

**JOINT PROJECT AGREEMENT BETWEEN COUNTY OF VOLUSIA AND
CITY OF DELTONA FOR ELKCAM BOULEVARD AT LAKE HELEN OSTEEN
ROAD FLOOD MITIGATION PROJECT**

THIS JOINT PROJECT AGREEMENT (AGREEMENT) is entered into by and between the **County of Volusia** (COUNTY), a political subdivision of the State of Florida, and the **City of Deltona** (CITY), a municipal corporation of the State of Florida, for the Elkcarn Boulevard at Lake Helen Osteen Road Flood Mitigation project.

WITNESSETH:

WHEREAS, the COUNTY was awarded \$328.9 million in Community Development Block Grant – Disaster Recovery (CDBG-DR) funds provided by the Department of Housing and Urban Development (HUD) Grant B-23-UN-12-0005 to aid the citizens of Volusia County in their recovery from Hurricane Ian; and

WHEREAS, the CITY has a project, the mitigation of flooding through stormwater pipe and ditch bottom inlet installation, and, in conjunction with the County, has determined that the Elkcarn Boulevard at Lake Helen Osteen Road Flood Mitigation project is eligible and meets all of the requirements of the HUD Grant B-23-UN-12-0005; and

WHEREAS, on behalf of CITY, the COUNTY will manage the design and construction of the Elkcarn Boulevard at Lake Helen Osteen Road Flood Mitigation project; and

WHEREAS, both parties, by this AGREEMENT, agree to ensure compliance with all federal requirements and grant guidelines as outlined herein; and

WHEREAS, the CITY, should it choose to use FEMA Hazard Mitigation Grant Program (HMGP) funds, will petition FEMA for reimbursement; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, warranties and undertakings of the Parties contained herein and other good and valuable consideration given by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto stipulate and agree as follows:

A. The above recitals are incorporated herein and form a material part of this Agreement.

B. MUTUAL COOPERATION

The COUNTY and the CITY shall mutually participate in this AGREEMENT and shall work cooperatively to coordinate and accomplish all aspects of the PROJECT. The COUNTY and CITY agree to endeavor to fulfill the responsibilities and complete the work set forth in this AGREEMENT, and any amendment, modification, supplement or change order, which may be approved by the COUNTY and the CITY subsequent to execution of this AGREEMENT, as expeditiously as possible.

C. CITY RESPONSIBILITIES

While the COUNTY will manage the design of the PROJECT on behalf of the City, the City shall be responsible for providing support and direction for the design. This shall include, but not be limited to, participation in the preparation of the design scope, performance of plan reviews, signing any necessary permit applications, and coordination with necessary parties as the project owner. Prior to construction and during construction the CITY shall provide timely assistance responding to contractor questions or requests for additional information and approvals of contractor shop drawings. The construction contract will include the provision that the contractor's insurance requirements and warranties for the PROJECT will apply to both the COUNTY and CITY.

At its own expense, the CITY shall provide knowledgeable representatives for the design and construction phases to respond to any PROJECT related questions during that phase of the PROJECT. The CITY shall also provide knowledgeable representatives for the design and construction phases to attend and participate in any PROJECT meetings prior to and during the performance of the PROJECT. The CITY shall provide knowledgeable representatives to observe the construction of the PROJECT at its own expense.

The CITY shall be responsible for the cost of the project above and beyond the funding provided by the HUD Grant B-23-UN-12-0005.

D. COUNTY'S RESPONSIBILITIES

The COUNTY shall prepare a scope, procure a design consultant and manage the design consultant in the preparation of the engineering plans and documents to include the necessary permitting for the PROJECT. The COUNTY shall ensure that the design of the PROJECT is designed in compliance with the HUD Grant B-23-UN-12-0005 requirements and applicable COUNTY and CITY specifications. The COUNTY shall procure a design consultant using the COUNTY's procurement methods for hiring professional services and noted in Section F. Upon completion of the engineering plans the County shall procure a construction contract using the COUNTY's procurement methods and as noted in Section F. The COUNTY shall oversee the contractor as the PROJECT is constructed. The COUNTY shall coordinate with the CITY on the CITY's requirements to include, but not be limited to, participation in the preparation of the design scope, performance of plan reviews, signing any necessary permit applications, and coordination with necessary parties as the project owner.

The COUNTY's responsibility for overall supervision does not relieve the CITY from performing its responsibilities in accordance with Section C.

E. COMPLIANCE

1. DAVIS-BACON ACT

The COUNTY shall comply with the labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7. The COUNTY shall maintain documentation that demonstrates compliance with applicable hour and wage requirements.

2. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT

The COUNTY shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing regulations at 24 CFR part 135. The COUNTY shall include the “Section 3 clause” at 24 CFR 135.38 in every “Section 3 covered contract” (as defined in 24 CFR 135.5).

