Item # 21

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

CONTINUED FROM 7-26-05

SUBJECT: Interlocal Utility Construction Agreement (Seminole County/South Seminole & North Orange County Wastewater Transmission Authority) in Conjunction with Phase I & II of the Lake Drive Project

DEPARTMENT: PUBLIC WORKS **DIVISION:** ENGINEERING

AUTHORIZED BY: **CONTACT:** Jerry McCollum, P.E. **EXT.** 5651
W. Gary Johnson, P.E., Director **County Engineer**

Agenda Date 08-09-05 **Regular** ☐ **Consent** ☒ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a Construction Agreement with South Seminole & North Orange County Wastewater Transmission Authority to facilitate the construction and removal of force main pipes in conjunction with Phases I & II of the Lake Drive Project.

District 1 – Commissioner Dallari
District 2 – Commissioner Morris (Jerry McCollum, P.E.)

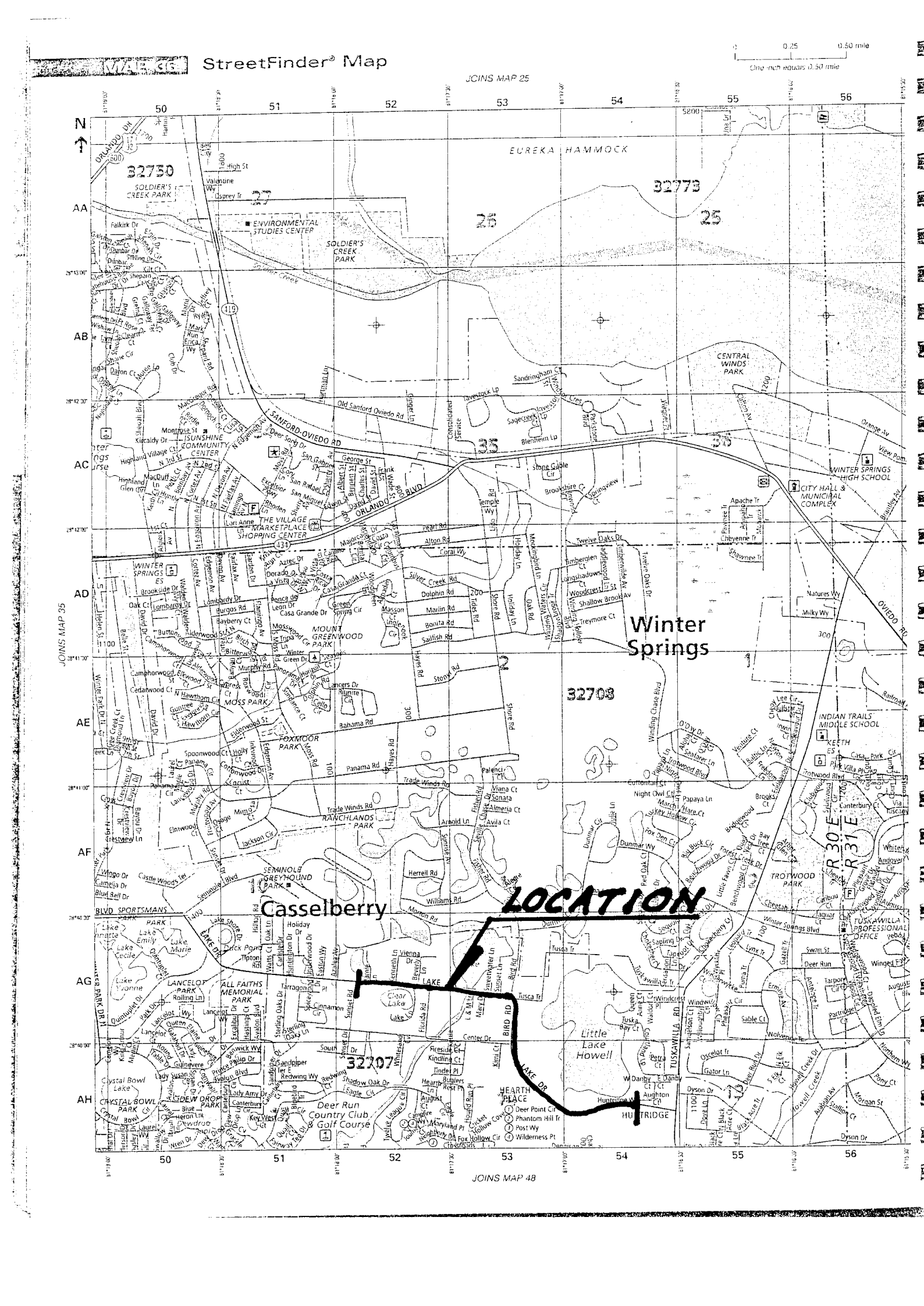
BACKGROUND:

This agreement will facilitate the construction of 1,400 feet of 24" PVC force main pipe and the removal of 1,200 feet of DIP force main pipe as part of Phases I & II of the Lake Drive Project. South Seminole & North Orange County Wastewater Transmission Authority will pay the County the actual cost of the Authority utility work consistent with the accepted bid, plus a portion of the CEI consultant fees.

A budget amendment to establish an appropriate account line and to recognize this reimbursement funding is on the Fiscal Services Budget Consent Agenda.

Reviewed by:
Co Atty:
DFS:
Other:
DCM:
CM:
File No. CPWE03

Attachment: Location Map
Interlocal Agreement


MAP 36
StreetFinder® Map
0 0.25 0.50 mile
One inch equals 0.50 mile
JOINS MAP 25
JOINS MAP 35
JOINS MAP 48
EUREKA HAMMOCK
32750
32773
32708
32707
Winter Springs
Casselberry
LOCATION
SOLDIER'S CREEK PARK
ENVIRONMENTAL STUDIES CENTER
CENTRAL WINDS PARK
SUNSHINE COMMUNITY CENTER
THE VILLAGE MARKETPLACE SHOPPING CENTER
WINTER SPRINGS HIGH SCHOOL
CITY HALL & MUNICIPAL COMPLEX
MOUNT GREENWOOD PARK
MOSS PARK
FOXMOOR PARK
RANCHLANDS PARK
SEMINOLE GREYHOUND PARK
INDIAN TRAILS MIDDLE SCHOOL
TROTWOOD PARK
TUSKAWILLA PROFESSIONAL OFFICE
LANCELOT PARK
ALL FAITHS MEMORIAL PARK
CRYSTAL BOWL PARK
DEW DROP PARK
Deer Run Country Club & Golf Course
HEARTH PLACE
HUNTRIDGE
Little Lake Howell
Clear Lake
SANFORD-OVIEDO RD
ORLANDO BLVD
BIRD RD
LAKE DR
TUSKAWILLA RD
R 30 E
R 31 E
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SEMINOLE COUNTY/SOUTH SEMINOLE &
NORTH ORANGE COUNTY WASTEWATER TRANSMISSION AUTHORITY
INTERLOCAL UTILITY CONSTRUCTION AGREEMENT
LAKE DRIVE

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2005, 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 the **SOUTH SEMINOLE & NORTH ORANGE COUNTY WASTEWATER TRANSMISSION AUTHORITY**, whose address is 410 Lake Howell Road, Maitland, Florida 32751-5907, hereinafter referred to as "AUTHORITY".

W I T N E S S E T H:

WHEREAS, COUNTY has the power to construct utility and roadway facilities and to contract for the performance of such work; and

WHEREAS, the AUTHORITY's Enabling Act at Chapter 78-617, Special Act of the State of Florida, grants the Authority the power to construct and maintain utility facilities and to contract for the performance of such work; and

WHEREAS, the COUNTY is a member of the AUTHORITY and as such shall proportionately share in all AUTHORITY utility work costs pursuant to this Interlocal Agreement; and

WHEREAS, the AUTHORITY desires, at its own expense, to construct sewer utilities in the COUNTY's rights-of-way, most of which are located within the County roadway construction project known as "Lake Drive" (the "County Project"); and

WHEREAS, the AUTHORITY has requested the COUNTY to include the AUTHORITY Utility Work (as defined in Paragraph 1 below) in the County Project in order to meet the needs of the AUTHORITY; and

WHEREAS, the COUNTY is willing to provide such work pursuant to the terms and conditions of this Agreement; and

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

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged as to both parties, the COUNTY and the AUTHORITY agree as follows:

Section 1. General. The AUTHORITY has proposed utility construction along the "Lake Drive" corridor consisting of the construction of approximately fourteen hundred (1,400) feet of 24" PVC force main pipe and related structures and the removal of approximately twelve hundred (1,200) feet of existing DIP force main pipe and structure pipe to meet the needs of the AUTHORITY. All of the AUTHORITY's proposed utility construction along "Lake Drive", shown on the construction plans as defined in paragraph 3 below, is referred to throughout this Agreement as the "Authority Utility Work".

