

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Proposed Joint Infrastructure Agreement-Jeno Paulucci/Reinhart Road Retention Pond

**DEPARTMENT:** County Manager      **DIVISION:** County Manager

**AUTHORIZED BY:** J. Kevin Grace      **CONTACT:** J. Kevin Grace      **EXT.** 7211

<b>Agenda Date</b> <u>01/13/04</u> <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input checked="" type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/> <b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>
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**MOTION/RECOMMENDATION:** Approve the attached Joint Infrastructure Agreement with Jeno F. Paulucci regarding the retention ponds located on Rinehart Road south of SR 46, and authorize the Chairman and staff to execute all documents, including a County deed, required to complete the transaction.

**BACKGROUND:** The retention ponds were acquired from Mr. Paulucci as part of the original Rinehart Road project. Mr. Paulucci retained certain rights in the ponds, including the right to use them as an entrance feature for a future development. After conclusion of the Kastner lawsuit regarding these same ponds, Mr. Paulucci approached the County regarding the possibility of moving the ponds off the road frontage. After negotiations, staff and Mr. Paulucci resolved all issues as reflected in the attached Joint Infrastructure Agreement.

The terms of the transaction are as follows:

Paulucci will pay the County a total of \$100,000; \$50,000 within thirty (30) days after execution of the agreement and \$50,000 upon the closing of the exchange of properties.

Paulucci may move the retention ponds to a new location, provided that certain conditions are satisfied, including that the new system must accept the stormwater from the existing Rinehart Road and all stormwater from the future six (6) lane curb and gutter configuration, when and if it is built.

Paulucci will be responsible for all costs of design, permitting and construction of the new drainage system and, upon completion of construction, will maintain the system.

Reviewed by:	
Co Atty:	_____
DFS:	_____
Other:	_____
DCM:	_____
CM:	
File No.	<u>CCM01</u>

The County will receive a permanent drainage easement over the new system and will convey, by County deed, the existing ponds to Paulucci.

Staff recommends approval of the attached Joint Infrastructure Agreement.

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## JOINT INFRASTRUCTURE AGREEMENT

**THIS JOINT INFRASTRUCTURE AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between Jeno F. Paulucci, as Managing Trustee of the Jeno F. Paulucci Revocable Trust, hereinafter referred to as "PAULUCCI", and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1001 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY."

### **WITNESSETH:**

**WHEREAS**, the COUNTY owns certain drainage retention ponds located on Rinehart Road in Seminole County (the "Ponds") which Ponds were originally purchased from PAULUCCI; and

**WHEREAS**, the COUNTY also owns a thirty (30) foot wide drainage and utility easement recorded in Official Records Book 2382 at page 371 of the Public Records of Seminole County (the "Connecting Easement") which was also purchased from PAULUCCI; and

**WHEREAS**, as part of the original purchase and sale agreement relating to the Ponds, PAULUCCI retained certain rights to use the Ponds; and

**WHEREAS**, PAULUCCI has requested the COUNTY to grant PAULUCCI the right to move the Ponds; and

**WHEREAS**, the provisions of this Agreement serve the public interest and will result in a benefit to PAULUCCI, the COUNTY and the citizens of Seminole County.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration provided by each party hereto, the parties agree as follows:

1. **AGREEMENT TO RELOCATE PONDS AND PAYMENT FROM PAULUCCI.** Subject to the terms and conditions hereafter expressed, the COUNTY agrees to allow PAULUCCI to relocate the Ponds legally described on the Attached Exhibit "A", which is incorporated herein by this reference. In consideration of this agreement, PAULUCCI shall pay COUNTY the sum of one hundred thousand dollars (\$100,000) in two equal payments of fifty thousand dollars (\$50,000) each. The first payment shall be made within thirty (30) days after execution of this Agreement by all parties hereto, and the second payment shall be made at the time of the closing as stated in section 6 of this Agreement.