F. PROJECT PROCESS

1. PROCUREMENT DOCUMENTS

The COUNTY shall be responsible for the assembly of all necessary administrative procurement documents for the PROJECT. The COUNTY shall be responsible for advertisement, bidding, award and administration of the construction contract for the PROJECT.

2. NOTIFICATION & AWARD

The COUNTY shall receive, open and evaluate all bids and award the contract for the PROJECT. The COUNTY will not award the PROJECT without prior review and acceptance by the CITY and issuance of a CITY purchase order. The CITY shall notify the COUNTY of its acceptance of the COUNTY’s selection, in writing, within ten (10) days of receipt of notice. The CITY understands and agrees that the COUNTY intends to award the contract to the lowest responsive and responsible bidder for the PROJECT. The COUNTY will not award the PROJECT without receipt of a CITY purchase order within twenty (20) days of the COUNTY notifying the CITY of the COUNTY’s decision to award the contract.

The COUNTY and the CITY acknowledge that the COUNTY's bidding documents include a provision that subcontractors will be subject to review as to their competency prior to award of contract, and shall be one of the considerations in determining the lowest responsible bidder. In the event the lowest bidder has listed a subcontractor for the PROJECT which the CITY deems unacceptable due to cause, the COUNTY will request a change of that subcontractor with no change to the pricing in lieu of disqualifying the prime contractor. "Cause," shall include, but is not limited to considerations of past performance on projects owned by the COUNTY or the CITY and past or current litigation involving work performed by the subcontractor. The CITY shall notify the COUNTY of any subcontractor deemed unacceptable due to cause within a ten (10) day review period from the date of notification.

3. NO OBLIGATION

The COUNTY is under no obligation to accept any of the bids received at the bid opening for the PROJECT, and may, at its option, without incurring any obligation to the CITY, reject all bids or any part of any bid received at bid opening.

4. CHANGE ORDERS

If the COUNTY determines that any adjustments, relocations, repair and incidentals are required to be made to the PROJECT during the construction phase, the CITY shall be responsible for funding the resolution to these issues unless covered by HUD Grant B-23-UN-12-0005. The COUNTY shall manage the coordination between the engineer of record responsible for the design of the project and the contractor. The COUNTY shall review the change order documents and the overall cost of the resolution. The COUNTY shall provide a copy of the documents and costs to an authorized CITY representative for review. The CITY shall amend its purchase order to reflect any approved change orders within 10 days of being provided the cost information for the change order by the COUNTY for any portion of the change order not covered by HUD Grant B-23-UN-12-0005. All such work shall be coordinated with the construction of the PROJECT and in a manner that will not cause inordinate delay or expense to the contractor.

5. CONSTRUCTION

All services and work under the construction contract shall be performed to the satisfaction of the County Engineer. All questions, difficulties and disputes of whatever nature which may arise under the construction contract, including but not limited to the prosecution and fulfillment of the services thereunder and the character, quality, amount and value thereof, shall be decided by the County Engineer after consultation with the CITY. The decision of the County Engineer upon all such questions, difficulties and disputes thereunder shall be final.

The salvage value of any materials related to the PROJECT and removed from the construction site will become the property of the contractor and shall be disposed of by the contractor.

6. OWNERSHIP

Upon completion and acceptance of the work and receipt by the CITY of as-built drawings of the completed work, the CITY shall own, control, maintain and be responsible for all the CITY's facilities involved. The CITY agrees that it shall maintain and keep in good repair, or cause to be maintained and kept in good repair, all such facilities or utilities.

G. CITY FUNDING

The CITY shall prepare and deliver a purchase order to the COUNTY for the amount of the CITY's cost-share portion prior to the award of a contract for the PROJECT. The COUNTY will prepare and deliver an invoice for the cost of the PROJECT to the CITY monthly as the PROJECT is completed and the contractor submits pay requests. The CITY will be provided the pay requests for review and written acceptance as to the percentage or quantities, as applicable, of work completed prior to processing for payment. The CITY shall pay all received invoices to the COUNTY within twenty (20) business days following receipt of the invoice. All invoices shall be sent to: Sandi Jackson, 2345 Providence Boulevard, Deltona, Florida 32725.

Upon final completion of all construction work, the COUNTY shall within one hundred eighty (180) days, furnish the CITY with two (2) copies of its final and complete billing of all costs incurred in connection with the Project performed hereunder, such statement to follow as closely as possible the order of the items contained in the job estimate. The final billing shall show the description and site of the PROJECT; the date on which the first work was performed; the date on which the last work was performed or the last item of billed expense was incurred; and, the location where the records and accounts bill can be audited. Adequate reference shall be made in the billing to the COUNTY's records, accounts or other relevant documents. All cost and accounts shall be subject to audit by a representative of the CITY. Upon receipt of final invoices prepared in accordance with the provision of the COUNTY procedures, the CITY agrees to reimburse the COUNTY, within twenty (20) business days the amount of such cost.

