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40p

March 31, 1999

Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Via Hand Delivery

RECEIVED-FPSC  
MAR 31 PM 4:07  
RECORDS AND REPORTING

990409-EM

Re: Petition to Initiate Rulemaking  
Pursuant to Section 120.54(7),  
Florida Statutes By Osceola County, Florida

Dear Ms. Bayo:

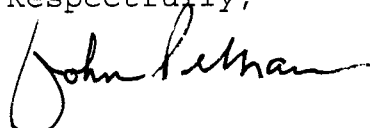
Enclosed for filing please find an original and fifteen copies of the Petition to Initiate Rulemaking Pursuant to §120.54(7) F.S. by Osceola County, Florida. You will also find a copy of this letter enclosed. Please date-stamp this copy to indicate that the original was filed and return a copy to me.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance in processing this filing.

RECEIVED & FILED

FPSC BUREAU OF RECORDS

Respectfully,



John C. Pelham

JCP:vhw  
Enclosures

DOCUMENT NUMBER-DATE

04133 MAR 31 99

FPSC-RECORDS/REPORTING

138

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Initiate  
Rulemaking Pursuant to Section  
120.54(7), Florida Statutes to  
Amend Rule 25-9.0525, F.A.C.

Docket No. 990469-EM  
Filed: March 31, 1

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**PETITION TO INITIATE RULEMAKING  
PURSUANT TO §120.54(7), F.S., BY OSCEOLA COUNTY, FLORIDA**

OSCEOLA COUNTY, FLORIDA, ("OSCEOLA COUNTY"), pursuant to Rule 25-22, Rule 25-40.001 and Rule 28-103.006, F.A.C., and Section 120.54(7) Florida Statutes, by and through undersigned counsel, hereby petitions the Florida Public Service Commission (the "Commission") to Initiate Rulemaking to amend Rule 25-9.0525, F.A.C. to provide that any municipal surcharge imposed by a public utility on customers outside of the corporate limits being served by the public utility shall be reduced or dropped off in favor of a duly adopted public service tax, authorized by Section 166.231, Florida Statutes, and levied by the County having jurisdiction over the unincorporated area within which the surcharge is being

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04133 MAR 31 8

FPSC-RECORDS/REPORTING

imposed. In support of this petition, OSCEOLA COUNTY shows the Commission as follows:

**PARTIES AND JURISDICTION**

1. OSCEOLA COUNTY is a political subdivision of the State of Florida which imposes a public service tax on the purchase of certain taxable items and services occurring on or after April 1, 1998 as provided in Section 166.231, Florida Statutes by virtue of the adoption of Ordinance No. 97-20 by the Board of County Commissioners of OSCEOLA COUNTY, Florida. (See Exhibit "A" attached hereto and incorporated herein).

2. OSCEOLA COUNTY's address is shown below:

17 S. Vernon Avenue  
Kissimmee, Florida 34741-5488

3. The name and address of the persons to whom copies of all correspondence, notices, orders and other documents in this proceeding should be sent are as follows:

On behalf of OSCEOLA COUNTY:

John C. Pelham, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Fl. 32302  
(850) 222-3533

Jo O. Thacker, Esquire  
County Attorney  
17 S. Vernon Avenue  
Kissimmee, Fl. 34741-5488  
(407) 847-1212

4. Petitioner OSCEOLA COUNTY has a substantial interest in this proceeding because, absent adoption of the requested amendment, citizens of the unincorporated area of OSCEOLA COUNTY will be "double taxed" and subjected to a discriminatory practice which results in said County residents paying more for the same service received by residents of the City of St. Cloud and Orange County.

5. The Commission has jurisdiction to adopt the amendment requested herein pursuant to Section 120.54(7), Section 366.04(2)(b), Section 366.05, Section 366.06 and Section 366.07, Florida Statutes.

#### **BACKGROUND**

6. Historically, the City of St. Cloud, Florida has provided electric utility service to portions of unincorporated OSCEOLA COUNTY, Florida. Pursuant to an interlocal agreement, the Orlando Utilities Commission ("OUC") now operates and manages the City of St. Cloud Utility (the "Utility"). See Interlocal Agreement attached as Exhibit "B".

7. The OUC is a public utility as defined by §366.02, Florida Statutes, and is authorized to sell utility service outside of its municipal boundaries.

8. Prior to the agreement with OUC, the City of St. Cloud levied on its residents, in accordance with §166.231, Florida Statutes, a public service tax in the amount of eight (8%) percent. In accordance with Commission Rule 25.9.0525, F.A.C., the City of St. Cloud was levying and collecting a equalization surcharge in the amount of eight (8%) percent from its customers who resided outside of its municipal boundaries. This surcharge was being charged to portions of unincorporated Osceola County.

9. On or about October 1, 1992, Osceola County became a charter county in accordance with §125.60, Florida Statutes. As a charter county, Osceola County has the authority under §166.231, Florida Statutes, to leverage a public service tax in unincorporated Osceola County. On or about November 24, 1997, Osceola County passed Ordinance 97-20, which ordinance authorizes such a public service tax in the amount of eight (8%) percent.

10. On or about January 6, 1987, Orange County became a charter county in accordance with §125.60, Florida Statutes. As a charter county, Orange County has the authority under §166.231, Florida Statutes, to leverage a public service tax in unincorporated Orange County. On or about August 6, 1991, Orange County passed Ordinance No. 91-17, which ordinance authorizes such a public service tax in the amount of ten (10)% percent.

11. OUC provides utility service to portions of Orange County, as well as portions of Osceola County. Since its administration of the Utility, OUC has continued to leverage the eight (8%) percent surcharge as to portions of unincorporated Osceola County. OUC, however, has discontinued the surcharge as to the residents of Orange County, upon the adoption of the public service tax by Orange County. Furthermore, upon information and belief, OUC is charging a public service tax somewhat less than eight (8%) percent to the residents of the City of St. Cloud.

12. OUC has indicated that it will continue to charge the eight (8%) percent equalization charge as to the residents of

Osceola County, in addition to the public service tax levied by Osceola County. This "double tax" has the effect of Osceola County residents paying more for the same service received by residents of the City of St. Cloud and Orange County. The plain meaning of Rule 25-9.0525, F.A.C. would seem to require that the surcharge drop off in favor of a public service tax. 25-9.0525, F.A.C. states in pertinent part:

The surcharge shall not result in a payment by any customer for services received outside of the city limits in excess of that charged a customer in the same class within the city limits, including the public service tax.

However, the Commission, in In Re: Petition of Robert A. Sarles for declaratory statement concerning 10% surcharge by Gainesville Regional Utilities - City of Gainesville, 94 FPSC 9:201 (1994) determined under similar circumstances that the discriminating impact was not due to practices of the utility.

13. Contrary to the situation in Sarles, the actions of OUC with regard to the citizen of unincorporated Osceola

County constitute a practice which is discriminatory and in violation of Rule. 25-9.0525, F.A.C.

14. The equalization surcharge billed and received by OUC is, in effect, an eight (8%) percent increase in the cost to portions of unincorporated Osceola County for utility service greater than the cost to St. Cloud residents for the same. The public service tax charged by OUC to the St. Cloud residents is retained by the City of St. Cloud for its general revenue. On the other hand, the equalization surcharge collected by OUC from the residents of Osceola County is retained by OUC as additional compensation for utility service. This discrepancy is discriminatory and violates this Commission's rules.

15. The revenues received from the public service tax levied pursuant to §166.231 by the City of St. Cloud have not been used as a revenue source for purposes of equalization. Therefore, the eight (8%) percent equalization surcharge paid by unincorporated Osceola County has disproportionately augmented lower rates for St. Cloud residents.



16. Pursuant to its statutory mandate, the Commission is charged with ensuring equal rates for same type customers. The Commission has clear authority to make a preliminary determination as to the validity of a surcharge. See Lake Worth Utilities Authority v. Barkett, 433 So.2d 1278 (Fla 4th DCA 1983).

17. Adoption of the requested amendment will promote the public interest by ensuring that customers outside the city limits of a municipality wherein a public utility is imposing a municipal surcharge shall not be required to pay more for services than a customer in the same class within the city limits.

18. Adoption of the requested amendment will prevent application of a practice which is discriminatory.

WHEREFORE, Petitioner respectfully requests the Commission to:

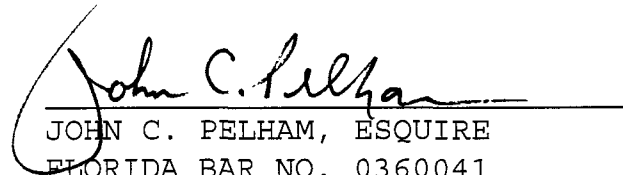
(1) Request comments from interested parties as to the proposed amendment;

(2) Hold an evidentiary hearing, if the Commission deems a hearing appropriate and necessary, to consider Amendment to Rule 25-9.0525, F.A.C.;

(3) Develop a rule amending Rule 25-9.0525, F.A.C. and

(4) Grant such other relief as it may deem just and proper.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March, 1999.



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COUNSEL FOR OSCEOLA COUNTY,  
FLORIDA

ORDINANCE NO. 97-20

AN ORDINANCE PERTAINING TO TAXATION IN OSCEOLA COUNTY, FLORIDA; LEVYING WITHIN THE UNINCORPORATED AREA OF OSCEOLA COUNTY A PUBLIC SERVICE TAX ON THE PURCHASE OF ELECTRICITY, METERED OR BOTTLED GAS (NATURAL LIQUEFIED PETROLEUM GAS OR MANUFACTURED), FUEL OIL, AND TELECOMMUNICATION SERVICES; PROVIDING THAT THE RATE OF SUCH TAX ON ELECTRICITY AND METERED OR BOTTLED GAS SHALL BE 8 PERCENT OF THE PAYMENTS RECEIVED BY THE SELLER OF THE TAXABLE ITEM OR SERVICE FROM THE PURCHASER FOR THE PURCHASE; PROVIDING THAT THE TAX ON FUEL OIL SHALL BE AT A RATE OF THREE CENTS PER GALLON; PROVIDING THAT FOR TELECOMMUNICATIONS SERVICE, THE TAX SHALL BE IMPOSED ACCORDING TO SECTION 166.231(9)(a)2, FLORIDA STATUTES; PROVIDING FOR EXTENSIONS FROM PAYMENT OF THE TAX; PROVIDING THAT THE TAX SHALL BE PAID BY THE PURCHASER TO THE SELLER FOR THE BENEFIT OF THE COUNTY; PROVIDING FOR THE MANNER OF COLLECTION AND REMITTANCE TO THE COUNTY BY THE SELLER; PROVIDING FOR THE KEEPING OF RECORDS BY THE SELLER AND FOR THE INSPECTION OF SUCH RECORDS BY THE COUNTY; PROVIDING THAT THE TAX MAY BE COMPUTED ON THE AGGREGATE AMOUNT OF SALES; PROVIDING PENALTIES FOR LATE PAYMENTS AND OTHER VIOLATIONS OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1(g), and Article VII, Section 9(a), of the constitution of the State of Florida, and the Osceola County Charter, the County is authorized to impose a public service tax pursuant to Section 166.231, Florida Statutes, as amended.

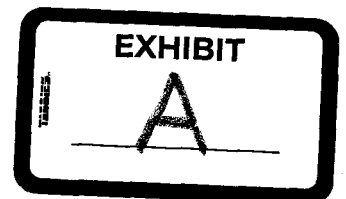
NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA:

SECTION 1. TITLE. This ordinance shall be known as the "Osceola County Public Service Tax Ordinance".

SECTION 2. IMPOSITION TAX.

(a) Except as exempted by Section 4, there is hereby levied by the County within the unincorporated area of Osceola County a public service tax upon each purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled and manufactured gas either metered or bottled at a rate of eight percent (8%) of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Purchase of electricity means the purchase of electric power by a person who will consume it within the unincorporated area of Osceola County .

(b) Except as exempted by Section 4, there is hereby levied by the County within the unincorporated area of Osceola County, a public service tax upon each purchase of fuel oil at a rate of \$0.03 cents per gallon.



(c) Except as exempted by Section 4, there is hereby levied by the County, a public service tax upon each purchase of telecommunication services, as defined in Section 203.012, Florida Statutes, as it may from time to time be amended, which originates and terminates in this state at a rate not to exceed seven percent (7%) of the total amount charged for any telecommunications service provided within the unincorporated area of Osceola County or, if the location of the telecommunications service provided cannot be determined, as part of the billing process, the total amount billed for such telecommunications service to a telephone or telephone number, a telecommunications number or device, a service address or a customers' billing address located within the unincorporated area of Osceola County, excluding public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company. However, telecommunications service as defined in Section 203.012(5)(b), Florida Statutes shall be taxed only on the monthly recurring customer service charges excluding variable usage charges.

(d) The tax shall not be applied against any fuel adjustment, and such charge shall be stated separately on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(e) Subject to the provision of Section 4, the tax shall in every case be paid by the purchaser of the taxable item at the time of paying the charge therefore.

**SECTION 3. DATE OF APPLICATION.** The tax levied hereby shall apply to all purchases of taxable items or services occurring on and after April 1, 1998.

**SECTION 4. EXEMPTIONS AND EXCLUSIONS FROM PAYMENT OF TAX.**

(a) The following purchasers are declared to be exempt from payment of the tax imposed hereby: The United States Government, the State of Florida, all counties, school districts and municipalities of the State, public bodies exempted by law or court order, any purchases made by a church recognized, in this state for use exclusively for church purposes, purchases of telecommunications service made by any religious institution that possesses a consumer certificate of exception issued under Chapter 212; a non profit corporation or cooperative association organized under Chapter 617 which provides water utility services to no more than 13,500 equivalent residential units ownership of which will revert to a political subdivision upon retirement of all outstanding indebtedness; any other public body as defined in Section 1.01, Florida Statutes; the purchase of natural gas or fuel oil by a public or private utility, either for resale or for use of fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines; the purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured) or fuel oil for agriculture purposes, "agricultural purposes" being defined as bona fide farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and aquaculture; and the purchase of local telephone service or other telecommunication service for use in the conduct of a telecommunications service for hire or otherwise for resale.

(b) Any purchaser who claims an exemption because of agricultural purposes, because it is a public body or other exempt organization, shall certify to the seller that it qualifies for the exemption, which certification may encompass all purchases after a specified date or other multiple purchases. Any purchaser who claims an exemption for purchases of telecommunications service for resale, shall present

such certification that satisfies the requirements of Chapter 212, Florida Statutes. A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax; however, a governmental body that is exempt from the tax authorized by this section shall not be required to furnish such certification; and a seller is not required to collect tax from such an exempt governmental body.

(c) Governmental bodies which sell or resell taxable service to non-exempt end users must remit the tax levied under this section.

#### SECTION 5. COLLECTION AND REMITTANCE.

(a) It shall be the duty of every seller of a taxable item to collect from the purchaser, for the use of the County, the tax levied hereby at the time of collecting the payment for such item or service, and shall file a return, on or before the twentieth (20th) day of each calendar month, with payment to Osceola County Board of County Commission, all such taxes collected during the preceding calendar month. The form of the return shall be determined by the County Manager, but must include the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, any collection allowance taken, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from the County concerning the seller's administration of the tax.

(b) For the purpose of compensating the seller, the seller shall be allowed one (1) percent of the amount of the tax collected and due to the County in the form of a deduction from the amount collected for remittance. The deduction shall be allowed as compensation for the keeping of records and the collection of, and the remitting of, the tax. The deduction authorized in this section shall not be allowed in the event of a returned filed past the due date.

(c) In the event the total amount of tax anticipated to be collected within a calendar quarter does not exceed \$120.00, the seller of such service may, after receiving written authorization from the County, remit the taxes collected during such calendar quarter to the County quarterly. The tax shall be due on or before the 20th day of the month following the end of the calendar quarter in which the taxes were collected.

(d) It shall be unlawful for any seller to collect payment for any taxable item or service without, at the same time, collecting the tax levied hereby in respect of such sales, unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser. Any seller failing to collect such tax at the time of collecting the price of any sale, where the seller has not elected to assume and pay such tax, shall be liable to the County for the amount of such tax in like manner as if the same had actually been paid to the seller. The seller shall not be liable for the payment of tax on uncollected bills until such bills have been duly paid by the purchaser.

(e) 1. If the sale of a taxable telecommunication service also involves the sale of an exempt cable television service, the tax shall be applied to the value of the taxable service when it is sold separately.

2. If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

3. The amount identified as taxable in subparagraph 2 above shall not be less than the statewide average tariff rates set forth by the local exchange

telecommunications companies in the tariffs filed with the public service commission on January 1, 1995, and on January 1 of each year thereafter for the equivalent services subject to this section. The Public Service Commission shall publish the statewide average tariff rates annually, beginning on January 1, 1996.

4. All public services taxes collected become County funds at collection.

SECTION 6. PROCEDURES FOR INFORMING SELLERS OF TAX LEVIES.

(a) Definitions: for purposes of this ordinance the following definitions shall be used:

1. "Department" means the Department of Revenue or its designated agent.
2. "Effective date" with respect to any levy, repeal of a levy, or update to a list required under this section, means the effective date of the related obligation or change in the obligation of sellers to collect the tax; however, with respect to taxable service that is regularly billed on a monthly cycle basis, each levy, repeal, or update applies to any bill dated on or after the effective date of such event.
3. "Levy" means and includes the imposition of a tax under Section 166.231 or Section 166.232, all changes in the rate of a tax imposed under either of those sections, and all changes of election under Section 166.231(a)(a).
4. "Seller" means a person who sells a service that is subject to a levy.

(b) The County shall notify the department of the adoption or repeal of a levy at least 120 days before the effective date thereof with the notification being furnished on a form prescribed by the department and the services which are being taxed hereunder with the rate of tax applies to each service and the name, mailing address and telephone number of the financial manager designated to respond to inquiries. The department shall maintain this information for the purpose of responding to inquiries with respect thereto, and any person may in writing request such information from the department.

(c) The County shall provide to any person, within 20 days following receipt of the person's written request, a copy of the ordinance adopting and levy and all amendments thereto, and shall advise such person in writing of the types of media on which the lists as further described herein are available, the charges, if any, for supplying the lists of each available medium and the address to which a request for such lists should be transmitted. Within 20 days following receipt of a written request therefore accompanied by payment of the cost, the County shall transmit the following to the person requesting same:

1. A list containing each street name, known street name aliases, street address ranges, applicable directionals, and zip codes associated with each street name, for all street addresses located within the unincorporated County. For a range of street address numbers located within an unincorporated County which consists only of odd or even street numbers, the list must specify whether the street numbers in the range are odd or even. The list shall be alphabetical, except that numbered streets shall be in numerical sequence.
2. A list containing each postal zip code and all the names associated therewith for all zip codes assigned to geographic areas located entirely

within the unincorporated County, including zip codes assigned to post office boxes.

3. A sequential list containing all post office box number ranges and the names and zip codes associated therewith for all post office boxes located within the unincorporated County, except that post office boxes with postal zip codes entirely within the unincorporated County which are included on the list furnished under paragraph 2 need not be duplicated.

4. The list shall be printed, except that, if a list is available on another medium, the County shall, upon request, furnish the list on such medium in addition to or in lieu of the printed lists. The County shall be responsible for updating the lists as changes occur and for furnishing this information to all sellers affected by the changes. Each update shall specify an effective date which shall be either the next ensuing January 1, April 1, July 1, or October 1; shall be furnished to sellers not less than 60 days prior to the effective date; and shall identify the additions, deletions, and other changes to the preceding version of the list. The seller shall be responsible for charging the tax only to service and billing addresses contained in the lists which include all the required elements required by this subsection, including lists furnished to it by a County without the seller's request. The County shall be entitled to collect a fee not to exceed the actual cost of duplicating the information furnished to the person requesting it.

(d) In the event the County fails to timely respond to any request for information, any related obligation by the seller to collect and remit tax is suspended during the period of delay except that:

1. If a request for information precedes the date on which the County is required to furnish notification to the department, the lack of a timely response to the request does not affect the seller's obligation to collect and remit tax for that County.

2. If a seller is properly collecting and remitting tax on a taxable service from customers within the County as of the date of any request for information, the lack of a timely response to the request does not affect the seller's obligation to continue collecting and remitting the tax levied on the same service from the same customers.

3. If a failure to furnish timely information causes a delay in a seller's receipt of a list or update to a date less than 60 days before the effective date of a levy or update, the obligation to collect and remit tax pursuant thereto may not commence until the next subsequent January 1, April 1, July 1 or October 1.

(e) If it is determined from lists or updates furnished by the County that more than one County or municipality claims the same address or group of addresses, the seller shall notify the Counties or municipalities affected within 60 days. Once a resolution of competing claims has been reached, the County shall furnish the seller with a signed agreement describing the resolution. The seller shall begin collecting and remitting tax pursuant to the agreement as of the next ensuing January 1, April 1, July 1, or October 1 that is at least 60 days after its receipt of the signed agreement. Prior to such date, the seller shall continue its prior tax treatment of charges to customers with addresses subject to competing claims. For purposes of this subsection, "prior tax treatment" means the practice of collecting and remitting or not collecting and remitting tax during periods prior to discovery of the competing claims. The seller has no liability to any affected County or municipality for amounts not collected and remitted before the agreement was implemented,

except to the extent that the seller's prior tax treatment was confirmed as correct in the agreement.

(f) If a list or update furnished by the County contains all the elements required, but such information does not conform with address information in the seller's records, the seller may so notify the County who furnished the list or update. The notification shall identify the portion of the list or update that is in question and describe the nature of the problem. If the seller furnishes such a notification within 60 days after first receiving the list or update from the county, the seller shall not be obligated to collect and remit the tax with respect to the portion of the list or update at issue until the next ensuing January 1, April 1, July 1 or October 1, which is at least 60 days after the County furnishes the seller with information which resolves the issue by the seller.

(g) The County may, during the seller's normal business hours at the official location of the seller's books and records, audit the records of any seller of a service that is taxable by the County under this ordinance for the purpose of ascertaining whether taxable services have been provided or the correctness of any return that has been filed or payment that has been made, if the County's power to assess tax or grant a refund is not barred by the applicable limitations period. Each such seller must provide to the County; upon 60 days' written notice of intent to audit from the County, access to applicable records for such service, except an extension of this 6-day period must be granted if reasonably requested by the seller. The seller may at its option waive the 60 day notice requirement. If either the County or the seller requires an additional extension, it must give notice to the other no less than 30 days before the existing extension expires, except in cases of bona fide emergency or waiver of the notice requirement by the other party. In an audit, the seller is liable only for its taxable accounts collected which correspond to the information provided to it by the County. As used in this section, "applicable records", means records kept in the ordinary course of business which establish the collection and remittance of taxes due. Such applicable records may be provided to the County on an electronic medium if agreed to by the Seller and the County. The fee or any portion of a fee for audits conducted on behalf of a County shall be based upon the amount assessed or collected as a result of the audit, and no determination based upon an audit conducted in violation of this prohibition shall be valid.

(h) Each seller of services that are taxable under this ordinance shall preserve applicable records relating to such taxes until the expiration of the time within which the County may make an assessment with respect to that tax; however, a seller is not required to retain duplicative or redundant records.

(i) Before auditing a seller, the County shall, upon request of the Seller, discuss with the seller the County's proposed audit methodology. The County shall prepare and furnish to the seller a report of each audit which identifies the nature of any deficiency or, overpayment, the amount thereof, and the manner in which the amount was computed. In addition, the County, upon request and no less than 45 days before issuing a determination, shall furnish the seller with all other information or material in possession of the County or its agents which is necessary to supplement the audit findings.

(j) A determination is any proposed assessment or finding of amounts due to seller. A determination must separately state the amounts of tax, interest and penalty claimed to be due or to be refunded, must be accompanied by a written narrative explanation of the basis for the County's determination, must inform the seller of the remedies available to it if it disagrees with any such determination, and must state the consequences of the seller's failure to comply with any demand of the County which is stated in the determination.



(k) The County may issue a proposed assessment of tax levied under this ordinance within 3 years after the date the tax was due. However, this limitation is tolled for 1 year if within the 3 year period the County issues to the seller a notice of intent to audit. If the audit cannot be completed prior to the expiration of this limitation period as extended by tolling, and such condition is due to the seller's refusal or delay in allowing access to applicable records, the County may make a proposed assessment from an estimate based upon the best information available for the taxable period, unless the seller agrees in writing to extend the limitations period. The County may also make a proposed assessment from such an estimate if, notwithstanding agreed extensions of the limitations period to a date which is 3 years following issuance of the notice of intent to audit, the seller does not allow access to applicable records prior to such date.

(l) A seller may apply to the County for refund and/or take a credit for, any overpayment of tax or interest or penalty thereon within 3 years following remittance by the seller, and once the claim is validated, the County must refund or allow the seller credit for such overpayments as were remitted. However, in the case of an overpayment which the seller has previously refunded or credited to a purchaser, the limitation period for the seller's refund application or credit shall expire 3 years following the seller's remittance to the County or 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

(m) Upon expiration of the periods hereinbefore described, the County's right to assess tax, interest, or penalty and the seller's right to apply for a refund or credit expire and are barred, unless fraud has occurred; however, sellers and the County may enter into an agreement to extend these periods.

(n) The County shall offset a seller's overpayment of any tax, interest or penalty revealed by an audit against any deficiency of tax, interest or penalty which is determined to be due for the same audit period, and such offsets must be reflected in any proposed assessment. If the overpayments by the seller exceed the deficiency, the County shall refund to the seller the amount by which the aggregate overpayments exceed the total deficiency. Absent proof to the contrary, the methodology that is employed in computing the amount of a deficiency is presumed to yield an appropriate computation of the amount of any overpayments. "Overpayment" to the County means and includes all remittances of tax under this ordinance, interest, or penalty which were not due to the County.

(o) Any purchaser of a service may request from a seller a refund of, or credit for, taxes collected from the purchaser upon the ground that the amounts collected were not due to the County. The seller shall issue the refund or allow a credit to the purchaser entitled thereto, if the request is made within 3 years following collection of the tax from the purchaser. In any event, a seller shall issue a refund or credit to a purchaser within 45 days following the seller's determination of the amount of taxes collected from the purchaser within the preceding 3 years that were not due to the County.

(p) The County shall assess interest and penalties for failure to pay any tax when due or to file any required return, except that no penalty shall be assessed absent willful neglect, willful negligence, or fraud. Interest shall be assessed at a maximum rate of 1 percent per month of the delinquent tax from the date the tax was due until paid. Penalties shall be assessed at a maximum rate of 5 percent per month of the delinquent tax, not to exceed a total penalty of 25 percent. However, in no event will the penalty for failure to file a return be less than \$15. In the case of a fraudulent return or a willful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100 percent of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject

to compromise.

(q) A written protest of any determination shall be filed by the seller with the County within 60 days after the determination is issued. The County shall consider the protest within 60 days, will issue a written notice of decision to the seller. The seller may petition the County for reconsideration of a notice of decision within 30 days after the issuance of the notice, that will be considered by the Board of County Commissioners within 30 days, who shall issue a written notice of reconsideration to the seller, which is final upon issuance of the notice of recommendation.

(r) The notice of decision or a notice of reconsideration shall address each issue raised in the protest or petition and shall explain the reasoning underlying the conclusion reached. The notice shall further advise the seller of the remedies available to it if it disagrees with the County's disposition of the issues.

(s) A seller may contest the legality of any determination by filing an action against the County in Circuit Court to contest the legality of any tax, penalty, or interest assessed under this section, the plaintiff must pay the County the amount of the tax, penalty, and accrued interest which is not being contested by the seller. Venue lies in the Osceola County.

(t) A seller's failure to protest a determination administratively or judicially does not waive or impair the seller's right to seek refund of any overpayment within the time provided.

(u) The County may settle or compromise seller's liability for any tax, interest, or penalty upon the grounds of doubt as to liability or doubt as to the collectibility of such tax, interest, or penalty. The County and seller shall enter into a written closing agreement that reflects the terms of any settlement or compromise. When such a closing agreement has been executed by the County and the seller, it is final, conclusive, and binding on the parties with respect to all matters set forth therein; and, except upon a showing of fraud or misrepresentation of material fact, additional assessment may not be made against the seller for the tax, interest, or penalty specified in the closing agreement for the time period specified in the closing agreement, and the seller may not institute any judicial or administrative proceedings to recover any tax, interest, or penalty paid under the closing agreement. In issuing a determination, the County shall include in its notification thereof to the seller the names of the persons authorized to approve compromises and to execute closing agreements. The County may enter into agreements for scheduling payments of taxes, interest, and penalties, which agreements must recognize both the seller's financial condition and the best interest of the County and shall be conditioned on the seller giving accurate current information and meeting all other tax obligations on schedule.

(v) All notices of intent to audit, determinations, notices of decisions, and notices of reconsideration issued under this section must be transmitted to the seller by certified mail or registered mail, return receipt requested, and the date of issuance is the postmark date of the transmittal. All protests and petitions for reconsideration are timely filed if postmarked or received by the County within the time prescribed by this section. If mailed, protests and petitions must be transmitted by certified mail, return receipt requested or registered mail.

(w) A seller may pay any contested amount, in whole or in part, at any time, and the payment does not impair any of the seller's remedies.

(x) A seller may have the right to be represented by counsel or other qualified representative and to procedural safeguards with respect to the recording of

interviews during the tax determination process conducted by the County.

(y) The County shall have the right to communicate with other political subdivisions regarding the following:

1. Technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit of a specific company, however, in no event shall the information include any data relevant to a specific purchase or account or the seller's tax treatment of specific services.
2. Names and addresses of companies selling taxable services within their respective jurisdictions.
3. The name of any company issued a refund of taxes and the total amount of taxes refunded to such company.

(z) The County will assess or attempt to assess a seller for any costs incurred by or charged to the County in connection with performing an audit of the seller's books and records, including all travel expenses. Any assessment or proposed assessment of such costs shall be void and unenforceable. The County may, however, assess and collect from the seller the reasonable travel expenses incurred by or charged to the County in connection with performing an audit of the seller's books and records if the seller received timely notice requesting access to such books and records and the seller failed to refuse or allow such access and did not propose an alternative date on which the audit was to commence, or if the seller and the County agreed in writing to an alternative date on which the audit was to commence but the seller then failed or refused to permit reasonable access to its books and records on the alternative date.

(aa) The address listings shall be effective on April 1, 1998. Address listings and updates that conform to the requirements of Section 166.231(10)(d), Florida Statutes, as in effect before the effective date of this act, are in compliance with this act and sellers may rely thereon, until July 1, 1998. However, no later than January 1, 1998, each municipality shall make available lists which conform to the requirements of this act, and such lists shall have an effective date of July 1, 1998.

**SECTION 7. TAX MAY BE COMPUTED ON AGGREGATE AMOUNT OF SALES.** In all cases where the seller of electricity, metered or bottled gas (natural or manufactured) water services, fuel oil or telecommunications service collects the price thereof in monthly periods, the tax hereby levied may be computed on the aggregate amount of sales per purchaser during such period; providing, that the amount of tax to be collected shall be the nearest whole cent to the amount computed.

**SECTION 8. CONFLICT.** Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

**SECTION 9. SEVERABILITY.** It is declared to the intent of the Board of County Commissioners that, if any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 10. EFFECTIVE DATE.** The effective date shall be April 1, 1998.

**PASSED AND ADOPTED** by the Board of County Commissioners of Osceola County, at its regular meeting this 24 day of November, 1997.



BOARD OF COUNTY COMMISSIONERS  
OF OSCEOLA COUNTY, FLORIDA

By: *Chuck Smith*  
Chairman/Vice Chairman

ATTEST:

OSCEOLA COUNTY CLERK OF THE BOARD

By: *Ernie R. Friel*  
Clerk/Deputy Clerk of the Board

NOTICE THAT THIS ORDINANCE HAS BEEN  
FILED WITH THE FLORIDA STATE BUREAU  
OF ADMINISTRATIVE CODE.

ON December 01, 1997

BY *Paula J. Carpenter*  
DEPUTY CLERK OF THE BOARD

4/25/97

INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF ST. CLOUD  
AND  
ORLANDO UTILITIES COMMISSION

This Agreement is made and entered into this 25 day of April, 1997, by and between the City of St. Cloud, Florida, a public agency and a municipal corporation organized and existing under the laws of the State of Florida, herein referred to as the "City" and the Orlando Utilities Commission, a public agency and a statutory commission existing under the laws of the State of Florida, herein referred to as "OUC," and jointly referred to herein as the "Parties."

ARTICLE I

Section 1.1 Purpose and Intent.

Section 1.1.1 Interlocal Cooperation Agreement. It is the purpose and intent of OUC and the City to draft and enter into this Agreement formed in reliance upon and under the authority of the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes.

Section 1.1.2 Provision of Services. It is the intent of the Parties to make the most efficient use of their powers by cooperating with each other and engaging in a joint and bilateral endeavor in order to provide the best electric service possible to the customers of each of the Parties at the lowest rates possible.

Section 1.1.3 No Transfer of Powers. It is the purpose and intent of the Parties not to transfer powers from one to the other. Instead, the Parties intend by this Agreement to enter into a cooperative project wherein the Parties decide upon each of the systems, facilities, and services that can best be provided by each Party for their mutual advantage, as a bilateral exercise of jointly held powers which each may exercise separately.

Section 1.1.4 Intent. The intent of this Agreement is to expand the planned consolidation of the electric utility functions of the City and OUC. It is the intent of this Agreement that OUC shall become the full requirements supplier of the City. The first phase of this plan was evidenced by the Full Requirements and Transmission Contract entered into by the Parties on November 8, 1994. This Agreement representing the second phase, extends the power supply responsibilities of OUC under the previous contract to now include all functions associated with the supply of electrical energy at the retail level. This Agreement provides the benefits of economies of scale and a more efficient utilization of the existing resources owned by the City and OUC to provide more economical and more reliable electric service to the customers of the City. It is envisioned that the ultimate consolidation of electric utility functions will provide further economies ultimately resulting in approximate rate parity between the retail rates of OUC and the City.



Section 1.1.5 Service to Retail Customers. It is the intent of the Parties to work together to serve retail customers in the City's Service Territory; OUC shall compensate the City for any retail customers served by OUC in the City's Service Territory, as defined in Appendix B, pursuant to Section 2.8.2.

## Section 1.2 Findings and Determinations.

Section 1.2.1 Public Agency. OUC and the City are each public agencies which have certain powers, privileges, and authority in common which each currently exercises separately.

Section 1.2.2 Efficient Use of Powers. OUC and the City can make the most efficient use of the powers which each has in common by cooperating with each other on a basis of mutual advantage.

Section 1.2.3 Service and Lower Rates. The City can provide service and lower rates to its customers within its electric service area in Osceola and Orange Counties by cooperating with OUC in the provision of electric service.

Section 1.2.4 Achievement of Goals. The City can further the achievement of its goals by contracting with OUC to assist the City in the management, operation, and servicing of the City's electric utility system by the more efficient and economic use of available electric system resources.

Section 1.2.5 Benefits for Customers. Cooperation between OUC and the City will produce benefits for both the customers of OUC and the City.

Section 1.2.6 City's Ability to Provide Certain Services. The City is able to provide; and is providing; electric distribution, transmission and generation, system engineering, construction, operations, maintenance, billing, customer services, and metering services, in the City's electric service area .

Section 1.2.7 OUC's Ability to Provide Certain Services. For the City's municipal electric service area, OUC is able to provide at the retail level the following services: electric distribution, transmission and generation, system engineering, construction, operations, maintenance, billing, customer services, and metering services.

Section 1.2.8 Effect of City's Charter. Article II, Section 2.40 (q) of the City's Charter prohibits the City from selling its plant without prior authority from the voters of the City, but the Charter does not prevent the City and OUC from entering into an interlocal service cooperation agreement pursuant to Section 163.01, Florida Statutes for the purposes set forth herein.

Section 1.2.9 Effect of Section 9(1) of the OUC Special Act Charter. Section 9(1) of the OUC Special Act Charter prohibits OUC from unilateral retail electric service by OUC outside of Orange County, but the Charter does not prevent OUC and the City from bilateral exercise of

jointly held powers that each may separately exercise pursuant to an interlocal cooperation agreement expressly under the provisions of Section 163.01, Florida Statutes for the purposes set forth herein.

Section 1.2.10 Power to Enter Into Interlocal Agreement. The City and OUC 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 in the Florida Interlocal Cooperation Agreement Act of 1969, as amended, Section 163.01, Florida Statutes, and so long as the agreement is limited to systems, facilities, and services provided by the parties as delineated pursuant to Section 163.01, Florida Statutes, and so long as those services and facilities are shared in common and are services which each might exercise separately under Section 163.01, Florida Statutes.

Section 1.2.11 Full Requirements Contract. The "Full Requirements and Transmission Line Contract Between the City of St. Cloud and the Orlando Utilities Commission," dated November 8, 1994, is superseded and placed in abeyance by this Agreement so long as this Agreement is in force and effect. The City shall have the option to reinstate the "Full Requirements and Transmission Line Contract Between the City of St. Cloud and the Orlando Utilities Commission," should this Agreement be terminated prior to September 30, 2022.

Section 1.2.12 Consistency with Powers Granted. The powers, duties, and related provisions of this Agreement are consistent with and authorized by the respective charters of the City and OUC and Section 163.01, Florida Statutes.

Section 1.2.13 Definitions. Terms used in this agreement have the meanings ascribed to them in Appendix A attached hereto.

ARTICLE II

Powers, Duties, and Related Provisions

Section 2.1 This Agreement is a Florida Interlocal Cooperation Agreement negotiated, executed, and to be operated expressly under the authority of the Florida Interlocal Cooperation Act of 1969, §163.01, Florida Statutes (1996).

Section 2.2 Based upon the statements of intent and purpose and the findings and determinations set forth in Article I; expressly herein adopted and incorporated as dispositive, the City and OUC hereby agree 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 purposes will be accomplished and the powers exercised will be by a joint contract administration committee ("Committee"), as set forth in Article III. The Committee shall not be a separate legal or administrative entity.

Section 2.3 [Reserved].

Section 2.4 Services, Powers, and Duties of the Parties. The Parties agree that the services, powers, and duties which each may exercise separately within their own jurisdictions and which the Parties intend to exercise together bilaterally, are hereinafter delineated.

Section 2.4.1 OUC Services, Powers and Duties.

Section 2.4.1.1 Services Provided. OUC shall provide all services associated with the supply of retail electric energy to all customers of the City. These services shall include all services provided by OUC to OUC's retail customers. OUC will also provide all management services and resources necessary to maintain City's electric utility system and assets consistent with the provisions of Section 6.2. OUC will protect and defend the City of St. Cloud's Electric Utility Territory, as defined in Appendix B. OUC shall have the responsibility to construct the tie line between OUC Stanton and the City's North Substation; the tie line has a scheduled in-service date of January 1, 1998.

Section 2.4.1.2 Operation of City's Diesel Plant. OUC shall assume complete control of and responsibility for all cost of, except as provided for in Section 2.4.2.3, and for the operation of and the service of the City's diesel generators, as shown in Appendix F, and other related facilities and the delivering of generation to the system. OUC shall schedule service on the City's diesel generators. OUC shall be responsible for making decisions regarding the availability and the retirement of the diesel generators. OUC reserves the decision to decommission the City's diesel generators at any time after May 1, 1997. If OUC elects to decommission the City's diesel generators, OUC will assume all of the management and financial responsibilities associated with that action, except as provided for in Section 2.4.2.3. OUC will supply all power supply requirements of the City including those formerly supplied by said generators. OUC shall operate the City's power system consistent with the operation of its own power system. OUC may, over the term of the Agreement, modify operating limits, guidelines, and procedures submitted to OUC due to new regulations, re-configuration of the power system or other valid reasons.

Section 2.4.1.3 Fuel Supply - Natural Gas. Consistent with the provision of Section 2.4.1.1, OUC shall nominate on behalf of the City the daily requirements for the use of natural gas. OUC may redirect, sell, or otherwise modify this nominated quantity of natural gas. OUC must operate within the terms and conditions of the gas contracts; OUC may not modify, extend, or amend the City's contracts without prior written approval from the City.

Section 2.4.1.4 Fuel Supply - Oil. OUC shall procure and direct the use of Number 2 oil by the City's diesel generators. OUC shall own the Number 2 oil inventory that will be used to supply the diesel generators. OUC will purchase from the City the existing supply of Number 2 oil at City's embedded cost.

Section 2.4.1.5 Transmission and Distribution System. OUC shall operate and maintain the City's electric distribution and transmission system consistent with OUC's operating and maintenance practices.



Section 2.4.1.6 Environmental Issues. OUC agrees to indemnify the City for any and all environmental-related claims, actions, demands, suits, losses, costs, expenses, assessments, obligations, liabilities, penalties or other damages, including, without limitation, attorneys' fees, costs, and expenses incurred or arising under state or local law, based upon any facts or events known or unknown which occur after May 1, 1997 and during the term of this Agreement. Any reimbursement for environmental clean-up cost from the State of Florida's Petroleum Reimbursement Program shall be credited to the party incurring the cost.

Section 2.4.1.7 Maintenance of Property Records. Upon the execution of this Agreement, OUC shall be responsible for the maintenance of property records associated with the electric utility facilities of the City.

Section 2.4.2 City - Services, Powers, and Duties

Section 2.4.2.1 Appointment of OUC as Agent. During the term of this Agreement, the City consents, contractually authorizes, and empowers OUC to act as its exclusive agent to direct the commitment and dispatch of the City's diesel generators and Purchase Power and Other Contracts within the equipment constraints of the City's diesel generators and within the terms and conditions of the Purchase Power and Other Contracts. The City shall, to the extent they are assignable, assign to OUC the City's Purchase Power and Other Contracts set forth in Appendix E. At the expiration of this Agreement the City shall, at its option, have the right to have any or all of these contracts assigned back to the City. During the term of this Agreement, the City also consents, contractually authorizes, and empowers OUC to act as its agent to procure and manage its fuel resources and manage its Purchase Power and Other Contracts. The City hereby appoints OUC as its agent to the extent necessary to permit OUC to carry out its functions under this Agreement. OUC may not enter into any new contracts on behalf of the City; OUC may not modify, extend, terminate, or amend any of the City's Purchase Power and Other Contracts without prior written approval from the City. To the extent that any of the Purchase Power and Other Contracts, set forth in Appendix E, are not assigned by the City to OUC, OUC will act as the City's agent in administering those contracts and OUC shall be responsible for all costs associated with those contracts.

Section 2.4.2.2 Prohibition Against New Purchase Power Contracts. Unless otherwise provided for in this Agreement, the City shall not exercise any options of its Purchase Power Contracts, shall not build any new generation or enter into any new purchase power or power supply contracts that would become effective during the term of this Agreement, except as mutually agreed to by the Parties. To the extent that the City is unable to assign the Purchase Power Contracts, then the City shall notify FPC and TEC that, during the term of this Agreement, OUC will act as the City's agent with respect to the Purchase Power Contracts.

Section 2.4.2.3 Indemnification. City agrees to indemnify OUC for any and all environmentally related claims (against the City), actions, demands, suits, losses, costs, expenses, assessments, obligations, liabilities, penalties or other damages, including, without limitation, attorneys' fees, costs and expenses incurred or arising under federal, state or local law, based on any facts or events known or unknown which occurred prior to May 1, 1997. In the event an

environmentally related claim, relating to the City's system, arising due to events which occurred prior to May 1, 1997, OUC will make application to all available State and Federal Reimbursement Programs in an effort to recover the required funds. In the event that funds are not recovered after all reimbursement options are exhausted, the City shall implement a non-by-passable charge on all retail sales to customers of the City.

Section 2.4.2.4 Transfer of Existing Property Records. Upon the effective date of this Agreement, the City shall provide the necessary assistance to transfer to OUC the existing property records associated with the electric utility facilities of the City.

Section 2.5 Financing, Repayment, and Related Matters

Section 2.5.1 The source of the financial support for the services described by this Agreement is as follows:

Section 2.5.1.1 OUC. OUC shall bill and collect, on behalf of the City and OUC, all revenue as described in Section 2.8.1 and subsections hereunder.

Section 2.5.2 Identification of the Personnel, Equipment, or Property of the Parties to the Agreement for Use in the Place of Other Contributions or Advances.

Section 2.5.2.1 OUC. Any of the City's electric system materials and inventory needed by OUC to perform its obligations under this Agreement may be purchased from City pursuant to the terms of Sections 2.9.1 and 2.9.2.

Section 2.5.2.2 City. The Parties agree that OUC will not contribute any personnel or property in the place of payments as described in this Agreement.

Section 2.6 Allocating and Financing Capital and Operating Costs.

Section 2.6.1 [Reserved].

2.6.2 Use of City's Renewal and Replacement Fund. OUC may request the City to provide funds to pay the cost of capital additions, extensions or enlargements to the Electric System, which funding, if approved by the City, will be made through disbursements from the City's Utility System Refunding Revenue Bonds Renewal, Improvement and Replacement Fund. Any assets so funded shall be the property of the City.

Section 2.7 Employment and Related Engagement, Compensation, Transfers or Discharge, as Related to Applicable Personnel Systems of the Parties.

Section 2.7.1 OUC's Employment of City's Employees. OUC shall offer employment to all employees listed in Appendix D. Employees transferred to OUC will be subject to the same terms and conditions of employment as OUC's regular full and part time employees,

except as outlined below. Any City employee who decides not to accept employment with OUC will continue employment with the City, under the City's rules, regulations and policies. OUC will utilize these employees on a contract basis, and OUC will pay to the City negotiated hourly rates for the utilization of these employees for up to a maximum of three years. If more than one employee elects to remain with the City then one of the individuals will be contracted as a supervisor and the others will be contracted for service. The supervisor will act as the liaison between the City and OUC.

Transferred employees will be placed in a comparable position at OUC, consistent with OUC's business needs, and maintain their current base rate of pay until a skills assessment has been completed lasting approximately six months. After the six month period, those employees who meet the requirements of the position will receive the OUC rate of pay for that position. Such placement will be based on the employee's total performance including skills, knowledge, ability, initiative, and may be based on time worked in a directly related position for those employees in positions where time worked is a requirement of the OUC promotion guidelines for that position. Those employees who do not meet the requirements of the position will receive an additional six months of on the job experience and training. If then the requirements of the position are met, the employee will receive the OUC rate of pay for that position. If after one year an employee does not meet the requirements of the position, then a determination will be made regarding the appropriate job placement consistent with OUC's pay policies and employment practices. All employees will be given the training necessary for advancement and participate in OUC's established training and development programs.

Section 2.7.2 Employee Benefits Excluding Pension Benefits. Employees transferred to OUC will be covered by OUC's employee benefits subject to the terms and conditions of OUC's employee benefits plans and policies except as outlined below:

- (a) The twelve-month comprehensive medical plan pre-existing condition limitation will be waived for employees whose date of hire was at least one year prior to May 1, 1997. This limitation will apply for the balance of one year from the date of employment by City for employees hired on or after May 1, 1997.
- (b) The comprehensive medical plan deductible and out-of-pocket expenses incurred by City employees on or after January 1, 1997 will be applied against services rendered on or after May 1, 1997.
- (c) The City will pay employees for the accrued balances of vacation earned through the pay period ending April 27, 1997. Employees may, however, elect to have the City hold back and transfer vacation earnings, including social security and medicare tax, for any period up to ten vacation days to OUC to be used during the balance of calendar year 1997. Should the employee not use the entire transferred vacation amount he/she will be paid for the remaining balance as of December 31, 1997, at the employee's

transferred rate of pay. The schedule of use will be subject to approval by OUC's management. OUC will grant five additional vacation days to each employee regardless of the number of days transferred. Commencing January 1, 1998, OUC will grant vacation according to its schedule for all employees, based on the employees' dates of hire by the City. Up to five days may be carried over from 1997 to 1998, in keeping with the OUC policy.

- (d) Unused compensatory, employee of the month, and administrative time as of April 30, 1997, will also be paid by the City directly to the employees in a lump sum.
- (e) Any unused sick leave on April 30, 1997, will be forfeited. In addition, the City will pay the employee \$1.00 for every hour of sick leave earned at the employee's time of transfer to OUC.

Upon transfer to OUC, employees will be credited with their forfeited balance of sick leave up to a maximum of 160 hours. This balance is available for use during the first two years at OUC for non-job related illness, injury or accident.

The City will reimburse OUC for the cost of utilization of sick leave, including social security and medicare tax, referred to in the preceding paragraph during the first two years of employment by OUC.

Upon transfer to OUC, employees will begin accruing sick leave according to OUC's policy. This accrual will be in addition to any time credited in the second paragraph of this Section 2.7.2(e). Additional sick leave will be credited annually, using May 1, 1997 as the employee's date of hire.

At the end of the two year period, any balance remaining from the second paragraph above will be eliminated.

- (f) Life insurance will be provided for transferred employees in the amount provided OUC's employees and will become effective on the first day actively on the job on or after May 1, 1997.
- (g) Any other accrued, vested or outstanding employee benefits, not including pension benefits, that a transferred employee may have from the City at the time of his or her transfer to OUC, will remain the exclusive responsibility or liability of the City.
- (h) The City shall remain responsible for compliance with any and all federal, state and local laws regarding the accrued, vested and outstanding employee benefits that a transferred employee may have from the City prior to the time

of his or her transfer to OUC. The City will assist OUC with whatever information may be necessary concerning transferred employees in order for them to be transferred into OUC's employee benefits plans.

- (i) City employees will be entitled to two (2) floating holidays in calendar year 1997.
- (j) The City will reimburse employees for courses commencing while employed by St. Cloud under the terms of St. Cloud's education assistance plan. Courses commencing on or after May 1, 1997 will be eligible for reimbursement by OUC under the terms of OUC's education assistance plan.

Section 2.7.3 Pension and Retirement Benefits. City employees who are transferred to OUC will participate in OUC's pension plan effective May 1, 1997.

- (a) A transferred employee's date of hire and service with the City will be used and adopted by OUC for the purpose of participation in and credit for vesting in OUC's pension plan. Under OUC's pension plan, an employee's pension benefit is vested 100% after five years of combined service with St. Cloud and OUC. However, transferred employees participating in an alternative pension plan other than the defined benefit plan provided by the City, will not receive credit for benefit determination purposes other than vesting for any period in which they participated in the alternative pension plan.
- (b) For employees transferred to OUC, the present value of benefits accrued under the City's pension plan as of April 30, 1997 will be credited to the Group Pension Plan for Employees of OUC. The present value to be transferred will be an amount agreed upon by the actuaries for the City's and OUC's pension plans.
- (c) For employees transferred to OUC, their pension benefits will be based on the transferred employee's highest thirty-six month average base earnings without adjustment for overtime (scheduled or otherwise), incentive compensation, or any other adjustment to income provided by OUC. The benefit will be credited at the percentage of income rates commensurate with service provided the transferred employee by the City's plan for service prior to May 1, 1997 and at the rates provided by OUC's plan for service thereafter. In no event will the pension benefit paid by OUC's pension plan be less than the transferred employee's monthly accrued benefit accrued under the City's pension plan.
- (d) The required 4% employee contribution to the OUC retirement plan will be paid by City for the first six months of employment for all transferred employees, as provided in Section 2.9.1.

- (e) A transferred employee's retirement prior to age 65 during the first ten (10) years of employment by OUC will be subject to the full actuarial adjustment for early retirement benefits under the City's pension plan. Upon completion of ten (10) years of service with OUC, a transferred employee who otherwise meets the requirements of OUC's pension plan for early retirement will be eligible for the early retirement adjustment factor specified in the OUC plan at the time of retirement.
- (f) Transferred employees who retire with less than five (5) years of employment with OUC and their eligible dependents may continue their OUC comprehensive medical benefits, provided they pay the entire cost to OUC.
- (g) Specifications regarding the pension plan benefits are subject to approval by OUC and the Department of Administration of the State of Florida.
- (h) Any accrued, vested, or outstanding pension benefits other than those outlined above that a transferred employee may have from the City at the time of his or her transfer to OUC will remain the exclusive responsibility or liability of the City. The City will assist OUC with whatever information may be necessary regarding transferred employees in order for them to be transferred into OUC's pension plan.

Section 2.7.4 Employee Related Claims. City agrees to indemnify OUC for any and all employment related claims, actions, demands, suits, losses, costs, expenses, assessments, obligations, diminution in value, deficiencies, taxes, workers' compensation contributions, liabilities, penalties, or other damages, including, without limitation, attorneys' fees, interest and costs and expenses reasonably incurred in investigating, attempting to avoid, or defending against any and all employment related claim(s) arising under federal, state, or local law, based on any facts or events, known or unknown, which occurred prior to May 1, 1997. The City also agrees to assist OUC with investigating, attempting to avoid, or defending against any and all employment related claim(s) based on any facts or events, known or unknown, which have occurred prior to May 1, 1997. Any occurrence as listed in the aforementioned occurring subsequent to May 1, 1997 becomes the liability of OUC.

Section 2.8 Determining, Fixing, Collecting and Remitting Certain Charges, Rates, Rents, or Fees and the Related Necessary Rules and Regulations of the Respective Parties.

Section 2.8.1 Revenue Collection. OUC shall bill and collect all revenue for electric rates billed to the City's customers in the St. Cloud municipal electric service area in Osceola and Orange County. The St. Cloud municipal electric service area is shown in Appendix B.

Section 2.8.1.1 Determination of Electric Rates. The rates billed to the customers

of the City for the provision of the services provided under this Agreement shall be based upon the retail electric rates of OUC in effect each month. The retail rates of OUC for the purpose of this section shall be the total of the Customer Charge, Energy Charge, and Demand Charge and shall not include gross receipt, municipal or other government taxes. The rates shall be equal to the OUC rates, plus a percentage adder as reflected in the following table:

Effective Date	Residential	Gen. Svc. Non-Demand	Gen. Svc. Demand	Gen. Svc. Large Demand	Street Lights
5/1/1997	8.0%	17.0%	20.0%	20.0%	20.0%
10/1/1998	7.0%	15.0%	15.0%	15.0%	15.0%
10/1/1999	6.0%	10.0%	10.0%	10.0%	10.0%
10/1/2000	6.0%	6.0%	6.0%	6.0%	6.0%
10/1/2001	5.5%	5.5%	5.5%	5.5%	5.5%
10/1/2002	5.0%	5.0%	5.0%	5.0%	5.0%
10/1/2003	4.5%	4.5%	4.5%	4.5%	4.5%
10/1/2004	4.0%	4.0%	4.0%	4.0%	4.0%

The applicable OUC rates as of the effective date of this Agreement are included by reference in Appendix G; OUC may change their Published Rate Tariff during the term of this Agreement.

The percentage adder in effect on 10/1/2004 shall remain in effect for the remainder of the term of this Agreement.

The percentage adders for all classes of customers not listed above will be the same as the General Service Demand class, or as determined by the Committee.

City customers will be entitled to all rate options available to OUC customers as of the effective date of this Agreement and for the term of the Agreement.

All rates will be applied identically to both Parties' customers with the exception of the applicable rate class adder. The rate class adder will be applied only to charges included in OUC's Published Rate Tariff.

All street lights installed prior to the effective date of this Agreement will be billed at OUC's rate where the customer has paid for installation, plus the appropriate percentage adder.

Section 2.8.1.2 OUC Revenue Based Payments. As OUC currently includes revenue based payments to the City of Orlando and to Orange County in its electric rates, the percentage adders in the above section are based upon this treatment of payments. If, in the future, these payments are not included in the electric rate, the above table shall be recalculated so that the relationship between the bills of OUC's customers and the City's customers shall be preserved. These calculations will be presented to the Committee for review and approval.

Section 2.8.2 Disbursements to City. OUC shall disburse all revenue collected as indicated hereinafter.

Section 2.8.2.1 Revenue Based Disbursements. Payment by OUC to the City during each fiscal year shall be based on the retail sales to the customers of the City for the second preceding fiscal year. Retail sales shall be the total revenues received from the customers of the City for electric energy, electric demand, electric transmission, electric distribution, and customer charges. Retail sales shall not include interest, CIAC, late penalties, service fees, rental of system facilities, proceeds from sale of system assets, or wholesale revenues. It is the intent of this Agreement that retail sales shall be those revenues upon which the State of Florida Gross Receipts Tax is levied in 1996 plus sales to the City. The amount of the annual revenue collected that shall be disbursed by OUC to the City shall be equal to 9.5 percent of retail sales of the second preceding Fiscal Year; however, the annual disbursement shall not be less than \$2,361,000. This amount shall be divided by twelve and paid monthly to the City prior to the fifteenth (15th) of each month.

Section 2.8.2.2 Minimum Payment Restriction. The minimum payment provision of the preceding paragraph is not applicable in the event (a) of a decline in unit retail sales from a declared natural disaster or (b) loss of retail customers to an energy supplier other than OUC. In this case, the minimum payment provision of the preceding paragraph shall be adjusted on a pro rata basis in accordance with the following:

$$\text{Rev Based Payment FY(X)} = \frac{\text{Retail Sales FY(X-2)} + Z(X-2)}{\text{Retail Sales FY 95}} \times \$2,361,000$$

Z(X-2) = Loss in retail sales which is not due to a declared natural disaster or loss of retail customers to an energy supplier other than OUC.

Notwithstanding the foregoing, in the event that the payments by OUC under this Section 2.8.2 are no longer permitted to be treated as operating expenses of OUC under applicable accounting rules or OUC's revenue bond resolutions, the minimum annual payment to the City under Section 2.8.2.1 shall not be less than \$600,000.00. OUC's commitment to this minimum will be offset by interest earnings from bond funds and revenue, if any, that the City receives from other Power Providers to the City's customers.

Section 2.8.2.3 Competitive Rate Provision. If, in the future, rates require revision to remain competitive, proposals to revise the rates and adjust the revenue based payments to the City may be brought to the Committee for review and approval.

Section 2.8.2.4 Electric System Disbursement. In addition to the disbursement required by Section 2.8.2.1, OUC shall disburse revenue collected to the City as detailed in Appendix C. The payments shall be made prior to the 15th day of each month.

Section 2.8.2.5 Failure to Make Payments: Payments as Operating Expenses. The payments provided for in Section 2.8.2.4 (the "Fixed Disbursements") are not subject to



reduction, set off, counterclaim, or any other defense or reduction and shall be due, regardless of the operating status of the Electric System and without regard to level of sales. If OUC fails to timely make any of the disbursements required under this Section 2.8, including the Fixed Disbursements and the revenue-based payments under Section 2.8.2.1 and such failure continues for a period of 10 days after receipt of notice of such failure from the City, at the option of the City, OUC's right to collect the revenues as set forth in Section 2.5.1.1 and Section 2.8.1 of this Agreement shall be terminated. Upon such occurrence, the City shall collect the revenues and, after the deduction of all amounts owed to the City under this Agreement (including interest on any delayed payment in accordance with Section 6.9.2 hereof), shall turn the remainder of such revenue over to OUC.

OUC agrees to elect that the payments to be made to the City under this section shall constitute "Operating Expenses" for purposes of OUC's bond resolutions to the full extent permitted by OUC's bond resolutions.

Section 2.8.2.6 Surplus Revenue Retained by OUC; Guaranty of Payment to City. In consideration of the services to be performed by OUC under this Agreement, OUC shall be entitled to retain, as full compensation, all revenues collected hereunder in excess of the amounts required to be disbursed to the City pursuant to Sections 2.8.2.1 through and including 2.8.2.4 (collectively, the "City Disbursements"). In consideration of OUC's right to retain such revenues, OUC shall and does hereby guaranty the payment of the City Disbursements in full and in a timely manner, notwithstanding the fact that revenues collected during any monthly or annual period may be insufficient to make such City Disbursements. Such guaranty by OUC shall be an unsecured obligation of OUC payable from, but not secured by, any revenue source available to OUC.

Section 2.9 Real or Personal Property (Acquisition, Ownership, Custody, Operation, Maintenance, Lease or Sale).

Section 2.9.1 City Existing Electric Warehoused Inventory. Prior to the effective date of this Agreement, OUC shall inventory all material and supplies in the Electric System Warehoused Inventory. OUC shall determine those items necessary for OUC to perform its duties under this Agreement. OUC may purchase these items from the City at system average cost. All material not purchased by OUC shall remain the property of the City. The first \$65,000 of proceeds from the sale of inventory to OUC shall be deposited in the OUC pension fund as reimbursement for provision 2.7.3(d).

Section 2.9.2 Equipment. Prior to January 1, 1998, OUC may purchase from the City any equipment that OUC determines is necessary to perform its duties. The purchase price will be based on current market value as determined by:

- a) Mutual agreement of the parties.
- b) Third party valuation.

The valuation firm will be mutually selected by the City and OUC and all fees will be paid by OUC.

Section 2.9.3 Disposition of Proceeds. All proceeds to the City from the sale of equipment and inventory shall be deposited into the Business Development and Customer Retention Funds or other agreed upon funds.

Section 2.10 Any Property Acquired Through This Agreement and How it Will Be Disposed.

Section 2.10.1 Business Development & Customer Retention Fund. The City shall deposit three million dollars of the accumulated retained earnings as of the effective date of this Agreement plus the amount remaining from Section 2.9.3 for utilization by the City and OUC; all earnings of these deposits will be redeposited in this account which is held by the City. These funds shall be utilized only for electric customer acquisition and/or electric customer retention activities. The approval of both Parties is required prior to the disbursement of these funds.

Additionally, the funds in the Business Development & Customer Retention Fund may, without the consent of OUC, be utilized by the City to pay current debt service on its outstanding Utility System Revenue Bonds, Series 1992A and Series 1992B or to replenish the debt service reserve fund for such bonds, in the event that OUC fails to make any payments to the City under Section 2.8.2 of this Agreement.

Section 2.10.2 Purchase of Capital Improvements. At the conclusion of this Agreement, the City shall purchase from OUC at net book value (and net of remaining CIAC), the Capital Improvements provided by OUC to the electric facilities of the City.

### ARTICLE III

#### Joint Contract Administration Committee

Section 3.1 Formation. The parties shall form a joint contract administration committee (Committee) upon execution of this Agreement, which shall not be a separate legal or administrative entity. It shall serve in a bilateral management capacity to facilitate the performance under this Agreement of the powers to be exercised and the systems, facilities, and services to be provided.

Section 3.1.1 Composition. The Committee shall have as members the following:

- a) Two representatives appointed by the City Council.
- b) A representative appointed by the City Manager.
- c) Three representatives appointed by OUC's Chief Executive Officer.

Section 3.1.2 Procedures. The Committee shall operate pursuant to the following procedures.

Section 3.1.2.1 Meetings and Matters to be Considered. The Committee shall meet at least quarterly and may conduct emergency and special meetings when called by the

presiding officer or 50% of the Committee. The Committee shall consider any matter brought before the Committee by any Committee representative which concerns any issue relating to this Agreement.

Section 3.1.2.2 Presiding Officer. Meetings shall be conducted by a presiding officer ("chairperson") who shall be picked annually in odd years by OUC's Chief Executive Officer and in even years by the St. Cloud City Council.

Section 3.1.2.3 Record of Meetings. Minutes of each meeting shall be kept and distributed to each representative.

Section 3.1.2.4 Decisions. Decisions shall be by majority vote. In the event of a tie the Parties shall engage in mediation and, if the matter cannot be resolved in such a manner, then the Parties shall submit the matter for binding arbitration to a qualified and licensed arbitrator within a reasonable time.

Section 3.1.3 Substantive Matters To Be Considered by the Committee. The Committee shall consider all matters regarding the performance of the Parties and make recommendations to the City Council and the OUC Commission regarding same.

#### ARTICLE IV

##### Effective Date 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 term of this Agreement and all obligations under this Agreement commence at the beginning of the day of May 1, 1997, and continue in effect until the end of the day of September 30, 2022.

#### 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 [except for any required payments herein], including, but not limited to, payments by OUC under Section 2.8 of 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.

Section 5.2 Responsibility and Indemnification. Each Party, to the extent permitted by law, hereto expressly agrees to indemnify and save harmless and defend the other Party to this Agreement against all claims, demands, cost or expense asserted by third parties and proximately caused by the negligence or willful misconduct of such indemnifying Party in connection with the operation of this Agreement. OUC shall not be responsible for injury to employees of the City whenever such persons are on OUC's premises on official City business. The City shall not be responsible for injury to employees of OUC whenever such persons are on the City's premises on official OUC business.

## ARTICLE VI

### Miscellaneous

Section 6.1 Option for Future Generation Units. OUC shall give the City the option to become a joint owner of any future generating units which OUC proposes to construct, up to an amount of capacity equal to 10% of the net output of each such unit. If the City exercises such option, it shall be responsible for its share of the costs of each such unit, comparable to the costs of each such unit being offered to other participants.

Section 6.2 No Pattern of Adverse Distinction or Undue Discrimination. OUC agrees that there shall be no pattern of adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Agreement.

Section 6.3 Audit Rights. Each Party shall have access to the other Party's records that support payments made or required to be made under this Agreement. In the event that review of these records reveals incorrect payments, correct payments shall be made plus interest at the Prime Rate. The City shall have access to all OUC records that support or document activities for services performed under this Agreement.

Section 6.4 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 6.5 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 6.6 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, unless such assignment or transfer is to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor empowered by law and financially able to effect the purposes of this Agreement which it must assume and thereafter, be exclusively responsible for the performance of the terms of this Agreement to be performed by either Party hereunder and said assignment will not effect the tax-exempt status of the Parties bonds.

Notwithstanding the foregoing, or anything else to the contrary in this Agreement, OUC shall have no right to sell, assign, transfer, or otherwise dispose of its interest in this Agreement or the Electric System or contract for the performance of its duties under the Agreement, if such action on the part of OUC will adversely affect the exclusion from gross income of interest on the City's Utility System Revenue Bonds, Series 1992A and Series 1992B. In the event OUC desires to take any such action, the City shall be entitled to receive, at the expense of OUC, an opinion of bond counsel acceptable to the City, as to the effect of such action on the tax status of its bonds. Any action taken by OUC in contravention of this requirement shall be void and of no effect and not binding on the City.

Not withstanding the foregoing, or anything else to the contrary in this Agreement, should OUC enter into negotiations that would result in a merger, consolidation, sale or foreclosure, the City shall be notified, in writing, and given the opportunity to decide whether or not to assign this Agreement to a successor. In the event that the City objects to an attempted assignment of the obligations contain within, it shall terminate this Agreement by giving eighteen (18) months notice as prescribed in Section 6.7. During the eighteen (18) month period, OUC shall ensure that its obligations will be performed and shall assist the City in re-establishing its ability to self perform the provisions of electrical service to its customers.

Section 6.7 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 32802  
Attention: General Manager and Chief Executive Officer
2. As to the City:  
1300 Ninth Street  
St. Cloud, Florida 34769  
Attention: City Manager

Section 6.7.1 Response to Written Notices. At any time either Party desires or is

required to respond to any written notice given pursuant to Section 6.7, such response shall be made in the manner prescribed by Section 6.7 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

Section 6.7.2 Notice of Default or Notice of Payment Under Protest. Any notice of default or notice of payment under protest shall be made within thirty (30) days of the Party becoming aware of the facts giving rise to the notice of default or within thirty (30) days of the Party becoming aware of the facts giving rise to any notice of payment under protest unless otherwise provided in this Agreement. Notice of payment under protest can be given as to amounts to be paid and to amounts already paid.

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

Section 6.9 Acts of Default. Both Parties agree to pay all monies when due and both Parties hereby agree to carry out all other duties and obligations to be performed by them pursuant to all of the terms and conditions set forth and contained in this Agreement and failure of either Party to perform the obligations and covenants herein shall be an act of default by the Party. The defaulting Party shall be liable for all direct and consequential damages incurred by the other Party.

Section 6.9.1 Notice of Default. Except as otherwise provided in Section 2.8.2.5 hereof, in the event of an act of default by either Party, the other Party shall promptly notify the defaulting Party, in writing, of the existence and nature of the default.

Section 6.9.2 Curing of Default. Within fifteen (15) days after written notice has been given, the defaulting Party shall cure such default. If either Party fails to make timely payment of any amount due and payable to the other Party, the defaulting Party shall be liable to the other Party for the amount of such payments, together with interest thereon from the due date until payment in full by the defaulting Party, at an annual rate equal to 125% of the Prime Rate at the time of such payment by the defaulting Party, or the maximum rate lawfully payable by the defaulting Party, whichever is less. In the event the defaulting Party fails to cure the default, the non-defaulting Party shall be entitled to terminate this Agreement upon thirty (30) days written notice of cancellation to the defaulting Party.

Section 6.10 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 6.11 Interlocal Agreement. This Agreement shall be considered 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.

Section 6.12 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 6.13 Prudent Utility Practice. OUC shall perform all of its obligations under this Agreement in accordance with Prudent Utility Practice.

Section 6.14 Specific Performance. It is understood and agreed between the Parties that there will be irreparable damage in the event that this Agreement is not specifically enforced. In the event any dispute arises under this Agreement, either party hereto shall be entitled to specific performance of the terms, conditions and agreements set forth in this Agreement. The remedy of Specific Performance shall be cumulative and not exclusive, and shall be in addition to any other remedy which the Parties may have.

Section 6.15 Attorneys' Fees. In the event any dispute under this Agreement results in litigation, the prevailing party shall be entitled to all fees and costs incurred in connection with such litigation, including reasonable attorneys' fees, both at the trial and appellate level.

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.

Attest: City of St. Cloud

By: J Paul Stibel  
City Manager

By: [Signature]  
Mayor

Attest: Orlando Utilities Commission

By: Betty J. Perrow  
Assistant Secretary

By: [Signature]  
General Manager and  
Chief Executive Officer

Form of execution of the foregoing Agreement is hereby approved:

By: Wayne Moron  
Attorney for OUC

By: [Signature]  
Attorney for St. Cloud