

**AGREEMENT**  
**BETWEEN THE ORLANDO UTILITIES COMMISSION**  
**AND**  
**THE CITY OF ORLANDO**  
**FOR**  
**NICHOLS APARTMENTS EFFICIENCY UPGRADE FUNDING**

This agreement for efficiency upgrade funding (hereinafter referred to as "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, 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, whose address is 100 West Anderson Street, Orlando, Florida 32801 (hereinafter referred to as "OUC"). CITY and OUC may hereinafter also be jointly referred to as the "Parties" or individually as a "Party."

**RECITALS**

WHEREAS, Nichols Apartments is a 58-unit apartment complex on 2.65 acres located at 541 S. Cottage Hill, scheduled to be renovated to become an affordable, sustainable and supportive housing community ("Housing Project").

WHEREAS, as a part of the renovation of the Housing Project, it will be retro-fit with utility facilities designed for conservation and efficiency ("Efficiency Upgrades") and will include the installation of a solar photovoltaic (PV) array ("Solar Array").

WHEREAS, the Efficiency Upgrades and Solar Array will be wholly or partially paid for by using efficiency rebates funds currently held by OUC, on behalf of the CITY ("Rebate Funds") and with certain defined economic incentive funds directly from OUC ("Economic Incentives").

WHEREAS, CITY shall act as the lead and liaison with the Housing Project and, as such, shall enter into an agreement or agreements with the Housing Project owner ("Project Agreement(s)") to put in place the terms and conditions of, among other things, the contribution of funds from CITY and OUC.

WHEREAS, OUC and CITY 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 joint 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:

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**SECTION 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.

**SECTION 2. FUNDING PLAN.** OUC and CITY have agreed to the following funding plan for the Housing Project:

1.1 City Rebate Funding. OUC is currently holding Ninety Thousand Dollars (\$90,000.00) of energy efficiency rebates on behalf of CITY ("Rebate Funds"). OUC shall disburse the Rebate Funds when and as directed in writing by CITY.

1.2 Economic Incentives. OUC shall provide CITY certain economic incentives in return for Housing Project owners entering into the Project Agreements with CITY committing to upgrade the Housing Project to include a Solar Array. City will provide OUC the final cost for the installation of the Solar Array and OUC will match the City's contribution for the Solar Array dollar for dollar up to a maximum of sixty thousand dollars (\$60,000.00) ("Economic Incentives").

1.3 First Right of Refusal to Provide OUC Services. In return for the Economic Incentives paid to CITY, OUC shall have the right (on some) and the first right of refusal (on others) to provide OUC Services for the Housing Project, as more specifically set forth in this MOU.

**SECTION 2. OUC RIGHTS TO SERVE CITY.** CITY shall include in the Project Agreements that OUC shall have the right or option (as applicable) to provide the following services ("OUC Services") to the Housing Project in return for the Economic Incentives:

2.1 Electric Service. OUC shall be the exclusive provider of electric service to the Housing Project per the terms of its service tariffs and associated service policies.

2.2 Water Service. OUC shall be the exclusive provider of potable water service to the Housing Project per the terms of its service tariffs and associated service policies.

2.3 Chilled Water Services. If and to the extent the Housing Project opts to utilize district chilled water services ("Chilled Water Services"), OUC shall have the first right of refusal to provide such chilled water service to the Housing Project.

2.4 Outdoor Lighting and Maintenance Services. OUC shall have the exclusive right to provide all exterior lighting services inclusive of on-going maintenance and energy requirements at the prevailing OUC Convenient Lighting rates for the Housing Project and future parking facilities on the Housing Project ("Outdoor Lighting"). Outdoor Lighting shall mean all outdoor lighting for exterior spaces, parking areas and walkways.

2.5 LEED and Conservation Consulting Services. OUC will provide LEED certification and conservation consulting services for Housing Project, if requested, at no charge;

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provided, however, OUC shall not be required to cover out-of-pocket costs of such consulting services unless pre-approved by OUC and the CITY or Housing Project Owner (as applicable).

2.6 Easements and Rights of Access for Services; Land Grant. CITY or Housing Project owner (as applicable) shall grant to OUC at no charge, as a condition of all applicable OUC Services, sufficient easements, grants and dedications providing OUC the right or privilege to construct, own, maintain, and operate those utility facilities provided by OUC in, under, over and across the present and future streets, roads, easements and reserved utility sites on the Housing Project.

2.7 EV Charging Station Service. OUC shall have the right to provide all EV charging station services for the Housing Project and future parking facilities on the Housing Project (“EV Services”).