H. INDEMNIFICATION

Each Party shall be responsible for its sole negligence, breach of contract, or breach of this AGREEMENT, subject to the limitations in § 768.28, Florida Statutes.

I. MISCELLANEOUS

1. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire agreement between the Parties regarding the PROJECT as set forth herein. All negotiations, proposals and draft agreements, oral or

written (or portions thereof) or understandings of any kind between the parties relating to the subject matter hereof are hereby superseded by this AGREEMENT to the extent the provisions of this AGREEMENT relate to such prior agreements or understandings or portions thereof.

2. AMENDMENT

This AGREEMENT may only be amended, modified or supplemented in writing which must be duly executed by the COUNTY and CITY.

3. SEVERABILITY

In the event that any provision of this AGREEMENT shall for any reason be determined invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements to this AGREEMENT or such other appropriate actions as shall implement and give effect to the intentions of the Parties reflected herein. All other provisions of this AGREEMENT, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

4. LAW/VENUE

The applicable laws of the State of Florida shall govern the validity, interpretation, construction and performance of this AGREEMENT. Venue for any suit involving this AGREEMENT shall be Volusia County, Florida. In the event a Party deems it necessary to take legal action to enforce any provision of this AGREEMENT, each Party shall bear its own attorneys' fees and costs.

5. NOTICES

Any notice, statement, demand or other communication required or permitted to be delivered, served or given by either Party to the other shall be deemed delivered, served or given, if mailed in any general or branch United States Post Office (USPS) enclosed in a registered or certified envelope addressed to the respective Party, as follows:

TO COUNTY: VOLUSIA COUNTY
ATTN: GEORGE RECKTENWALD
COUNTY MANAGER
123 WEST INDIANA AVENUE
DELAND, FL 32720

COPY TO: DONA D. BUTLER
DIRECTOR, ORR
1578 N. WOODLAND BLVD.
DELAND, FL 32720

TO CITY: CITY OF DELTONA

ATTN: DALE (DOC) DOUGHERTY
2345 PROVIDENCE BLVD
DELTONA, FL 32725

COPY TO: CITY OF DELTONA
ATTN: SANTIAGO AVILA, JR.
2345 PROVIDENCE BLVD
DELTONA, FL 32725

6. COUNTY FUNDING

The COUNTY's responsibilities under this AGREEMENT are contingent upon the appropriation of funds required for the PROJECT.

7. EFFECTIVE DATE/TERM

This AGREEMENT shall be effective on the date of execution by the COUNTY and shall continue in full force and effect until final reconciliation and payment, in full by the CITY under this AGREEMENT, is received by the COUNTY. If the COUNTY does not issue an invitation to bid within five years of execution of this AGREEMENT, the AGREEMENT shall terminate.

8. FORCE MAJEURE

Neither the COUNTY nor the CITY shall be liable to the other for any failure to perform under this AGREEMENT to the extent such performance is prevented by an act of God, war, riot, natural catastrophe, or other event beyond the control of the nonperforming Party and which could not have been avoided or overcome by the exercise of due diligence; providing that the Party claiming the excuse from performance has (a) promptly notified the other Party of the occurrence of the event and its estimated duration; (b) promptly remedied or mitigated the effect of the event to the extent possible; and (c) resumed performance as soon as possible.

9. ASSIGNMENT

No assignment, delegation, transfer or novation of this AGREEMENT or any part thereof shall be made unless approved in writing by the Parties.

10. HEADINGS

All section headings contained herein are included for convenience only and shall not affect in any manner the construction or interpretation of the AGREEMENT.

11. SUCCESSORS AND ASSIGNS

This AGREEMENT shall be binding upon and inure to the benefit of the respective successors, assigns, administrators and managers of the COUNTY and the CITY.

12. EXECUTION OF DOCUMENTS; RECORDING

This AGREEMENT shall be executed in two (2) duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute one and the same instrument. The COUNTY shall retain one (1) fully executed original and the CITY shall retain one (1) fully executed original. After execution by the Parties, this AGREEMENT shall be recorded in the Public Records of Volusia County by the COUNTY.

IN WITNESS WHEREOF, the Parties hereto have made and executed this AGREEMENT as of the latest day and year written below.

ATTEST:

CITY OF DELTONA

DALE (DOC) DOUGHERTY
CITY MANAGER

BY: _____
SANTIAGO AVILA, JR.
MAYOR

DATE: _____

Approved as to form
and correctness:

GEMMA TORCIVIA
CITY ATTORNEY

ATTEST:

COUNTY OF VOLUSIA, FLORIDA

GEORGE RECKTENWALD
COUNTY MANAGER

BY: _____
JEFFREY S. BROWER, CHAIR
COUNTY COUNCIL

DATE: _____

Approved as to form
and correctness:

THOMAS R. (RUSS) BROWN, III
DEPUTY COUNTY ATTORNEY