2. **DESIGN, PERMITTING AND CONSTRUCTION RELATED TO THE RELOCATION OF THE PONDS.**

PAULUCCI shall pay all costs of the design, engineering, permitting and construction of the new drainage retention system, including all drainage structures and appurtenant facilities, and including connections to the existing Rinehart Road Stormwater System. PAULUCCI shall also be responsible for all governmental approvals, any rezoning that may be required and all other approvals required by entities having jurisdiction over the Ponds or the new drainage retention system. The COUNTY shall provide reasonable assistance to PAULUCCI in connection with obtaining the required approvals, such assistance to include providing written consent, if required by a permitting authority, providing PAULUCCI with copies of original permits, designs,

specifications, etc., regarding the existing ponds and answering any questions that PAULUCCI's consultants may have regarding same. The new drainage retention system may consist of one or more ponds, provided however, that the new system shall meet the following requirements:

A. It shall be located such that the water running off Rinehart Road into the existing Ponds can be conveyed to the new pond(s); and

B. It shall be designed, engineered, permitted and constructed to provide sufficient capacity for the Rinehart Road water run off as the road exists at the time of the relocation of the ponds plus the additional stormwater run off necessary to expand Rinehart Road to a six (6) lane curb and gutter cross section (all as envisioned by SJRWMD Permit No. 4-117-0261-AG issued on November 13, 1990 and as modified by Management And Storage of Surface Waters Technical Staff Report dated August 1, 1991 as part of Permit No. 4-117-0261-AGM); and

C. If PAULUCCI wishes to use the new drainage retention system to serve other development, then the system shall be designed, engineered, permitted and constructed for the capacity of PAULUCCI's development plus the capacity described in paragraph 2.B. immediately above.

D. PAULUCCI shall grant the COUNTY a permanent drainage easement over the new drainage retention system in the form attached hereto as Exhibit "B". The new easement shall be exchanged for the County deed and release of the Connecting Easement specified in Section 4 below.

E. Construction of the new system shall be coordinated such that there is no interruption in the safe acceptance and storage of water from Rinehart Road.

F. It shall be designed by a duly qualified professional engineer holding all required licenses to practice engineering in the State of Florida.

Construction of the new drainage retention system shall not commence until the COUNTY has given its written approval of the design of the system. PAULUCCI shall provide a copy of the plans to the COUNTY for review and, within thirty (30) days after receipt thereof, the COUNTY shall approve the plans or, if the plans are not approved, provide reasons why they are not approved and sufficient detail for corrections to be made.

3. MAINTENANCE OF THE PONDS. The COUNTY shall continue to maintain the Ponds until such time as construction of the new drainage retention system is complete. Thereafter PAULUCCI shall assume all responsibility for maintenance and functioning of the new drainage retention system.

4. COUNTY CONVEYANCE AND RELEASE OF EASEMENT. Upon completion of the construction of the new drainage retention system the COUNTY shall, by standard County deed, convey the Ponds to PAULUCCI. In addition, the COUNTY shall release its rights under the Connecting Easement. PAULUCCI shall be responsible for the costs of recording the deed and release and the COUNTY shall be responsible for the costs of recording the new permanent drainage easement. It is understood that the COUNTY cannot, by law, warrant title to the Ponds. Accordingly, PAULUCCI may choose to perform whatever investigation it chooses into the quality of the COUNTY's title to the Ponds. If title defects rendering the title uninsurable are discovered then PAULUCCI shall provide the COUNTY with written notice specifying the defects. The COUNTY shall make good faith efforts to clear the title, however, if title cannot be

reasonably cleared to PAULUCCI's satisfaction then PAULUCCI may: (a) elect to accept the title "as is", or (b) cancel this agreement. The COUNTY agrees that it will not convey or otherwise encumber the Ponds from and after the date of this agreement until delivery of the County deed contemplated by this paragraph.

5. PERMANENT DRAINAGE EASEMENT. PAULUCCI shall convey to the COUNTY a permanent drainage easement over the new drainage retention system granting to and allowing the COUNTY to use the new drainage system to the capacity specified in paragraph 2.B. above. The easement shall not be deemed to grant the COUNTY the right to design and construct any road project or drainage system using the new drainage system without the written approval of PAULUCCI, except that no approval shall be required to use the new drainage system and permanent drainage easement for the expansion of Rinehart Road to a six (6) lane curb and gutter cross section. The conveyance of the permanent drainage easement shall be free and clear of all liens and encumbrances, or, in the alternative, PAULUCCI shall provide a subordination of interests or a joinder in the conveyance from all those holding an interest in the property which might be superior to the COUNTY's permanent drainage easement. The permanent drainage easement shall authorize the COUNTY to enter upon the property to perform maintenance, at PAULUCCI's expense, should PAULUCCI, after thirty (30) days written notice, fail to properly maintain the new drainage retention system. In the event the Board of County Commissioners finds and determines that the COUNTY no longer needs to utilize the permanent drainage easement then the COUNTY shall record in the public records a termination or abandonment of its easement rights, thereby terminating the permanent drainage easement contemplated by this paragraph.

