

TALLGRASS STORMWATER IMPROVEMENT AGREEMENT

THIS TALLGRASS STORMWATER IMPROVEMENT AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 2021 (the “Effective Date”) by and between the Village of Orland Park, an Illinois home rule municipal corporation (the “Village”), Marth Enterprises, Inc. (“Marth”), and DesignTek Engineering, Inc. (“DesignTek”). The Village, Marth and DesignTek are sometimes referred to herein collectively as the “Parties.”

RECITALS

A. Marth is currently engaged in the construction of the Villas of Tallgrass development, located South of 167th street and West of 108th Avenue in the Village of Orland Park, subject to and in conformance with permits issued by the Village (the “Subject Property”).

B. DesignTek is acting as design and construction engineer for the development of the Subject Property, and will act as engineer for Marth and the Village for the work provided under this agreement.

C. Certain upstream neighbors have filed a civil action styled Abdullah et al v Village of Orland Park, 2020 CH 3470 in the Circuit Court of Cook County (the “Law Suit”), seeking among other things a mandatory injunction against Marth and the Village imposing a storm drainage route through the Tallgrass property.

D. In order to address additional stormwater runoff emanating onto and from the Subject Property certain additional improvements are required on and adjacent to the Subject Property, as more fully described in this Agreement (the “Stormwater Improvements”).

E. The Village has requested, and Marth has agreed, as part of the Stormwater Improvements to allow additional storm water to traverse Tallgrass, and to cooperate with the Village in modifying and adding capacity to the existing approved stormwater system to carry the increased stormwater flow.

F. Marth, DesignTek and the Village believe the proposed Stormwater Improvements will moot the claims made in the Law Suit, be good for the community and overall drainage environment, and thus subject to dismissal the Law Suit, and therefore desire to jointly coordinate and fund these Stormwater Improvements, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Marth, DesignTek, and the Village do hereby agree as follows:

1. **Incorporation of Recitals.** Each of the recital paragraphs set forth above are hereby incorporated herein and made a part of this Agreement.

2. **Stormwater Improvements:**

A. The Stormwater Improvements to be designed and constructed by Marth and DesignTek shall be as follows:

a. The stormwater improvements shall provide a complete and functioning stormwater conveyance system that meets or exceeds all applicable requirements of the Metropolitan Water Reclamation District of Greater Chicagoland (“MWRDGC”), the Village, and other applicable government agencies, as well as applicable codes and best management practices of the stormwater industry.

b. The work shall include completing the new design, revision of existing design (where applicable), submission to the Village for review and approval, submission of the required documents, and acquiring all permits from MWRDGC, the Village, and other related agencies, retaining and maintaining a construction contract with a qualified contractor, construction observation/engineering services, and conducting as well as monitoring all necessary field testing.

c. A belowground (in pipes) stormwater system shall be installed, as approved by the Village. The Village code requires concrete pipes for all stormwater systems.

d. A stormwater structure will be installed in Village drainage easement between Lot #2 and #3 in Vintage Crossing, which structure will be used to connect the existing box culvert to the Villas of Tall Grass stormwater pond. The Village will coordinate with Marth/DesignTek in developing an acceptable solution.

e. If required, Marth/DesignTek shall design and make appropriate adjustments of flow restriction to the existing stormwater system/structure to convey water from Villas of Tall Grass stormwater basin to the Sterling Ridge stormwater basin.

f. Any areas that may be disturbed during the installation of the improvements shall be restored to their original condition by the contractor.

g. The Village Marth, and DesignTek will develop a punch-list at the end of the project and, in coordination with the contractor, shall cause completion of all punch-list items in a timely manner.

h. Marth and/or its contractor will be responsible to correct any construction deficiencies for a period of 12-months from the date the project is formally accepted by the Village (the “Warranty Period”). After the Warranty Period, the Village will be responsible for the Stormwater Improvements.

i. All invoices for the Stormwater Improvements, along with appropriate supporting documentation, shall be circulated to all Parties, and shall be promptly

paid. Invoices for DesignTek services related to the Stormwater Improvements shall be subject to Section 3G below.

