

**INTERLOCAL AGREEMENT  
BETWEEN  
CITY OF OVIEDO  
AND  
THE ORLANDO UTILITIES COMMISSION**

This Agreement is made and entered into this 6<sup>th</sup> day of March, 2007 by and between City of Oviedo, Florida, a public agency authorized by section 1(d) Article VIII, Florida Constitution and created by section 7.49, Fla. Stat., a political subdivision of the State of Florida herein referred to as "City of Oviedo" and the Orlando Utilities Commission, a public agency and a statutory commission, a special purpose local government, created by and existing under the laws of the State of Florida, herein referred to as "OUC"; referred to herein jointly as the "Parties" and each as "Party".

**ARTICLE I**

*Preamble*

Section 1.1 Findings, Ascertainments and Determinations

Section 1.1.1 Findings. The Parties find:

Section 1.1.1.1 The Central Florida Area, including Orange County and Seminole County, continue to experience substantial growth with projections for sustained such growth for the foreseeable future.

Section 1.1.1.2 Under applicable growth management laws, and based upon common sense, this growth requires the delivery of appropriate systems, facilities and services concurrent with the impacts of the new growth in a manner that is timely, responsive, fair, accountable and efficient with appropriate economies of scale so as not to overburden taxpayers and consumers.

Section 1.1.1.3 The owners and developers within the City of Oviedo have approached OUC about the installation and maintenance of lighting and chilled water systems, facilities and services and OUC has reported these inquiries to the City of Oviedo so that OUC and the City of Oviedo, together aware of this specialized need, understand that experienced, flexible, innovative, responsive and intermittent installation, when a public or private landowner requires lighting and chilled water systems, facilities and services, is needed.

Section 1.1.1.4 City of Oviedo is experiencing even more focused and dynamic growth which requires innovative and flexible ways to provide for certain systems, facilities and services concurrent with the growth

Section 1.1.1.5 OUC has substantial experience with economies of scale in the timely and flexible delivery of basic systems, facilities and services, including lighting and

chilled water systems, to meet the demands of taxpayers, citizens, consumers, tourists and others who require these specialized systems, facilities and services.

Section 1.1.1.6 OUC is able to provide and does provide systems, facilities and services for lighting and chilled water for facilities and is able to install and maintain them at high levels of sustained quality over the long-term, especially geared to immediate installation to meet different energy needs intermittently, innovatively and flexibly.

Section 1.1.2 Ascertainments. The Parties have learned with certainty:

Section 1.1.2.1 City of Oviedo and OUC are able to provide the lighting and chilled water systems, facilities and services at competitive rates to third parties and owners such as landowners, developers, residents and others who benefit from and have a right to expect aesthetically pleasing, lighting and chilled water systems, facilities and services.

Section 1.1.2.2 City of Oviedo and OUC, each, have the powers to provide, install and maintain lighting and chilled water systems for various buildings.

Section 1.1.2.3 City of Oviedo and OUC can make the most productive, accountable, fair, responsive, timely and efficient use of the powers, which each has in common with the other, by cooperating with each other on a basis of mutual advantage, especially regarding such intermittent, specialized provision by OUC of lighting and chilled water systems, facilities and services.

Section 1.1.2.4 City of Oviedo and OUC enter into this Agreement formed in reliance upon, and under the authority of, the Florida Interlocal Cooperation Act of 1969, as amended, Section 163.01, Florida Statutes.

Section 1.1.3 Determinations. The Parties have decided expressly:

Section 1.1.3.1 Provision by OUC of the lighting and chilled water systems, facilities and services contemplated in this Agreement within parcels of land within City of Oviedo is consistent affirmatively with the State Comprehensive Plan and implements specifically various important goals and policies of plan dealing with the elderly in section 187.201(3), Fla. Stat.; health in section 187.201(5), Fla. Stat.; public safety in section 187.201(6), Fla. Stat.; land-use in section 187.201(15), Fla. Stat.; urban and downtown revitalization in section 187.201(16), Fla. Stat.; public facilities in section 187.201(17), Fla. Stat.; cultural and historical resources in section 187.201(18), Fla. Stat.; transportation in section 187.201(19), Fla. Stat., and the implementation of governmental efficiency specifically in sections 187.201(20)(b)l, 5, 8, 9 and 13, Fla. Stat.

Section 1.1.3.2 OUC and City of Oviedo are each public agencies which have certain powers, privileges and authority in common and which, currently, each exercises separately.

