

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Joint Project Agreement Between Seminole County and Utilities, Inc. for the Northwestern Avenue Erosion and Sedimentation Control Project

**DEPARTMENT:** Public Works      **DIVISION:** Road Operations & Stormwater

**AUTHORIZED BY:** *W. Gary Johnson*      **CONTACT:** *Mark E. Flomerfelt*      **EXT.** 5710  
*212463*  
W. Gary Johnson, P.E., Director      Mark E. Flomerfelt, P.E., Mgr.  
Public Works      Road Operations & Stormwater

Agenda Date 3/11/03      Regular       Consent       Work Session       Briefing   
Public Hearing – 1:30       Public Hearing – 7:00

**MOTION/RECOMMENDATION:**

Approve and authorize Chairman to execute the Joint Project Agreement Between Seminole County and Utilities, Inc. for Northwestern Avenue Erosion and Sedimentation Control Project.

**BACKGROUND:**

During the design of the Northwestern Avenue Erosion and Sedimentation Control Project, a sanitary sewer pipe and manholes were located within the (Little Wekiva River) drainage easement. This sanitary sewer facility is in poor condition.

The owner of the sanitary sewer facility, Utilities Inc. of Florida, and Seminole County agreed that combining the relocation/reconstruction of this pipe and manholes with the Erosion and Sedimentation Control Project was beneficial to both entities.

The project was bid with the relocation/reconstruction of the sanitary sewer as an "alternate add on" bid such that the costs associated with the sanitary sewer are identified. This JPA provides that Utilities Inc of Florida will pay Seminole County the costs of the sanitary sewer relocation/reconstruction (the "alternate add on" bid) within ten (10) days after the award of contract.

This saves Utilities Inc. of Florida restoration costs of adjacent owner's property and the river bank. This also saves Seminole County costs associated with supporting the pipe and manholes and or providing temporary sewer facilities during the construction of the erosion and sedimentation control project.

In addition, having one contractor responsible for both projects, makes project coordination easier, and provides one point of contact for any errors, field problems, warranties, and reduces the disruption to the adjacent property owners.

Reviewed by: \_\_\_\_\_  
Co Atty: *[Signature]*  
DFS: \_\_\_\_\_  
Other: \_\_\_\_\_  
DCM: *[Signature]*  
CM: *[Signature]*  
  
File No. CPWS02

**JOINT PROJECT AGREEMENT  
BETWEEN SEMINOLE COUNTY AND UTILITIES, INC.  
FOR NORTHWESTERN AVENUE EROSION AND  
SEDIMENTATION CONTROL PROJECT**

**THIS JOINT PROJECT AGREEMENT** ("JPA") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between **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 "COUNTY" and **UTILITES, INC.**, whose address is 200 Weathersfield Avenue, Altamonte Springs, Florida 32714, hereinafter referred to as "UIF."

**W I T N E S S E T H:**

**WHEREAS**, UIF has underground and surface sanitary sewer facilities, located in a COUNTY-owned drainage easement, which need to be relocated and re-constructed during the COUNTY's Northwestern Avenue Erosion and Sedimentation Control Project (the "Project"), between Stations 103+61 and 104+83, and

**WHEREAS**, the parties desire that the COUNTY contract for construction of the Project to include the above-referenced work on UIF's utilities at UIF's expense, and thereby save UIF the significant costs of duplicating work, such as excavation, that the COUNTY's contractors will already be doing to accomplish the Project; and

**WHEREAS**, this JPA is authorized by the provisions of *Chapters 125, 163 and 166, Florida Statutes*, and other applicable law;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the COUNTY and UIF agree as follows:

**Section 1. Purpose.** The purpose of this JPA is for the COUNTY to provide relocation and reconstruction of identified utilities as follows:

(a) Part of the COUNTY's Project involves relocation and reconstruction of a UIF-owned 8-inch diameter sanitary sewer line on the banks of the Little Wekiva River and removal of the existing sanitary sewer main. The work of relocating and reconstructing that sewer line will include removing the old sewer line and relocating, supplying constructing, installing and testing pipes fittings, manholes and other improvements (collectively, such old and new improvements constituting the sewer line system are referred to herein as the "Utilities"). The reconstruction of the Utilities is shown on plans prepared by COUNTY's consultant, Singhofen and Associates, Inc which plans have been approved by UIF before execution of this JPA

(b) The COUNTY shall advertise for bids, receive the bids, select a bid, and award a contract for the Project work to a contractor, subject to approval by UIF if UIF provides written notice of its disapproval within five (5) days of the selection of a bid by COUNTY staff. The COUNTY may terminate this JPA forthwith and without written notice if UIF gives such notice of disapproval, otherwise the COUNTY may proceed.

