DE000295

WHEREAS, MAT Asphalt denies that it committed the above-referenced violations;

WHEREAS, both parties agree and acknowledge that this Agreement results from their desire to resolve these issues expeditiously and to avoid the costs that would be incurred and the uncertainty inherent to litigation; and

WHEREAS, this Agreement is intended by the parties to resolve solely the above-referenced Cases;

THEREFORE, in consideration of these recitals, which are deemed a material part of this Agreement, and of the mutual promises and covenants hereinafter set forth, the parties mutually warrant and agree as follows:

1. **Payment.** Within **seven (7) calendar days** of receipt of a payment invoice from CDPH, MAT Asphalt must follow the instructions on the invoice to pay to the City the total amount of twenty thousand dollars exactly (\$20,000.00).

2. **Dust Control.**

a) Prior to operation of the kiln, or any other equipment controlled by the baghouse, at the Plant each year, MAT Asphalt must:

(i) have its baghouse inspected and tested for leaks using an industry-standard leak detection procedure, such as black light testing, by an independent, third-party firm that advertises and provides, via trained and experienced technical personnel, professional baghouse inspections, maintenance, and repairs (“Baghouse Inspector”);

(ii) obtain from the Baghouse Inspector a written report that specifies any and all maintenance, repairs, and replacements necessary to ensure that the baghouse operates at full power and efficacy (“Baghouse Report”); and

(iii) complete, and document completion of, all maintenance, repairs, and replacements identified in the Baghouse Report; provided, however, that with regard to any and all ongoing maintenance, repairs, and replacements identified in the Baghouse Report, such as daily, weekly, monthly, or quarterly maintenance, repairs, or replacements, MAT Asphalt must comply with the practices detailed in the written plan submitted pursuant to paragraph (2)(a)(iv) below, and document in detail and submit to CDPH at cdphpermits@cityofchicago.org within **two (2) business days** any deviations from the plan.

(iv) Additionally, within **two (2) business days** of MAT Asphalt’s receipt of each Baghouse Report required in paragraph (2)(a)(ii) above, MAT Asphalt must provide the following to CDPH via email to cdphpermits@cityofchicago.org: (A) a copy of the Baghouse Report; (B) if not stated in the Baghouse Report, the name of the Baghouse Inspector that provided the Baghouse Report and the date(s) on which the

Baghouse Inspector conducted the inspection; and (C) the dates by when MAT Asphalt will complete each of the maintenance, repairs, and replacements identified in the Baghouse Report. (With regard to any and all ongoing maintenance, repairs, and replacements identified in the Baghouse Report, such as daily, weekly, monthly, or quarterly maintenance, repairs, or replacements, MAT Asphalt must provide a written plan with a detailed schedule for completion of the ongoing maintenance, repairs, and replacements identified in the Baghouse Report.)

b) Prior to operation of the kiln, or any other equipment controlled by the baghouse, at the Plant each year, MAT Asphalt must:

(i) have all ductwork inspected by an independent, third-party firm that advertises and provides, via trained and experienced technical personnel, professional ductwork inspections, maintenance, and repairs (“Ductwork Inspector”);

(ii) obtain from the Ductwork Inspector a written report that specifies any and all maintenance, repairs, and replacements necessary to prevent leaks from the ductwork (“Ductwork Report”);

(iii) complete, and document completion of, all maintenance, repairs, and replacements identified in the Ductwork Report (provided, however, that with regard to any and all ongoing maintenance, repairs, and replacements identified in the Ductwork Report, such as daily, weekly, monthly, or quarterly maintenance, repairs, or replacements, MAT Asphalt must comply with the practices detailed in the written plan submitted pursuant to paragraph (2)(b)(iv) below, and document in detail and submit to CDPH at cdphpermits@cityofchicago.org within **two (2) business days** any deviations from the plan.