Section 1.1.3.3 OUC and City of Oviedo each can achieve their respective goals, consistent with legal authority and applicable policies, by contracting with each other for the intermittent specialized provision by OUC of lighting and chilled water systems, facilities and services to parcels of land in City of Oviedo, as a more efficient and economic use of available capabilities producing mutual advantage and benefit.

Section 1.1.3.4 The City of Oviedo, under home rule, has the authority and is not prohibited from entering into this Agreement for OUC to provide these specialized lighting and chilled water systems within parcels of land pursuant to this Agreement in City of Oviedo under this Agreement, Section 125.01(1), Fla. Stat., and Sections 1(p)(w)(a)(f) and (m), Fla. Stat.; and is consistent with the Charter of City of Oviedo.

Section 1.1.3.5 Section 9(1) of the OUC Special Act Charter prohibits OUC from unilateral retail lighting and chilled water service outside of municipal service areas of Seminole County but the Charter does not prohibit OUC and City of Oviedo from bilateral exercise of jointly held powers (including expressly the limited and specialized power to provide lighting and chilled water systems), that each may exercise separately, pursuant to an Interlocal Cooperation Agreement provided expressly under section 163.01, Fla. Stat., for the purpose and intent set forth herein and based upon the findings, ascertainments and determinations set forth herein.

Section 1.1.3.6 OUC and City of Oviedo have the power, privilege, right and authority to enter into a Florida Interlocal Cooperation Agreement, so long as the Agreement is negotiated, executed and administered under, pursuant to and in express compliance with all provisions of the Florida Interlocal Cooperation Agreement Act of 1969, as amended, section 163.01, Fla. Stat., and so long as the Agreement is limited to those certain systems, facilities and services for electric lighting as delineated by the Parties pursuant to section 163.01, Fla. Stat., and so long as those systems, facilities and services for electrical lighting are shared in common and are systems, facilities and services which each may exercise separately under section 163.01, Fla. Stat.

Section 1.1.3.7 That which induced the Parties to bind themselves to this Agreement is the authority from City of Oviedo for OUC to provide and to administer intermittent and specialized chilled water systems, facilities and services identified herein within the City of Oviedo and the confidence of City of Oviedo in the flexible, reliable, timely, responsive and accountable performance by OUC of this provision and administration function under the terms of this Agreement in order to meet the specialized needs of certain areas of City of Oviedo. This consideration flows only between and for OUC and City of Oviedo.

## Section 1.2 **Purpose and Intent**

Section 1.2.1 **Intent**: The Parties, based upon their findings, ascertainments and determinations, as a result of good faith negotiations, and without any hesitation or ambiguity, have formulated a plan (intent) to enter into an Interlocal Cooperation Agreement, negotiated, executed, formed and to be operated and relied upon, and under the authority of, the Florida Interlocal Cooperation Act of 1969, as amended, section 163.01, Fla. Stat., in order to make the

most efficient, flexible and specialized use of their respective powers by cooperating with each other and by engaging in a joint and bilateral endeavor in order to provide the best, most affordable, most economic chilled water systems, facilities and services possible at the lowest competitive rates possible.

Section 1.2.2 Purpose: The express end and goal to be attained by to the Parties (purpose) is that their Interlocal Cooperation Agreement require and authorize OUC to provide those lighting and chilled water systems, facilities and services for parcels of land pursuant to this Agreement, without any transfer of powers from one Party to the other Party for their mutual advantage as a bilateral exercise of those powers held jointly by the Parties which each may exercise separately with administration by OUC.

Section 1.3 Definitions: Certain terms used in this Agreement have the meanings ascribed to them in Addendum A attached hereto and incorporated herein.

Section 1.4 Essence of the Agreement: The essence of this Agreement is a simple operating mechanism by which the Parties agree, understand and implement a process for the installation, maintenance, equipment and administration by OUC of lighting and chilled water systems, facilities and services.

## **ARTICLE II**

### **Incorporation of Preamble; Powers; Duties; Related Provisions**

Section 2.1 All provisions of Article I, are incorporated herein expressly, and made a part hereof, specifically and expressly, as dispositive.

Section 2.2 This Agreement is a Florida Interlocal Cooperation Agreement negotiated, executed and to be operated expressly under the authority of the Florida Interlocal Act of 1969, as amended, section 163.01, Fla. Stat.

Section 2.3 Based upon the provisions in Article I, the Preamble, City of Oviedo and OUC agree hereby, and, accordingly, shall exercise, jointly and bilaterally, those powers that each may exercise separately within the respective jurisdiction of each Party. The method by which the contractual purpose and intent will be accomplished, and the powers exercised, will be, as set forth herein below in Article III, by OUC administration.

