

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT (“the Agreement”) is made and entered into as of this ____ day of _____, 2021, by and between Levy County, a political subdivision of Florida (“the County”) and the Town of Yankeetown (“the City”).

RECITALS

WHEREAS, the City desires to construct certain storm water drainage improvements around or within County rights of way in the vicinity of County Road 40, 50th Street, and Riverside Drive, all located within the municipal limits of the City, in order to improve drainage within the municipal limits of the City;

WHEREAS, the City has received, or will otherwise acquire, funding necessary to construct the desired storm water drainage improvements;

WHEREAS, the City desires to continue to own, operate, and maintain the desired storm water drainage improvements in good repair;

WHEREAS, the County desires to assist the City by granting an easement within certain portions of its right of way to allow for the City to construction and later maintain or repair the City’s desired storm water drainage improvements; and

WHEREAS, Chapter 163, Florida Statutes, permits governmental units to enter into interlocal agreements to make the most efficient use of their powers by enabling them to cooperate with one another on a basis of mutual advantage; and

WHEREAS, the parties desire to make the most efficient use of their powers by entering into this Agreement to serve their mutual best interests and advantage.

NOW, THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in the Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

1. **RECITALS, DEFINITIONS AND EXHIBITS**. (a) *Incorporation*. The above recitals and any Exhibits referenced in this Agreement are specifically incorporated herein by reference and made part of this Agreement.

(b) *Definitions and Exhibits*. The following terms as used in this Agreement will have the meanings set forth below, unless the context clearly indicates otherwise:

The term "Property" means those certain rights of way properties previously dedicated and accepted by the County, or otherwise transferred to the County, as more particularly described or depicted in Exhibit "A1" and Exhibit "A2."

The term "Improvements" means the storm water drainage improvements that the City proposed to construct on the Property and the surrounding area, which are more particularly described in Exhibit "B."

The term "Governmental Law" means any federal, state, local, administrative, regulatory, safety and environmental law, code, rule, regulation, policy, procedure, guideline, standard, specification, permit, as the same may be constituted and amended from time to time, including, without limitation, those of the County, the Southwest Florida Water Management District, the Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and any other applicable federal, state or local governmental entity.

2. **EFFECTIVE DATE/TERM.** The effective date of this Agreement will be the date this Agreement is filed with the Levy County Clerk of Court, following execution of this Agreement by both parties. The initial term of this Agreement will begin on the effective date and will continue for a period of one (1) year. This Agreement will automatically renew for successive and continuing one (1) year terms unless terminated by either party upon sixty (60) days' written notice to the other party, or unless mutually terminated by subsequent written agreement between the parties.

3. **CONSTRUCTION OF IMPROVEMENTS.** (a) The City shall submit to the County, all construction plans, construction schedules, maintenance of traffic plans, and any other plans or documents reasonably requested or required by the County, which describe the construction of the Improvements (herein "plans, schedules and other documents"). The County will have the right, by and through its County Road & Bridge Department, to review and approve all the plans, schedules and other documents, and to require reasonable revisions necessary to protect the County's interest in and the public's use of the Property. The County will be allowed thirty (30) days for any review of the plans, schedules and other documents, including any requested or required revisions thereto. The City shall not commence construction of the Improvements until final County approval has been provided for all the plans, schedules and documents, and any revisions thereto.

(b) Once the County provides final approval of the plans, schedules and other documents, the City shall provide or acquire all funding for and construct the Improvements in and on the Property in a timely manner and otherwise in accordance with the provisions of this Agreement.

(c) Immediately following the construction of the Improvements, the City will perform all work necessary to restore the Property to as good or better condition than it was in prior to the construction of the Improvements, reasonable wear and tear accepted.

(d) Upon completion of construction of the Improvements, the City will provide the County with a copy of complete, as-built plans of the Improvements.

(e) Upon completion of construction of the Improvements, the City will own the Improvements, which ownership will not interfere with any County interest in the Property.

4. **MAINTENANCE OF IMPROVEMENTS.** (a) The City shall operate, maintain and repair the Improvements in a timely manner, at its sole cost and expense, throughout the initial and any renewal term of this Agreement. The City shall provide the County with reasonable notice of any maintenance or repair of the Improvements. The City shall also provide any construction plans, construction schedules, maintenance of traffic plans, or other documents or description of any maintenance or repair to the Improvements the City plans or intends to perform. The County shall have a reasonable time to review and approve any such maintenance or repair plans or schedules, and may require reasonable amendments to the same prior to the City's commencement of such maintenance or repairs to the Improvements.