(iv) Additionally, within **two (2) business days** of each annual ductwork inspection required in paragraph (2)(b)(i) above, MAT Asphalt must provide the following to CDPH via email to cdphpermits@cityofchicago.org: (A) a copy of the Ductwork Report; (B) if not stated in the Ductwork Report, the name of the Ductwork Inspector that provided the Ductwork Report and the date(s) on which the Ductwork Inspector conducted the inspection; and (C) the dates by when MAT Asphalt will complete each of the maintenance, repairs, and replacements identified in the Ductwork Report. (With regard to any and all ongoing maintenance, repairs, and replacements identified in the Ductwork Report, such as daily, weekly, monthly, or quarterly maintenance, repairs, or replacements, MAT Asphalt must provide a written plan with a detailed schedule for completion of the ongoing maintenance, repairs, and replacements identified in the Ductwork Report.)

c) MAT Asphalt must maintain at the Plant written *and* before-and-after photographic records that document all maintenance, repairs, and replacements performed on the baghouse and ductwork at the Plant, including the dates and descriptions of each. MAT Asphalt must make these records available to CDPH personnel within **four hours**, upon request.

d) Within **fourteen (14) calendar days** of the Effective Date, MAT Asphalt must submit to CDPH, for review and approval, a written dust-control plan. If CDPH finds that the submitted dust-control plan is missing any required information or is insufficient to ensure compliance with any applicable laws or requirements, including but not limited to Sections 11-4-730 and 11-4-760 of the Code, CDPH may disapprove the dust-control plan and request submission of a modified dust-control plan. The dust-

control plan must, at a minimum, detail the specific controls and work practices that MAT Asphalt will implement to achieve the following:

- i. Control of dust on Plant roadways and paved areas of the Plant yard by application of water and street sweeping, using a street sweeper that is equipped with a water spray system, for use during nonfreezing weather, and a vacuum system to prevent Fugitive Dust during street sweeping; at a frequency such that:
 - (A) not more than **four hours** elapses between successive water applications,
 - (B) not more than **four hours** elapses between successive street sweeper cleanings, (C) water is also applied and street sweeping conducted after every 100 truck material receipts or dispatches, and (D) MAT Asphalt utilizes an equally effective alternative method of control of dust on Plant roadways and paved areas of the Plant yard during freezing conditions, which alternative method must be described in the Dust-Control Plan;
- ii. Control of dust from material storage piles by use of a misting system or mist cannon that effectively suppresses dust whenever material is added to or removed from any pile, as well as an alternative method of such control during freezing conditions, which alternative method must be described in the Dust-Control Plan;
- iii. Immediate clean-up of any material spilled on Plant roadways; and
- iv. Effective cleaning of each and every departing truck's wheels before the truck leaves the Plant, plus additional measures, such as hosing down pavements as necessary, to minimize the potential for dust or mud to be tracked out to public roadways.

v. Additionally, MAT Asphalt must at all times comply with the controls and work practices detailed in the dust-control plan. If, for any reason, there are any deviations from the plan, MAT Asphalt must document such deviations in detail and submit the documentation to CDPH within **two (2) business days**.

e) MAT Asphalt must maintain records that document all measures and activities required in the dust-control plan, including but not limited to dates of all activities, for at least **three years** from the Effective Date. MAT Asphalt must also make these records available to CDPH personnel within **four hours**, upon request.

3. **Odor Control.**

a) Within **twenty-one (21) calendar days** of the Effective Date, MAT Asphalt must submit to CDPH, for review and approval, an odor control plan prepared by an independent, third-party environmental consultant with experience addressing odor issues. If CDPH finds that the submitted odor control plan is missing any required information or is insufficient to ensure compliance with any applicable laws or requirements, including but not limited to Sections 11-4-730 and 11-4-760 of the Code, CDPH may disapprove the odor control plan and request submission of a modified odor control plan. The odor control plan must, at a minimum, include a detailed schedule and plan for the following items, including a specific timeline for implementation, which, for Implementation Phase 1, must be no later than **October 1, 2023** and, for Implementation Phase 2, must be no later than **April 1, 2024**:

i. Installation and maintenance (in accordance with manufacturer recommendations) of odor control condensers atop each liquid asphalt tank (as part of **Implementation Phase 1**) to address concerns with odors caused by the displacement

of vapors while the tanks are being filled; and

ii. Installation and maintenance (in accordance with manufacturer recommendations) of a complete system for controlling blue smoke from the top of the silos and the truck-loading area beneath the silos (the “capture systems”). The capture systems must consist of hoods and/or enclosures on top of the silos (**Implementation Phase 1**) and an enclosure structure over and around the truck load-out area at the bottom of the silos (**Implementation Phase 2**). Captured emissions must be treated using a media-type filter system equipped with upstream mist collectors. Emissions from the top of the silos may be recirculated to the kiln’s burners upon CDPH’s review and approval of documentation demonstrating that the existing conveyer system conveying the captured gases is fully ducted.

b) All installed odor controls and systems must be installed, operated and maintained in accordance with the manufacturer’s specifications. If the capture systems are found to be operating outside the manufacturer’s specifications, the Contractor must immediately take corrective action to bring the system back into the specified operating range.

c) MAT Asphalt must at all times comply with the odor control plan as approved. Any deviations from the plan must be documented in detail and submitted to CDPH within **two (2) business days** of the deviation.

