
**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Seminole County / Shoemaker Construction Co., Inc., Joint Facilitation of Public Infrastructure Agreement, County Road 46A, Phase III

DEPARTMENT: Public Works

DIVISION: Engineering

AUTHORIZED BY: Gary Johnson

CONTACT: David Nichols

EXT: 5657

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a Joint Facilitation of Public Infrastructure Agreement with Shoemaker Construction Co., Inc., in conjunction with the County Road 46A, Phase III, (Capital Improvement Project #00011401) Road Improvement Project.

District 5 Brenda Carey

Jerry McCollum

BACKGROUND:

The Shoemaker Construction Co., Inc., offices located at the southwest corner of the intersection of Airport Boulevard and County Road 46A, were acquired as a total take parcel to facilitate the construction of improvements for the contiguous roadways. Shoemaker Construction was able to locate an available parcel of land in close proximity to its original office location on the southeast corner of the intersection of County Road 46A and Old Lake Mary Road. Seminole County has acquired property contiguous to the new property owned by Shoemaker Construction, Co., Inc., that will be used to construct Stormwater Pond 2 for the County Road 46A, Phase III Project. Shoemaker Construction will construct a new office facility on their property and has a need for a stormwater pond facility. Due to the proximity of their new site to the Seminole County pond, they proposed the construction of a joint use stormwater pond facility that would be created by expanding Seminole County's pond to a size and volume that would accommodate the stormwater requirements for the two projects: County Road 46A, Phase III, roadway project and the Shoemaker Construction office project. The ultimate construction of the joint use pond facility will occupy a portion of both Seminole County's and Shoemaker Construction's property.

Under the proposed agreement, Shoemaker Construction Co., Inc., will remit a one-time, lump sum non-refundable payment to Seminole County of \$67,500, within 10 days of the date this agreement is approved by the Board of County Commissioners. Shoemaker Construction will modify the stormwater pond facility utilizing a construction contract acceptable to Seminole County and will be responsible for all maintenance of the Joint Use Pond.

STAFF RECOMMENDATION:

Staff recommends the Board approve and authorize the Chairman to execute a Joint Facilitation of Public Infrastructure Agreement with Shoemaker Construction Co., Inc., in conjunction with the County Road 46A, Phase III, Road Improvement Project.

ATTACHMENTS:

1. Location Map
2. Joint Facilitation of Public Infrastructure Agreement - CR 46A, Phase III

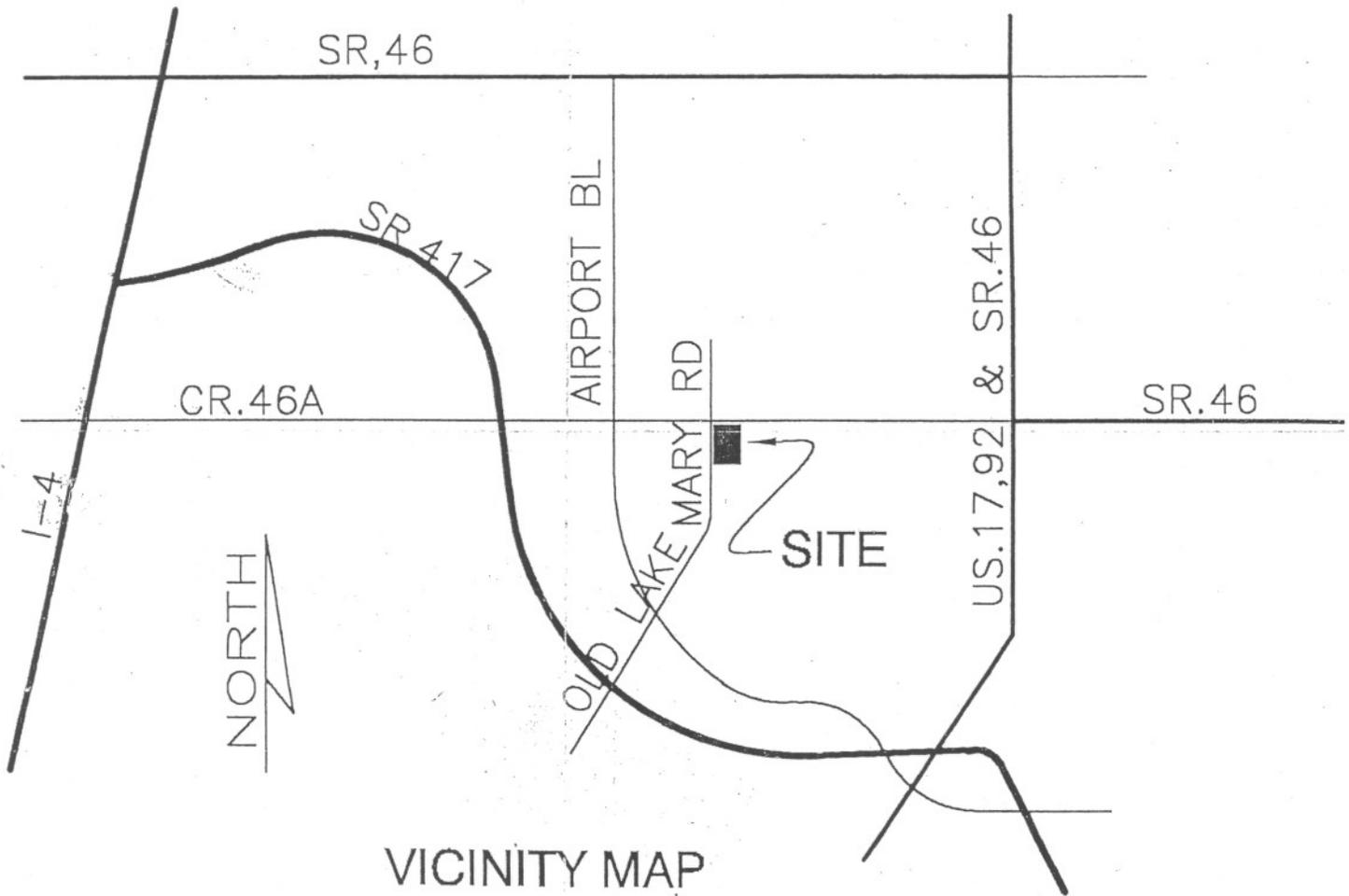
Additionally Reviewed By:

- Budget Review (Fredrik Coulter, Lisa Spriggs)
- County Attorney Review (Matthew Minter)

Seminole County/Shoemaker Construction Co., Inc.

Joint Facilitation of Public Infrastructure Agreement

County Road 46A-Phase III



VICINITY MAP

**SEMINOLE COUNTY / SHOEMAKER CONSTRUCTION CO., INC.
JOINT FACILITATION OF PUBLIC INFRASTRUCTURE AGREEMENT
COUNTY ROAD 46A (PHASE III)**

THIS JOINT FACILITATION OF PUBLIC INFRASTRUCTURE AGREEMENT is made and entered into this _____ day of _____, 2007, by and between SHOEMAKER CONSTRUCTION CO., INC., a Florida corporation, whose address is P.O. BOX 1885 Sanford, Florida 32772, hereinafter referred to as "**DEVELOPER**", 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 "**COUNTY**".

WITNESSETH:

WHEREAS, COUNTY is improving CR-46A from Upsala Road to Old Lake Mary Road (the "**Road Project**"); and

WHEREAS, COUNTY has acquired property (the "**County Property**") contiguous to property owned by DEVELOPER (the "**Developer's Property**"), for the location and construction of a stormwater retention pond on such County Property as part of and to serve the needs of the Road Project (the "**Planned County Pond**"); and

WHEREAS, DEVELOPER desires to develop the Developer's Property (the "**Development**") and has need for stormwater retention for the Development. Developer has proposed to COUNTY a joint use retention pond that would be created by the expansion of the Planned County Pond to a size and volume sufficient to accommodate the stormwater drainage and retention

requirements of both the Road Project and the Development (hereafter, the **"Joint Use Pond"**). The ultimate construction of the Joint Use Pond will occupy a portion of both the County Property and the Developer's property; and

WHEREAS, the parties understand that the County will initially construct on and within the County Property, at County's expense, the Planned County Pond, in order to construct and complete the Road Project; and

WHEREAS, DEVELOPER has agreed to design, permit and construct the expansion of the Planned County Pond to create the Joint Use Pond at DEVELOPER'S expense; and

WHEREAS, the provisions of this Agreement serve the public interest and will benefit both DEVELOPER and 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:

Section 1. Recitals and Purpose of Agreement The parties agree that the above recitals are true and correct and constitute a material part of this Agreement upon which the parties have relied. Subject to the terms of this agreement, the parties agree to the design, permitting and construction of a Joint Use Pond situated in part on the County Property, and in part on Developer's Property, of sufficient capacity to allow for the development of both the Development and the Road Project. **In addition, each party grants to the**

other the perpetual right to use the Joint Use Pond for purposes set forth herein.