(c) The Utilities shall be relocated within a COUNTY-owned easement or right-of-way as designated in the Project plans. Upon completion of the work, the Utilities shall become the property of UIF and shall occupy the COUNTY's right-of-way or easement under a permissive right-of-way use permit. UIF shall be responsible for all continuing maintenance of the Utilities, except as covered by the COUNTY's warranty.

(d) Upon completion and acceptance of the work by the COUNTY, it shall furnish UIF with one set of as-built mylar drawings for the Project

COUNTY shall not have any liability to pay UIF any money under this JPA, other than to refund the amount of overpayments received by the COUNTY from UIF.

**Section 2. Administrative Agent.** The COUNTY is designated as the party to administer this JPA by and through its officers, employees or agents.

**Section 3. Responsibility for Cost Reimbursables.**

UIF shall hold the COUNTY harmless for all design or construction errors and omissions with respect to the Project, except those within the warranties and bonds given to the COUNTY by its contractors. The COUNTY accepts full responsibility for the cost and management of rectifying in the Utilities such errors and omissions as are covered by its contractors' warranties, performance bond, and material and workmanship bond. The COUNTY makes no warranties with respect to the plans for the Utilities, and UIF shall hold the COUNTY harmless for errors in the plans. The COUNTY and its contractor for the Project shall provide in their bid and construction contract for a performance bond and a material and workmanship bond covering the Utilities for two years after completion of construction. As a component of UIF's advance payment for the estimated cost of the Utilities, as provided in subsection 3(b), below, UIF shall pay the cost of such bonds proportionate to the cost of the Utilities as a part of the entire Project.

UIF will advance the estimated cost of relocation and reconstruction of the Utilities by paying the COUNTY the amount of the estimate for such work in the winning bid within ten (10) days of a signed approval of the award of the Project contract to the winning bidder by the Board of County Commissioners. Within thirty (30) days of completion and acceptance of the Project, the COUNTY shall render an accounting to

UIF and shall, within a further ten (10) days, refund to UIF the amount, if any, by which its advance payment exceeded UIF's obligations. If UIF's obligations to the COUNTY under this JPA exceed UIF's advance payment of the estimated costs, UIF shall pay the balance to COUNTY within thirty (30) days of receipt of the COUNTY's accounting.

(c) The foregoing payment obligations of UIF shall include the amount of whatever change orders UIF pre-approved. When the COUNTY requests UIF's approval of change orders involving the Utilities or overhead costs partly chargeable to UIF, UIF shall not unreasonably withhold its consent and shall promptly respond in writing to the COUNTY's designated employee with approval or non-approval, but no later than ten (10) days after mailing of the request. Either UIF's failing to respond in writing within such time; failing to give specific, factual written reasons for the non-approval; or stating reasons for non-approval that are arbitrary or unreasonable in fact; shall constitute sufficient cause for the COUNTY to issue the change order to the contractor with the same effect as if UIF had pre-approved.

#### **Section 4. Duties and Level of Services.**

(a) UIF shall conduct all field inspections of the construction of the Utilities and forthwith notify (but not later than three [3] business days after the inspection) the COUNTY's CEI engineer in writing of any discrepancies between the construction and the plans or specifications.

(b) All services and work hereunder shall be performed to the reasonable satisfaction of the COUNTY or the COUNTY's CEI engineer, who shall decide all questions, difficulties and disputes of whatever nature which may arise under or by reason of such services and work, the prosecution and fulfillment of the services and

work hereunder, and the character, quality, amount and value thereof; and its decision upon all claims, questions and disputes shall be conclusive with respect to all services and work performed or to be performed with relation to the Project, except that UIF may submit specific objections in writing to the COUNTY about the work on the Utilities.