4. **Extension of time for implementation.** In the event that a *force majeure* event occurs, which causes or may cause a delay in the performance of any of the requirements of this Agreement, MAT Asphalt may request, and CDPH will not unreasonably withhold approval for, a reasonable extension of time of any of the timeframes herein. In such

event, MAT Asphalt shall notify CDPH within **forty-eight (48) hours** of the events' occurrence. For purposes of this Agreement, a *force majeure* event is an event arising solely beyond the control of MAT Asphalt which prevents the timely performance of any requirement of this Agreement and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, labor disputes, and supply chain disruptions. An increase in costs associated with implementing any requirement of this Agreement shall not, by itself, excuse any failure to comply with such a requirement.

5. **Address for submittals by MAT Asphalt to CDPH.** All notifications and documentation required under this Agreement must be submitted to CDPH via email to CDPHPermits@cityofchicago.org.

6. **No Presumption/No Waiver of Enforcement Rights or Contract Obligations.** The parties agree and intend that neither this Agreement, nor CDPH's review or approval of any or all of the submissions required herein, nor MAT Asphalt's performance of any or all of the activities or implementation of any or all of the measures required herein, proves or creates any presumption that MAT Asphalt or the Plant is in compliance with any of MAT Asphalt's permits, with any section or paragraph of the Code, with any requirements or conditions applicable to MAT Asphalt in any contract with the City, or with any other federal, state, or local law or regulation, nor shall this Agreement in any way limit any obligations of MAT Asphalt pursuant to any contract with the City. The parties agree and intend that this Agreement concludes only the above-listed Cases and does not preclude or have any other effect of any kind on the issuance of any future notice of violation or on any case or action of any kind that may be issued or initiated against MAT Asphalt or any other person or entity under any federal, state, or local requirement, including this Agreement.

7. **Right of entry.** CDPH, by its employees, and representatives, have the right of entry into and upon the Plant at all reasonable times for the purposes of conducting inspections relating to compliance with this Agreement and evaluating MAT Asphalt's compliance with this Agreement. In conducting such inspections, CDPH's employees and representatives may take photographs and samples, and collect information, as they deem necessary.

8. **Compliance with laws.** This Agreement in no way affects the responsibility of MAT Asphalt to comply with any federal, state, or local laws or regulations, including but not limited to Sections 11-4-730 and 11-4-760 of the Code. MAT Asphalt acknowledges that if CDPH observes violations at any time, CDPH may issue notices of violation and take any other action that CDPH is authorized to take pursuant to the Code.

9. **Penalties for Breach of Agreement.**

a) MAT Asphalt's failure to comply with any of the terms of this Agreement, as specified herein, constitutes a breach of this Agreement. If CDPH or its representative provides written notice to MAT Asphalt by email to MAT Asphalt's undersigned representative, or any other representative who submits any of the plans or documentation required under this Agreement, that MAT Asphalt has breached this Agreement, then MAT Asphalt must pay the City \$100.00 per day for the first 10 days after the date of the email notice and \$300.00 per day for each day thereafter, until MAT Asphalt demonstrates to CDPH's satisfaction that MAT Asphalt has achieved full compliance with all of the terms of this Agreement. MAT Asphalt must pay these penalties within **thirty (30) calendar days** of the date MAT Asphalt receives a payment invoice for the breach, following the payment instructions on the invoice. Payment of these penalties does not preclude the City from

taking any other action, including an enforcement action against MAT Asphalt for violation of this Agreement and/or for violation of any federal, state, or local laws or regulations, including but not limited to Sections 11-4-730 or 11-4-760 of the Code.

b) If MAT Asphalt fails to make any payment required by this Agreement on or before the date upon which the payment is due, then MAT Asphalt will be in default and the remaining unpaid balance of the penalty will be due and owing immediately. In the event of default, the City is entitled to reasonable costs of collection, including reasonable attorney's fees.

10. **Non-Suit.** In consideration of MAT Asphalt's timely payment of the above-referenced \$20,000.00 and its commitment to complete all of the other activities required by this Agreement, the City will move to non-suit the subject Cases, which non-suit will have the sole effect of resolving the subject Cases.