Section 2. Compensation

As part of the consideration for the use of the County Property and the other terms of this Agreement, and in addition to any other consideration stated herein, DEVELOPER agrees to make a one-time lump sum, non-refundable payment to COUNTY of sixty seven thousand, five hundred dollars (\$67,500.00). Such payment is due upon the COUNTY's approval and execution of this Agreement. Failure to make the payment within ten (10) days thereafter renders this Agreement null and void and of no further force or effect.

Section 3. Design, Permitting and Construction of the Joint Use Pond.

(a) DEVELOPER shall pay all costs of the design, engineering, permitting and construction for the expansion of the Planned County Pond to create the Joint Use Pond, including all drainage structures and appurtenant facilities, whether located on the County Property or on Developer's property. All design work shall be done by a professional engineer or firm of professional engineers, fully licensed to practice in the State of Florida. The Joint Use Pond shall be designed, engineered, permitted and constructed to provide sufficient capacity for DEVELOPER's development and for the outfall from the CR-46A road improvement project as set forth in the right-of-way maps and construction plans for the CR-46A project dated January 30, 2006 (bid plans) and any

revisions thereto, in which CR-46A is to be expanded to five (5) lanes (the County Plans).

(b) Construction of the Joint Use Pond shall be in accordance with the COUNTY's final approved plans, attached hereto as **Exhibit A**, and the **Shoemaker Industrial Project** plans attached hereto as **Exhibit B**.

(c) DEVELOPER shall be responsible for obtaining all required governmental approvals, including permit modifications from the St. John's River Water Management District, and all other approvals required by entities having jurisdiction over the COUNTY improvements to CR-46A or the improvements to DEVELOPER's property. Nothing in this Agreement shall be construed to relieve DEVELOPER from compliance with the applicable Seminole County land use and development regulations. The COUNTY's approval of this Agreement does not constitute a regulatory approval of the Joint Use Pond; the Joint Use Pond must meet all applicable zoning, land use and other regulatory requirements and is subject to such further approvals as may be required under all applicable codes.

(d) Construction of **the Joint Use Pond** shall not commence until the COUNTY has given its written approval of the design of **the Joint Use Pond**, provided however, that the COUNTY's approval does not relieve the DEVELOPER and its design professionals of the responsibility of providing a proper and workable design. DEVELOPER 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. Upon COUNTY'S approval of the plans, DEVELOPER shall have the option of proceeding immediately with the construction of the Joint Use Pond so long as the work is performed by the same contractor who has been engaged by the COUNTY for the Road Project, pursuant to a separate agreement between DEVELOPER and the COUNTY'S contractor. In the alternative, DEVELOPER may engage the contractor of his choice for the construction of the Joint Use Pond, in which case the DEVELOPER shall not commence construction on the Joint Use Pond until the COUNTY has accepted the work of the COUNTY'S contractor on the completed Road Project.

(e) Within thirty days following completion of construction of the Joint Use Pond, DEVELOPER shall provide the COUNTY a signed and sealed record survey of the constructed Joint Use Pond and the associated structures to demonstrate that the Joint Use Pond was constructed in accordance with approved plans therefor, including all grades and elevations.

(f) The COUNTY may inspect the construction of the Joint Use Pond at any time and DEVELOPER shall correct any deficiencies to the Joint Use Pond which are caused by DEVELOPER's expansion of the Planned County Pond, immediately following notification from COUNTY.

Section 4. Bonding Requirements/Liens. DEVELOPER shall cause all contractors performing work on the COUNTY Property to be fully licensed and insured. The general contractor shall post a payment and performance bond in an amount sufficient to insure that no lien attaches to the COUNTY Property.

