

**THIRD AMENDMENT TO AGREEMENT
FOR WASTEWATER UTILITY SERVICE BETWEEN
THE CITY OF WARRENVILLE AND THE CITY OF NAPERVILLE**

THIS THIRD AMENDMENT TO AGREEMENT is entered into this ___ day of _____, 2025 by and between the CITY OF NAPERVILLE, an Illinois municipal corporation of DuPage and Will Counties, Illinois (hereinafter referred to as "Naperville"), and the CITY OF WARRENVILLE, an Illinois municipal corporation of DuPage County, Illinois (hereinafter referred to as "Warrenville"). Naperville and Warrenville may be referred to herein individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, the Parties entered into an Agreement for Wastewater Utility Service Between the City of Warrenville and the City of Naperville, dated April 5, 1982 (hereinafter referred to as the "Agreement"), and

WHEREAS, on December 18, 1984, the Parties entered into a first amendment to the Agreement (hereinafter referred to as the "First Amendment"), which First Amendment was approved by Naperville by ordinance on December 18, 1984, and by Warrenville by ordinance on December 17, 1984; and

WHEREAS, the First Amendment amended Section 6 of the Agreement to set forth certain classes of charges to be paid by Warrenville to Naperville under the Agreement, including variable charges, including for wastewater treatment and sludge disposal and interceptor sewer transport, and fixed monthly charges, including debt service payments for certain capital improvements and flow metering, billing, and interceptor inspections; and

WHEREAS, the First Amendment also amended Section 7 of the Agreement to provide an audit and true-up process for the classes of charges to be paid by Warrenville to Naperville under the Agreement; and

WHEREAS, on May 17, 1994, the Parties entered into a second amendment to the Agreement (hereinafter referred to as the “Second Amendment”), which Second Amendment was approved by Naperville by ordinance on May 17, 1994, and by Warrenville by ordinance on September 7, 1994; and

WHEREAS, the Second Amendment again amended and restated Section 6 of the Agreement in its entirety to add certain prepaid capital charges attributable to the Warrenville Development Property (now commonly referred to as the Cantera Development); and

WHEREAS, Warrenville has satisfied in full its obligations set forth in (i) Section 6.B.I of the Agreement, as amended by the Second Amendment (regarding debt services of original 10 million gallons per day plant construction and interceptor sewers); (ii) Section 6.B.II of the Agreement, as amended by the Second Amendment (regarding debt service of the 5 million gallons per day plant expansion); and (iii) Section 6.C of the Agreement, as amended by the Second Amendment (regarding prepaid capital charges attributable to Warrenville Development Property) (hereinafter referred to collectively as “Warrenville’s Satisfied Obligations”); and

WHEREAS, the terms related to variable charges set forth in Section 6.B.III of the Agreement, as amended by the Second Amendment, regarding “Other Local Capital Improvements” no longer represent the agreement of the Parties going forward (hereinafter referred to as “Other Local Capital Improvement Charges”); and

WHEREAS, Naperville has identified the need to make certain major capital improvements, including improvements to the Springbrook Plant to ensure compliance with nutrient removal regulations and the long-term capacity of the Springbrook Plant, and certain collection and

pumping system improvements, as more specifically identified and described in Section 3 of this Third Amendment (hereinafter referred to collectively as “Planned Capital Improvements”); and

WHEREAS, Naperville estimates that the Planned Capital Improvements will cost approximately \$233,118,779 (hereinafter referred to as the “Planned Capital Improvements Costs”); and

WHEREAS, Naperville further estimates that Warrenville’s share of the Planned Capital Improvements Costs will be approximately \$ 24,345,228 (“Warrenville Share of Planned Capital Improvements Costs”); and

WHEREAS, the Parties mutually desire to further amend the Agreement to (i) remove provisions related to Warrenville’s Satisfied Obligations because they are no longer applicable; (ii) provide terms upon which Warrenville will pay the Warrenville Share of Planned Capital Improvements Costs to Naperville; (iii) update and clarify the Other Capital Improvement Charges; (iv) remove charge adjustment and audit provisions that are no longer applicable; and (v) clarify reserve capacity for future development within Warrenville; and

WHEREAS, the terms of the Agreement and all previous amendments are incorporated herein by reference in their entirety and shall remain in full force and effect except to the extent they are modified by the provisions contained herein; and

WHEREAS, Warrenville and Naperville are authorized by Section 10, Article VII of the Illinois Constitution of 1970 to enter into agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree that:

1. **Recitals.** The foregoing Recitals are incorporated herein by reference as if fully set forth in this Section 1.

2. **Acknowledgment of Satisfaction of Obligations.** The Parties agree that Warrenville has satisfied all of its obligations under Section 6.B. II and Section 6.C of the Agreement, as amended by the Second Amendment.

