

**LIGHTING AND SOLAR AGREEMENT FOR ORLANDO’S PUBLIC  
SCULPTURE COMMUNITY PROJECT  
BETWEEN THE CITY OF ORLANDO, STRENGTHEN ORLANDO,  
INC. AND THE ORLANDO UTILITIES COMMISSION**

**This LIGHTING AND SOLAR AGREEMENT FOR ORLANDO’S PUBLIC SCULPTURE COMMUNITY PROJECT** (hereinafter referred to as “Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2014 (the “Effective Date”) by and between the CITY OF ORLANDO, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, FL 32801(hereinafter referred to as the “CITY”), STRENGTHEN ORLANDO, INC. a 501(c)(3) non-profit Florida corporation, with principal offices located at 400 S. Orange Avenue, Orlando, FL, 32801 (hereinafter referred to as “SO”), and the ORLANDO UTILITIES COMMISSION, a statutory commission organized and existing under the laws of the State of Florida, with its administrative offices at 100 W. Anderson Street, Orlando, FL 32801(hereinafter referred to as “OUC”). CITY, SO and OUC may hereinafter also be jointly referred to as the “Parties” or individually as a “Party.”

**WHEREAS**, the CITY, in conjunction with See Art Orlando, initiated a major Public Sculpture Community Project (“Sculpture Project”) to enhance the aesthetic experience and cultural image of Downtown Orlando; and

**WHEREAS**, the CITY and See Art Orlando believe that installation of iconic works of art throughout the City of Orlando will bring national and international attention to Orlando and will add to the economic viability of the community; and

**WHEREAS**, the CITY and See Art Orlando have sought the support of the local business community to provide funds for the Sculpture Project to avoid placing a burden on City taxpayers; and

**WHEREAS**, the CITY and See Art Orlando desire for the Sculpture Project to be illuminated so that the sculptures can be enjoyed during certain nighttime hours; and

**WHEREAS**, OUC agrees to provide all labor and materials to install - lights and electrical facilities at each sculpture location (“Lighting System”); and

**WHEREAS**, upon completion of the installation of the Lighting System, SO, acting as the fiscal agent for See Art Orlando, will pay OUC for all labor and material costs for the Lighting System; and

**WHEREAS**, the CITY and OUC further agree that it will be beneficial to the community to offset the cost of the electricity to illuminate the Sculpture Project with the use of a solar power generating system (“Solar Array”) installed on a City -owned facility at a future date; and

**WHEREAS,** the OUC desires to contribute to the Sculpture Project by donating a Solar Array to the CITY and installing the Solar Array on a City-owned facility for the benefit of the CITY and the Sculpture Project; and

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

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

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

2. **Effective Date and Term of Agreement.** The effective date of this Agreement shall commence on \_\_\_\_\_, 2014 and shall remain in effect until the following events have been completed: 1) OUC has received payment by SO for the cost of lighting and materials, labor and installation of the Lighting System; and 2) the Solar Array is fully operational; and 3) ownership of the Solar Array, and the associated warranty, have been transferred from OUC to the CITY.

3. **OUC Responsibilities.**

- a) **Sculpture Illumination.** OUC shall provide all equipment, materials and labor to install - lights and the electrical facilities (“Lighting System”) as may be required to illuminate each sculpture and location designated by the CITY as part of the Sculpture Project. Upon completion, OUC shall transfer ownership of the Lighting System and associated warranties to the CITY and invoice Strengthen Orlando on a time and material basis for all costs associated with the Lighting System.
- b) **Solar Array.** OUC shall procure and purchase the design, equipment and installation of a Solar Array, sized to meet the approximate lighting load for the Sculpture Project, to be located on CITY-owned property, at a site designated by the CITY and structurally acceptable to OUC and its solar contractor. The Solar Array installation shall be completed no later than four (4) months after CITY provides OUC, in writing, notice that the location on CITY property upon which the Solar Array will be installed is ready for the installation. The Solar Array shall be interconnected to and generate power to the OUC power grid and be used to off-set and reduce the CITY’s monthly utility bill. OUC shall also procure and purchase a five-year warranty on the Solar Array. Upon completion of installation of the Solar Array, OUC shall, at no cost to the CITY, transfer full title, ownership and control of the Solar Array and the five-year warranty, to the CITY. Should the Lighting System or Solar Array malfunction under the warranty period, OUC, at CITY’s request, will assist in identifying warranty supporting material or information needed. Upon transfer of ownership and

integration of the Solar Array into OUC's power grid, OUC shall enter into an Interconnection Agreement with CITY.

- c) Electricity Charges. The electricity used to illuminate the sculptures shall be billed by OUC as part of the CITY's monthly power bill. Once operational and upon completion and transfer of title, ownership and control of the Solar Array, OUC shall offset or credit and reduce the CITY's monthly electrical charges, including the cost of illuminating the Sculpture Project, by the value of solar energy generated by the Solar Array.

4. **CITY Responsibilities.**

- a) Sculpture Illumination. CITY shall provide OUC with designated locations for the Lighting System that are part of the Sculpture Project and require illumination. Upon completion of the Lighting System and payment by SO to OUC, the CITY shall own, maintain, and replace at its sole cost the Lighting System.
- b) Solar Array. The CITY shall designate a location on CITY-owned property for the installation of the Solar Array. Upon completion of the Solar Array and once it is fully operational and accepted by CITY, the CITY shall take full title, ownership and control of the Solar Array and the five-year warranty on it, at no cost to the CITY. Upon transfer of ownership and integration of the Solar Array into OUC's power grid, the CITY shall also enter into an Interconnection Agreement with OUC.
- c) Electricity Charges. The electricity used to illuminate the sculptures shall be billed by OUC as part of the CITY's monthly power bill. Once operational and upon completion and transfer of title, ownership and control of the Solar Array, the CITY shall pay the monthly electrical charges, including the cost of illuminating the Sculpture Project which shall be off-set or credited and reduced by the value of solar energy generated by the Solar Array.

5. **Strengthen Orlando Responsibilities.** SO, acting as the fiscal agent of See Art Orlando, will remit payment to OUC within thirty (30) days of receipt of a bill for the purchase and installation of the Lighting System for the Sculpture Project.

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

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

7. **Indemnification and Hold Harmless.** To the extent permitted by Florida law and without waiving its sovereign immunity, OUC shall indemnify and hold CITY, See Art Orlando and SO harmless from and against any and all claims, liabilities or damages resulting from claims of third parties or fines or penalties assessed by governmental entities to the extent arising from the negligence or intentional misconduct of OUC, its contractors or subcontractors, related to any work performed under this Agreement. Notwithstanding the foregoing, OUC does not waive and specifically retains all defenses and protections provided to it under Florida and other applicable law, including, without limitation, the defense of sovereign immunity. The limited waiver of sovereign immunity as currently set forth in Section 768.28, Florida Statutes, for tort actions brought against OUC shall be applicable to any claim or action brought pursuant to the foregoing indemnity provision, even if said claim or action sounds in contract rather than tort. Nothing in this Agreement shall inure to the benefit of any third party to allow a claim otherwise barred by sovereign immunity or other operation of law. This Section 7 shall survive the expiration, cancellation or termination of this Agreement.

8. **Risk of Loss.** The risk of loss of the Lighting System and the Solar Array shall remain with OUC until the Lighting System and Solar Array are completed and accepted by CITY and title has transferred. Upon acceptance by CITY and the transfer of title, the risk of loss shall transfer to CITY.

9. **Release of Liability.** The Parties agree that once the CITY takes ownership and control of the Lighting System and the Solar Array and associated warranties, any maintenance and repair to either facility shall be the CITY's sole responsibility. Upon taking title to these facilities, the CITY thereby releases OUC of any further liability beyond the responsibilities described in Section 3 and Section 7 above.

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

11. **Default and Termination.**

- a) **Default.** In the event of a material default by any Party hereto, the other Party(ies) shall have the right to terminate this Agreement prior to the expiration of this Agreement and may pursue any and all legal and equitable rights and remedies under the laws of the state of Florida. Default shall be deemed to have occurred upon breach of any of the conditions set forth herein and a failure to cure said breach within thirty (30) days after written notice from the another Party.
- b) **Termination.** The Parties agree not to terminate this Agreement until all responsibilities and obligations of the Parties as stated herein have been satisfied.

12. **General Provisions.**

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

- h) **Non-waiver.** The failure of a Party to insist upon the another Party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release the other Party from its duties to comply with such obligations in all other instances.
  
- i) **Severability.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effective. To that end, this Agreement is declared severable.

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

**SIGNATURES START NEXT PAGE**

CITY OF ORLANDO, FLORIDA,  
a municipal corporation

ATTEST:

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

By: \_\_\_\_\_  
Alana Brenner, City Clerk

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2014  
by \_\_\_\_\_, Mayor/Mayor Pro Tem and \_\_\_\_\_, City Clerk, who is  
personally known to me who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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

\_\_\_\_\_, 2014

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

**SIGNATURES CONTINUE NEXT PAGE**

Two Witnesses:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**ORLANDO UTILITIES**

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

By: \_\_\_\_\_  
Kenneth P. Ksionek  
General Manager and CEO  
Executed on:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Beth Mason, Secretary

STATE OF FLORIDA  
COUNTY OF ORANGE:

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by KENNETH P. KSIONEK, as General Manager and CEO, and BETH MASON, as Secretary, of Orlando Utilities Commission, a statutory commission created pursuant to the laws of Florida on behalf of Orlando Utilities Commission, known to me to be the persons described in and who executed the foregoing, this \_\_\_\_ day of \_\_\_\_\_, 2014, who are personally known to me and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2014.

(NOTARY SEAL) \_\_\_\_\_  
Notary Public

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

**SIGNATURES CONTINUE NEXT PAGE**



Two Witnesses:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**STRENGTHEN ORLANDO**, a non-profit Florida Corporation

By: \_\_\_\_\_  
Rebecca Sutton, Director

Executed on:  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE:

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Rebecca Sutton, as a Director of Strengthen Orlando, a non-profit Florida corporation, known to me to be the persons described in and who executed the foregoing, this \_\_\_\_ day of \_\_\_\_\_, 2014, who is personally known to me and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2014.

(NOTARY SEAL) \_\_\_\_\_  
Notary Public

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