6. CLOSING AND PAYMENT. Unless otherwise agreed to in writing, the closing and exchange of the County deed for the permanent drainage easement shall occur within thirty (30) days after written notice from PAULUCCI to the COUNTY that construction of the new drainage retention system has been completed.

7. EXCHANGE OF PROPERTY. This transaction shall be deemed an exchange of property pursuant to Section 125.37, *Florida Statutes*, whereby the COUNTY obtains a permanent drainage easement in exchange for title to the property where the Ponds are located. PAULUCCI hereby agrees to pay for the required publication of the notice of the terms and conditions of the exchange in the *Orlando Sentinel*.

8. NOTICES. (a) Whenever either party desires to give notice to the other, notice shall be sent to:

For the COUNTY: **County Manager**  
Seminole County Services Building  
1101 East First Street  
Sanford, Florida 32771

For PAULUCCI: Mr. Jeno F. Paulucci  
201 West First Street  
Sanford, Florida 32771

With a copy to: Mr. Larry W. Nelson  
C/o Paulucci International  
201 West First Street  
Sanford, Florida 32771

(b) Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices or receipt of invoices. All notices shall be effective upon receipt.

9. In accordance with Section 270.11(1), *Florida Statutes*, the COUNTY has elected not to reserve any rights relating to petroleum, phosphates, materials and metals, or the right to mine and develop the same.

10. The parties to this Agreement agree that each party shall bear its own costs and attorney's fees incurred relating to this Agreement.

11. Neither party has made any agreement or arrangement for payment of any finder's fee or broker's commission with respect to the transactions contemplated by this Agreement. Each party agrees to be responsible for the defense and payment of any such claim made through that party.

12. Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that the representations, warranties, covenants and agreements of the parties expressed herein shall survive Closing, the delivery and recording of the deed and easement and the possession of the properties and all of the same shall not merge into the instruments of conveyance to be given by the parties but shall be independently actionable.

13. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the parties to be bound thereby.

14. Nothing in this agreement shall be construed to diminish, alter, or otherwise affect the COUNTY's rights under that certain Permanent Perpetual Right-of-Way Easement dated January 22, 1992 and recorded in Official Records Book 2382 at page 368 of the Public Records of Seminole County.

15. All terms and condition of this agreement shall be binding upon and shall inure to the benefit of the parties to this agreement and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:  
TRUST

THE JENO F. PAULUCCI REVOCABLE

\_\_\_\_\_  
SIGNATURE

By: \_\_\_\_\_  
Jeno F. Paulucci, Managing Trustee

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

\_\_\_\_\_  
By: DARYL G. MCLAIN, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.  
Approved as to form and  
legal sufficiency.

As authorized by the Board of County  
Commissioners at their meeting of  
\_\_\_\_\_, 2004

\_\_\_\_\_  
County Attorney

SPL  
11/06/03

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Exhibit "A": Legal Description

**FEE SIMPLE - POND 5-A**

A portion of Lot 25, Smith's Third Subdivision, Section 28, Township 19 South, Range 30 East according to the plat thereof as recorded in Plat Book 1, Page 86 of the Public Records of Seminole County, Florida.

Being described as follows:

Commence at a Railroad Rail with no RLS number marking the Northwest corner of the Southwest 1/4 of Section 28, Township 19 South, Range 30 East, Seminole County, Florida; thence South  $00^{\circ}04'01''$  West along the West line of the Southwest 1/4 of said Section 28 and the West line of the plat of Smith's Third Subdivision according to the plat thereof as recorded in Plat Book 1, Page 86 of the Public Records of Seminole County, Florida, 311.47 feet, said point also being a point on the West line of a 15.00 foot Right-of-Way; thence South  $89^{\circ}55'59''$  East, 27.00 feet to a point on the East line of the West 27.00 feet of the Southwest 1/4 of said Section 28 and POINT OF BEGINNING, said POINT OF BEGINNING also being a point on the South line of Lockhart Smith Canal; Phase VII, Section L-6-117; thence continue South  $89^{\circ}55'59''$  East along the South line of said Lockhart Canal 240.00 feet; thence South  $00^{\circ}04'01''$  West 232.32 feet; thence North  $89^{\circ}55'59''$  West 215.00 feet to a point of curvature with a circular curve concave northeasterly; thence northwesterly along the arc of said curve having a radius of 25.00 feet and a central angle of  $90^{\circ}00'00''$  a distance of 39.27 feet to the point of tangency; thence North  $00^{\circ}04'01''$  East along the East line of West 27.00 feet of the Southwest 1/4 of said Section 28 for 207.32 feet to the Point of Beginning.

