

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Chairman to Execute Contract for Restoration of the Econ River Wilderness Area

DEPARTMENT: Planning & Development **DIVISION:** Development Review

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Mahmoud Najda **EXT.** 7343

Agenda Date <u>03/23/04</u>	Regular <input checked="" type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Authorize chairman to execute the attached contract with United Associates Properties, Inc. to complete the restoration of the Econ River Wilderness Area.

(District 1: Maloy)

BACKGROUND:

During late 2002, flooding of the Econ Wilderness Area property began to occur, during a time of the year that is normally considered the "dry" season. Substantial portions of the property were completely inundated and the natural vegetation was destroyed. In consultation with the St. Johns River Water Management District (SJRWMD) and Orange County officials, it was determined that the cause of the flooding was a residential development project in Orange County. The Board of County Commissioners (BCC) directed staff to assess the damage to the Econ Wilderness property, which was completed in conjunction with the SJRWMD staff and presented to the BCC on December 9, 2003. The estimated cost of restoration plan was estimated to be \$115,000. At this meeting the BCC directed staff to develop/negotiate a funding plan to implement a restoration of the property and to report back to the Board. At the February 10, 2004, the County Manager presented a conceptual funding plan to the BCC that would involve the SJRWMD providing \$30,000 to the County and the developer (United Associates Properties) providing \$60,000 in cash and in-kind services to fund a \$90,000 restoration plan. The BCC authorized staff to proceed with the concept, but emphasized the need to communicate clearly with the various parties and interests involved.

Reviewed by:
Co Atty: <u>[Signature]</u>
DFS: _____
Other: <u>[Signature]</u>
DCM: <u>[Signature]</u>
CM: <u>[Signature]</u>
File No. <u>rpdd01</u>

Staff has negotiated a contract with United Associates Properties to provide \$60,000 in cash to fund their responsibilities related to restoration plan. This contract is attached for Board consideration. A cashiers check for \$60,000 has already been provided to the County and has been held pending final approval of the contract by the BCC. A contract with the SJRWMD will be finalized and brought to the Board in the near future to secure the other \$30,000. Upon approval by the Board, staff will immediately begin the process of implementing the restoration of the Econ Wilderness Area property.

Attachment: Contract with United Associates Properties, Inc.

**AGREEMENT FOR RESTORATION OF THE ECON RIVER WILDERNESS AREA
BETWEEN SEMINOLE COUNTY AND
UNITED ASSOCIATES PROPERTIES, INC.**

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida, 32771, (hereinafter referred to the "COUNTY"), and **UNITED ASSOCIATES PROPERTIES, INC.**, a Florida corporation, whose address is 1017 East South Street, Suite B, Orlando, Florida 32801, (hereinafter referred to as ("UNITED")).

W I T N E S S E T H:

WHEREAS, UNITED developed and constructed the property known as Rybolt Reserve in Orange County, Florida; and

WHEREAS, said property is located in close proximity to the Seminole County natural preservation area known as the Econ River Wilderness Area (hereinafter referred to as the "ECON"; and

WHEREAS, Seminole County and its citizens place a high value on the integrity of its natural preservation areas due to the natural beauty, ecological diversity, and environmental functions these areas provide; and

WHEREAS, due to UNITED's construction work on McCulloch Road, relating to development of Rybolt Reserve, a dam was created which obstructed the area's natural water flow and resulted in flooding in the ECON; and

WHEREAS, the flooding of the ECON caused extreme damage to approximately sixty acres of the ECON, including the destruction of hundreds of pine trees, bay trees and palmettos, destruction of wildlife habitat, including that of the gopher tortoise, and displacement of wildlife; and

WHEREAS, the COUNTY has estimated that it will cost approximately ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00) to clear the dead trees and underbrush, restore the natural water flow, and provide five years of ecological monitoring of the damaged portions of the ECON; and

WHEREAS, the County shall undertake the responsibility to implement and supervise this restoration; and

WHEREAS, the St. John's River Water Management District has agreed to pay the COUNTY THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) toward the cost of the ECON restoration; and

WHEREAS, UNITED has agreed to pay the COUNTY SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) toward the cost of the ECON restoration; and

NOW THEREFORE, the parties, in consideration of the premises set forth above, the sufficiency of which is hereby acknowledged, as well as the benefits which will accrue to them respectively and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2. SUBJECT PROPERTY. The property subject to this Agreement is described in attached Exhibit "A" and is hereinafter referred to as the Econ Restoration Area.

SECTION 3. UNITED'S OBLIGATIONS. UNITED agrees and covenants to:

(a) Pay SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) to the COUNTY at the time of execution of this Agreement or within five (5) business days thereof.

(b) Engage in no further activities which may result in ecological damage to any portion of any natural lands in Seminole County, Florida.