Section 2. Rights of Way. The parties acknowledge and agree that all the Authority Utility Work is to take place within rights-of-way already acquired by the COUNTY. The COUNTY shall not be obligated to perform any Authority Utility Work that requires acquisition of any property interests, including temporary construction

easements, over and above those acquired by the COUNTY or the AUTHORITY. The AUTHORITY shall be responsible for acquiring and paying for any additional rights-of-way that may be necessary to complete the Authority Utility Work.

Section 3. Construction Plans.

(a) Since most of the Authority Utility Work is in an area where the COUNTY plans to make grade changes for roadway embankment construction and build underground sewer facilities, including pipelines and appurtenant structures, it is in the best interest of both the AUTHORITY and the COUNTY to have the Authority Utility Work and the roadway construction performed under a single construction contract. Accordingly, the AUTHORITY, through its consultant, Rockett & Associates ("R&A") has prepared the design plans (Authority Design Plans") for the Authority Utility Work and furnished signed and sealed copies of the Authority Design Plans to the COUNTY. The Authority Design Plans were prepared on the basis that all Authority Utility Work will be conducted by the COUNTY's roadway contractor under a single construction contract. These plans consist of:

SHEET NO.	LATEST DATE	DESCRIPTION
1	9/20/04	Cover Sheet
2	9/20/04	Summary of Pay Items
3	9/20/04	General Notes and Abbreviations
4	9/20/04	Project Layout
5,6,7,8,9,10, 11,12,13,14,15	9/20/04	Plan and Profile Sheets
16,17	9/20/04	Conflict Structure Details
18	9/20/04	Section Details
19,20	9/20/04	Construction Details

The AUTHORITY also understands and agrees that COUNTY's review of the Authority Design Plans may require the AUTHORITY to make minor changes to the plans or submit additional information to the COUNTY.

(b) No additional work beyond that specified above shall be done without notification to and concurrence of the AUTHORITY, provided, however, that, if in the opinion of the COUNTY's consulting engineer an emergency exists, the COUNTY's consulting engineer, after notification to R&A, may authorize measures which in his/her professional opinion are reasonably necessary to prevent or mitigate damages which might result from such emergency. Additional work required for the Authority Utility Work beyond that specified in the construction contract shall be authorized by change order issued in accordance with the procedure set forth herein and shall be paid for in full by the AUTHORITY. Any reduction of the cost for the Authority Utility Work made by change order will reduce the total amount to be paid by AUTHORITY to COUNTY.

Section 4. Utility Specifications. The AUTHORITY will provide to the COUNTY signed and sealed specifications required for the construction of the Authority Utility Work. These specifications will include copies of issued permits, record drawing requirements, testing requirements, and the two (2) year maintenance bond required to be provided to AUTHORITY by COUNTY's contractor. AUTHORITY understands COUNTY's review of the specifications may require the AUTHORITY to make minor changes to the specifications or submit additional information to the COUNTY.

Section 5. Permitting. The AUTHORITY accepts sole responsibility for obtaining, at AUTHORITY expense, all necessary permits required for the Authority

Utility Work not covered under the COUNTY's permits. AUTHORITY will not apply for a permit from the COUNTY until COUNTY completes its review of the plans.

Section 6. Bidding and Contract Award. The AUTHORITY, through R&A, will provide to the COUNTY a bid schedule containing bid items (item number and description), unit of measure, and estimated quantity for all major items of the Authority Utility Work. The bid schedule will be in tabular format, with spaces provided for COUNTY's bidders to fill in unit prices and total prices for each bid item. AUTHORITY understands COUNTY's review of the bid schedule may require the AUTHORITY to make minor changes to the schedule or submit additional information to the COUNTY.

(a) All bidding, including bid advertisement, distribution of bid documents, bid opening, evaluation of bidders and award of the contract will be conducted by the COUNTY (subject to compliance with Section II, Chapter 78-617). The AUTHORITY, through R&A, shall provide written answers to questions from the COUNTY and shall respond as needed to questions raised during the bidding process. Before the actual bid opening, the AUTHORITY and R&A shall not communicate, in any fashion, with any prospective bidder, plan holder, subcontractor or other person, firm or entity regarding the plans and specifications, it being the intent of the parties that all information regarding the bid documents, including the plans and specifications, questions, interpretations, and explanations regarding same shall be processed through the COUNTY.