(b) Immediately following any maintenance or repair of the Improvements, the City will perform all work necessary to restore the Property to as good or better condition than it was in prior to such maintenance or repair of the Improvements, reasonable wear and tear accepted.

(c) Upon completion of any maintenance or repair of the Improvements, the City will provide the County with a copy of complete, as-built plans of such maintenance or repair work, if there are any changes to the Improvements as may be applicable.

(d) The City agrees that it will be solely responsible for the operation, maintenance and repair of the Improvements. Should the City fail to operate, maintain and repair the Improvements in accordance with the terms and provisions of this Agreement or applicable Governmental Law, the County shall give reasonable notice and opportunity to the Town to cure the failure by completing the maintenance or repairs and the County is required to perform such operation, maintenance or repair in order to protect the Property, the use of the Property, or the public health, safety or welfare, the City shall be fully responsible to the County for repayment of any funds expended by the County for such operation, maintenance, or repair of the Improvements. Should the City fail to perform any work to restore the Property to as good or better condition than it was in prior to the performance of the construction or any maintenance or repair of the Improvements as required herein, the City shall be fully responsible to the County, and the County is required to perform such restoration of the Property, the City shall be fully responsible to

the County for repayment of any funds expended by the County for such restoration of the Property. The County shall invoice the City for any operation, maintenance or repair expenses, or any restoration expenses charged to or performed by the County, and the City shall pay such invoices promptly. Nothing in this Agreement will require the County to perform any operation, maintenance or repair to the Improvements, or restoration of the Property. Nothing in this Agreement will relieve the City of its financial obligations to the County in any event.

5. **STANDARDS OF PERFORMANCE.** (a) The City shall perform the construction and any operation, maintenance or repair of the Improvements, and any activities to restore the Property following the construction or any maintenance or repair of the Improvements, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement, with the plans, schedules and other documents and any other County-approved maintenance or repair plans or schedules (if applicable), and with all applicable Governmental Law.

(b) The County will have the right to inspect any work done on the Property in connection with the construction, operation, maintenance or repair of the Improvements. In addition, the County will have the right to reject any such work that is not done in accordance with the requirements of this Agreement. In the event the County rejects any such work, the City will correct such work to meet the requirements of the County.

(c) The City shall be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the City to perform the construction of the Improvements or any operation, maintenance or repair of the Improvements. The City shall ensure all utility locations are accurately documented on any construction plans including the final as-built plans. All utility conflicts shall be resolved by the City directly with the applicable utility.

6. **PERMITS.** In the performance of the Agreement the City may be required to obtain one or more federal, state or local permits which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such federal, state or local permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the County. Should any term or provision of the Agreement conflict with any term, provision or requirement of Governmental Law or any federal, state or local permit, the terms and provisions of the applicable Governmental Law or applicable permit shall control unless specifically noted otherwise in any such permit.

7. **ACCESS/NON-INTERFERENCE.** (a) Subject to the provisions of this section, the County hereby grants access to the Property to City for the limited purposes of performing construction of the Improvements and any operation, maintenance or repair

of the Improvements following such construction. The County agrees not to do or commit any acts that would interfere with the City's performance of construction, operation, maintenance or repair of the Improvements that are performed in accordance with this Agreement.

(b) The County acknowledges only that it has a right of way interest in the Property and makes no other representation as to ownership or title to the Property or to its power or authority to grant access to the Property to the City as provided herein. The access provided by this section does not create or grant to the City a property right or property interest in the Property.

8. **EMINENT DOMAIN AND DAMAGES.** Under no circumstances shall the County's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the City to full and just compensation from the County either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The City forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs and loss of business profits resulting in any manner from the County's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the City, as a result of the County's exercise of any right provided in this Agreement.

9. **INDEMNIFICATION.** (a) The City shall promptly defend, indemnify, hold the County harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs/penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the City's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The City's duty to defend, indemnify and hold the County harmless specifically does not encompass indemnifying the County for its negligence, intentional or wrongful acts, omissions or breach of contract.