3. **Costs of Stormwater Improvements:**

The Village, Marth and DesignTek agree that each Party shall be responsible for and share all costs associated with the design and construction of the Stormwater Improvements as follows:

- A. The Village shall contribute up to fifty percent (50%) of all costs related to the Stormwater Improvements, provided, however, that the Village's contribution shall be capped and shall not exceed eighty thousand dollars (\$80,000).
- B. Marth shall pay twenty-five percent (25%) of all costs related to the Stormwater Improvements, provided, however, that Marth's contribution shall be capped and shall not exceed forty thousand dollars (\$40,000).
- C. DesignTek shall contribute up to twenty-five percent (25%) of all costs related to the Stormwater Improvements, provided, however, that DesignTek's contribution shall be capped and shall not exceed forty thousand dollars (\$40,000).
- D. The Parties agree to work together and cooperate to keep costs for the Stormwater Improvements to a minimum. In the event the cost of the Stormwater Improvements, as finally designed and bid, exceed one hundred sixty thousand dollars (\$160,000), the Parties shall jointly determine and agree to any cost sharing for said amounts in excess of one hundred sixty thousand dollars (\$160,000), which may include review of Value Engineering opportunities, including materials and methods, prior to initiating construction of the Stormwater Improvements.
- E. Marth, or its contractor and/or Designtek, shall not be charged any permit fees by the Village for the Stormwater Improvements.
- F. Marth, or its contractor, and/or Designtek, shall not be required to post a cash security or letter of credit.
- G. DesignTek engineering work billing on the Tallgrass Stormwater Improvement as outlined in this Improvement Agreement shall act as a set off to its share of the costs, as set forth in Section 3C above. The fee schedule for the engineering work is set forth in the attached 2020 Exhibit of Hourly Rates. DesignTek shall not bill for any work performed prior to the effective date of this Agreement. The monetary payment, after the engineering fee set off, shall be paid by DesignTek in one lump sum to Marth after construction is complete. If the dismissal of the lawsuit, as outlined in provision F of the Recitals above is not dismissed, and if DesignTek performs some or all of the engineering work on

the Tallgrass Stormwater Improvement Project then its fees will be paid in the ordinary course.

4. **General Provisions**

- A. Governing Law and Venue. This Agreement shall be interpreted under, and governed by, the laws of the State of Illinois, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in the Circuit Court of Cook County and each Party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.
- B. Modification. This Agreement may not be altered, modified or amended except by a written instrument signed by all Parties. Provided, however, the Parties agree that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.
- C. Time of the Essence. Time is of the essence of this Agreement. Marth and DesignTek shall complete its work, and that of its subcontractors, to meet the requirement of the Village and MWRDGC. The Stormwater Improvements shall be completed no later than June 30, 2021.
- D. Notices. Unless otherwise specified, any notice, demand or request required under this Agreement must be given in writing at the addresses set forth below by any of the following means: personal service, reliable overnight or express courier:

TO MARTH:

Marth Enterprises, Inc.
14800 80th Ave
Orland Park, Illinois 60462

With a copy to:

Matthew M Klein
324 W Burlington
LaGrange, Illinois 60525

TO DESIGNTEK:

Scott Schreiner
DesignTek Engineering, Inc.
9930 W. 190th Street, Suite L
Mokena, Illinois 60448

With copy to:

Mark F. Wolfe
Traub Lieberman Straus & Shrewsberry LLP
303 West Madison Street, Suite 1200
Chicago, Illinois 60606

TO THE VILLAGE:

Village of Orland Park
14700 Ravinia Avenue
Orland Park, Illinois 60462
Attn: Village Manager

With a copy to:

Klein, Thorpe and Jenkins, Ltd.
15010 S. Ravinia Avenue, Suite 10
Orland Park, Illinois 60462
Attn: Dennis G. Walsh

IN WITNESS WHEREOF, the Village, Marth and DesignTek have duly executed this Agreement pursuant to all requisite authorizations as of the Effective Date.

MARTH ENTERPRISES, INC.

VILLAGE OF ORLAND PARK

By: _____

By: _____

Village President

Its: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name: _____

Village Clerk

DESIGNTEK ENGINEERING, INC.

By:_____

Its:_____

ATTEST:

By:_____

Name:_____

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the _____ and _____ of Marth Enterprises, Inc., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such _____ and _____, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2021.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the _____ and _____ of DesignTek Engineering, Inc. and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such _____ and _____, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2021.

Notary Public