

**ONE PERSON ONE TREE PROGRAM
PROJECT AGREEMENT
BETWEEN THE CITY OF ORLANDO AND THE ORLANDO
UTILITIES COMMISSION**

This ONE PERSON ONE TREE PROJECT AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into on this ____ day of _____, 2015 (the “Effective Date”) by and between the CITY OF ORLANDO, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, FL 32801(hereinafter referred to as “CITY”) and the ORLANDO UTILITIES COMMISSION, a statutory commission organized and existing under the laws of the State of Florida, with its administrative offices at 100 W. Anderson Street, Orlando, FL 32801(hereinafter referred to as “OUC”). CITY and OUC may hereinafter also be jointly referred to as the “Parties” or individually as a “Party.”

WHEREAS, the CITY has initiated a One Person One Tree Program (Project) to enhance and promote sustainability throughout City of Orlando residences; and

WHEREAS, the CITY and OUC believe that the appropriate planting of shade trees throughout the City of Orlando will provide reduction in energy consumption, improve air quality and promote a better quality of life; and

WHEREAS, CITY agrees to provide all labor and materials to promote and distribute shade trees for City of Orlando residents; and

WHEREAS, OUC desires to contribute to the Project by donating funds towards the purchase and distribution of shade trees; and

WHEREAS, the Parties desire to enter into this Agreement in order to more fully set forth the understanding and responsibilities of the Parties in order to successfully achieve this endeavor.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and OUC agree as follows:

1. **Recitals Incorporated.** All of the recitals contained herein are true and correct, and are incorporated herein and made a part hereof by this reference.

2. **Effective Date and Term of Agreement.** The effective date of this Agreement shall mean the date executed by the last party as written in the first paragraph of this Agreement and shall remain in effect through fiscal year 2019, subject to continued OUC budgetary approval.

3. **CITY Responsibilities.**

- a) Infrastructure. CITY shall establish criteria for the Project, provide all website development, procurement of shade trees, and distribution to participants.
- b) Shade Trees. Promotional materials delivered with the shade trees purchased with City and OUC funds should bear both the CITY and OUC logos as shown in Exhibit A. The shade trees to be funded shall be a species agreed to by both parties.
- c) Project Funding. Annually, CITY shall invoice OUC for the funding amount.
- d) Placement. CITY shall insure that all shade trees purchased with OUC funds will be provided to premises within OUC territory, to the extent possible.
- e) Notification. CITY shall provide OUC with a comma delimited file for all trees purchased and distributed with OUC funds. The content, timing, frequency and format of this file will be mutually agreed upon.

4. **OUC Responsibilities.**

- a) Project Funding. OUC will provide funding for 30,000 – 40,000 shade trees over the term of this Agreement. The total donation shall be \$200,000 paid under the following schedule:

Fiscal Year	Donation
2016	\$75,000.00
2017	\$50,000.00
2018	\$50,000.00
2019	\$25,000.00

- b) Marketing and promotion. OUC and CITY will agree on all marketing and promotional materials for the Project. All OUC marketing and promotional materials shall bear both the CITY and OUC logos as shown in Exhibit A.

5. **Insurance.** Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, CITY acknowledges it is self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes. CITY agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Florida Statute 440. Upon request, CITY shall provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to sovereign immunity limits, which OUC agrees to find acceptable for the coverage mentioned above.

OUC's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve CITY of its liability and obligations under this Agreement. CITY shall require any of its contractors performing work subject to this Agreement to procure and maintain workers' compensation, commercial general liability and business auto liability coverage in the amounts of \$1,000,000 per occurrence of bodily injury or property damage and a minimum of \$2,000,000 annual aggregate.

6. **Indemnification and Hold Harmless.** To the extent permitted by Florida law and without waiving its sovereign immunity, CITY shall indemnify and hold OUC harmless from and against any and all claims, liabilities or damages resulting from claims of third parties or fines or penalties assessed by governmental entities to the extent arising from the negligence or intentional misconduct of CITY, its contractors or subcontractors, related to any work performed under this Agreement. Notwithstanding the foregoing, CITY does not waive and specifically retains all defenses and protections provided to it under Florida and other applicable law, including, without limitation, the defense of sovereign immunity. The limited waiver of sovereign immunity as currently set forth in Section 768.28, Florida Statutes, for tort actions brought against CITY shall be applicable to any claim or action brought pursuant to the foregoing indemnity provision, even if said claim or action sounds in contract rather than tort. Nothing in this Agreement shall inure to the benefit of any third party to allow a claim otherwise barred by sovereign immunity or other operation of law. This Section 6 shall survive the expiration, cancellation or termination of this Agreement.

