

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Black Hammock Wholesale Water Service Capacity Agreement between the City of Oviedo and Seminole County

DEPARTMENT: Environmental Services **DIVISION:** Business Office

AUTHORIZED BY: *R.G. Adolphe* **CONTACT:** *Bob Briggs* **EXT.** 2148
Robert G. Adolphe, P.E., Director Bob Briggs, Finance Manager

Agenda Date 11/09/04 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

Approve and Authorize Chairman to execute the Wholesale Water Service Capacity Agreement

BACKGROUND:

The purpose of this agenda item is to renew a previous Wholesale Water Agreement with The City of Oviedo dated January 22, 1988. The wholesale agreement enables the County to connect to the City's water system and purchase capacity on a wholesale basis from the city to serve the county customers and enable the City to connect to County's water system and purchase capacity on a wholesale basis from the County to serve the City customers.

The intent of the continuation of the Agreement is to provide potable water service to the existing homes and lots in the area and it is not intended to facilitate new development or increased densities. Private well water quality is low and this interlocal agreement will maintain a supply of safe drinking water to the Black Hammock community.

Reviewed by: _____
Co Atty: *J. Deetrich*
DFS: _____
Other: _____
DCM: *35*
CM: *[Signature]*
File No. CESA01

10/28/04

**BLACK HAMMOCK WHOLESALE WATER SERVICE CAPACITY
AGREEMENT BETWEEN
CITY OF OVIEDO AND SEMINOLE COUNTY**

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, 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 the “**COUNTY**”, and **CITY OF OVIEDO**, a Florida municipal corporation, whose address is 400 Alexandria Boulevard, Oviedo, Florida 32765, hereinafter referred to as “**CITY**”.

W I T N E S S E T H:

WHEREAS, the **COUNTY** owns and operates a potable water system located in unincorporated Seminole County, hereinafter referred to as the “**County Water System**” and **CITY** owns and operates a potable water system located in **CITY**, hereinafter referred to as the “**CITY Water System**”; and

WHEREAS, on January 22, 1988, the **COUNTY** and the **CITY** entered into a Wholesale Water Service Capacity Agreement, between City of Oviedo and Seminole County, hereinafter referred to as Wholesale Agreement. The **WHOLESALE AGREEMENT** enabled the **COUNTY** to connect to **CITY’S** Water System and purchase capacity on a Wholesale basis from **CITY** to serve **COUNTY** customers and enabled the **CITY** to connect to **COUNTY’S** Water System and purchase capacity on a Wholesale basis from **COUNTY** to serve **CITY** Customers; and

WHEREAS, the Wholesale Agreement permitted **COUNTY** to connect to **CITY’S** Water System and the **CITY** to connect to the **COUNTY’S** Water System so as

to allow a pass-through of water capacity to COUNTY customers including, but not limited to COUNTY customer located in the area known as Black Hammock; and

WHEREAS, the Wholesale Agreement contemplated that no capital recovery fees would be exchanged for the pass-through capacity from the COUNTY to the CITY or CITY to the COUNTY; and

WHEREAS, the Wholesale Agreement expired by its terms on February 1, 2003; and

WHEREAS, the COUNTY wishes to continue its connection to the CITY Water System and purchase capacity on a wholesale basis from CITY to serve COUNTY customers and CITY wishes to continue its connection to the COUNTY Water System and purchase capacity on a wholesale basis from the COUNTY to serve CITY customers; and

WHEREAS, the COUNTY and CITY wish to mutually cooperate in the provision of water service capacity to both the COUNTY and CITY subject to certain terms and conditions.

NOW, THEREFORE, in consideration of the premises, terms, provisions and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties covenant and agree as follows:

Section 1. Recitals. The foregoing recitals 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 clearly indicates otherwise:

2.1 “Agreement” – this Wholesale Water Service Capacity agreement between the CITY and the COUNTY as it may from time to time be modified.

2.2 “CITY Plant” means those treatment facilities and rights owned by the CITY and used by the CITY to treat raw water and produce potable water in accordance with applicable governmental and regulatory requirements.

2.3 “CITY Water System” means those Transmission Facilities and the City Plant in which the COUNTY is receiving Water Service Capacity on a wholesale basis and which are operated, maintained and replaced by the CITY.

2.4 “COUNTY Water System” means those Transmission Facilities and the COUNTY plant which are operated and maintained by the COUNTY.

2.5 “COUNTY Plant” means those treatment facilities and rights owned by the COUNTY and used by the COUNTY to treat raw water and produce potable water in accordance with applicable governmental and regulatory requirements.

2.6 “Distribution Facilities” means all facilities used to receive potable water from the Transmission Facilities.

2.7 “ERC” means a factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose, the ADF of one (1) ERC is deemed to be three hundred fifty (350) GPD for water service.

2.8 “GPD” means gallons per day, average annual basis.

2.9 “Providing Entity” means the entity providing water service Capacity pursuant to this Agreement.

2.10 “Receiving Entity” means the entity receiving wholesale Water Service Capacity pursuant to this Agreement.

2.11 “Transmission Facilities” means those lines, pipes, water mains, pumps, meters and all other appurtenant equipment and facilities used to transmit potable water from the COUNTY plants or from the CITY plants to the point of connection to the Distribution Facilities.

2.12 “Water Service Capacity” means the rate of potable water which can be pumped from the ground, treated, transmitted, and distributed where such rate is measured in GPD and based upon maximum daily domestic demand and fire flows in accordance with applicable governmental requirements and regulations.

Section 3. **Purpose.** Subject to the terms and conditions hereinafter set forth, COUNTY shall deliver to CITY and CITY shall receive from COUNTY and CITY shall deliver to COUNTY and COUNTY shall receive from CITY, Water Service Capacity.

Section 4. **Service Area.** The COUNTY’S service area is as indicated by *Exhibit “A” County Service Area* and the CITY service area shall be within the incorporated City Limits as may from time-to-time be amended. This AGREEMENT is limited to these service areas irrespectively.

Section 5. **Terms.** This Agreement shall continue in full force and effect from the complete execution hereof and thereafter for twenty (20) years; provided, further, that

this Agreement may be extended for successive ten (10) year periods if mutually agreed to by the parties.

Section 6. Termination. This Agreement may be terminated by either party at any time, with or without cause, upon not less than thirty (30) days written notice delivered to the other party, as provided for herein.

Section 7. Provision of Water Service Capacity. CITY agrees to reserve and provide Water Service Capacity for COUNTY'S use. In consideration of said reservation and provision of Water Service Capacity, COUNTY agrees to reserve and provide to CITY an equivalent amount of Water Service Capacity. The total Water Service Capacity provided to CITY by COUNTY shall be calculated based upon the previous month's consumption as registered on the meter through which the COUNTY is obtaining service. COUNTY shall provide Water Service Capacity to CITY, its successors and assigns and CITY shall provide Water Service Capacity to COUNTY, its successors and assigns in the following manner and subject to the following terms and conditions:

7.1 Connection to Transmission Facilities.

(a) COUNTY has previously connected the COUNTY'S Distribution Facilities to CITY'S Transmission Facilities at a point of connection that is located in County Road 426 right-of-way north of the roadway west of the intersection of Neile Court and County Road 426. CITY has previously connected CITY'S Distribution Facilities to COUNTY'S Transmission Facilities at a point of connection that is located in State Road 434 right-of-way west of the roadway north of the intersection of State Road 434 and Dalton Drive.

(b) COUNTY and CITY agree that future emergency connection between the COUNTY Water System and the CITY Water Systems is desirable and are needed to improve both COUNTY and CITY water systems' reliability and/or hydraulic capacity. COUNTY and CITY agree to cooperate in the implementation of the future connections.

(c) Operation, maintenance and replacement of all pipes, fittings, valves and appurtenances, including the Transmission Facilities up to the point of connection and the water plant providing capacity shall be the responsibility of the providing entity. Operation, maintenance and replacement of the Distribution Facilities and the water flow meter from the point of connection shall be the responsibility of the receiving entity.

Section 8. Metering.

(a) COUNTY shall maintain existing metering equipment at its point of connection from CITY'S Transmission Facilities to the COUNTY'S Distribution Facilities, which shall be capable of measuring all water flowing from CITY'S Transmission Facilities to COUNTY'S Distribution Facilities. The metering equipment is and shall remain the property of the COUNTY and the COUNTY shall be solely responsible for the operation, maintenance and replacement of its meter. In the event that the COUNTY'S meter requires replacement the CITY shall have the right to review, approve or disapprove the type of metering equipment to be exchanged. CITY shall also have the right to read or test the metering equipment.

(b) The CITY shall furnish and install metering equipment at its State Road 434 point of connection and with mutual consent from both parties shall furnish and

install meter equipment at any emergency connection to COUNTY'S Water System which shall be capable of measuring all water flowing from the COUNTY'S Transmission Facilities to CITY'S Distribution Facilities. The metering equipment shall remain the property of CITY and CITY shall be responsible for the operation, maintenance and replacement of the metering equipment. COUNTY shall have the right to review and approve the type of meter and meter installation. COUNTY shall also have the right of access to read the metering equipment.

(c) COUNTY and CITY shall only open emergency connection when both the COUNTY and CITY agree that conditions exist that necessitates the connection opening. Duration of the opened connection shall be decided by the providing entity.

(d) The metering equipment shall be of standard make and type, installed at a readily accessible location, and shall record flow with an error rate not exceeding plus or minus two (2%) of full scale reading and suitable for billing purposes. If the meter is found to be in error exceeding two percent (2%) of true accuracy, it shall be recalibrated to the mutual satisfaction of the parties at the expense of the meters owner.

(e) In calculating any billing adjustment, it shall be assumed that any master metering equipment inaccuracy existed for a maximum of six (6) months between master equipment accuracy checks by either party. Billing shall be made at the rates established in accordance with Sections 10 and 11 herein, but in the event of master metering equipment and inaccuracy, the volume used in the billing calculations shall be adjusted as described in this Agreement.

Section 9. Water Service Capacity.

(a) Both parties agree that the COUNTY'S connection to the CITY'S Transmission Facility shall remain open and the CITY'S connection to the COUNTY'S Transmission Facility shall be operated such that the flows to the CITY Distribution Facilities shall reasonably match the flows to the COUNTY'S Distribution Facilities. CITY shall maintain Water Service Capacity continuously at an adequate pressure to maintain peak average daily domestic demands in accordance with the Agreement and all applicable regulatory requirements; provided, however, that the obligation of each party shall be consistent with and not greater than the party's obligation to provide Water Service Capacity to the public generally.

(b) Both parties agree that nothing within this Agreement should be construed that either party shall be responsible to provide and/or maintain Water Service Capacity flows and/or pressures sufficient to guarantee for fire flow in the others Party's distribution facility.

(c) Any customers that are connected or will connect into the COUNTY'S Distribution Facilities shall be customers of COUNTY and pay COUNTY'S rates, fees, charges and deposits for Water Service Capacity.

(d) Any customers that are connected or will connect into CITY'S Distribution Facilities shall be customers of CITY'S and pay CITY'S rates, fees, charges and deposits for Water Service Capacity.

Section 10. Wholesale Water User Charges. The intent of this Agreement is for COUNTY to provide to CITY and for CITY to provide to COUNTY an equivalent amount of Water Service Capacity. The CITY will read monthly the COUNTY'S meter

and bill the COUNTY for the usage and the COUNTY will read monthly the CITY'S meter and bill the CITY for the usage. Said charges shall be 80/100 DOLLARS (\$.80) per one thousand (1000) gallons of potable water. Payment shall be made within forty-five (45) days from the date on the face of the bill for such Water Service Capacity.

Section 11. Change of Rates. In the event either CITY or COUNTY, during the terms of this Agreement, shall propose any new rate schedule or amended rate schedule applicable to wholesale service furnished, that party shall forward to the other party a copy of such rate schedule or amended rate schedule proposing a change of rates prior to the effective date thereof, and shall substitute such rate schedule or amended rate schedule for the rate schedule then in effect hereunder for such wholesale service, commencing with the next billing period after the effective date. The purpose of this Section is disclosure only and shall not grant either party any right to appeal any rate increase. CITY and COUNTY hereby declares that said rates are not in excess of the lowest rates now available to any prospective customer under wholesale water service, and agree to bill the other party at the lowest available rate for equivalent wholesale water service during this Agreement.