3. **Amendments to the Agreement.**

A. **Amendments to Section 6.B of the Agreement.** Section 6.B of the Agreement, as amended by the Second Amendment, is hereby amended and restated in its entirety and shall read as follows:

“B. Fixed Charges

I. Warrenville Payment for its Proportional Share of the planned capital improvements, which include the Springbrook Plant upgrades and collection and pumping system improvements specifically listed and described on Exhibit A, attached to and made a part of this Agreement (collectively, the “Planned Capital Improvements”):

(a) General Obligation: Warrenville will pay to Naperville Warrenville’s proportional share of the actual costs incurred by Naperville to construct the Planned Capital Improvements (hereinafter referred to as the “Warrenville’s Proportionate Share”) over a 20-year term.

For the purposes of this Section 6.B.I the Planned Capital Improvements Costs include costs incurred by Naperville necessary for and directly attributable to the completion of the Planned Capital Improvements, including financing costs (including fees, charges, and interest), and design, engineering, and construction costs. The Planned Capital Improvements Costs do not include, and Warrenville shall have no responsibility for, legal, administrative, salary or benefit costs for Naperville employees, or other fees or costs unless approved in writing by the Parties pursuant to an amendment of this Agreement.

Warrenville's Proportional Share shall be calculated by multiplying the total actual costs incurred by Naperville for the Planned Capital Improvements Costs by [the percentage of total wastewater flow attributable to Warrenville in the then-current year divided by the total wastewater treated at the Springbook Plant in the then current-year (hereinafter referred to as "Warrenville Proportional Share Rate")].

- (b) Annual Payments. It is understood that Naperville will complete the Planned Capital Improvements in several projects spread over several years, but that the Planned Capital Improvements will be completed in their entirety by December 31, 2034.

Warrenville agrees to pay the Warrenville Proportional Share by making up to 20 annual installment payments (each hereinafter referred to as a "Annual Payment") on or around January 1 of each year commencing in 2026 and ending in 2046 (hereinafter referred to as the "True Up/Payment Date"); provided, however, that Warrenville shall not be penalized in any manner for making early Annual Payments or for fulfilling its obligation to pay the Warrenville Proportional Share before 2046.

- (c) First Annual Payment. Naperville has prepared a detailed, itemized, estimate of the costs it will incur to complete the Planned Capital Improvements, which estimate is attached to and made a part of this Agreement as Exhibit B (hereinafter referred to as the "Total Cost Estimate").

The first Annual Payment due on or around January 1, 2026 shall be \$1,250,000, which is the amount Warrenville anticipates it will collect annually from utility account holders through the assessment of its Naperville Wastewater Treatment Capital Improvement Volume Charge.

- (d) True Up; Subsequent Annual Payments. Prior to each True Up/Payment Date, including January 1, 2026, Warrenville and Naperville will review and revise the Total Cost Estimate by replacing estimated costs with actual costs that are, at that time, known, to arrive at an updated Total Cost Estimate ("Updated Total Cost Estimate"); provided, however, that Naperville will notify the Warrenville City Administrator as soon as practical after receiving notice that the Total Cost Estimate will increase.

(1) If the Updated Total Cost Estimate is less than the Total Cost Estimate, then the Annual Payment due the following year (January 1, 2027 and so on) will continue to be \$1,250,000.

(2) If, on the other hand, the Updated Total Cost Estimate is greater than the Total Cost Estimate, the next Annual

Payment will be calculated by finding the Warrenville Proportional Share by multiplying the [Updated Total Cost Estimate less the Annual Payments already paid] by the Warrenville Proportional Share Rate to arrive at an updated estimated Warrenville Proportional Share. The Annual Payment would then be updated by dividing the estimated Warrenville Proportional Share by the number of years remaining in the 20-year payment term.

- (3) Alternatively, if the Total Cost Estimate has increased due to a discrete, additional cost, Warrenville may, at its sole election, opt to pay its total Warrenville Proportional Share of that discrete cost in a lump sum with the next Annual Payment rather than recalculate all future Annual Payments as described in Section 6.B.I.(d)(2) above.

Warrenville will continue to make Annual Payments to Naperville until it has paid the full Warrenville Proportionate Share of the total actual Planned Capital Improvements Costs.

II. Other Local Capital Improvements:

Naperville may determine, from time to time, that other capital improvements to the wastewater utility facilities providing service to Warrenville are necessary. For the purposes of this Section 6.B.II, “Other Capital Improvements” mean capital improvements other than those specifically identified in Section 6.B.I of this Agreement. Warrenville will pay to Naperville the Warrenville proportional share of the total actual engineering, design, and construction costs of the Other Capital Improvements as follows:

- (a) Naperville must notify Warrenville of any Other Capital Improvements at least 12 months before any payment by Warrenville for the Other Capital Improvement would be required.
- (b) Warrenville may, at its sole election, either:
 - (i) include the Other Capital Improvements as part of the Planned Capital Improvements and adjust the Planned Capital Improvements Costs accordingly and pay its proportional share of the Other Capital Improvements as part of its Annual Payment for the Planned Capital Improvements; or
 - (ii) pay its proportional share of the cost of the Other Capital Improvements over a five-year term in five equal annual installment payments, using the formula below:

For the purposes of this Section 6.B.II(b)(ii), Warrenville’s proportional share shall be calculated by multiplying the total estimated cost of the Other Capital Improvements by the Warrenville Proportional Share Rate, defined in Section 6.B.I of this Agreement. At least 12 months prior to deadline to make the final annual payment for the Other Capital Improvement, Warrenville’s final proportional share of the *actual* cost of the Other Capital Improvement will be calculated. The final payment for the Other Capital Improvement will be adjusted so it is equal to the amount necessary to bring Warrenville’s payment total to the actual total cost of the Other Capital Improvement.