11. **Court Costs and Attorneys' Fees.** Each party will bear its own court costs and attorneys' fees related to this matter.

12. **Release.**

a) In consideration of the City's commitment as set forth in paragraph 10 of this Agreement, MAT Asphalt hereby releases, waives, and discharges the City and its officers, employees, agents, representatives, and attorneys, on MAT Asphalt's own behalf and on behalf of its officers, employees, agents, representatives, and attorneys, from any and all claims, demands, damages, losses or actions from the beginning of time through the Effective Date, whether known or unknown, made or asserted or those that could be asserted by MAT Asphalt against the City or its officers, employees, agents, representatives, or attorneys for any action the City or its officers, employees, agents, representatives, or

attorneys has/have taken or failed to take relating to the subject Cases, NOV's, or the Plant or facility.

b) Nothing in this Agreement is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action of any kind, whatsoever, that the City or CDPH may have against any person other than MAT Asphalt.

13. **Venue.** The parties agree that the venue of any action commenced in Circuit Court for the purposes of interpretation, implementation and/or enforcement of the terms and conditions of this Agreement must be in Cook County, Illinois.

14. **Interpretation.** This Agreement is entered into in the State of Illinois and must be construed and interpreted in accordance with its applicable laws and any applicable local laws, federal laws, and the Constitution of the United States.

15. **Effectuation of Agreement.** The parties will execute any documents and take whatever steps are necessary to effectuate the purposes of this Agreement.

16. **Entire Agreement.** This Agreement and any documents required hereunder contain the entire agreement between the parties.

17. **Amendments and Related Matters.** This Agreement may not be altered, amended, changed, terminated, or modified in any respect without the expressed, written consent of the parties hereto. No waiver by any party hereto or any breach or default hereunder will be deemed a waiver of any other or subsequent breach or default.

18. **Parties Relied Solely On Their Own Judgment And Investigation.** The parties acknowledge and expressly represent and warrant that they have relied solely upon their own judgment, together with advice of counsel, when deciding whether to enter into this Agreement. Each party further agrees, acknowledges, and expressly warrants that no

information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other party will be, or has been, relied upon by it in entering into this Agreement unless specifically contained and incorporated herein.

19. **Joint Participation.** The parties warrant and represent that they have each knowingly and voluntarily entered into this Agreement following consultation with their respective legal counsel, and participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. **Advice of Counsel.** Each of the parties hereto represents and warrants that it has had the advice of counsel concerning the terms and conditions of this Agreement. In entering into this Agreement, MAT Asphalt and the City represent that each has relied upon the advice of its attorney, who is the attorney of its choice, and that the terms of this Agreement have been interpreted and explained by its attorney, and that these terms are fully understood and voluntarily accepted by the parties.

21. **Binding Nature of Agreement.** The terms of this Agreement are binding upon, inure to the benefit of, and are enforceable by, the parties hereto, and their respective successors, administrators, executors, beneficiaries, and/or assigns.

22. **No Third-Party Rights.** Nothing in this Agreement is intended or may be interpreted to confer any rights, privileges, or rights of action of any kind upon any person or entity not a party to this Agreement, or to effectuate a release by the parties of any claims or causes of

action that either party has or may have against any person or entity not a party to this Agreement.

23. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same instrument. A copy of a valid signature has the same effect and enforcement as the original signature.

24. **Duration and Termination of this Agreement.** This Agreement terminates upon either 1) written notice by CDPH to MAT Asphalt that the Agreement is terminated, or 2) the issuance by CDPH of a new or renewed air pollution control (APC) permit and/or certificate of operation (COO) applicable to the Plant, which APC permit and/or COO contain one or more special conditions, whichever comes first.

25. **Authorization.** The undersigned representatives for each party to this Agreement certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Agreement and to legally bind them to it.

**CITY OF CHICAGO
DEPARTMENT OF PUBLIC HEALTH**

BY: Allison Arwady, MD
(Signature)

Date: 4/7/2023

Name: Allison Arwady

Title: Commissioner, Chicago Department of Public Health

**CITY OF CHICAGO
DEPARTMENT OF LAW**

BY: Mort P. Ames
(Signature)

Date: 4/5/23

Name: Mort P. Ames

Title: Senior Counsel

MAT ASPHALT, LLC

BY: Michael Tison
(Signature)

Date: 3/15/2023

Name: Michael Tison

Title: President

Email Address for Notices: mtison@matasphalt.com