

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Joint Participation Agreement Between City of Lake Mary and Seminole County providing for Reclaim Water Interconnect and Supply

DEPARTMENT: Environmental Services

DIVISION: Business Office

AUTHORIZED BY: Andrew Neff

CONTACT: Becky Noggle

EXT:

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the Joint Participation Agreement Between City of Lake Mary and Seminole County providing for Reclaim Water Interconnect and Supply.

District 5 Brenda Carey

Bob Briggs (ext 2148)

BACKGROUND:

The purpose of this agreement is to provide an interconnect between the City of Lake Mary and Seminole County's reclaim water distribution infrastructure. The City of Lake Mary wants to purchase on a wholesale basis up to .25 mgd of reclaim water to provide service to future customers of the City in the designated project area as depicted on exhibit A.

STAFF RECOMMENDATION:

Staff recommends that the Board approve and authorize the Chairman to execute the Joint Participation Agreement Between City of Lake Mary and Seminole County providing for Reclaim Water Interconnect and Supply.

ATTACHMENTS:

1. Agreement

<p>Additionally Reviewed By:</p> <p><input checked="" type="checkbox"/> County Attorney Review (Ann Colby)</p>

**JOINT PARTICIPATION AGREEMENT BETWEEN
CITY OF LAKE MARY AND SEMINOLE COUNTY PROVIDING FOR
RECLAIMED WATER INTERCONNECT AND SUPPLY**

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between the **CITY OF LAKE MARY**, a Florida municipal corporation, whose address is 100 North Country Club Road, Lake Mary, Florida 32746, hereinafter referred to as "CITY" 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".

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapters 125, 163, 166, and 336, Florida Statutes, as well as other applicable law, CITY and COUNTY are authorized to enter into this Agreement; and

WHEREAS, the purpose of this Agreement is to set forth the complete and full understanding and agreement of the parties concerning CITY's interconnection with COUNTY's reclaimed water distribution infrastructure in order for CITY to provide retail reclaimed water service to customers located in that certain area of incorporated Lake Mary, hereinafter referred to as the "Project Area", as depicted in **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, COUNTY has reclaimed water capacity available to serve future customers of CITY in the Project Area; and

WHEREAS, CITY wishes to connect to COUNTY's reclaimed water system and purchase such reclaimed water on a wholesale basis from COUNTY to serve CITY's future customers; and

WHEREAS, it is the intent of the parties for COUNTY to provide wholesale reclaimed water services to CITY and for CITY to purchase reclaimed water services from COUNTY to serve the reclaimed retail customers located in the Project Area; and

WHEREAS, CITY and COUNTY have determined that the terms and conditions of this Agreement are in the best interests of the public health, safety and welfare of their respective citizens,

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals. The recitals set forth above are true and correct and form a material part of this Agreement upon which the parties have relied.

Section 2. Definitions. The parties agree that in construing this Agreement, the following words, phrases, and terms shall have the following meanings unless the context indicates otherwise:

(a) "Agreement" means this Joint Participation Agreement between the City of Lake Mary and Seminole County as it may from time to time be modified.

(b) "GPD" means gallons per day on an annual average basis.

(c) "MGD" means million gallons per day on an annual average basis.

(d) "Reclaimed Water Distribution Facilities" means the pipes, pump stations, meters and appurtenant equipment owned and operated by CITY to receive and distribute Reclaimed Water from the interconnect meter to the property on which CITY has established a system or expanded existing systems to deliver and spray Reclaimed Water.

(e) "Reclaimed Water" means Wastewater that has been appropriately treated and is usable for reuse purposes in public access areas as defined by applicable regulatory agencies.

(f) "Seminole County Wastewater System" or "County Wastewater System" means those Transmission Facilities and treatment facilities in which Wastewater is received, transmitted, treated, detained, and disposed of and from which CITY is receiving and shall receive reclaimed water capacity on a wholesale basis, to which COUNTY has designated allocated capacity.

Section 3. Effective Date. This Agreement shall become effective on the date of its execution by the COUNTY and remain in full force and effect for ten (10) years and shall automatically be renewed annually thereafter unless terminated earlier by either mutual agreement or by one (1) year prior written notice provided, as set forth hereunder, to the other party on or before the annual renewal date.

Section 4. Provision of Reclaimed Water Service. COUNTY shall provide Reclaimed Water Service to CITY in the following manner and subject to the following terms and conditions:

(a) Delivery of Reclaimed Water.

(1) The COUNTY shall deliver, and CITY shall accept and use, an estimated volume of up to 0.25 MGD of reclaimed water on an annual average daily flow basis. The reclaimed water shall be delivered to the existing point of connection at Lake Mary Boulevard and Lake Emma Road as depicted on Exhibit "A", commencing on a mutually agreed upon date.

(2) Should the COUNTY's reclaimed water transmission and/or distribution system fail for reasons or events beyond the COUNTY's control, or during periods when the COUNTY is performing required maintenance or repairs to the reclaimed water system, it is hereby understood by the parties that delivery of reclaimed water may be interrupted or limited in quantity. The COUNTY shall utilize its best efforts to minimize downtime of the reclaimed water system and to restore the system to full capacity. The COUNTY shall provide CITY notice of scheduled downtime. Further, the COUNTY may temporarily suspend delivery of reclaimed water should the quality of its reclaimed water not meet the standards for water quality set forth in Chapter 62-610, Part III, Florida Administrative Code (F.A.C.). Nothing in this Agreement shall prevent CITY from implementing a permitted backup supply of reclaimed water during the aforementioned periods of downtime or temporary suspension by COUNTY.

(3) The COUNTY retains the right to enact necessary conservation strategies, including, but not limited to, designating odd/even watering days, reducing the system operating pressure and instituting rolling service blackouts. CITY shall cooperate with the COUNTY to implement these strategies with CITY customers if such conservation strategies become necessary. The COUNTY shall provide CITY prior written notice of such reduction strategies including volume reduction and duration when known.

(4) COUNTY shall be responsible for the operation, maintenance, repair and replacement of the COUNTY Wastewater System up to and including the point of connection to CITY's Reclaimed Water Distribution Facilities. Said point of connection is depicted on Exhibit "A".



(b) Metering. COUNTY shall own and remains solely responsible for operation, maintenance, repair and replacement costs associated with the master meter depicted on Exhibit "A". COUNTY shall have the right to read the meter at any time and the right to free access thereto for meter reading and testing purposes. The metering equipment shall record flow with an error rate not exceeding plus or minus two percent ($\pm 2\%$) of full scale reading.

(c) Testing. COUNTY, at its expense, shall periodically inspect and test the metering equipment, at intervals recommended by the manufacturer unless otherwise requested by CITY. Written results of any meter inspections shall be provided by COUNTY to CITY within ten (10) days of such inspections.

(d) Reclaimed Water Charges.

(1) Reclaimed Water Rates. The COUNTY shall charge and CITY shall pay the rate of \$0.50 per one thousand gallons for flow delivered to the CITY to serve the CITY's reclaimed retail customers located in the Project Area. Reuse water used by CITY to maintain the Lake Mary Boulevard right-of-way shall be governed by the Seminole County/City of Lake Mary Amended Addendum to Interlocal Agreement Relating to Lake Mary Boulevard Gateway Corridor executed November 28, 1995.

(2) Payment. The COUNTY shall bill CITY monthly based on the number of gallons of Reclaimed Water used and metered each month by the CITY's reclaimed retail customers located in the Project Area. CITY shall remit the amount due to COUNTY within forty-five (45) days from the date of COUNTY's bill. 

(3) Change of Rates. In the event COUNTY during this Agreement proposes a new rate schedule or amended rate schedule applicable to Reclaimed Water, the COUNTY shall forward to CITY a copy of such proposed rate commencing with the next billing period after the effective date. The purpose of this Section is disclosure only and shall not grant CITY any right to appeal a rate increase. COUNTY hereby declares that said rates are not in excess of the lowest rates now available to any prospective customer under Reclaimed Water Service and agrees that, during this Agreement, CITY shall continue to be billed at the lowest available rate for equivalent Reclaimed Water Service.

(e) Inspections. The COUNTY shall have the right to review and inspect CITY's operating practices to ensure compliance with Chapter 62-610, F.A.C., and this Agreement.

(f) Water Quality. Reclaimed water delivered by COUNTY's Wastewater System to CITY's Reclaimed Water Distribution Facilities pursuant to this Agreement shall be treated by the COUNTY in accordance with the requirements of COUNTY permits issued by state and federal regulatory agencies, if applicable. The parties shall comply with Florida Department of Environmental Protection (FDEP) Rule 62-610, F.A.C., as amended.

Section 5. CITY Responsibilities.

(a) CITY shall be responsible for the ownership, operation, maintenance and repair costs of its Reclaimed Water Distribution Facilities from the point of connection with the COUNTY's Wastewater System, as set forth on Exhibit "A". Customers connecting into the Reclaimed Water Distribution Facilities shall be customers of CITY and pay CITY rates, fees, charges and deposits for Reclaimed Water Services, as applicable.

(b) Cross-connections between the reclaimed water system and any potable water system shall be prohibited.

(c) CITY shall comply with all applicable rules and regulations of agencies with jurisdiction over the use of reclaimed water.