- (c) Warrenville shall not be penalized in any manner for making early payments or for fulfilling its obligation to pay its share of the Other Capital Improvements early.

III. Reserved.

IV. Flow Metering, Billing & Interceptor Inspection:

A fixed monthly payment equal to the prior five year annual average costs for the Total Expense divided by 12 months.

The Total Expense shall be the sum of the costs for:

- (a) calibrating of and repairs to the master meter;
- (b) reading the master meter and preparing the monthly invoice for Warrenville; and
- (c) labor, material, and transportation to inspect the interceptors multiplied by Warrenville ration described in Section 6.A-II of this Agreement titled “Interceptor Sewer Transport Charge.”

B. Amendments to Section 6.C of the Agreement. Section 6.C of the Agreement, as amended by the Second Amendment, is hereby amended and restated in its entirety as follows:

“C. Reserved Capacity for Future Warrenville Development.

- I. In addition to the capacity guaranteed by Section 15 of the Agreement, Naperville agrees to provide 10,000 P.E. (Population Equivalent) of capacity for additional development within Warrenville’s corporate boundaries, including, without limitation, development within the Warrenville Development Property (also referred to as Cantera) (the “Option”). As of June 1, 2025, Warrenville has reserved 8,743 P.E. of the Option. The Option is not a reservation of capacity but represents Warrenville’s prior right to purchase capacity under the terms of this Agreement. A portion of

the Option will be considered reserved only when Warrenville pays the costs associated with such portion of the Option as set forth in 6.C.II below.

- II. Warrenville will have the right to reserve all or a portion of the remaining Option by payment of the cost in effect at the time of the reservation as set forth on the schedule attached hereto as Exhibit C, attached to and made a part of this Agreement. In the event that Naperville does not have the capacity to provide all of the Option requested by Warrenville, Naperville agrees to provide that portion for which it does have capacity, and agrees to provide the balance thereof within two-and-one-half years from the date of the request.

- III. In the event Warrenville reserves capacity through the Option as set forth in this Section 6.C, Warrenville may make the necessary payments to Naperville in up to 10 annual installments plus interest on the unpaid balance of such payments at the municipal borrowing rate for obligations of Naperville with similar maturities (or if Naperville finances the construction of an additional expansion to the Springbrook Treatment Plant, the actual interest rate incurred by Naperville therefore). The total of such payments and interest shall be paid in equal annual amounts commencing on the date 90 days after the reservation is made on the first nine anniversaries thereof, unless paid sooner. Warrenville will not be penalized for satisfying its obligations under this Section 6.C.III in less than 10 years.”

C. Amendments to Section 7 of the Agreement. Section 7 of the Agreement, as amended by the First Amendment, is hereby amended as follows:

1. All references to “Fixed Monthly Charges” are amended to read “Fixed Charges”; and
2. Section 7(c) is hereby deleted in its entirety and reserved for future use.

4. **Severability.** In the event any provision of this Third Amendment to the Agreement is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the said Agreement. The remainder of the 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.

5. **Amendments.** This Third Amendment to the Agreement may be amended by written agreement of the Parties.

6. **Counterpart Execution.** For convenience, this Third Amendment to the Agreement may be executed in counterparts, each of which shall be deemed to be an original and all such counterparts when taken together shall constitute one and the same document.

7. **Authorized Execution.** The undersigned warrant and represent that have read and understand this Third Amendment to the Agreement and that they are authorized to execute said Agreement.

IN WITNESS WHEREOF, the Parties by their signatures acknowledge they have read and understand this Third Amendment to the Agreement and intend to be bound by its terms.

CITY OF NAPERVILLE

CITY OF WARRENVILLE

By: Douglas Krieger
City Manager

Name:
Title:

EXHIBIT A

PLANNED CAPITAL IMPROVEMENTS

The Planned Capital Improvements are comprised of the following capital projects:

- Ultraviolet Disinfection and Non-Potable Water System Improvements - *[Naperville to insert description]*
- Biosolids Holding Tank - *[Naperville to insert description]*
- Influent Pump Station and South Plant Forcemain Improvements - *[Naperville to insert description]*
- South Plant Return Activated Sludge & Grit Removal Improvements - *[Naperville to insert description]*
- South Plant Capacity Upgrades - *[Naperville to insert description]*
- Nutrient Removal and North Plant Upgrades - *[Naperville to insert description]*
- Cloth Media and Disc Filters - *[Naperville to insert description]*
- Springbrook Interceptor Improvements - *[Naperville to insert description]*
- Northwest Wastewater Pump Station Improvements / Upgrades - *[Naperville to insert description]*
- North Pump Station Improvements - *[Naperville to insert description]*

EXHIBIT B

**PLANNED CAPITAL IMPROVEMENTS
TOTAL COST ESTIMATE**

[INSERT ENGINEERING SPREADSHEET]