

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS AND FAIRFIELD IV
HOMEOWNERS ASSOCIATION FOR THE RIPARIAN BUFFER ZONE SITE PREP AND
CRITICAL PLANTING PROJECT

This AGREEMENT is made this 4th day of April 2023 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 Fairfield IV Homeowners Association, an Illinois not-for-profit corporation, with offices at 529 Ryan Ct, Westmont, IL 60559 (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 ASSOCIATION is proposing a riparian buffer zone site prep and critical planting project for the Fairfield IV property (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the ASSOCIATION have determined that the construction of the PROJECT will benefit local citizens by improving the water quality in the Flagg Creek Watershed; and

WHEREAS, the ASSOCIATION has requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY’S Water Quality Improvement Program in an amount not to exceed one thousand dollars (\$1,000); and

WHEREAS, the ASSOCIATION shall pay PROJECT expenses to the contractors as they become due and will be reimbursed by the COUNTY for qualified expenses not to exceed one thousand dollars (\$1,000) per this AGREEMENT; 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 a removal of invasive species and planting native vegetation in a riparian area to improve water quality. The improvements include clearing invasive vegetation, site preparation, and planting native vegetation. The goal of the ASSOCIATION is to reduce pollutant loadings by increasing absorption and reducing stormwater runoff and erosion into the Flagg Creek watershed.
- 2.2 The PROJECT shall be developed essentially in accord with the application packet (Riparian Buffer Zone - site prep and critical planting Fairfield 4 2023), as prepared by Justin Zelenka, Treasurer, and submitted on January 4, 2023, which document is incorporated herein by reference but is not attached hereto due to space limitations. The best management practices shall be maintained and monitored by the ASSOCIATION or its consultant.

3.0 FUNDING.

- 3.1 The total water quality related PROJECT costs are estimated to be four thousand dollars (\$4,000). The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

FAIRFIELD IV HOMEOWNERS ASSOC.	75%	\$3,000
COUNTY OF DUPAGE	25%	\$ 1,000
TOTAL	100.0%	\$4,000

- 3.2 The ASSOCIATION shall be responsible for bearing any cost overruns or expenses in excess of the funding listed in Paragraph 3.1, regardless of the cause, unless the ASSOCIATION and COUNTY agree to apportion such extra costs in writing before they are incurred.
- 3.3 This AGREEMENT shall in no way obligate the ASSOCIATION to undertake this PROJECT if the ASSOCIATION in its sole discretion determines that it is no longer in the ASSOCIATION'S best interest to proceed with this PROJECT.

However, in the event the PROJECT is not substantially completed (excepting post-construction monitoring) by October 31, 2024, the ASSOCIATION shall promptly reimburse the COUNTY any monies paid by the COUNTY to the ASSOCIATION pursuant to this AGREEMENT. The ASSOCIATION'S right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the ASSOCIATION'S timely and satisfactory completion of the PROJECT.

- 3.4 The ASSOCIATION may only seek COUNTY reimbursement for allowable PROJECT expenses. Allowable PROJECT expenses incurred and paid by the ASSOCIATION in relation to the PROJECT shall include third-party professional services related to the construction of the PROJECT (construction management, etc.), construction (labor and materials), bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the ASSOCIATION'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

4.0 ASSOCIATION'S RESPONSIBILITIES.

- 4.1 The ASSOCIATION 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-related public bids. The ASSOCIATION shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The ASSOCIATION shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The ASSOCIATION shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The ASSOCIATION shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY in a timely manner to ensure sufficient review by the COUNTY. The purpose of the COUNTY'S review shall be for the sole purpose of documenting whether PROJECT work components qualify as allowable expenses.
- 4.5 The ASSOCIATION shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The ASSOCIATION shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.

- 4.7 The ASSOCIATION may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The ASSOCIATION shall submit no more than one invoice per month to the COUNTY during the construction phases of the PROJECT. Under no circumstances should the COUNTY be invoiced more than twenty-five percent (25%) of total incurred PROJECT costs up to the limits as established in Paragraph 3.1. The invoice shall show the quantities and cost per item and be summarized by PROJECT area.
- 4.9 The ASSOCIATION shall make direct payments, or cause to have payments made, to all parties providing services related to this PROJECT. This requirement will not affect the COUNTY'S obligation to reimburse the ASSOCIATION in the amounts herein agreed upon, nor shall this provision affect the ASSOCIATION'S obligation to repay the COUNTY in the event the PROJECT is not undertaken or completed, as established in Paragraph 3.3.
- 4.10 The ASSOCIATION shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY.
- 4.11 The COUNTY 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 ASSOCIATION and ASSOCIATION'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION beyond the usual burdens and liabilities for a municipality in the construction of public improvements. This section is intended merely to relieve the COUNTY from such liabilities in this PROJECT. COUNTY'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S eligibility under the COUNTY'S Water Quality Improvement Program.
- 4.12 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, press releases and presentations.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT'S plans and specifications, prior to the ASSOCIATION'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 qualify for reimbursement through the COUNTY'S Water Quality Improvement Program. The COUNTY shall promptly provide the ASSOCIATION with any recommended changes to the CONTRACT DOCUMENTS for PROJECT components to qualify for reimbursement.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
- 5.2.1 The COUNTY shall reimburse the ASSOCIATION for approved costs associated with the PROJECT at a fixed proportion of twenty- five percent (25%) of the PROJECT costs, which have been incurred and paid for by the ASSOCIATION, as specified in Paragraph 3.1.
- 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed one thousand dollars (\$1000).
- 5.2.3 In the event PROJECT costs total less than four thousand dollars (\$4,000), the COUNTY'S total reimbursement amount shall be not more than twenty-five percent (25%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the ASSOCIATION.
- 5.2.4 The COUNTY shall not be obligated to pay invoices received after November 30, 2024, regardless of when the work was completed and notwithstanding that the COUNTY'S contribution limit has not been reached.
- 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 limited purpose of determining eligibility for COUNTY reimbursement, 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.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The ASSOCIATION 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 ASSOCIATION'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 intentional wrongful misconduct or omissions by COUNTY officials, employees, agents, contractors or personnel.
- 7.2 The ASSOCIATION shall require each consultant and contractor 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 ASSOCIATION shall require that its consultants and contractors 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 negligence or willful conduct of such consultant and/or contractor.
- 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 its consultants, contractors 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 November 30, 2024 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 November 30, 2024.

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:

Justin Zelenka
Treasurer
Fairfield IV Homeowners
Association
529 Ryan Ct.
Westmont, IL 60559

Mary Beth Falsey
Water Quality Supervisor
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

FAIRFIELD IV HOMEOWNERS
ASSOCIATION

Justin Zelenka,
Treasurer

ATTEST:

ATTEST:

Courtney Suffredin,
Administrative Assistant