7. **Risk of Loss.** The risk of loss of the Project shall remain with CITY.

8. **Release of Liability.** The Parties agree that the CITY has ownership and control of the Project and any associated warranties, any maintenance and repair to Project shall be the CITY's sole responsibility.

9. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing addressed to the Parties at their addresses set forth above to the attention of Luz Aviles, Director of Sustainability for OUC, Jon Ippel, Director of Sustainability, for the CITY or at such other address as a Party may designate in writing to the other hereafter. Said notices or communication may be personally served, faxed or sent by overnight courier or U.S. mail and shall be deemed given as follows: (a) if served in person, when served; (b) if faxed, on the date of transmission if on a business day and between business the business hours of 8:00 a.m. and 5:00 p.m., otherwise on the next business day; provided that a hard copy of such notice is also sent by overnight courier or U.S. Mail pursuant to the provisions in this paragraph; (c) if by overnight courier on the first business day after delivery to the courier within the drop-off deadline for the courier ; or if (d) by U.S. mail , certified or registered mail, return receipt requested on the fourth day after deposit in the mail postage pre-paid.

10. **Default and Termination.**

- a) **Default.** In the event of a material default by any Party hereto, the other Party(ies) shall have the right to terminate this Agreement prior to the expiration

of this Agreement and may pursue any and all legal and equitable rights and remedies under the laws of the state of Florida. Default shall be deemed to have occurred upon breach of any of the conditions set forth herein and a failure to cure said breach within thirty (30) days after written notice from the another Party.

- b) Termination. The Parties agree not to terminate this Agreement until all responsibilities and obligations of the Parties as stated herein have been satisfied.

12. **General Provisions.**

- a) **Amendments.** Any Party may request changes to this Agreement. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by and between the Parties to this Agreement shall be incorporated by written instrument, and effective when executed and signed by all Parties to this Agreement.
- b) **Applicable Law.** This Agreement will be construed in accordance with the laws of the State of Florida. Venue shall be in any court of competent jurisdiction located in Orange County, Florida.
- c) **Entirety of Agreement.** This Agreement constitutes the entire understanding between the Parties and supersedes all prior agreements and understandings whether written or oral and has been jointly drafted and prepared.
- d) **Status of Independent Contractor.** The Parties hereto deem the CITY and OUC, to be independent contractors for the purposes of this Agreement and not as agents of the other.
- e) **Disclaimer Related to Governmental Authority.** Nothing in this Agreement binds or compels the CITY to exercise or to refrain from exercising its police powers and other governmental powers in any manner. The CITY retains all its governmental prerogatives and discretion, and nothing herein shall cause any impediment thereto.
- f) **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue under or by reason hereof to or for the benefit of any third party.
- g) **Assignment.** This Agreement may not be assigned or transferred by any of the Parties hereto without the prior written consent of the other Parties.
- h) **Non-waiver.** The failure of a Party to insist upon the other Party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release the other Party from its duties to comply with such obligations in all other instances.

- i) **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 effective. To that end, this Agreement is declared severable.

13. **Signatures.** In witness whereof, the Parties to this Agreement through their duly authorized representatives have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

CITY OF ORLANDO, FLORIDA,
a municipal corporation

By: _____
Mayor/Mayor Pro Tem

Date: _____

ATTEST:

Celeste T. Brown, City Clerk

Approved as to form and legality for the use
and reliance of the City of Orlando, Florida only

_____, 2015

By: _____
Assistant City Attorney

SIGNATURES CONTINUE NEXT PAGE

Two Witnesses:

Print Name: _____

Print Name: _____

ORLANDO UTILITIES

COMMISSION, a statutory commission
created pursuant to the laws of Florida

By: _____

Byron Knibbs

VP Customer & Sustainable Services

Date:

STATE OF FLORIDA
COUNTY OF ORANGE:

The foregoing was acknowledged before me this ____ day of _____, 2015 by
Byron Knibbs, Vice President, Customer & Sustainable Services who is personally known to me
who did (did not) take an oath

Name

Notary Public

Serial Number:

My Commission Expires:

Approved as to form and legality for the use
and reliance of the Orlando Utilities
Commission only

_____, 2015

Wayne A. Morris

Chief Deputy General Counsel