

WETLAND CREDIT AGREEMENT

THIS WETLAND CREDIT AGREEMENT (“**Agreement**”) is made and entered into as of the Effective Date set forth herein by and between Mill Creek WB, LLC, an Illinois limited liability corporation authorized to transact business in the State of Illinois with offices located at 9575 West Higgins Road Suite 801 Rosemont, IL 60018, and the City of Naperville a home rule unit of local government under the laws and Constitution of the State of Illinois as Lead Local Agency on behalf of the Road Authority, as defined herein.

RECITALS

1. WHEREAS, the City of Naperville, (“**Purchaser**”), has applied to the Illinois Department of Transportation (“**Permitting Agency**”) for a permit (“**Permit**”) to allow the discharge of clean non-toxic fill material into 0.62 acres of a wetland within the North Aurora Rd (FAU Route 1509) Pennsbury Lane to Frontenac Road Project in Naperville, Illinois (the “**Project**”) which Project is being undertaken by the City of Aurora, Naperville Township, and the City of Naperville (the “**Road Authority**”); and
2. WHEREAS, Mill Creek WB, LLC (“**Seller**”) owns and operates a wetland bank and has available wetland credits for sale; and
3. WHEREAS, as a condition to the issuance of the Permit from the Permitting Agency Purchaser is required to compensate for the wetland impact described in Recital 2 above and elects to do so through the purchase of wetland credits from the Sellers’ Mill Creek Wetland Mitigation Bank (“**Wetland Bank**”); and

4. WHEREAS, the Permitting Agency has determined that Purchaser shall be required to purchase a total of 1.24 acres of certified wetland credit (“**Wetland Credit**”) due to the proposed impacts to the wetlands resulting from the development of the Project.

5. WHEREAS, the Project is located in the Des Plaines River watershed and the Wetland Bank is located in the Des Plaines River watershed, in Lake County, Illinois.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

1) RECITALS INCORPORATED: The Recitals above are hereby incorporated in their entirety in this Section 1 by reference.

2) PURCHASE PRICE: Purchaser shall, subject to the terms and conditions herein provided, pay to the Seller the sum of TWO HUNDRED TWENTY-THREE THOUSAND TWO HUNDRED DOLLARS (\$223,200), the “**Purchase Price**”, for the Wetland Credit from the Wetland Bank. The Purchase Price is derived from the unit cost of \$180,000 per wetland credit/acre.

3) PAYMENT OF PURCHASE PRICE/NOTIFICATION OF GRANT OF WETLAND CREDIT: Purchaser shall remit payment of the Purchase Price to the Seller by check within two (2) business days of the Effective Date of this Agreement. Said check shall be made payable to Mill Creek WB, LLC and be sent by overnight courier. Within two (2) business days of receipt by the Seller of the check for the Purchase Price, the Seller shall issue written notice by email and mail to the Permitting Agency that the 1.24 acres of certified wetland credit have been secured by the Purchaser from the Wetland Bank for the

Project. Failure of the Seller to so notify the Permitting Agency shall be deemed a breach of this Agreement. Such notice shall be given to the Permitting Agency as follows:

Illinois Department of Transportation

Attn: Alix Brice

Email: Alix.Brice@illinois.gov

4) TERMINATION: Intentionally omitted.

5) SELLER'S PERFORMANCE INDEMNITY: In consideration of the Purchase Price, Seller affirms that it has sufficient wetland credits in its Wetland Bank to satisfy the Wetland Credit required by the Permitting Agency for the Project and hereby does sell said Wetland Credit to Purchaser. Purchaser shall have no obligation to perform any of the responsibilities or assume any liabilities of Seller now or hereafter, including but not limited to any obligations or liabilities required by the Permitting Agency in the development and maintenance of the Wetland Bank.

6) NOTICES: Except as provided in Section 2 above, any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by United States mail, return receipt requested, or by facsimile to the parties hereto as follows:

If to Seller: Mill Creek WB, LLC
C/o Land and Water Resources, Inc.
9575 West Higgins Road
Suite 801
Rosemont, IL 60018
Attn: Mr. John H. Ryan
Phone: 847-692-7170
Fax: 847-939-5214
Email: jryan@lawrinc.com

If to Purchaser: City of Naperville
400 South Eagle Street
Naperville, Illinois 60540
Attn: Andy Hynes

Phone: 630- 548-2958
Email: HyneA@naperville.il.us

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by United States mail, return receipt requested, shall be effective as of the third business day following its posting, and any notice given pursuant hereto by email or facsimile shall be effective as of confirmation of receipt by the receiving party.

7) PRIOR AGREEMENTS: This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written instrument executed by or on behalf of both Seller and Purchaser.

8) APPLICABLE LAW/VENUE: Seller and Purchaser shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Illinois and subject to the requirements of any applicable state or federal law or regulation. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

9) ATTORNEY'S FEES. In the event of any action, suit, or other proceeding at law or in equity brought to enforce the covenant and agreements contained in this Agreement or to obtain monetary damages for breach thereof, and such action results in an award of judgment for monetary damages, or the granting of any equitable relief in favor of any party hereto, all expenses, including reasonable attorney's fees, of the successful party in such action, suit, or other proceeding shall, upon demand of such party, be paid by the other party.

10) CHANGES IN LAW. Each party shall hold the other party harmless for damages sustained by the other party as a result of changes in federal, state, or local laws, or changes to their interpretation, which occur subsequent to the Effective Date of this Agreement.

11) SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Purchaser, as the case may be, and their respective successors and assigns. Neither party hereto shall assign any interest hereunder without the prior written approval of the other firsthand.

12) EFFECTIVE DATE: This Agreement shall become effective and enforceable from the date upon which it is fully executed by both parties hereto (herein the “Effective Date”).

The undersigned warrant and represent that have read and understand this Agreement and that they are authorized to execute this Agreement.

PURCHASER:

City of Naperville

By: _____
Douglas A. Krieger, City Manager

Attest by: _____
Dawn Portner, City Clerk

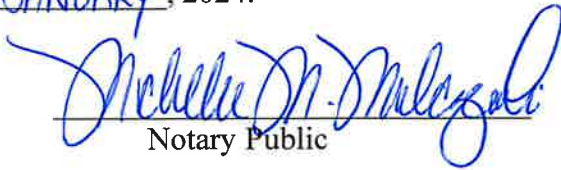
SELLER:

Mill Creek WB, LLC

By: 
John H. Ryan, Managing Member

State of Illinois)
)SS
County of Cook)

The foregoing instrument was acknowledged before me by John H. Ryan this 2nd day of JANUARY, 2024.


Notary Public

John H. Ryan
Print Name



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