

**Drainage Improvements Construction and Financing Agreement**

This AGREEMENT, hereinafter referred to as "AGREEMENT", is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the CITY OF AURORA, ILLINOIS, a municipal corporation, ("CITY "); \_Farnswood Condominium Association, Inc. "OWNER"; The City and Owners, and are referred to as "Party" or "Parties."

**WITNESSETH:**

**WHEREAS**, the City of Aurora regulates the construction, access and usage of roadways, and certain utilities within its jurisdiction as part of its municipal services; and

**WHEREAS**, the Farnswood Subdivision was development in the 1970's and was constructed in such a manner that the north end of the subdivision is in a low depressional area, which does not have an overland flood route and therefore several units are subject to flooding; and

**WHEREAS**, the City has contracted with Engineering Enterprises Inc. (EEI) to design a drainage improvement to reduce the risk of flooding here in refered to as "Project" which is depicted in the engineering plans attached as Exhibit A; and

**WHEREAS**, the City has adopted Resolution Number \_\_\_\_\_ authorizing the execution of this Agreement for the construction of said Project; and

**WHEREAS**, the City shall publicly bid the Project and execute a contract with a contractor to complete the Project; and

**WHEREAS**, the City has estimated the cost of construction to be a total sum of \$591,317 for the Project as identified on the engineer's estimates prepared by Engineering Enterprises Inc. dated February 12, 2016, attached hereto as Exhibit "B" ("the Estimated Costs"); and

**WHEREAS**, the City has separated the plans and the cost estimate into two (2) phases. Phase 1 will be the City's cost and Phase 2 will be the Owner's cost; and

**WHEREAS**, the Owner has executed a plat of easement to allow the City's contractor to access the Owner's private property to construct the improvements for Phase 2 of the Project; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and obligations herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City hereto agrees as follows:

**Improvement Provisions**

1. The preambles hereto and the foregoing statements and recitations are a material part hereof and incorporated herein by reference, and the parties hereto acknowledge their correctness as to the matters and circumstances therein referred to.



2. The Owner hereby acknowledges and understands that the design of the Project is to reduce the risk of flooding, but that the Project does not completely eliminate the risk of flooding. Owner agrees to release and hold City, its elected officials, employees, agents, representatives harmless from and against any loss, damage, injury or liability, resulting from, or arising from, risk of flooding or actual flooding. Nothing contained herein shall constitute a release of any contractor performing work on the Project.
3. The City has contracted with Engineering Enterprises Inc. to prepare final engineering plans and to provide construction services. The City is not seeking reimbursement from the Owner for the cost of these professional services. The plans and bid documents are depicting Phase 1 and Phase 2 work items.
4. The City agrees to bid the Project. The City is responsible for the Phase 1 cost, which is estimated to be \$250,429 and the City has budgeted for this expenditure. The Owner is responsible for Phase 2 cost which is estimated to be \$340,888.
5. Once the Project is bid and the cost are known, the Owner further agrees to deposit the full amount of their share into an Escrow Account fifteen (15) calendar days after the bid or provide the City in writing the reason this deposit will not be completed. The deposit by the Owner will act as the City's notice to proceed with the Project. Nothing in this Agreement obligates the City to commence or continue the Project if the Owner is unable to meet its responsibilities set forth herein.
6. The City will prepare invoices based on the completed work and then send the invoice to the Owner for review and signature approving the invoice. The Owner shall have fifteen (15) calendar days to approve the invoice or provide in writing the deficiencies.
7. The Owner acknowledges that during the course of construction of the Project, costs and expenses may be incurred by City that were not included in the Estimated Costs which are attributable to unforeseen conditions or circumstances or changes in the Project required by the City (collectively "Cost Increases"). Such Cost Increases shall be added to and become part of the Project Costs associated with each phase of the Project and, upon the mutual agreement of the Owner and City, each Party shall be responsible for paying the Cost Increases associated with its respective phase of the Project. The Owner acknowledges that the Estimated Costs are based upon costs as of the date of this Agreement. Owner shall not be responsible for any additional costs and expenses in excess of the estimated amounts provided in paragraph 4 without the expressed written consent of the Owner.

8. The Owner agrees Owner shall be responsible for repairing and maintaining the improvements contained in Phase 2 of the Project. The City accepts the maintenance responsibility of the improvements contained within Phase 1 of the Project

### **General Provisions**

9. In the event that any section, subsection or paragraph of this Agreement is held to be invalid, the invalidity of such section, subsection or paragraph shall not affect any of the other provisions of this Agreement.
10. Any notice or demand hereunder from any Party hereto to another Party hereto shall be in writing and shall be deemed served if mailed by prepaid registered or certified mail addressed as follows:

If to the City: Mayor of Aurora  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

With copy to: Aurora Corporation Counsel  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

To Owner: Farnswood Condominium Association, Inc.  
c/o Baum Property Management  
540 W. Galena Blvd.  
Aurora, Illinois 60506

with a copy to: Patrick T. Costello  
Keay & Costello, P.C.  
128 S. County Farm Road  
Wheaton, Illinois 60187

11. The Parties hereto agree to cooperate in applying the provisions of this Agreement and to fulfill the intent of the provisions set forth herein.
12. The Owner agrees that Owner or its successors in title is bound to this Agreement and that City enforce this Agreement in any court of competent jurisdiction in an appropriate action at law or in equity, , including the right to seek specific performance of the terms of this Agreement.



Executed in Aurora, Illinois.

**SIGNED BY OWNER** on the 28 day of APRIL, 2016.

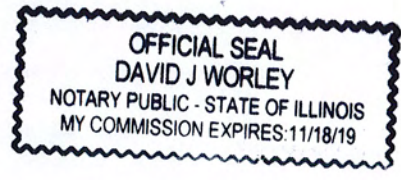
Company Name: FARNSWOOD CONDO ASSN.

By: *Larry Pitt*

Its: \_\_\_\_\_

Attest: *David J. Worley*

Its: \_\_\_\_\_



**SIGNED BY CITY OF AURORA** on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.  
CITY OF AURORA, an Illinois  
Municipal Corporation

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk