

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Exhibit G to Conditional Utility Agreement for Sewer Service (Oviedo Marketplace Parcel 16)

**DEPARTMENT:** Environmental Services

**DIVISION:** Planning Engineering Inspections

**AUTHORIZED BY:** John Cirello

**CONTACT:** Becky Noggle

**EXT:** 2143

**MOTION/RECOMMENDATION:**

Approve and authorize the Chairman to execute Exhibit G to the Conditional Utility Agreement for Sewer Service (Oviedo Marketplace Parcel 16) for relocation and extension of a 8" force main. Reimbursement of fees per this agreement will not exceed \$66,809.33.

District 1 Bob Dallari

Mike Harber

**BACKGROUND:**

The proposed project consists of removal of approximately 465 Linear Feet of an existing eight inch (8") Force Main and the extension and relocation of 662 Linear Feet of an eight inch (8") Force Main within the Oviedo Marketplace Right-Of-Way owned and maintained by Seminole County. The owner is willing to relocate and extend at the County's expense and as part of the construction of the off-site sewer system an existing sanitary sewer force main owned by the County. Reimbursement of fees per this agreement will not exceed \$66,809.33.

**STAFF RECOMMENDATION:**

Staff recommends the Board approve and authorize the Chairman to execute the Exhibit G for the Conditional Utility Agreement for Sewer service Oviedo Marketplace Parcel 16 for a relocation and extension of a 8" force main.

**ATTACHMENTS:**

1. Exhibit G Oviedo Marketplace 16

|  |
|--|
| <p><b>Additionally Reviewed By:</b></p> <p><input checked="" type="checkbox"/> County Attorney Review ( Susan Dietrich )</p> |
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**Exhibit "G"**

**Sewer Agreement**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY," and the **SHOPPES OF OVIEDO MARKETPLACE, LLC**, a Florida limited liability company whose address is 6700 Conroy-Windermere Road, Suite 230, Orlando, Florida 32835, referred to as "OWNER".

**W I T N E S S E T H:**

**WHEREAS**, OWNER owns certain real property in Seminole County, Florida, hereinafter referred to as "the Property," as described in Exhibit "A," and set forth on the survey in Exhibit "B," attached to the Conditional Utility Agreement For Sewer Service; and

**WHEREAS**, OWNER requires a sewer service system to serve future commercial development to be located on the Property; and

**WHEREAS**, OWNER is willing to construct an off-site sewer system and other appurtenant facilities to serve the Property and convey the sewer system and appurtenant facilities to the COUNTY in return for the considerations set forth herein; and

**WHEREAS**, OWNER is willing to relocate and extend at COUNTY's expense and as part of the construction of the off-site sewer system an existing sanitary sewer force main owned by the COUNTY; and

**WHEREAS,** OWNER has executed a Conditional Utility Agreement for Sewer Service to which this Agreement is attached as Exhibit "G" and together the Conditional Utility Agreement for Sewer Service and this Agreement (hereinafter referred to as the "Agreement") comprise the complete and entire sewer agreement between the parties,

**NOW, THEREFORE,** in consideration of the premises, the parties mutual covenants and agreements, including the cost of designing, permitting, constructing, conveying and accepting the sewer system as hereinafter defined, the Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

**Section 1. Recitals.** The foregoing premises are true and correct and form a material part of this Agreement upon which the parties have relied.



**Section 2. Definitions.** As used in this Agreement, certain terms and phrases appearing herein are defined as follows:

(a) **Sewer System.** The term "Sewer System" shall refer to and mean: (1) the construction of an off-site sewer transmission system; and (2) the relocation and extension of an existing sanitary sewer force main owned by the COUNTY in the project known as "Oviedo Marketplace" including transmission mains, stub-outs, pipes, valves, fittings and other such pertinent facilities as are routinely placed in public rights-of-way or dedicated easements, excluding service connections. All permits and engineering design and construction contracts, plans and specifications for the Sewer System as and when

filed and approved by the COUNTY's Planning Department, Development Review Division, are incorporated herein by reference.

(b) Service Area. The term "Service Area" shall mean and consist of the Property which is to be developed and which is described in Exhibit "A" of the Conditional Utility Agreement for Sewer Service.

**Section 3. Agreement to Construct and Convey.** OWNER agrees to construct and convey to the COUNTY the Sewer System and the COUNTY, in reliance on the representations and warranties of OWNER contained herein and subject to the terms and conditions of this Agreement, agrees to accept the Sewer System from OWNER and pay for the cost of construction thereof upon completion of the Sewer System. OWNER represents and warrants that:

(a) OWNER shall cause  the Sewer System to be designed, permitted and constructed. Any Federal, State or local permitting fees and approvals, if applicable, shall be the responsibility of the OWNER; provided, however, that the COUNTY shall be responsible for the right-of-way use permit fee, if applicable, the Florida Department of Environmental Protection permit fee and the underground utility permit fee, all related to the off-site sewer main only.

(b) Subject to the terms of this Agreement, the OWNER shall commence construction of the Sewer System within two (2) years and complete construction within three (3) years of execution of the Agreement.

(c) OWNER's agreement to construct and convey the Sewer System is in addition to OWNER's agreement to construct, install and convey, at OWNER's sole cost and expense, all other sewer transmission, collection and meter facilities necessary to provide sewer service to OWNER's Property pursuant to the Conditional Utility Agreement for Sewer Service.

**Section 4. Conveyance.** In addition to the provisions set forth in Section 11, Title to Installations Constructed by Developer, of the Conditional Utility Agreement for Sewer Service, the following shall apply:

(a) Conveyance shall be closed at the Seminole County Services Building within fifteen (15) days of the vote relating to conveyance by the Board of County Commissioners.

(b) Real and personal property taxes, if any, shall be the responsibility of the OWNER and prorated as of the date of closing. Any corrective instruments required in connection with perfecting OWNER's title shall be prepared and recorded by OWNER prior to closing.

**Section 5. Construction of Installations.** In addition to the provisions of Section 9 of the Conditional Utility Agreement for Sewer Service, the OWNER shall provide COUNTY with the proposed utility contractor's firm name, key agents, address and brief description of previous applicable jobs so that the COUNTY may approve said contractor prior to establishment of a pre-construction conference. Approval shall not be unreasonably withheld by the COUNTY.

**Section 6. Payment.** COUNTY shall reimburse OWNER for the actual costs incurred in construction of the Sewer System as described in Section 2(a) herein. The anticipated construction costs are set forth in Attachment "A" attached hereto and incorporated herein and shall not exceed \$66,809.33. Actual costs shall include all design, permitting, construction, labor and materials associated with construction of the Sewer System. To be eligible for reimbursement by COUNTY, the costs incurred by OWNER must be reviewed and written consent obtained from COUNTY by OWNER prior to incurring the costs. These costs shall be based on the contractor's invoices and OWNER's engineer's certification of the invoices and in accordance with cost and pay estimates approved by COUNTY. Payment shall be made as follows:



(a) Notwithstanding any other provision of this Agreement, the total repayment amount shall not exceed the amount of OWNER's contract to construct the Sewer System together with change orders as approved by the COUNTY in writing.

(b) The COUNTY shall reimburse the OWNER for approved costs of design, permitting and construction of the Sewer System upon completion of construction. Payments shall be by COUNTY warrant within forty-five (45) days of receipt and approval by COUNTY of the bill of sale, contractor invoices, engineer certification of completion, Florida Department of Environmental Protection acceptance and clearance, final COUNTY inspection and COUNTY receipt of as-builts related to off-site water main in accordance with this Agreement.

**Section 7. Risk of Loss.** OWNER shall bear the risk of loss or damage to the Sewer System prior to conveyance and acceptance by the COUNTY. OWNER shall restore at its expense all loss or damage within a reasonable period of time.

**Section 8. Approval of County.** As a condition precedent to COUNTY's obligations hereunder, the OWNER shall deliver to COUNTY for COUNTY's prior review and approval all plans, specifications, drawings, financial and cost projections, construction and other contracts and corresponding prices prepared for the OWNER regarding the Sewer System. Under no circumstances shall the review by the COUNTY impose on the COUNTY any liability to the OWNER for faulty design or construction of the Sewer System. It is acknowledged by the parties that the COUNTY review contemplated in this Section is only for the purpose of determining the operational acceptability of the Sewer System and for no other purpose whatsoever. Nothing in this Section shall relieve OWNER of its obligations under this Agreement, the Conditional Utility Agreement for Sewer Service, or other applicable COUNTY regulations and procedures.

**Section 9. Access to Site.** The COUNTY shall provide to the OWNER rights of access and easements over property belonging to or controlled by the COUNTY for installation of the Sewer System as required for the completion of the approved Sewer System and in accordance with the approved plans and specifications. County Development Fees related to development of the adjacent subdivision

including underground utilities fees and right-of-way use fees, shall not be waived by this Section.

**Section 10. Operation and Maintenance.** Upon transfer, the COUNTY shall be responsible for operation and maintenance of the Sewer System and shall assure service to all present and future connections to the Property; provided, however, that the COUNTY's obligation shall be consistent with and not greater than the COUNTY's obligation to provide such sewer service to the public generally.

**Section 11. Indemnification.** OWNER agrees to hold harmless and indemnify the COUNTY, its Commissioners, officers, employees and agents from and against any and all claims, losses, damages, or lawsuits for damages, including any and all court costs and attorney fees arising from or related to the performance of this Agreement between OWNER and COUNTY.



OWNER further agrees to hold harmless and indemnify the COUNTY, its Commissioners, officers, employees and agents from and against any and all claims, losses, damages or lawsuits for damages resulting from:

(a) any misrepresentation of a material fact contained in this Agreement or the exhibit attached hereto; or

(b) any breach of warranties made by OWNER pursuant to this Agreement.

**Section 12. County's Liability.** Notwithstanding everything contained herein to the contrary, OWNER understands and agrees that the obligations of the COUNTY, including, but not limited to, the

payment of costs to be made hereunder to OWNER shall not be deemed to be or constitute a pledge of the full faith and credit of the general revenues, including non-ad valorem tax revenues of the COUNTY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SHOPPES OF OVIEDO MARKETPLACE, LLC,  
a Florida limited liability  
company

By: RETAIL INVESTMENT SPECIALISTS, LLC  
a Florida limited liability company,  
Its Managing Member

By: [Signature]  
Alan C. Charron, Manager

Date: 2-12-08

STATE OF FLORIDA  
COUNTY OF Orange



I HEREBY CERTIFY that, on this 12<sup>th</sup> day of February, 2008, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared Alan C. Charron, Managing Member of Retail Investment Specialists, LLC, a limited liability company, organized under the laws of the State of Florida, the Managing Member of the Shoppes of Oviedo Marketplace, LLC, a Florida limited liability company  who is personally known to me or  who has produced \_\_\_\_\_ as identification and that he did take an oath. He acknowledged before me that he executed the foregoing instrument as such officer in the name and on behalf of the limited liability company.



[Signature]  
NOTARY PUBLIC  
Print Name LuAnn Giordano  
Notary Public in and for the County  
and State Aforementioned  
My commission expires: 2/22/2010

Seminole County attestation continued on Page 9

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

ATTEST:

\_\_\_\_\_  
Maryanne Morse  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
Brenda Carey, Chairman

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

For the use and reliance  
of Seminole County only.

As authorized for execution by the Board  
of County Commissioners at its \_\_\_\_\_,  
200\_\_, regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney

SED/sb  
12/13/07

Attachment:

Attachment "A" - Shoppes of Oviedo Marketplace, LLC  
Estimated Construction Cost

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# SHOPPES OF OVIEDO, LLC

## ATTACHMENT <sup>A</sup>'B'

### ESTIMATED CONSTRUCTION COST Oviedo Marketplace Parcel 16 Force Main Relocation and Extension

| <u>Description</u>                        | <u>Quantity/Units</u> | <u>Unit Cost</u>  | <u>Total Cost</u>  |
|---|-----------------------|-------------------|--------------------|
| Mobilization                              | 1 LS                  | \$5,000.00        | \$5,000.00         |
| 8" SDR 26 PVC Pipe Force Main             | 662 LF                | \$28.75           | \$19,032.50        |
| 8" Plug Valve                             | 1 EA                  | \$875.00          | \$875.00           |
| 8" FM Reconnection                        | 1 EA                  | \$1,500.00        | \$1,500.00         |
| 8" Miscellaneous Fittings                 | 6 EA                  | \$275.00          | \$1,650.00         |
| Connect to Existing Lift Station          | 1 EA                  | \$2,275.00        | \$2,275.00         |
| Clean/Flush/Remove Existing 8" Force Main | 1 LS                  | \$2,432.00        | \$2,432.00         |
| Remove & Replace 5' Wide Sidewalk         | 478 LF                | \$22.50           | \$10,755.00        |
| ROW Tree Removal and Replacement          | 12 EA                 | \$475.00          | \$5,700.00         |
| ROW Restoration with Seeding & Sodding    | 635 SY                | \$4.75            | \$3,016.25         |
| Pressure Test                             | 1 EA                  | \$500.00          | \$500.00           |
|   |                       | <b>SUB-TOTAL:</b> | <b>\$52,735.75</b> |
| Temporary Effluent Pumping                | 1 LS                  | \$8,000           | \$8,000.00         |
|   |                       | <b>TOTAL:</b>     | <b>\$60,735.75</b> |
| 10% Contingency Fee                       |                       |                   | \$6,073.58         |
| <b>Total Estimated construction cost</b>  |                       |                   | <b>\$66,809.33</b> |

6700 Conroy Rd., Suite 230 • Orlando, Florida 32835 • 407-291-9000 (phone) • 407-291-9090 (fax)

# SHOPPES OF OVIEDO, LLC

## Exhibit 'G'

**Project Title:** Oviedo Marketplace Parcel 16 Force main Extension.

**Project Reference:** The proposed project will consist of:  
Removal of approximately 465 LF of existing 8-inch force main and the extension/relocation of an 8-inch force main within the Oviedo Marketplace right of way owned and maintained by Seminole County.

**Project Intent:** The sanitary force main will enhance the existing sanitary sewer collection system within the Oviedo Marketplace ROW.

**Project Description:**

The project will include the relocation and extension 662 LF of 8-inch sanitary sewer force main. The proposed force main will connect just outside of the existing sanitary sewer pumping station and extend in a northwesterly direction, thence in a westerly direction to the easterly right of way of Oviedo Marketplace within an existing utility easement. Thence the force main shall run along the easterly right-of-way to a point north of the southwest property corner of parcel 16 and north of the existing Target driveway entrance within a proposed easement. Thence the force main shall be routed southeasterly to be connected to an existing 8 inch sanitary sewer force main located approximately 25 feet (±) easterly of the southwest property corner of parcel 16 within a proposed 10 foot utility easement.

Utility Plan – See Attachment 'A'

Estimated Construction Cost – See Attachment 'B'