Containing 1.28 acres more or less.

**FEE SIMPLE POND 5-B**

A portion of Lot 25, Smith's Third Subdivision, Section 28, Township 19 South, Range 30 East according to the plat thereof as recorded in Plat Book 1, Page 86 of the Public Records of Seminole County, Florida.

Being described as follows:

Commence at a Railroad rail with no RLS number marking the Northwest corner of the Southwest 1/4 of Section 28, Township 19 South, Range 30 East, Seminole County, Florida; thence South  $00^{\circ}04'01''$  West along the West line of the Southwest 1/4 of said Section 28 and the West line of the plat of Smith's Third Subdivision according to the plat thereof as recorded in Plat Book 1, Page 86 of the Public Records of Seminole County, Florida, 311.47 feet, said point also being a point on the West line of a 15.00 foot Right-of-Way; thence South  $89^{\circ}55'59''$  East 27.00 feet to a East line of the West 27.00 feet of the Southwest 1/4 of said Section 28 and being a point on the South line of Lockhart Smith Canal; Phase VII, Section L-6-117; thence South  $00^{\circ}04'01''$  West along said East line for 337.32 feet to the Point of Beginning. Thence continue South  $00^{\circ}04'01''$  West along said East line 207.32 feet to the South line of Lot 25; thence South  $89^{\circ}55'59''$  East along said South line 240.00 feet; thence North  $00^{\circ}04'01''$  East 232.32 feet; thence North  $89^{\circ}55'59''$  West for 215.00 feet to a point of curvature with a circular curve concave southeasterly; thence northwesterly along the arc of said curve having a radius of 25.00 feet and a central angle of  $90^{\circ}00'00''$  a distance of 39.27 feet to the Point of Beginning.

Containing 1.28 acres, more or less.

EXHIBIT "A"

Exhibit "B": Permanent Drainage Easement

This instrument prepared by:  
Stephen P. Lee, Esq.  
County Attorney's Office  
1101 East First Street  
Sanford, Florida 32771

PERMANENT DRAINAGE EASEMENT

THIS PERMANENT DRAINAGE EASEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, whose address is \_\_\_\_\_ hereinafter referred to as the GRANTOR, and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the GRANTEE.

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of ONE AND NO/100 DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, GRANTOR does hereby grant and convey to the GRANTEE and its assigns, a perpetual easement for drainage purposes, with full authority to enter upon, excavate, construct and maintain, as the GRANTEE and its assigns may deem necessary, a drainage system consisting of pipes, ditches, detention, percolation or disposal areas or any combination thereof, together with appurtenant drainage structures over, under, upon and through the following-described lands situate in the County of Seminole, State of Florida, to-wit:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD said easement unto said GRANTEE and its assigns forever.

THE GRANTEE herein and its assigns shall have the right of access to and to clear and keep clear all trees, undergrowth, and other obstructions, including structures, that may interfere with the location, excavation, construction, operation, including the free flow of water, or maintenance of the drainage facilities placed thereon by the GRANTEE and its assigns, from the herein granted easement area, and GRANTOR, its successors and assigns, covenants and agrees not to build, construct or create, or permit others to build, construct or create any buildings or other structures on the herein granted easement that may interfere with the location, excavation, operation or maintenance of the drainage, retention, detention or any other similar facilities placed thereon.

GRANTOR does hereby covenant with the GRANTEE, that it is lawfully seized and possessed of the real estate above described, that it has a good and lawful right to convey the said easement and that it is free from all encumbrances.

IN WITNESS WHEREOF, GRANTOR has hereunto set its hand and seal, the day and year first above written.

**WITNESSES:**

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

**STATE OF FLORIDA     )**  
**COUNTY OF SEMINOLE   )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me or who produced \_\_\_\_\_ as identification and who did (did not) take an oath.

WITNESS my hand and official seal in the County and State aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Legibly print or stamp Notary's name

\_\_\_\_\_  
Notary Public, in and  
for the County and State  
Aforementioned

My Commission Expires: