

RESOLUTION NO. 2026-R-04

A RESOLUTION OF THE CITY OF EDGEWATER, FLORIDA, AGREEING TO A STORMWATER USE AGREEMENT FOR G-2 AND G-11 CANALS AND ASSOCIATED IMPROVEMENTS; AUTHORIZING RECORDING; REPEALING RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND APPLICABILITY AND ESTABLISHING AN EFFECTIVE DATE.

THIS AGREEMENT (the "Agreement") is entered into by and between the following entities: The CITY OF EDGEWATER, a municipality within Volusia County, mailing address: 104 N Riverside Drive, Edgewater, FL 32132, ("CITY") and the COUNTY OF VOLUSIA, a political subdivision of the State of Florida mailing address: 123 West Indiana Avenue, DeLand, FL 32720, ("COUNTY").

RECITALS

WHEREAS, the G-2 and G-11 canals are maintained by the (CITY) City and County (COUNTY) at different intervals within the City of Edgewater; and

WHEREAS, the G-2 and G-11 canals are owned and maintained by the COUNTY for mosquito control purposes but may at times serve as vital stormwater conveyance routes within the Special Flood Hazard area within the City of Edgewater; and

WHEREAS, the G-2 and G-11 canals drainage basin contains approximately 350 acres of urbanized low land elevations that are especially prone to flooding; and

WHEREAS, during heavy rain events, substantial stormwater combined with significant tidal surge backflow from the Indian River through the Gabordy Canal and prevents the G-2 and G-11 canals from effectively preventing flooding; and

WHEREAS, the CITY desires to utilize \$14,697,665 in Community Development Block Grant Mitigation funding to help alleviate flooding by constructing stormwater drainage improvements and tidal backflow measures; and

WHEREAS, the CITY is requesting the right to make said improvements and maintain said improvements in their entirety as well as the right to maintain the G-2 and G-11 canals, including those under COUNTY jurisdiction; and

WHEREAS, the COUNTY expresses desires to grant the CITY the rights necessary to complete such improvements and perform long-term maintenance; and

WHEREAS, COUNTY hereby grants CITY full right-of-entry, access, ingress, and egress to COUNTY property for construction, maintenance, equipment, machinery, inspections, and emergency work relating to the G-2 and G-11 canals.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the recitals above, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged by the parties hereto, the parties agree as follows:

1. Recitals. The above recitals are true and correct and incorporated by reference herein.
2. Parties. All references in this Agreement to CITY and all requirements and entitlements herein shall also mean, refer to, include and apply to CITY. This Agreement shall be recorded in the public records of Volusia County, Florida. Exhibit A incorporated within the Agreement shall serve as the boundary for the G-2 and G-11 canals.
3. Effective Date. The effective date of this Agreement shall be the date it is fully executed by both parties. The COUNTY shall execute the Agreement last, after approval by the County Council.
4. CITY shall:
 - A. Construct and maintain the stormwater improvements from the HUD CDBG-MIT Program (Grant #IR024) grant along the G-2 and G-11 canals. Additionally, the CITY shall maintain the G-2 and G-11 canals.
 - B. Signed and sealed engineering plans shall be provided to the County Engineer for review and approval. Construction design standards within the COUNTY portions of G-2 and G-11 canals shall be in accordance with the County Engineer's determination of design requirements.
 - C. The CITY shall make no other improvements to any other canals without the expressed written approval of the COUNTY.
 - D. CITY shall not, through construction, maintenance, or failure to maintain, interfere with the historical flow of water for mosquito control through the G-2 and G-11 canals.
 - E. If, at any time while the terms of this agreement are in effect, it shall come to the attention of the COUNTY, that the CITY is not maintaining the constructed stormwater improvements in this Agreement and not maintaining the G-2 and G-11 canals as established herein pursuant to the terms of this agreement, the COUNTY, may, issue a written notice to the CITY to place the CITY on notice thereof. Thereafter, the CITY shall have a period of (30) thirty calendar days within which to commence correction of the cited deficiency or deficiencies and diligently proceed until cured. If unable to correct the deficiency within the thirty (30) day commencement period, the CITY shall provide the COUNTY a schedule timeline within the (30) day commencement period for correcting the deficiency that shall

be approved by the COUNTY. If said commencement does not occur within this time period, the COUNTY may at its option, proceed to maintain the noticed deficiencies with the COUNTY's own resources or may hire a Contractor's material, equipment and personnel for a commercially reasonable fee. The actual cost for such work will be the responsibility of the CITY. The COUNTY will send an invoice for actual cost to the CITY, which invoice shall be paid by the CITY within forty-five (45) days of the City's receipt of the invoice.