(b) COUNTY shall provide AUTHORITY a copy of all bids received so AUTHORITY can evaluate all submitted prices for the Authority Utility Work. AUTHORITY understands that the COUNTY intends to award the roadway construction

contract to the lowest responsive, responsible bidder, based on the COUNTY's requirements, and that the lowest overall roadway bid will not necessarily include the lowest submitted bid prices for Authority Utility Work (subject to compliance with Section 11, Chapter 78-617).

Section 7. Administration of Construction Contract. All direct communication with the COUNTY's contractor during construction shall be through the COUNTY or the COUNTY's designated Construction Engineering and Inspection Professional Engineer, hereinafter referred to as "CEI Consultant". The AUTHORITY and R&A are authorized to consult with and advise the CEI Consultant and the COUNTY's Contractor during the construction period in relation to the Authority Utility Work. Construction layout, construction coordination, including coordination with other utilities, and scheduling all work are the sole responsibility of the COUNTY's CEI Consultant and Contractor and are not the responsibility of either the AUTHORITY or R&A.

(a) The CEI Consultant shall: (1) schedule and attend the preconstruction meeting, progress meetings, and project closeout meetings with the Contractor; (2) provide on-site inspection services, engineering services, surveys for as built drawings and final quantities; (3) provide construction coordination with subcontractors, surveyors, layout personnel and construction quality control testing personnel, and (4) issue all instructions to the Contractor, coordinate the processing of all contract change orders, process all payment applications, conduct punch list and final inspections of the in-place work to determine if the work is completed substantially in accordance with the

plans, specifications and other contract documents (R&A may attend and/or participate in Items 1-4 with notice to the CEI Consultant).

(b) The AUTHORITY's responsibilities during the administration of the contract relate only to the Authority Utility Work. The AUTHORITY and/or R&A will attend the preconstruction meeting, review and respond to Contractor questions or requests for information and review proposed construction changes. The cost of conflict manholes not included in the original contract shall be the responsibility of the AUTHORITY unless COUNTY modifies the original conformed design. The AUTHORITY is authorized to consult with and advise the CEI Consultant and the Contractor during the construction period. The AUTHORITY shall not issue directions, interpretations, product approvals or denials, grant time extensions, approve payment of claims or in any way administer the actual construction or the associated paperwork directly with the contractor, it being understood and agreed that, in order for any action to be binding upon the COUNTY, such action must be approved and issued by the COUNTY in accordance with the applicable provisions of the contract between the COUNTY and the contractor.

(c) The AUTHORITY shall have the opportunity to review and approve all change orders related to the Authority Utility Work before they are approved by the COUNTY for inclusion in the construction contract. The AUTHORITY shall be responsible for payment to the COUNTY for all costs resulting from approved change orders on the Authority Utility Work. In the event of a conflict or dispute relating in any way to the Authority Utility Work, and following compliance with the procedures set forth herein, the COUNTY shall have final authority.

Section 8. Inspection During Construction. At all times the AUTHORITY and R&A shall have the right to non-intrusively inspect the Authority Utility Work and any and all records relating to the performance of the Authority Utility Work, the contract administration and all inspections. AUTHORITY inspection shall be to the level that it needs to ensure Authority Utility Work construction is in compliance with the contract documents; compliance of Authority Utility Work with the construction documents will be judged by CEI Consultant based on geotechnical testing reports provided by the CEI Consultant and the coordination of construction activities, including the survey and layout of construction. The COUNTY shall, upon request, furnish three (3) copies of all reports requested by the AUTHORITY. Copies of any reports issued by AUTHORITY inspectors or R&A will be provided to the COUNTY and the CEI Consultant.

Section 9. Maintenance of Facilities. During construction, the maintenance of installed Authority Work is the responsibility of the Contractor. The installation and startup of the Authority Utility Work will occur prior to completion of the roadway portion of the construction contract. During this period, AUTHORITY will be allowed to operate its facilities; however, protection of the completed facilities and maintenance during construction will be the continued responsibility of the Contractor until final contract closeout. If during the course of the work, cessation of utility services occurs it shall not constitute a breach of this Agreement on the part of either party hereto; and neither party shall be liable to the other for damage resulting from such cessation of services. This release of liability shall not be construed to release the contractor awarded the construction contract or any other third party from any liability for any damage from whatever cause whatsoever. Upon completion of the COUNTY construction contract

and acceptance of the Authority Utility Work by the AUTHORITY, the AUTHORITY shall own, control, maintain and be responsible for all of its facilities, in accordance with the terms of any and all utility permit(s).

