



## Legislation Text

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**File #:** RES21-3107, **Version:** 1

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A Resolution Approving a Stormwater Operation and Maintenance Agreement with FRED-ROMEOVILLE HC, LLC

WHEREAS, the Village of Romeoville has determined that it is in its best interests to authorize the execution of a Stormwater Operation and Maintenance Agreement with FRED-ROMEOVILLE HC, LLC, in substantially the form attached as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ROMEOVILLE, WILL COUNTY, ILLINOIS:**

**SECTION ONE.** The foregoing Recitals are hereby incorporated into this resolution as if fully set forth in this Section 1.

**SECTION TWO.** That the Village President is authorized to execute a Stormwater Operation and Maintenance Agreement with FRED-ROMEOVILLE HC, LLC, in substantially the form attached as Exhibit A, subject to final Village Manager and Village Attorney review and approval.

**SECTION THREE.** That the various provisions of this Resolution are to be considered severable and if any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

**SECTION FOUR.** All prior Resolutions, or parts thereof in conflict or inconsistent with this Resolution are hereby expressly repealed only to the extent of such conflict or inconsistency.

**SECTION FIVE.** This Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law, provided, however, that the approvals herein contained shall be conditioned upon the Village's receipt of an executed copy of this Agreement within thirty (30) days of the approval of this resolution, otherwise, such approvals shall be null and void and of no further force or effect.

**EXHIBIT A**  
**PROPOSED AGREEMENT**  
**STORMWATER OPERATION AND MAINTENANCE AGREEMENT**

This Stormwater Operation and Maintenance Agreement (the "Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_, 2021, between the Village of Romeoville, an Illinois home rule municipal corporation ("Village") and FRED-ROMEOVILLE HC, LLC, a Wisconsin limited liability company ("Developer").

**RECITALS**

A. Developer is the owner of real property located in the Village which is legally described on attached Exhibit A and incorporated by reference herein, and which is currently under development by the Developer as a Seasons of Romeoville ("Project").

B. Pursuant to Chapter 160 of the Village Code of Ordinances, one of the requirements for the issuance of a stormwater permit to Developer is to provide the Village with an operation and maintenance agreement ensuring the reasonable long-term maintenance of stormwater and drainage facilities constructed to serve the Project. Specifically, the provisions of §§ 160.135 through 160.140 are hereby incorporated by reference in this agreement and the overall approval of the proposed development and the Developer's acceptance of this agreement and commencement of the proposed development shall be deemed to be the Developer's acceptance and assumption of the obligations imposed under this agreement.

C. The stormwater and drainage facilities approved by Village for the Project (subject to the execution of the above-contemplated agreement) are described and depicted in Exhibit B, attached hereto, and incorporated herein by reference.

D. For purposes of this agreement, the long-term party responsible for the maintenance is the Developer initially but the Developer may subsequently be replaced with Homeowner's or similar association. These terms shall be considered equivalent for purposes of this agreement.

Now, therefore, the parties agree as follows:

Section 1. Compliance with Laws, Ordinances, Permits. Developer agrees to construct, install, and operate the Project in accordance with approvals received from the Village and other governmental entities with applicable jurisdiction. In constructing the Project, Developer agrees to comply with all state and local laws, ordinances, and regulations as well as the terms of this Agreement.

Section 2. Compliance with Village Approvals. Without limiting the provisions of Section 1, the Developer agrees to construct and operate the Project in accordance with the terms and conditions of all Village ordinances and all approvals heretofore sought from and issued by the Village with respect to the development of the Project as well as the terms and conditions of this Agreement and its Exhibits.

Section 3. Alterations or changes. No alterations or changes to the stormwater systems, as defined in this Agreement, shall be permitted unless they are approved, in writing, by the Village, and any such approved changes will be deemed to comply with this Agreement.

Section 4. Easements to be secured and recorded. The Developer, at its expense, shall secure from any affected owners (including itself) of land all easements and releases of rights-of-way necessary for utilization of the stormwater systems, as defined in this Agreement, and shall record them with the Will County Recorder of Deeds. These easements will provide for appropriate ingress and egress to and maintenance of such all portions of said stormwater systems and releases of rights-of-way will not be altered, amended, vacated, released, or abandoned without prior written approval of the Village. Shrubs, trees, or permanent structures shall not be located within the easements utilized by the Developer without the prior written approval of the Village. These easements will provide rights to the Homeowner's or similar association as well as the Village of Romeoville.

Section 5. Operation and Maintenance of Stormwater and Drainage System. As used in this Section, "stormwater and drainage system" shall mean all stormwater systems, catch basins, storage structures, drains, leaching basins, ponds, pipes, and appurtenances located on the Property including, but not limited to, all pollution-control devices utilized as part of the stormwater and drainage system, as set forth in Exhibit B. As used herein, "maintain" or "maintenance" shall mean inspecting, cleaning out, mowing, repairing, and removing accumulated sediment, leaves, weeds, debris, and obstructions from all ponds, leach basins, pollution-control devices, or similar appurtenances of the stormwater and drainage system such that failure to maintain is likely to result in impeding the functioning of the stormwater and drainage system.