(c) If UIF submits one or more such objections and the parties are not able to resolve the disagreement, they shall contemporaneously submit the issue to binding arbitration before a mutually agreed arbitrator to determine whether the condition of the Utilities must be corrected in accordance with UIF's objection, and if so, determine the liability of UIF, if any, for the cost of remedial work necessary to effect the correction. In its complete discretion, the COUNTY may, however, allow the contractor to move forward with any Project work before an arbitrator is appointed or makes a decision, in which case the COUNTY or UIF, depending on the arbitrator's decision, shall accomplish the remedial work without delaying the COUNTY's contractor or after completion of the project.

**Section 5. Employee Status.** Persons employed by one party in the performance of services and function pursuant to this Agreement shall have no claim to pension, worker's compensation, unemployment compensation, civil service or any other rights or privileges of employment by the other party.

**Section 6. Cooperation.** To facilitate performance pursuant to this JPA, UIF shall render the COUNTY full cooperation and assistance. Where UIF has any responsibilities for performance in the relocation and reconstruction of the Utilities, the COUNTY shall fully cooperate with UIF. Written notices shall be given to a party by personal delivery or certified mailing to the employee or agent designated in writing from

time to time by that party, or in the absence of written designation, to the party at its address first hereinabove shown.

**Section 7. Liability.** UIF shall indemnify, defend and hold the COUNTY harmless from and against all liability, damages, claims, suits or proceedings for personal injury, property damage, extra compensation or any other losses made or brought by the COUNTY's contractors or subcontractors concerning the Project, irrespective of negligence, actual or claimed, of the COUNTY, its officers, agents or employees, except gross negligence. As to other third parties, UIF shall indemnify, defend and hold the COUNTY harmless from and against all liability, damages, claims, suits or proceedings for personal injury, property damage, extra compensation or any other losses made or brought as a result of the relocation and reconstruction of UIF's Utilities, irrespective of any degree of negligence, actual or claimed, of the COUNTY, its officers, agents or employees. UIF's agreement to indemnify, defend and hold the COUNTY harmless shall also include all charges, expenses, attorneys' fees and costs for handling claims, proceedings, trials or appeals.

**Section 8. Entire Agreement.**

(a) The entire Agreement of the parties is contained herein and this JPA supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof; and

(b) Any alterations, amendments, deletions or waivers of the provisions of this JPA shall be valid only when expressed in a written agreement and duly signed by both

parties. Only the Board of County Commissioners of Seminole County has the power to approve and sign any such agreement for the COUNTY.

**Section 9. Conflict of Interest.**

UIF agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

UIF hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in *Section 112.312(15), Florida Statutes*, as over 5% of the total assets or capital stock) either directly or indirectly in UIF, and that no such person shall have any such interest during the term of this Agreement.

[This subsection is intentionally omitted.]

UIF shall have the continuing duty to report to the COUNTY any information that indicates a possible violation of this Section.

**Section 10. Constitutional and Statutory Limitations on Authority.** The terms and conditions of this Agreement are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of UIF and the COUNTY. The COUNTY is without authority to grant or pledge a security interest in the products or services sold, assigned, exchanged or transferred pursuant to this JPA or in any other COUNTY property, either real or personal.

**Section 11. Governing Law.** This JPA shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any judicial proceedings (not including arbitration) shall be in the Circuit Court in and for Seminole County, Florida.


**Section 12. Termination.** The COUNTY may terminate this JPA at any time upon thirty (30) days' written notice, except as otherwise provided in Section 1(b).

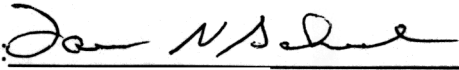


IN WITNESS WHEREOF, the parties hereto have made and executed this instrument for the purpose herein expressed

ATTEST:

UTILITIES, INC.

  
~~ANDREW N. BOPUCH, Secretary~~  
Susan J. Fortino

By:   
LAWRENCE SCHUMACHER, President *Secretary*

(Corporate Seal)

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

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 for execution by the Board of  
County Commissioners at their \_\_\_\_\_,  
200\_\_, regular meeting.

 2-25-2003  
County Attorney

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