

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS AND ST. JOSEPH
CREEK CONDOMINIUM ASSOCIATION FOR THE ST. JOSEPH CREEK CONDOMINIUM
FLOOD MITIGATION PROJECT

This AGREEMENT is made this 18 day of April 2024 between the County of DuPage, a body politic and corporate, with offices at 421 N. County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and the St. Joseph Creek Condominium Association, an Illinois not-for-profit corporation, with offices at 4731 St. Joseph Creek Road, Suite #4I, Lisle, IL 60532 (hereinafter referred to as the ASSOCIATION).

R E C I T A L S

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to take action to manage stormwater and control flooding and to enter into agreements for stormwater management and flood control purposes (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, the COUNTY has adopted the DuPage County Stormwater Management Plan which recognizes the reduction of stormwater runoff and improving water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, the COUNTY has been awarded \$179,266,585 in funding through the American Rescue Plan Act (ARPA); and

WHEREAS, ARPA permits the use of ARPA funds for stormwater infrastructure projects; and

WHEREAS, the COUNTY has allocated a portion of its ARPA funds be dedicated towards qualifying stormwater infrastructure projects; and

WHEREAS, the COUNTY has also been awarded \$915,000 in grant funding through the FEMA and IEMA Flood Mitigation Assistance Program specifically for the building commonly known as 4731 St. Joseph Creek Road; and

WHEREAS, the COUNTY adopted the St. Joseph Creek Watershed Plan on February 21, 2021 which outlines project alternatives within the watershed which reduce stormwater runoff and improve water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, the installation and construction of flood walls and flood gates at the St. Joseph Creek Condominium Building "A" "B" and "C," as defined below in paragraph 2.1, was a recommended project in the adopted St. Joseph Creek Watershed Plan; and

WHEREAS, the COUNTY and ASSOCIATION have agreed in concept that the "St.

Joseph Creek Condominium Flood Mitigation Project” meets the criteria as a project that qualifies as an ARPA Stormwater Infrastructure Project (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the ASSOCIATION have agreed that this PROJECT will provide flood protection up to the 100-year base flood elevation at the location of each condominium building, but will not provide any additional protection or prevention of sanitary sewer back-ups, interior drainage issues, or any other issues related to interior plumbing of each building; and

WHEREAS, the COUNTY and the ASSOCIATION have determined that the construction of the PROJECT will benefit local citizens by reducing flood losses and mitigating the property against future flooding along St. Joseph Creek; and

WHEREAS, the COUNTY shall pay all project expenses related to the PROJECT for planning, design, and construction of the PROJECT and regular payments to the contractors as they become due; and

WHEREAS, the ASSOCIATION has agreed to allow the COUNTY and their contractors and staff to have full access to the St. Joseph Creek Condominium Association property area until the PROJECT is substantially complete; and

WHEREAS, the ASSOCIATION shall share any available data collected from the PROJECT for the purposes of fostering community education and improving upon similar future projects; and

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made a 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 this AGREEMENT or to affect the construction hereof.

2.0 PROJECT DESCRIPTION.

- 2.1 The PROJECT involves the construction of a flood wall and flood gate around buildings known as “A” “B” and “C” of the St. Joseph Creek Condominium development. These three buildings where the flood mitigation will occur are also known by their common addresses 4711 St. Joseph Creek Road (Building B), 4721

St. Joseph Creek Road (Building A), and 4731 St. Joseph Creek Road (Building C). The flood walls and flood gates are intended to prevent flood waters from entering the lower level garages and possibly portions of the first floor of the referenced condominium buildings. The flood walls and flood gates are intended to protect the buildings up to and including the 100-year base flood elevation along St. Joseph Creek at this location. The goal of the ASSOCIATION is to prevent overbank flooding from St. Joseph Creek from entering the Buildings known as "A" "B" and "C" of the St. Joseph Creek Condominium Association.

- 2.2 The PROJECT is not intended to reduce or eliminate any sanitary sewer back-ups into each building, or eliminate any other interior damage to the buildings due to interior drainage or plumbing issues.
- 2.3 The PROJECT shall be developed and constructed essentially in accord with the stormwater application packet as submitted by the COUNTY on March 22, 2024, which document is incorporated herein by reference but is not attached hereto due to space limitations.

3.0 FUNDING.

- 3.1 The total PROJECT costs are estimated to be ___ million ___ hundred ___ thousand ___ hundred ___ dollars. The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

ST. JOSEPH CREEK CONDOMINIUM ASSOC.	0%	\$0
COUNTY OF DUPAGE	100%	\$3,198,200
TOTAL	100%	\$3,198,200

- 3.2 The COUNTY shall be responsible for bearing any cost overruns or expenses in excess of the funding listed in Paragraph 3.1, regardless of the cause.
- 3.3 This AGREEMENT shall in no way obligate the COUNTY to undertake this PROJECT if the COUNTY in its sole discretion determines that it is no longer in the COUNTY'S best interest to proceed with this PROJECT.

4.0 ASSOCIATION'S RESPONSIBILITIES.

- 4.1 The ASSOCIATION shall reserve the right to review the PROJECT'S plans and specifications, prior to the COUNTY'S advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto ("CONTRACT DOCUMENTS"), for the purpose of verifying that PROJECT components meet PROJECT goals. The ASSOCIATION shall promptly provide the COUNTY with any recommended changes to the CONTRACT DOCUMENTS for the PROJECT.

- 4.2 The ASSOCIATION shall be responsible for maintenance of the entire PROJECT and all components from the date of successful completion of all phases of the PROJECT.
- 4.3 The ASSOCIATION shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.4 The ASSOCIATION shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.5 The ASSOCIATION shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY.
- 4.6 The ASSOCIATION must acknowledge the COUNTY using logo(s) and wording provided by the COUNTY in permanent onsite signage and other promotion of the PROJECT including, but not limited to, printed materials, association correspondence, and presentations.
- 4.7 Following regulatory signoffs and PROJECT final approvals, the ASSOCIATION shall own and be solely responsible for operating and maintaining all flood walls and flood gates and all appurtenances related to the flood walls and flood gates constructed for the PROJECT. The maintenance of all components of the PROJECT will extend into perpetuity and be the sole responsibility of the ASSOCIATION. The cost and responsibility of any future relocation, adjustment, modification, repair, or replacement of said improvements shall be borne solely by the ASSOCIATION.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall be responsible for the preparation of the plans, specifications, and bid documents for the PROJECT, together with the advertisement and award of all PROJECT bids. The COUNTY shall select, and contract with, all vendors providing professional services for the PROJECT.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
 - 5.2.1 The COUNTY shall reimburse the ASSOCIATION for approved costs as allowed.
 - 5.2.2 Unless agreed to by both parties as outlined under Paragraph 3.2 above, the COUNTY will be responsible for the full costs of the PROJECT as outlined in Paragraph 3.1 above.

- 5.3 The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.) for the purpose of determining eligibility for COUNTY payment, and the use of all data collected as part of the PROJECT. The COUNTY shall provide the ASSOCIATION reasonable advance notice of when the COUNTY requires such access.
- 5.4 The ASSOCIATION shall not be responsible for or have control over the design, construction, means, methods, techniques or procedures with respect to any work performed for the PROJECT. The COUNTY and COUNTY'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The COUNTY shall take such measures as are necessary to ensure that its contractors maintain the PROJECT areas in a safe condition and install appropriate barricades and warning signs, and the COUNTY shall strictly enforce or cause to have strictly enforced all applicable safety rules and regulations. This provision is not intended to create any new burden or liability for the COUNTY beyond the usual burdens and liabilities for a county in the construction of public improvements. This section is intended merely to relieve the ASSOCIATION from such liabilities in this PROJECT. The ASSOCIATION'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S purpose and goals.
- 5.5 The COUNTY shall make any data collected from the PROJECT available to the ASSOCIATION upon reasonable request by the ASSOCIATION.
- 5.6 The COUNTY shall make direct payments, or cause to have payments made, to all parties providing services related to this PROJECT. The COUNTY shall not allow any mechanic's liens or other liens to be recorded against the association and/or the property during the course of the completion of the PROJECT.
- 5.7 The COUNTY shall be responsible for securing all local, county, state, and federal permits necessary for the completion of the PROJECT.
- 5.8 The COUNTY shall be responsible for successful completion of all phases of the PROJECT, from design and permitting through construction.
- 5.9 The COUNTY shall be responsible for providing copies of all permit applications, permit plans, and correspondence to the ASSOCIATION for their PROJECT files.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The ASSOCIATION and COUNTY shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to the PROJECT.

7.0 INDEMNIFICATION.

- 7.1 The ASSOCIATION shall indemnify, hold harmless and defend the COUNTY and any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, including reasonable 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 COUNTY'S performance under this AGREEMENT to the fullest extent the ASSOCIATION is so authorized under the law; provided, however, that the ASSOCIATION shall not be obligated to indemnify, hold harmless and defend the COUNTY for any negligent or intentionally wrongful misconduct, willful conduct, or omissions by COUNTY officials, employees, agents, contractors, subcontractors or personnel.
- 7.2 The COUNTY shall require each consultant, contractor, and subcontractor responsible for the construction of the PROJECT to name the ASSOCIATION and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the COUNTY shall require that its consultants, contractors, and subcontractors indemnify, defend and hold harmless the ASSOCIATION and COUNTY, its officers, employees and elected officials from and against any claims, liability or judgments resulting from, or caused by, the negligent, intentionally wrongful, willful acts or omissions of such consultant, contractor, or subcontractor.
- 7.3 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, liens, proceedings and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraph 7.1 is to be the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove the ASSOCIATION'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above. Moreover, indemnity as provided in this AGREEMENT shall not be limited by reason of any insurance coverage maintained by the ASSOCIATION or any consultants, contractors, subcontractors or agents. The ASSOCIATION'S indemnification of the COUNTY shall survive the termination, or expiration, of this AGREEMENT.

8.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT.

- 8.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties, excluding term extensions as provided for in the following provision.

8.2 Notwithstanding Paragraph 8.1, above, the term for performing this AGREEMENT may be extended by any suitable COUNTY designated form, signed by both parties without formal amendment pursuant to Paragraph 8.1, above.

9.0 TERM OF THIS AGREEMENT.

9.1 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:

9.1.1 September 30, 2025, or to a new date agreed upon by the parties.

9.1.2 The completion by the ASSOCIATION and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before September 30, 2025.

10.0 ENTIRE AGREEMENT.

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

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

10.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

10.4 In the event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

11.0 SEVERABILITY.

11.1 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.

12.0 GOVERNING LAW.

- 12.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 12.2 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.

13.0 NOTICES.

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

Anton Then
President
St. Joseph Creek Condo
Association
4731 St Joseph Creek
Road #4I
Lisle, Illinois 60532

Kyla Mercer
Manager
FirstService Residential
25 Northwest Point
Boulevard
Elk Grove Village, Illinois
60007

Sarah Hunn
Director
DuPage County
Stormwater Management
421 N. County Farm Road
Wheaton, Illinois 60187

14.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

- 14.1 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.

15.0 NO WAIVER OF TORT IMMUNITIES

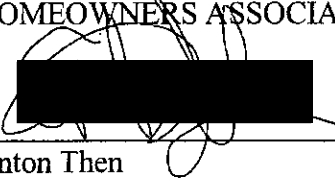
- 15.1 Nothing contained in any provision of this Agreement is intended to constitute nor shall constitute a waiver of the defenses, privileges or immunities available to the parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

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

COUNTY OF DUPAGE

ST. JOSEPH CREEK CONDOMINIUM
HOMEOWNERS ASSOCIATION

Deborah A. Conroy,
Chair
DuPage County Board



Anton Then
President

ATTEST:

ATTEST:

Jean Kaczmarek,
County Clerk