Section 2.4 Parties agree that the provision of chilled water systems, facilities and services is exercised by and pursuant to their respective powers and duties, which each may exercise separately within their own jurisdictions and which the Parties intend to exercise together, bilaterally, are delineated herein after including administration by OUC unilaterally.

#### **Section 2.4.1 OUC Duties to City of Oviedo.**

Section 2.4.1.1 Systems, facilities and services provided. OUC shall provide all systems, facilities and services necessary to provide a complete and operable lighting

and chilled water system including installation and maintenance of lighting and chilled water for facilities for recreational, educational and similar purposes on parcels of land pursuant to this Agreement in the area of the City of Oviedo to include installation and maintenance of related equipment; OUC shall be in charge of deriving all applicable permits, licenses and easements for a variety of purposes in order to effect this obligation within City of Oviedo.

Section 2.4.1.2 OUC shall be responsible itself, or in concert with landowners, developers or those authorized, independent and outside of this Agreement, to exercise the rights regarding certain lands on behalf of landowners, if properly documented, to pursue only those appropriate entitlements, permits, authorities, licenses and development orders for the provision of the chilled water systems, facilities and services.

#### Section 2.4.2 City of Oviedo duties to OUC.

Section 2.4.2.1 Authorize OUC to provide and to administer the limited intermittent specialized chilled water systems, facilities and services, the subject of this Agreement. Under this Agreement, there are no direct or indirect implied or expressed duties to any landowner or developer of any project in City of Oviedo.

Section 2.4.2.2 Receive and review reports, records and status of chilled water systems, facilities and services installed by OUC for various owners of properties subject to various City of Oviedo approved land uses and respond to questions and otherwise assist in facilitating the purpose of this Agreement.

### ARTICLE III

#### Unilateral Administration by OUC

Section 3.1 OUC Unilateral Administration. The Parties agree that OUC shall administer this Agreement unilaterally under and pursuant to this Agreement and section 163.01(6), Fla. Stat.

### ARTICLE IV

#### Effective Date Duration and Term of Agreement

Section 4.1 Effective Date. This Agreement shall become effective upon the execution and delivery by both Parties.

Section 4.2 Term. The initial term of this Agreement and all obligations under this Agreement commence at the beginning of the day of January 30<sup>th</sup>, 2007 and continue in effect until the end of the day of January 30<sup>th</sup>, 2027. After the expiration of the initial term, this Agreement shall be automatically extended and continue in effect for four (4) five year renewal periods, until either party hereto shall deliver to the other party a written notice of cancellation,

which notice shall only be effective on the thirtieth anniversary of the initial term commencement date or on the five (5) year anniversary date of the then current extended term, as applicable, provided that such notice is delivered at least one (1) year in advance of such termination.

## ARTICLE V

### Force Majeure and Indemnification

Section 5.1 Force Majeure. In case either Party hereto should be delayed in, or prevented from, performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon said party by this Agreement, by reason of or through strike, stoppage in labor, failure of contractors or suppliers of materials and fuel, riot, fire, flood, ice, invasion, civil war, commotion, insurrection, military of usurped power, order of any Court granted in any bona fide adverse legal proceedings or action, order of any civil or military authority (either de facto or de jure), explosion, act of God, or the public enemies or any cause reasonably beyond its control and not proximately attributable to its neglect; then and in such case or cases, both Parties shall be relieved of performance under this Agreement for the duration of the period for which performance is delayed or prevented and shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from or arising out of such delay or prevention; provided, however, that the Party suffering such delay or prevention shall use due and practicable diligence to remove the cause or causes thereof; and provided, further, that neither Party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such a settlement seems advisable.

## ARTICLE VI

### Miscellaneous

Section 6.1 No Pattern of Adverse Distinction or Undue Discrimination. OUC agrees that there shall be no pattern or adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Agreement.

Section 6.2 OUC Employee Conduct. OUC personnel shall conduct their actions and business in accordance with the policies set forth in the OUC Employee Handbook and OUC Safe Practices Handbook. All persons contracted by OUC shall be held to the same standards of work conduct as OUC employees.

Section 6.3 Waivers. Any waiver at any time by any Party hereto of its rights with respect to the other Party, or with respect to any matter arising in connection with this Agreement, shall not be considered a waiver of any such rights or matters at any subsequent time.

Section 6.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective successors and assigns. Neither this Agreement

nor the obligations contained herein, shall be assignable by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld.

Section 6.6 Written Notices. Written notices shall be given to the Parties at the following addresses or such other place or other person as each Party shall designate by similar notice.