Section 12. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue under or by reason hereof, to or for the benefit of any third party not a formal party hereto.

Section 13. Disclaimer of Security. Notwithstanding any other provision of this Agreement, COUNTY and CITY expressly acknowledge:

(a) that they have no pledge of or lien upon any real property, any personal property, or any existing or future revenue source of the other as security for any amounts of money payable by the other in accordance herewith; and

(b) that their rights to any payments hereunder are subordinate to the rights of all holders of any water revenue bonds or notes of the other, whether currently outstanding or hereafter issued.

Section 14. **Service Interruptions.** CITY shall make all reasonable efforts to prevent interruptions of service. Upon interruption of service, CITY shall endeavor to reestablish service with the shortest possible delay consistent with safety to its customers and the general public.

Section 15. **Assignment.** This Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Agreement or the rights and obligations hereunder to any other party without the prior written consent of the other party.

Section 16. **Default.**

(a) Either party to this Agreement, in the event of or act of default by the other, shall have all remedies available to it pursuant to the laws of the State of Florida including, but not limited to, injunction to prevent default or specific performance to enforce this Agreement, subject to State law.

(b) Each of the parties hereto shall give the other party written notice of any defaults hereunder allow the defaulting party thirty (30) days from the date of receipt to cure such defaults and otherwise comply with any State law and interlocal agreement designed to resolve disputes between local governments.

(c) In the event of a default by the COUNTY, CITY agrees that it shall not discontinue service to the COUNTY provided all payments for service required hereunder are made by the COUNTY and until such time as a court of competent jurisdiction has rendered an adjudication or default. In the event the COUNTY disputes amount payable for service pursuant to this Agreement, the COUNTY shall continue to make such payments under protest. In the event of default by the COUNTY, CITY shall be entitled to any and all remedies available to customers of the COUNTY water system.

Section 17. Notices. Any notice required to allowed to be delivered hereunder shall be in writing and be deemed to be delivered when either (1) hand delivered to the official hereafter designated, or (2) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the designated official at the address set forth opposite the party's name below, or to such other official or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

For CITY: City Manager
City of Oviedo
400 Alexandria Boulevard
Oviedo, Florida 32765

with a copy to: Director of Public Works
City of Oviedo
400 Alexandria Boulevard
Oviedo, Florida 32765

For COUNTY: Director of Environmental Services
500 W. Lake Mary Boulevard
Sanford, Florida 32773

with a copy to: County Manager
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

Section 18. 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 the Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be affected. To that end, this Agreement is declared severable.

Section 19. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.


Section 20. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

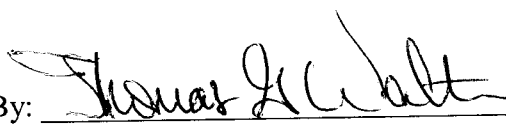
Section 21. Entire Agreement/Effect on Prior Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

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

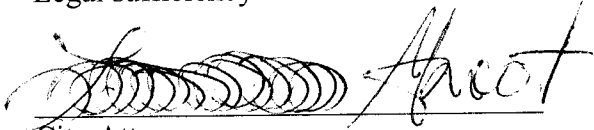
ATTEST

CITY OF OVIEDO


BARBARA J. BARBOUR
City Clerk

By: 
THOMAS G. WALTERS
MAYOR of the City of Oviedo, Florida
Date: 4/13/04

Approved as to form and
Legal sufficiency



City Attorney
Lonnie N. Groot, Esquire

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

ATTEST:

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.