5. COUNTY shall:

- A. Grant to the CITY the right to construct and maintain those stormwater improvements as stated and defined in Grant #IR024 only to the G-2 and G-11 canals.
- B. Grant the CITY the right to maintain COUNTY segments of the G-2 and G-11 canals.
- C. COUNTY retains the right to continue to treat the G-2 and G-11 canals for mosquito control purposes and nothing in this Agreement modifies this right.

5.1. OWNERSHIP Clause:

At the conclusion of the construction of improvements as contemplated in this Agreement, the CITY shall own all improvements constructed under this Agreement.

5.2 CDBG-MIT Compliance Clause:

Because the improvements are funded through the Grant #IR024, the parties agree as follows:

- A. COUNTY shall allow the CITY, HUD, the Florida Department of Commerce, and their auditors reasonable access to COUNTY property and records for inspection, construction, and compliance monitoring.
- B. CITY shall ensure the project complies with all applicable federal, state, and local environmental and mitigation requirements and shall complete all required HUD reporting and documentation.
- C. Both parties shall retain project-related records for the federally required retention period and shall cooperate with any audit or monitoring.
- D. COUNTY shall not be responsible for any HUD repayment, penalties, or enforcement actions arising from CITY's administration of the CDBG-MIT grant, except for issues caused solely by COUNTY's failure to meet its obligations under this Agreement.

5.3 FISCAL RESPONSIBILITY

This Agreement does not obligate either party to provide funding to the other, nor does it commit either party to any future financial expenditure unless expressly stated in writing and approved by the governing bodies of both the CITY and the COUNTY.

5.4 TERM AND TERMINATION:

- A. This Agreement shall remain in effect for twenty (20) years from the Effective Date and shall automatically renew for successive five-year terms unless either party provides written notice of non-renewal at least 180 days prior to the end of the current term.
- B. If federal or state funding necessary to complete or maintain the project is withdrawn, reduced, or terminated, the CITY may suspend or terminate its obligations upon 60 days' written notice to the COUNTY.
- C. If either party provides notice of termination, then the COUNTY shall have the right to perform an inspection and require CITY to maintain or repair any deficiencies of the improvements placed in the canal by CITY pursuant to this agreement prior to termination of this Agreement. Alternatively, COUNTY shall have the right to require CITY to remove any improvements prior to termination placed in the G-2 and G-11 canals pursuant to this Agreement.
- D. Either party may terminate this Agreement if the other party materially fails to perform its obligations and does not cure such failure within 90 days after written notice.

5.5 EMERGENCY ACTIONS:

During declared emergencies, storm events, or conditions requiring immediate action to protect public safety or prevent flooding, the CITY may enter and perform temporary emergency work on COUNTY segments of the G-2 and G-11 canals without advance written notice. However, the CITY shall not take any actions that interfere with the historic flow of the G-2 and G-11 canals. The CITY shall notify the COUNTY as soon as practicable after such entry. Both parties shall coordinate emergency activities to the extent feasible. Emergency actions taken under this provision shall not be considered a breach of this Agreement.

6. INDEMNIFICATION:

To the extent permitted by law, the CITY agrees to indemnify, defend and hold harmless the COUNTY, its agents, officials, and employees against all injuries, death, losses, damages, claims, liabilities, judgments, costs and expenses, direct, indirect or consequential (including, but not limited to fees and charges of attorneys and other professionals) arising out of the CITY's construction and maintenance of the improvements on the COUNTY canals shown in Exhibit A and contemplated in this Agreement. The foregoing is not intended to, nor should it be construed as a waiver of sovereign immunity of the COUNTY or CITY pursuant to Section 768.28, Florida Statutes, and the cap on the amount and liability of either party for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort.

7. **ASSIGNMENT:**

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

8. **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: TADD KASBEER, P.E.
 COUNTY ENGINEER
 123 WEST INDIANA AVENUE
 DELAND, FL 32720

TO CITY: CITY OF EDGEWATER
 ATTN:

COPY TO: CITY OF EDGEWATER
 ATTN:

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding stormwater use for the G-2 and G-11 canals.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto attach their hands and seals to this Stormwater Use Agreement for the G-2 and G-11 canals, this _____ day of _____, 2026.

COUNTY OF VOLUSIA, a political subdivision of the State of Florida

Jeffrey S. Brower, County Chair

Attest
By: _____

George Recktenwald, County Manager

Approved as to form by:

Paolo Soria
Sr. Assist. County Attorney

[SEAL]

CITY:

Attest:

_____, City Clerk

By: _____
Name: _____
Title: _____

Approved as to form and legal sufficiency:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Dated: _____

Exhibit A- G-2 and G-11 Canal Drainage Basin and Canal Segments