Section 10. Schedule. Except as to delays covered by the force majeure provisions of the contract between the COUNTY and the contractor (subject to the provisions of Section 7(a) herein), should the Authority Utility Work be unduly delayed by failure of the AUTHORITY to comply any written demand or request submitted to the AUTHORITY by the COUNTY, the AUTHORITY will be responsible for the cost of any resultant time delays to the COUNTY's roadway portion of the work performed by the Contractor and/or CEI Consultant.

Section 11. Administrative Agent. Subject to AUTHORITY involvement, provided herein, the COUNTY is designated as the party to administer this Agreement by and through its departments and officers, consultants and independent contractors.

Section 12. Cost Computation, Payment. The AUTHORITY shall pay the COUNTY the actual cost of the Authority Utility Work consistent with the approved and accepted bid, as documented by invoices from the construction contractor to the COUNTY, plus a portion of the cost of the services of the CEI Consultant calculated as hereafter stated.

(a) It is the intent of the parties that all costs of the construction of the Authority Utility Work, except the CEI Consultant services, including regulatory compliance testing, survey layout, preparation of record drawings, and closeout submittals (including the maintenance bond), be included in the bid price for the Authority Utility Work. If the COUNTY incurs any cost directly related to performance of

the Authority Utility Work, other than the CEI Consultant services, which was not included in the bid price then those costs shall be included in the amount payable by the AUTHORITY upon submission of an invoice supporting the amount thereof and after compliance with Section 7(a)(4) herein and R&A's right to participate.

(b) The AUTHORITY portion of the CEI Consultant services shall be that portion of the CEI fee billed to the COUNTY that bears the same ratio that the Authority Utility Work bears to the total contract price for the road project, including the Authority Utility Work. Initially, the percentage to be used will be based upon the bid as awarded by the COUNTY. At the conclusion of the project the final percentage will be calculated based upon the final contract amounts as adjusted by change orders, if any. Any difference between the amount paid using the initial percentage and the amount due using the final calculation will be paid by the AUTHORITY or the COUNTY, as the case may be, within thirty (30) days after close out of the construction contract. By way of example, if the construction contract as awarded totals $15,000,000.00 (including the cost of the Authority Utility Work) and the portion of that amount attributable to the Authority Utility Work is $3,000,000.00 then the percentage applied to the CEI billing will be twenty percent (20%) ($3,000,000.00 divided by $15,000,000.00). The same method will be used to calculate the final CEI percentage except the numbers shall reflect the final contract amounts, including all change orders.

(c) On or before the sixty-second (62nd) day after award of the construction contract, the AUTHORITY shall deposit with the COUNTY twelve percent (12%) of the total bid amount for the Authority Utility Work. These funds shall be held in a separate account and be used to pay the contractor's invoices related to the Authority Utility Work

and the applicable portion of the CEI Consultant's fee. In the event that funds remain in the account after contract closeout, they shall be first credited against any and all other charges payable by the AUTHORITY to the COUNTY. Any remainder shall be refunded by the COUNTY to the AUTHORITY within thirty (30) days after closeout of the construction contract.

(d) Beginning on the first day of the month following receipt of the first invoice from the contractor, the COUNTY will issue monthly bills to the AUTHORITY for its share of the Authority Utility Work and CEI Consultant's fees, calculated as stated above. All late payments shall be assessed non-refundable interest at a rate of ten percent (10%) per annum.

Section 13. Closeout. After final completion and acceptance of construction of the contractor's work on the Authority Utility Work and the County Project, the AUTHORITY shall be entitled to receive one (1) set of reproducible as-built drawings showing the Authority Utility Work, provided that the AUTHORITY has made all payments required by this Agreement.

Section 14. Duties and Level of Services. All services and work hereunder shall be performed to the satisfaction of the COUNTY or the COUNTY's CEI Consultant, who shall decide as provided herein 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 final and conclusive with respect to all services and work performed or to be performed.

Section 15. Employee Status. Persons employed by one party in the performance of services and functions pursuant to this Agreement shall have no claim against the other party for pension, worker's compensation, unemployment compensation, civil service or other employee rights or privileges whether granted by operation of law or by policy of the non-employing party.