(d) CITY shall operate and maintain the reclaimed water distribution system in a manner protecting the health, safety, welfare and environment including, but not limited to, the following:

(1) Required advisory signs, in accordance with Chapter 62-610, F.A.C., shall be installed and properly maintained by CITY at all entrances adjacent to property utilizing reclaimed water to advise the type of water usage. Replacement signs shall be installed by CITY as needed.

(2) CITY shall take all necessary precautions to clearly identify reclaimed water irrigation systems to prevent inadvertent human consumption.

(3) CITY shall implement public education programs to inform its residents, employees, agents, and invitees of the reclaimed water system, as required by Chapter 62-610, F.A.C., to prevent inadvertent human consumption.

(4) CITY shall properly report any reclaimed water spills and cross-connections directly to FDEP and provide a copy of this information to the COUNTY in a timely manner.

(5) CITY shall provide COUNTY with customer location information to properly facilitate utility billing, annual reuse reporting, permitting and regulatory compliance reuse service management requirements.

(6) In the event of any system violation within CITY's Reclaimed Water Distribution System, CITY shall immediately report any potential violation to the appropriate agency to avoid agency citation and violations when possible; timely respond to agency citations and violations when required; timely cure the violation to the satisfaction of the citing agency; pay all costs and penalties

associated with the violation, including costs and penalties incurred by the COUNTY related to curative actions by the COUNTY mandated by the citing agency which are directly attributable to CITY's Reclaimed Water Distribution System.

Section 6. Administrative Agent. The COUNTY is designated as the party to administer this Agreement by and through its departments and officers, consultants and independent contractors.

Section 7. 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 Circuit Court 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 8. Headings. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

Section 9. Force Majeure. In the event any party hereunder fails to satisfy a requirement imposed by this Agreement in a timely manner, due to a hurricane, flood, tornado, or other Act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

Section 10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and assigns of the parties.

Section 11. Assignment. This Agreement shall not be assigned by either party without the prior written approval of the other which shall not be unreasonably withheld.

Section 12. Exhibits. All exhibits to this Agreement shall be deemed to be incorporated into this Agreement as if fully set forth verbatim into the body of the Agreement.

Section 13. Public Records. Each party shall allow public access to all documents, papers, letters or other materials which have been made or received in conjunction with this Agreement in accordance with Chapter 119, Florida Statutes.

Section 14. Conflict of Interest. The parties agree to take no action or engage in any conduct that would cause an officer or employee to have a conflict of interest or violate any law relating to the ethical conduct of government offices and employees, or otherwise create or permit a conflict of interest, as defined by Chapter 112, Florida Statutes, to exist or occur in the performance of its obligations pursuant to this Agreement.

Section 15. Compliance with Laws and Regulations. In performing pursuant to this Agreement, the parties shall abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. Any material violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and entitle the non-violating party to

terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

Section 16. Notices. Whenever a party desires to give notice unto the others, notice may be sent to:

For COUNTY:

Seminole County Manager
Seminole County Service Building
1101 East First Street
Sanford, Florida 32771

For CITY:

City of Lake Mary Manager
100 N. Country Club Road
Lake Mary, Florida 32746

Any party may change, by written notice as provided herein, the address or person for receipt of notices.

Section 17. Indemnification.



(a) Each party to this Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions arising out of this Agreement of that party and the officers, employees and agents thereof.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the parties beyond the waiver provided for in Section 768.28, Florida Statutes.

(c) The waiver of a provision herein by either party shall not constitute the further waiver of said provisions or the waiver of any other provision.

Section 18. Expenses of Enforcement. Each party shall be responsible for its own costs and expenses incurred, including attorney's fees, in enforcing any covenants, terms or conditions of this Agreement.

Section 19. Remedies. Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Agreement.

Section 20. Counterparts. This Agreement may be executed in several counterparts, each of which, when executed and delivered, shall be deemed an original, but all counterparts shall together constitute one and the same instrument.

Section 21. Severability.  If any part of this Agreement is found invalid or unenforceable by any Court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

Section 22. Entire Agreement.

(a) This Agreement constitutes the entire agreement of the parties and supersedes all previous discussions, understandings and agreements, verbal or written, between the parties relating 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.

(b) No waiver or consent to any departure from any term, condition or provision of this Agreement shall be effective or binding upon any party hereto unless such waiver or consent is in writing, signed by an authorized officer of the party giving the same and delivered to the other party.

Section 23. Disclaimer of Third-Party Beneficiaries. This

Agreement is intended solely for the benefit of the parties hereto and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes  herein stated on the date first above written.