Actual construction shall not begin until the COUNTY: (a) approves, in writing, the design of **the system**; and (b) DEVELOPER posts, in a form reasonably acceptable to the COUNTY, adequate security, in favor of the COUNTY, to cover the cost of the construction, plus ten per cent (10%) for contingencies, and (c) the COUNTY approves the form and content of all insurance policies and payment and performance bonds provided by the general contractor.

DEVELOPER shall indemnify and hold the COUNTY harmless from and against any and all claims arising from the construction work done by, or contracted for by DEVELOPER with respect to the expansion of the Planned County Pond, including claims of lien under Chapter 713 of the Florida Statutes. In the event any contractor, subcontractor, materialman, laborer or third party attempts to place such a lien against the COUNTY Property because of DEVELOPER'S acts of expansion of the Planned County Pond, then DEVELOPER shall immediately post or cause to be posted a bond to transfer the lien from the COUNTY Property to the bond. DEVELOPER shall liable for all costs and expenses, including reasonable attorneys' fees (both at trial and on appeal), incurred by the COUNTY as a result of any claim of lien made against the COUNTY Property arising from the DEVELOPER'S construction work on, and expansion of the Planned County Pond for purposes of creating the Joint Use Pond, and any future maintenance of construction work commissioned or performed by or for DEVELOPER on the Joint Use Pond or from DEVELOPER's use of the COUNTY Property, whether the claim of lien is ultimately judged invalid or not.

Section 5. Maintenance of the Joint Use Pond. After completion of construction **of the Joint Use Pond**, DEVELOPER shall be solely responsible to maintain the entire Joint Use Pond, in accordance with the COUNTY's functional maintenance requirements, as same may be amended from time to time. Attached hereto as **Exhibit "C"** is a copy of the COUNTY's current standards. Should DEVELOPER fail to maintain the Joint Use Pond, then the COUNTY may perform necessary maintenance at DEVELOPER's expense, provided that, except in the case of an emergency, the COUNTY has first given DEVELOPER written notice of the need for maintenance and DEVELOPER has, for ten (10) days or more, failed to undertake the required maintenance.

Section 6. Reciprocal Easements. Each party shall, by separate instrument, **grant to the other party a perpetual easement conveying the right to enter and use the Joint Use Pond** for purposes of the construction, maintenance and operation of the Joint Use Pond. Attached hereto as **Exhibit "D"** is a form of such an easement.

Section 7. Recording. This Agreement shall be recorded in the Public Records of Seminole County and shall inure to the benefit of COUNTY and DEVELOPER, their successors and assigns. This Agreement and the rights conveyed herein shall run with both the Developer's Property and the County Property, and such rights shall be exercisable by the COUNTY or DEVELOPER and any successor in interest of either party.

Section 8. Indemnification. **DEVELOPER shall indemnify and hold harmless the COUNTY from and against all claims, demands,**

disputes, damages, costs, expenses (to include attorney's fees necessary to defend against any such claims, demands and disputes, including both trial and on appeal) as a result, directly or indirectly, of the negligence or wrongful act or omission of DEVELOPER or its employees, agents, or by third parties acting on behalf of and with the permission of DEVELOPER, so long as such acts or omissions are caused by DEVELOPER's design, development and construction of, the expansion of the Planned County Pond to create the Joint Use Pond.

Section 9. Insurance. At all times that DEVELOPER uses the Joint Use Pond or other property owned by the COUNTY under this Agreement, DEVELOPER shall maintain liability insurance, through an insurance company licensed to do business in the State of Florida, naming the COUNTY as an additional insured, with minimum combined single limits of one million dollars (\$1,000,000.00) per occurrence. DEVELOPER shall ensure that the County Engineer is provided with a current copy of all such insurance policies. All policies shall be endorsed to require at least thirty (30) days notice to the COUNTY of any material change in coverage or the policy. DEVELOPER shall immediately procure replacement coverage in the event any policy is cancelled, lapses or otherwise is terminated.

Section 10. Notice.