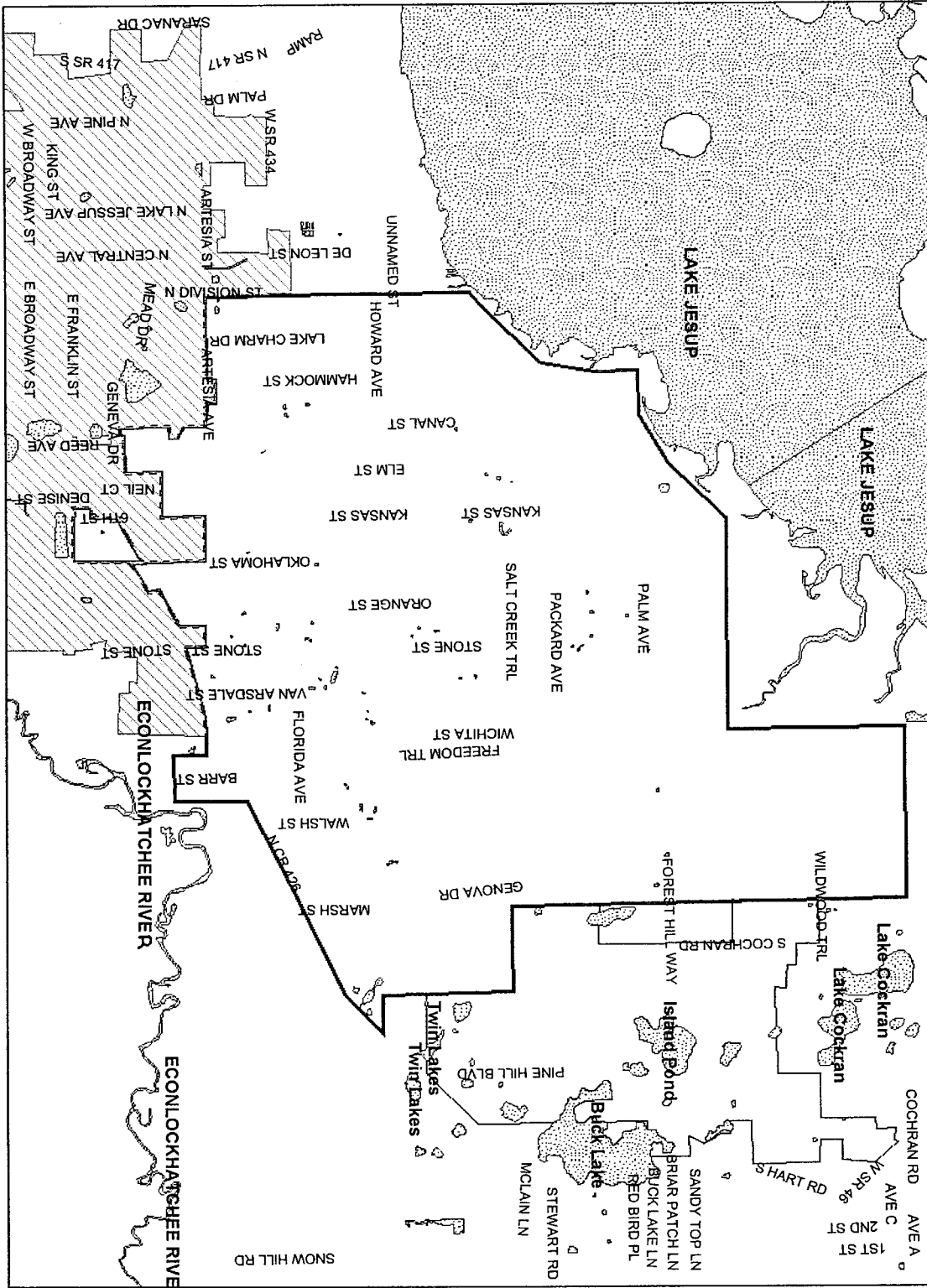
As authorized for execution by the Board of
Commissioners at their _____, 20__
regular meeting.

Approved as to form and
Legal sufficiency

County Attorney

SED/lpk
4/1/03 5/14/03 6/2/03
interlocal w/ oviedo – wholesale water capacity

Attachment:
Exhibit "A" – County Service Area



SEMINOLE COUNTY AND OVIEDO WATER SERVICE AREAS

- WATER SERVICE AREA BOUNDARIES
- SEMINOLE WOODS
 - SEMINOLE COUNTY
 - CITY OF OVIEDO
 - LAKES AND RIVERS