(b) The City shall notify the County in writing immediately upon becoming aware of any Liabilities. The City's obligation to defend, indemnify and hold the County harmless from an Liabilities, or at the County's option to participate and associate with the County in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the County's written notice of claim for indemnification

to the City. The City's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

(c) Nothing in this Agreement will be deemed or otherwise interpreted or construed as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time.

10. **NOTICE.** All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

County: Levy County Road Department
P.O. Box 336
Bronson, Florida 32621-0336

City: Town of Yankeetown
6241 Harmony Lane
Yankeetown, Florida 34498

11. **GOVERNING LAW.** This Agreement shall be governed in all respect by the laws of the State of Florida.

12. **VENUE AND JURISDICTION.** Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties shall lie exclusively in a state court of appropriate jurisdiction in Levy County, Florida.

13. **ASSIGNMENT.** The City shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the County. The County has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the City for delegating its duties hereunder, but such delegation shall not release the City from its obligation to perform the Agreement.

14. **THIRD PARTY BENEFICIARIES.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein. Nothing in this Agreement will be deemed or otherwise interpreted or construed to be

consent by either party to be sued by third parties in any matter arising out of this or any other Agreement.

15. **VOLUNTARY EXECUTION OF AGREEMENT.** Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influences; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

16. **ENTIRE AGREEMENT.** This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

17. **EXECUTION OF DOCUMENTS.** The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

18. **WAIVER.** The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

19. **INTERPRETATION.** No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

20. **CAPTIONS.** Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provisions hereof.

21. **SEVERANCE.** If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall

remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

22. **COMPUTATION OF TIME.** In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

23. **MODIFICATION OF AGREEMENT.** A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

24. **PUBLIC RECORDS.** Both parties shall comply with all applicable provisions of Chapter 119, Florida Statutes.

IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

County Coordinator
levybocc@levycounty.org
P.O. Box 310
Bronson, Florida 32621
(352) 486-5218

IF THE COUNTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

TOWN CLERK-ADMINISTRATOR
6241 HARMONY LANE
YANKEETOWN, FL 34498
PHONE: 352-447-2511
YANKEETOWNTH@GMAIL.COM ;
yankeetownadm@bellsouth.net

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement.

**BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA**

John Meeks, Chairman

Dated: _____

**ATTEST: CLERK OF THE CIRCUIT
COURT AND EX OFFICIO CLERK
TO THE BOARD:**

Danny J. Shipp, Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Anne Bast Brown, County Attorney

TOWN OF YANKEETOWN

Jack Schofield, Mayor

Dated: _____

ATTEST:

Sherri MacDonald, Town Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Ralf Brookes, Town Attorney

EXHIBIT A1

A PART OF SECTIONS 4 AND 5, TOWNSHIP 17 SOUTH, RANGE 16 EAST, LEVY COUNTY, FLORIDA.
MORE PARTICULARLY DESCRIBED AS:

THE SOUTHERLY HALF OF THE RIGHT OF WAY OF COUNTY ROAD 40, A 80 FOOT RIGHT OF WAY AS CURRENTLY ESTABLISHED; BOUNDED ON THE WEST BY THE EASTERLY RIGHT OF WAY LINE OF 51ST STREET, A 50 FOOT RIGHT OF WAY AS CURRENTLY ESTABLISHED, AND ON THE EAST BY THE EASTERLY ROW LINE OF 50TH ST, A 60 FOOT RIGHT OF WAS AS CURRENTLY ESTABLISHED.

Sketch contained on following page.

Exhibit A1 - Property
50th St & CR 40 Drainage



Legend

- Drainage Improvements Area
- Parcel Boundary



Exhibit A2 - Property
Riverside Drive Drainage



Exhibit B

Yankeetown 50th Street Drainage Improvements Projection Description

This drainage improvement project consists of regrading and widening of existing drainage swales along County Road 40 and installing new swales along 50th Street to store and convey excess runoff south to the Withlacoochee River.

A storage pond will be installed along the north side of Riverside Drive east of 50th Street.

Flows from this storage pond will be conveyed thru a new double 24" RCP storm pipe to discharge runoff into the river. A concrete weir structure will dissipate energy prior to the runoff discharging into the river.