A. Operation of Stormwater and Drainage System. The Developer shall at all times operate the stormwater system in a manner consistent with generally accepted stormwater management practices and the provisions of Chapter 160 of the Village Code of Ordinances.

B. Maintenance of Stormwater and Drainage System. Not less than annually, the Developer shall maintain the stormwater and drainage system located on the Property. As required by 160.135(A)(C), the then-current maintenance provider (Developer, Homeowner's, or similar association) shall be required to comply with the requirements of a Pond Self-Inspection Program. In the event that such maintenance is not conducted, the Village shall notify the Developer, specifying the necessary maintenance. Within thirty (30) days of the notice, the Developer shall perform the specified maintenance at its expense. Within thirty-six (36) hours of notice, the Developer shall perform any specified emergency maintenance as may be required in the Village's notice.

A. Requirements of the Homeowner's or Similar Association.

- (1) The association shall be duly incorporated and a copy of the Certificate of Incorporation, duly recorded, and bylaws, and any amendment to either of them, shall be delivered to the Village;
- (2) The bylaws of the association shall, at a minimum, contain:
  - (a) A provision acknowledging and accepting the association's obligation to maintain certain portions of the stormwater drainage system as described above;
  - (b) A mechanism for imposing an assessment upon the owners of all of the lots or parcels comprising the development sufficient, at a minimum, to provide for the maintenance of those portions of the

stormwater drainage system as described above and the payment of all taxes levied thereon;

- (c) A provision adopting the plan of long-term maintenance set forth in the approved design documents, with approved amendments;
- (d) A provision identifying the officer of the association responsible for carrying out the obligations imposed upon the association, and an obligation to inform the Village of the name, address and phone number of this officer and any changes thereto;
- (e) A provision requiring the consent of the Village to any amendment of the bylaws changing any of the provisions of the bylaws required by this agreement; and
- (f) A provision requiring the consent of the Village to the dissolution of the association.

D. Failure to Maintain. In the event the Developer does not operate and maintain the stormwater and system as required under the terms of this Agreement, the Village shall be entitled, and is hereby expressly authorized by the Developer, to take one or more of the following actions (or any combination of the same):

(1) The Village or its agent may go onto the Property and maintain the stormwater and drainage system. Not less than ten (10) days before taking such action, the Village shall provide to the Developer and any other owners (as determined by reference to the tax rolls maintained by the Will County Treasurer), by first-class mail, notice of its intention. The Developer hereby grants to the Village and its agents a non-revocable license to go onto the Property to carry out the provisions of this subsection. The Village will invoice the cost of the specified maintenance, and the Developer shall pay the amount of the invoice within thirty (30) days of the Village's mailing the invoice by first class mail. If the Developer shall fail to pay the amount of the invoice, all costs, fees, or expenses incurred by the Village in maintaining the stormwater system pursuant to this subsection may be, without further notice, assessed as a lien on the Property, to be collected in any manner provided for by law.

(2) Require the Developer to provide a letter of credit in an amount sufficient to ensure maintenance of the stormwater and drainage system, in a form satisfactory to the Village. The Developer shall provide the requested letter of credit within fifteen (15) business days of receiving such a request from the Village. The letter of credit shall provide that the payment to the Village shall be assured upon submission by the Village of notice that the Developer has not maintained the stormwater and drainage system as required by this Agreement.

Section 6. Violation of Agreement. The parties acknowledge that monetary damages for a breach of this Agreement would be inadequate to compensate the parties for the benefit of their bargain. Accordingly, the parties expressly agree that in the event of a violation of this Agreement, the non-breaching party shall be entitled to receive specific performance. Nothing herein shall be deemed a waiver of the Village's rights to seek enforcement of this Agreement, any approvals previously granted, or any other available remedies for breach of this Agreement to the extent otherwise authorized by law. A violation of the terms and conditions of this Agreement by the Developer or its successors subsequent to the completion of the Project shall entitle the Village, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred.

Section 7. Recording. The obligations under this Agreement are covenants that run with the land and bind successors in title of the Developer. It is the parties' intent that this Agreement shall be recorded with the Will County Recorder of Deeds. The Developer shall be responsible for all costs associated with the recording of the Agreement.

Section 8. Miscellaneous.

A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

B. Notices. All notices permitted or required to be given shall be in writing and sent either by mail or by personal delivery to the addresses given below:

To Village: Village of Romeoville  
Attn: Village Engineer  
1050 Romeo Road  
Romeoville, IL 60446

To Developer: FRED-ROMEOVILLE HC, LLC,  
a Wisconsin limited liability company  
Attn: Steve Bersell, COO  
789 N Water St #200  
Milwaukee, WI 53202

C. Waiver. No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

D. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Illinois and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.

E. Amendment. This Agreement may only be amended in writing, signed by all parties.

The parties have executed this Agreement on the day and year first above written.

Village of Romeoville

Fred-Romeoville HC, LLC (Developer)

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 1 of the Seasons at Romeoville Subdivision being a subdivision of that part of the west half of the northwest quarter of section 17, township 36 north, range 10 east of the third principal meridian, according to the plat thereof recorded as document R2020-080266, in will county, Illinois.