**SECTION 3 CONDITIONS FOR ECONOMIC INCENTIVES.** OUC has agreed to provide the Economic Incentives for the Housing Project, based on the following conditions:

3.1 OUC Contribution Schedule. OUC will pay the Economic Incentives based on the following payment schedule:

3.1.1 \$30,000 - When the conditions in Section 3.2 have been met.

3.1.2 Remainder (up to \$60,000.00) - When the conditions in Section 3.3 have been met.

3.2 Conditions of Payment for First Payment of Economic Incentives. The first portion of the Economic Incentive to be paid under Section 3.1.1 by OUC above shall be contingent upon satisfaction of all of the following conditions precedent:

3.2.1 Housing Project Owner and CITY having entered into the Project Agreement(s); and,

3.2.2 OUC approval of designs for Solar Array installation.

3.3 Conditions of Payment for Second Payment of Economic Incentives. The second portion of the Economic Incentive to be paid under Section 3.1.2 by OUC above shall be contingent upon satisfaction of all of the following conditions precedent:

3.3.1 OUC confirmation that the Solar Array is installed and operational.

**SECTION 4 PROMOTIONAL OPPORTUNITIES.** In return for Economic Incentives provided by OUC, the Project Agreements shall reflect the following programs of OUC sponsorships and advertising opportunities on or in conjunction with Housing Project:

4.1 Placement of Sustainability Features. OUC and CITY shall be entitled to place mutually agreed OUC and CITY branded Sustainability Facilities within the Housing Project property. OUC, CITY and the Housing Project owner shall mutually agree on the design and

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location of any and all such Sustainability Facilities. Sustainability Features may include features such as solar modules, solar glass, rain water conservation projects, interior grid monitoring devices, storage devices, solar sculptures and similar equipment.

4.2 EV Charging Stations. OUC shall be entitled to place OUC and CITY branded EV Charging Stations on and within the Housing Project. OUC, CITY and Housing Project owner shall mutually agree on the design and location of any and all such Charging Stations.

### **SECTION 6. MISCELLANEOUS.**

6.1 Notice. Any notices which may be permitted or required hereunder shall be in writing, and shall be deemed to have been duly given (i) one day after depositing with a nationally recognized overnight courier service, or (ii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, E.S.T. or E.D.T., as applicable), to the address listed below or to such other address as a Party may from time to time designate by written notice in accordance with this paragraph:

To CITY:

Chris Castro  
Director of Sustainability  
Office of Sustainability & Energy  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 32801  
P: (407)-246-3463

To OUC:

Orlando Utilities Commission  
100 W. Anderson St.  
Orlando, Florida 32801  
Attention: Linda Ferrone

6.2 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.

6.3 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.

6.4 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.

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6.5 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.

6.6 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.

6.7 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.

6.8 Assignment. This Agreement may not be assigned or transferred by any of the Parties hereto without the prior written consent of the other Parties.

6.9 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.

6.10 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.

**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.

**SIGNATURES START NEXT PAGE**

EXECUTION VERSION

CITY OF ORLANDO, FLORIDA,  
a municipal corporation

ATTEST:

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

By: \_\_\_\_\_  
Denise Aldridge, City Clerk

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2018  
by \_\_\_\_\_, Mayor/Mayor Pro Tem and \_\_\_\_\_, City Clerk, 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 City of Orlando, Florida only

\_\_\_\_\_, 2018

By: \_\_\_\_\_  
Assistant City Attorney

**SIGNATURES CONTINUE NEXT PAGE**

Two Witnesses:

Nanci Schwartz  
Print Name: Nanci Schwartz

Kimberly J. Catrett  
Print Name: Kimberly J. Catrett

Approved as to form and legality  
OUC Legal Department

DATE: 3/27/18 BY: [Signature]

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

By: Clint Bullock

Clint Bullock  
General Manager and CEO

Executed on: 4/5/2018

ATTEST: Beth Mason  
Beth Mason, Secretary

STATE OF FLORIDA  
COUNTY OF ORANGE:

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by CLINT BULLOCK, as General Manager and CEO, and BETH MASON, as Secretary, of Orlando Utilities Commission, a statutory commission created pursuant to the laws of Florida on behalf of Orlando Utilities Commission, known to me to be the persons described in and who executed the foregoing, this 5<sup>th</sup> day of April, 2018, who are personally known to me and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 5<sup>th</sup> day of April, 2018.

(NOTARY SEAL)  
Notary Public

Patricia A. Notarnicola

(Name typed, printed or stamped)  
Notary Public, State of Florida  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