SECTION 4. COUNTY'S OBLIGATIONS. COUNTY agrees and covenants to:

(a) Use and apply the monies paid by UNITED pursuant to Section 3 above toward the following activities:

(1) Construction of a weir to restore the natural water flow to the Econ Restoration Area; and

(2) Removal of dead or dying trees and vegetation from the Econ Restoration Area; and

(3) Monitoring the ecological changes and progress in the Econ Restoration Area for a period of at least five years.

(b) Upon receipt of the payments specified in Section 3 above, the COUNTY will, in a timely manner, provide a written notice to Orange County that UNITED has paid the monies owed regarding the Econ Restoration Project and that the COUNTY will not seek any further action from Orange County in regard to restoration of the ECON.

SECTION 5. RELATIONSHIP OF PARTIES. Neither this Agreement, nor the activities undertaken pursuant hereto, shall be deemed to, nor make, the COUNTY a co-venturer, agent, or partner of UNITED.

SECTION 6. REMEDIES.

(a) In the event of any breach of this agreement, the parties respectively retain the right to pursue all available legal and equitable remedies, including but not limited to specific performance of the Agreement and monetary damages.

(b) The parties agree that the reparation estimate set forth herein is not a detailed estimate of the damages to the ECON. In the event of any litigation regarding this agreement both parties shall have the right to present evidence as to the actual amount of damages suffered. In that event, the amount of the reparation estimate set forth herein shall not be admissible in evidence as an admission against either party, it being the intent of the parties that this amount represents a compromise in order to reach a settlement.

(c) In addition to such remedies, the COUNTY reserves right to retain any and all monies paid by UNITED pursuant to Section 3 above.

(d) The COUNTY further reserves the right to notify Orange County of any breach of this Agreement.

SECTION 7. TERM.

(a) This Agreement shall be effective upon execution by all parties.

(b) This Agreement shall be in effect for five years from the date of its execution by all parties.

(c) All provisions, covenants and agreements of the parties pursuant to this Agreement shall be accomplished on or before its expiration date. Failure to do so shall constitute a breach of this Agreement.

SECTION 8. NOTICE.

(a) Any notice provided to either party pursuant to this Agreement shall be delivered to the following addresses:

UNITED:
United Associates Properties, Inc.
President
1017 East South Street, Suite B
Orlando, Florida 32801

COUNTY:
Seminole County
Director of Planning and Development
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

Either party shall notify the other in the event in any change of address or legal status.

(b) All notices shall be in writing and delivered by hand delivery or certified mail, return receipt requested, unless waived in writing.

(c) Notices shall not be effective until actually received by the receiving party as evidenced by dispositive proof.

SECTION 9. APPLICABLE LAW/VENUE.

(a) This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

(b) Venue for any proceeding arising under this Agreement shall be in the Eighteenth Judicial Circuit in and for Seminole County, Florida, as to State actions, and the United States District Court for the Middle District of Florida as to Federal actions.

SECTION 10. ASSIGNABILITY. No rights, duties, and obligations arising hereunder may be assigned by either party.

SECTION 11. SEVERABILITY. If any provision of this Agreement, or its application to any person, entity, or circumstances is specifically held to be invalid by a court of competent jurisdiction, the remainder of this Agreement and the application of the provisions hereof to other persons, entities, or circumstances shall not be affected thereby, and, to that end,

this Agreement shall continue to be enforced to the greatest extent possible consistent with law and the public interest.

SECTION 12. CONSTRUCTION/INTERPRETATION.

(a) This Agreement shall not be construed against either party on the basis of its being the drafter of the Agreement. The parties agree that both parties herein played an equal part in drafting this Agreement.

(b) Capitalized terms contained herein shall have no more force nor effect than uncapitalized terms.

(c) The definitions set forth in the Land Development Code and County Code of Seminole County shall apply to this Agreement.

(d) Captions and Section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

SECTION 13. ENTIRE AGREEMENT.

(a) This Agreement and its attached Exhibits constitute the entire agreement between the Parties as to the matters set forth herein and supersede all previous understandings, discussions, and agreements to the contrary as to the matters set forth herein, whether oral, expressed, or implied.

(b) No variation, modifications, amendments, or changes shall be binding upon the parties unless set forth in an agreement executed by both parties of equal dignity herewith.

(c) All exhibits to this Agreement are incorporated into the body of the Agreement by this reference thereto and as if fully set forth herein verbatim and set forth matters upon which the parties have relied.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESSES: **UNITED ASSOCIATES PROPERTIES, INC.**

_____ By: _____
Print Name _____ CAREY HILL, President

_____ Date: _____
Print Name _____

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2004 by CAREY HILL, as President of United Associates Properties, Inc., on behalf thereof, who is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public in and for the County
and State Aforementioned
My Commission Expires: _____

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

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

By: _____
DARYL 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 Commis-
sioners in their _____,
2004, regular meeting.

County Attorney

Attachments

Exhibit A - Legal description and sketch

2/9/04 3/3/04
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