1. As to OUC:

500 South Orange Avenue  
Orlando, Florida 32801  
Attention: General Manager and Chief Executive Officer

2. As to the City of Oviedo:

City Manager  
400 Alexandria Blvd.  
Oviedo, Florida 32765  
Attention: City Manager

Section 6.7 Notice of Default. Any notice of default shall be made within thirty (30) days of the party becoming aware of the facts giving rise to the notice of default.

Section 6.8 Governing Law. This Agreement shall be governed by the laws of the State of Florida.

Section 6.9 Entire Agreement Severability. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein and may not be amended, modified or rescinded, unless otherwise provided in this Agreement, except in writing and signed by all parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect unless such provision which is found to be invalid substantially alters the benefits of the Agreement for either party.


Section 6.10 Interlocal Agreement. This Agreement shall be considered and is an interlocal agreement as defined in Section 163.01, F.S. However, if any part of this Agreement requires either party to do anything that it is not authorized to do, the parties hereto upon notification of such shall immediately and in good faith seek to resolve the issues presented in a way to keep this Agreement in effect. This Agreement shall be recorded with the Clerks of the Court for Seminole and Orange Counties.

Section 6.11 Section Headings Not to Affect Meanings. The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

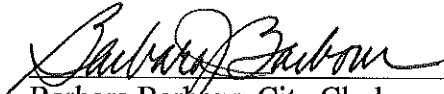
Section 6.12 Prudent Utility Practice. OUC shall perform all of its obligations under this Agreement in accordance with Prudent Utility Practice.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

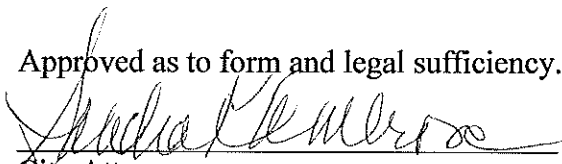
CITY OF OVIEDO

By:   
Gerald J. Seeber,  
City Manager

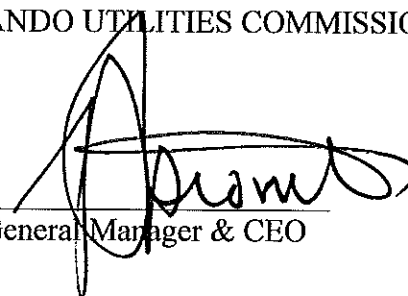
Attest:

  
Barbara Barbour, City Clerk

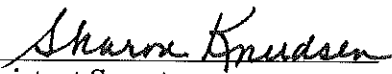
Approved as to form and legal sufficiency.

  
City Attorney  
Sandra K. Ambrose

ORLANDO UTILITIES COMMISSION

By:   
General Manager & CEO

Attest:

  
Assistant Secretary

Approved as to form and legality  
OUC Legal Department  
DATE: 3-6-07 By: W.M.



**AGENDA**  
**MEMORANDUM**

<b>TO:</b>	Honorable Mayor Walters and City Council Members
<b>FROM:</b>	Gerald J. Seeber, City Manager
<b>DATE:</b>	February 19, 2007
<b>SUBJECT:</b>	<b>Resolution No. 1528-07, Interlocal Agreement with OUC for participation in the OUConvenient Lighting Program</b>

**Introduction:** This is a request for City Council to approve an interlocal agreement with Orlando Utilities Commission (OUC) for participation in the OUConvenient Light Program.

**Background:** City Council recently approved two separate agreements with OUC to provide lighting on Franklin Street and on Oviedo Blvd. As development occurs in these areas and throughout the City, it is in the City's best interest to provide options to owners, residents and developers that are aesthetically pleasing and encourages continuity.

**Discussion:** Resolution 1528-07 seeks to partner with OUC through an interlocal agreement to provide innovative and decorative lighting system options to owners, residents and developers that will enhance the development and the community and encourages continuity consistent with the area. Through this program, the developer can cut costs and save money when they are able to meet deadlines in construction schedules while ensuring that his/her development will have the look and feel that he/she desires.

**Budget Impact:** There is no budgetary impact associated with the proposed Interlocal Agreement addressed in Resolution 1528-07.

**Recommendation:** It is recommended that City Council adopt Resolution No. 1528-07, approving an interlocal agreement with Orlando Utilities Commission for participation in the OUConvenient Lighting Program offered by OUC.

Attachments: Interlocal Agreement

Prepared By: Susan Sheikh, Contracts Manager

Reviewed By: Tami Concepcion

Tony Segreto, Director of Public Works