Section 16. Funding/Termination. The AUTHORITY, by approving and executing this Agreement, represents and warrants that sufficient funds are available and have been properly budgeted to pay the anticipated costs of the Authority Utility Work and a portion of the CEI Consultant's fees, all as envisioned by this Agreement. The AUTHORITY understands and agrees that it is in the best interest of both parties that the Authority Utility Work be accomplished simultaneously with the County Project. Accordingly, the AUTHORITY may not terminate this Agreement except in the case of a breach of contract by the COUNTY and in accordance with the provisions of this paragraph. To facilitate performance pursuant to this Agreement, each party agrees to provide full cooperation and assistance to the other. Except for failure to make payment, the circumstances whereby the COUNTY may terminate this Agreement and remove the Authority Utility Work from the County Project are specified throughout this Agreement and are not subject to the provisions of this paragraph. As to any AUTHORITY claim of breach by the COUNTY and as to a COUNTY claim of non-payment by the AUTHORITY, the following apply:

(a) Notice. The party making the claim shall provide a written statement of the claim, providing as much detail as is reasonably possible under the circumstances. The other party shall have ten (10) days to remedy the claim or, if the matter cannot be

resolved in that time period, begin resolution thereof and thereafter, and complete in a timely manner resolution of the claim.

(b) Settlement Discussions. If the dispute is not resolved as a result of the notice provided above, then the managers of the AUTHORITY and COUNTY shall meet and attempt to reach a satisfactory resolution.

If the dispute is not resolved between the managers then this Agreement shall be terminated on the seventh (7th) day after the meeting of the managers. In all events the AUTHORITY shall reimburse the COUNTY for all costs and expenses incurred through the date of termination, including the amounts payable to the construction contractor and the CEI Consultant.

Section 17. Liability.

(a) To Third Parties. As to the Authority Utility Work, the AUTHORITY shall, to the extent permitted by Florida Law, indemnify and hold the COUNTY harmless from and against all liability, loss, costs, damages, and claims of any kind arising from personal injuries, including death, or property damage suffered by third parties. The term "third parties" is intended to mean all persons, firms, or other legal entities except the AUTHORITY, the COUNTY, the contractor, and the CEI Consultant. In addition, the AUTHORITY shall indemnify the COUNTY, the contractor, and the CEI consultant from and against any and all claims related to or arising from the failure of the AUTHORITY to obtain necessary easements for the location of the AUTHORITY's facilities outside the COUNTY's rights-of-way. Nothing herein shall be construed to waive or expand the provisions and requirements of *Section 767.28, Florida Statutes*.

(b) To the COUNTY. The AUTHORITY shall indemnify and hold the COUNTY harmless from any and all claims made by the contractor or the CEI Consultant for amounts due pursuant to the COUNTY'S contract with the Contractor or the CEI Consultant arising from the Authority Utility Work, it being understood and agreed that the COUNTY is including this work in its construction contract in order to save the AUTHORITY time and money and that the COUNTY is essentially acting as the AUTHORITY's agent with respect to this work. The AUTHORITY shall be relieved from the obligations imposed by this paragraph to the extent of any breach of contract by the COUNTY related to this Interlocal Agreement, the contract with the contractor or the contract with the CEI Consultant; it being the intent of the parties that the AUTHORITY shall pay the total amount which may be or become payable on account of any claim covered by this paragraph, less the AUTHORITY's entitlement to recover damages from the COUNTY on account of breach of contract by the COUNTY.

Section 18. Entire Agreement. It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement 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. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

Section 19. Conflict of Interest. The parties agree that they will not contract for or accept employment for the performance of any work or services with any individual, business, corporation or government unit that would create a conflict of interest in the performance of the obligations of this Agreement.

Section 20. 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 permission of the AUTHORITY and the COUNTY. Specifically, the parties acknowledge that the COUNTY and the AUTHORITY are without permission to grant or pledge a security interest in the products sold pursuant to this Agreement or any other property, either real or personal, that is owned by the COUNTY or the AUTHORITY.

Section 21. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida and the parties consent to venue 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.

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

ATTEST:

STEPHEN MILLER, Secretary/
Executive Director

SOUTH SEMINOLE & NORTH ORANGE COUNTY WASTEWATER TRANSMISSION AUTHORITY

By: _____
JAMES WILLIAMS, Chairman

Date: 26 May 2005

ATTEST:

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

BOARD OF COUNTY COMMISSIONERS SEMINOLE COUNTY, FLORIDA

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

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

_____
County Attorney
LMV:krc

12/29/04

As authorized for execution by the Board of County Commissioners at its _____, 2005, regular meeting.

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