ATTEST:

CITY OF LAKE MARY

CAROL A. FOSTER, City Clerk

By: _____
DAVID MEALOR, Mayor

Date: _____

[Balance of this page intentionally blank; signatory page follows]

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

ATTEST:

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

By: _____
BOB DALLARI, 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 _____,
2009, regular meeting.

County Attorney

SED/dre
08/27/09

Attachment:

Exhibit "A" - Project Area

P:\Users\Sdietrich\Agreement\Joint Participation Sc-Lm - Reclaimed Water.Docx



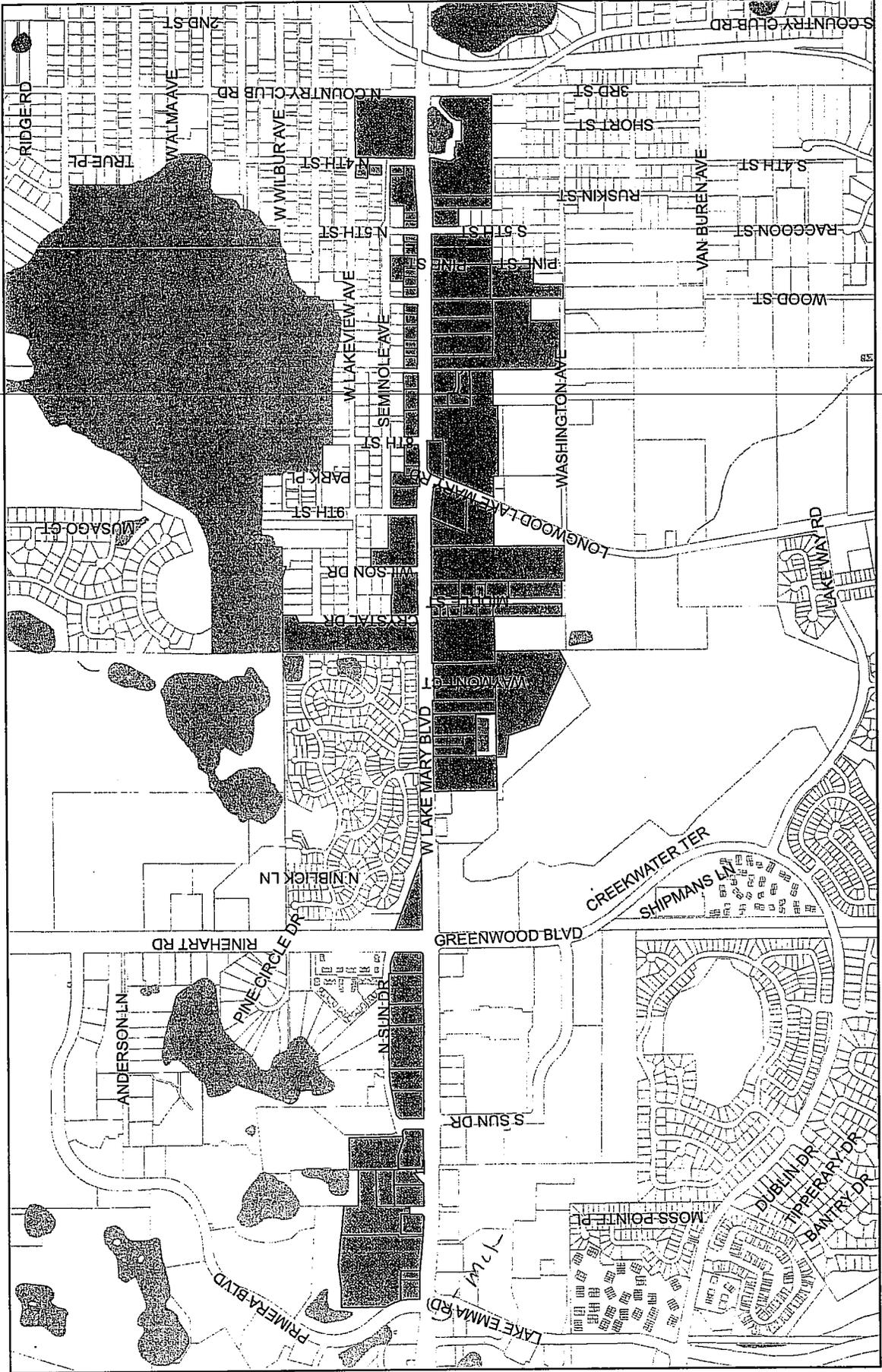
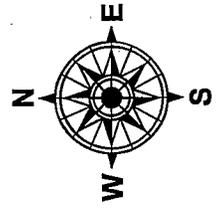


Exhibit "A" Potential Reuse Application Sites