(a) Except as otherwise provided in this Agreement, whenever either party desires to give notice to, or make deliveries to the other, such notice or delivery shall be sent to:

For the COUNTY:

Jerry McCollum, County Engineer
Public Works Department
Engineering Division
520 West Lake Mary Boulevard
Suite 200
Sanford, Florida 32773

For DEVELOPER:

Alan Dean Shoemaker, President
Shoemaker Construction CO., Inc.
P.O. Box 1885
Sanford, Florida 32771

(b) Either party may change, by written notice as provided herein, the addresses or persons for receipt of notices.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

Section 12. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

Section 13. Obligation of COUNTY. This Agreement shall not be deemed to pledge the credit of the COUNTY or to make the COUNTY a co-venturer or partner of DEVELOPER.

Section 14. Applicable Law Venue/Remedies.

(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.

(c) In the event of a dispute between DEVELOPER and COUNTY regarding the subject matter of this Agreement, DEVELOPER and COUNTY agree to submit same to non-binding mediation and shall cooperate in good faith in appointing a qualified mediator, attending and participating in mediation of such dispute. Each party shall pay the fees of their own attorneys and consultants and their own costs incurred in connection with any such mediation. The costs and fees of the mediator shall be split equally between the parties. In the event that such dispute cannot be resolved by mediation, then the parties hereto shall have all rights and remedies available under Florida law in connection with the enforcement of the terms and conditions of this Agreement.

Section 15. Time is of the Essence. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

Section 16. Non-Waiver. Failure on the part of either party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that

party of its rights and any remedies that exist under this Agreement, at law, or in equity.

Section 17. Further Assurances.

(a) DEVELOPER agrees to sign any other and further instruments and documents, consistent herewith, as may be necessary and proper in order to give complete effect to the benefits deriving from the terms and conditions of this Agreement.

(b) DEVELOPER warrants that it will cause the holders of any mortgages and liens relating to the Developer's Property to subordinate their interests to the provisions of this Agreement. If DEVELOPER fails to attain such subordination, it shall lose all rights and benefits deriving hereunder.

Section 18. Curative Periods. No default as to any provision of this Agreement on the part of either the COUNTY or DEVELOPER shall be claimed or charged by either party against the other until notice thereof has been given to the defaulting party in writing, and such default remains uncured for a period of ten (10) days after such notice.

Section 19. Effective Date. This Agreement shall take effect on the date that this Agreement is fully executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

WITNESSES:



**SHOEMAKER CONSTRUCTION
CO., INC.**



SIGNATURE

Robert WALKRATH

PRINT NAME

L. O'Donnell

SIGNATURE

LEONARD O'DONNELL

PRINTNAME

ALAN DEAN SHOEMAKER,
PRESIDENT

Date: AUGUST 20, 2007

STATE OF Florida)

COUNTY OF Seminole)

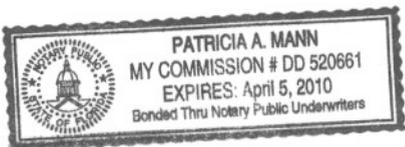
I HEREBY CERTIFY that, on this 20th day of August 2007, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared ALAN DEAN SHOEMAKER, as a President, of SHOEMAKER CONSTRUCTION CO., INC., a Florida corporation, who is personally known to me or who has produced _____ as identification. He acknowledged before me that he executed the foregoing instrument as such officer in the name and on behalf of the corporation and is authorized to sign on behalf of said corporation.

Patricia A. Mann

Print Name PATRICIA A. MANN

My commission, expires:

Notary Public in and for the
County _____ and State
Aforementioned



ATTEST:

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

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
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.

As authorized for execution by the Board
Of County Commissioners at its _____
2007, regular meeting.

County Attorney

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Attachments:

Exhibit A-CR-46A (Phase III) Final Approved Construction Plans

Exhibit B-Shoemaker Industrial Project Plans

Exhibit C-Functional Maintenance Requirements

Exhibit D-Form Easement

August 6, 2007

EXHIBIT "C"

JOINT USE POND MAINTENANCE REQUIREMENTS

The joint use pond functional maintenance requirements shall consist of the following components:

1. The joint use pond facility and its associated structures shall be inspected monthly and after major rainfall events to check for any obstructions or damage and to remove accumulated trash and debris.
2. The joint use pond facility shall be mowed on a monthly schedule.
3. Undercut or eroded areas shall be repaired as needed.
4. Sediment accumulations shall be monitored and removed when 25% of the permanent pool volume has been lost.