

FUNDING AGREEMENT BETWEEN
SOLAR AND ENERGY LOAN FUND
AND
CITY OF ORLANDO

THIS FUNDING AGREEMENT (“Agreement”) is made and entered into this _____ day of _____ 2014, by and between the Solar and Energy Loan Fund, hereinafter referred to as “SELF” with a principal address of 2400 Rhode Island Avenue, Fort Pierce, FL and the City of Orlando, hereinafter referred to as “City,” a municipal corporation organized and existing under the state of Florida with a principal address of 400 S. Orange Avenue, Orlando, Florida 32801.

WHEREAS, SELF and the City will work together to ensure a funding partnership to assist City of Orlando customers and primarily residential owners with financing related to home energy retrofits, including energy efficiency and renewable energy alternatives, (the “Program”); and

WHEREAS, the City of Orlando City Council adopted plans to reduce community-wide energy usage 5% by 2018, in the Green Works Orlando Community Action Plan; and

WHEREAS, through investments in green buildings, renewable energy, and energy efficiency, the City has generated available rebate and energy tax deduction funds to be reinvested in other like projects; and

WHEREAS, the City will provide an up-front investment of One Hundred Thousand Dollars (\$100,000.00) to be leveraged to bring in sufficient loan execution or other outside and community partners necessary for SELF to become self-sustaining; and

WHEREAS, the parties hereto desire to clearly identify the duties and responsibilities each has to the other regarding the implementation and development of the Program;

NOW THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the parties hereto do hereby agree as follows:

1. **INCORPORATION OF RECITALS.**

The foregoing recitals are incorporated herein and made a part of this Agreement.

2. **SCOPE OF WORK.**

(a) City shall perform, in a satisfactory and proper manner, the work and services detailed below:

- i. Provide opportunities to connect to the local banking and non-profit foundations community for the purposes of SELF securing additional investments and grants.

- ii. Promote the Program through online, video and neighborhood outreach opportunities and help connect SELF with multiple existing City projects and programs.
- (b) Self shall perform, in a satisfactory and proper manner, the work and services detailed below:
- i. SELF will employ at least one (1) full-time employee in the City during the Agreement Term, and shall be hired within two (2) months following the effective date of this Agreement. Upon receipt of the City's One Hundred Thousand Dollars (\$100,000) over the course of the first funding year, SELF will provide funding for a fulltime clean energy specialist position in the City, along with travel expenses and back office support from headquarters for capitalization plans, strategic planning, and underwriting, etc.
 - ii. In order to ensure minimum standards and consumer protection, SELF shall:
 - a. provide coordination with the Orlando Utilities Commission ("OUC") Energy Audit process;
 - b. perform client consultation (energy expertise) to help interpret Energy Audit report;
 - c. help clients identify cost-effective home energy retrofits; including energy efficiency and renewable energy alternatives;
 - d. help clients select specific product types and contractors;
 - e. review competitive bids from contractors and ensure reasonable and competitive consumer prices;
 - f. coordinates with OUC to complete contractor screening;
 - g. provide a process to handle complaints and resolution procedures; and
 - h. SELF agrees to lend at favorable terms to Orlando residents that are equal to or lower rates than other regions where SELF operates.
 - iii. SELF will leverage the City's initial investment to become self-sustaining over the three-year term of this Agreement. SELF will utilize the City's investment as Match from and/or leverage the investment from other local government agencies, foundations, banks, and others. Under no circumstance shall the City become a party to the terms and conditions of any granting agency, nor will the City assume any risk on any subsequent loans procured by SELF. Should SELF not issue sufficient loans and/or raise the necessary funds over the three year Agreement term, the City may elect to terminate this Agreement for the convenience of the City with advance written notice to SELF. The Parties anticipate that the initial investment of One Hundred Thousand Dollars (\$100,000) will enable SELF to leverage funds in order to reach Three Million Dollars (\$3,000,000) in lending and/or use the City's \$100,000 allocation as match to raise additional operating funds by the end of the Agreement Term in order for SELF to be self-sustaining. Should the City's funds or the partnership described in this Agreement be used as grant match; leverage for additional area government partners; and/or used to

raise additional capital partners, those additional funds shall be considered towards SELF's need for self-sufficiency.

3. PROGRAM MILESTONES

The following milestones should be attainable by SELF, in order for the City, to continue this Funding Agreement. Prior to the end of the first year, following the effective date of this Agreement, SELF should have sufficient staffing and have engaged in hiring at least one (1) dedicated full-time individual and secured dedicated office space within the City of Orlando. The hired full-time individual working in the City shall focus during the first year of this Agreement in the following priority order: 1) exclusively inside the City boundaries and 2) OUC's service territory outside City boundaries, unless additional funds were raised for the use in Central Florida and/or self-sufficiency has been achieved. Prior to the issuance of the final Twenty Thousand Dollar (\$20,000) payment, as detailed below in Section 4, SELF shall provide to the City evidence of a minimum of twenty-five (25) actual loans in circulation.

Following the first year of this Agreement and up through the Term of this Agreement, SELF should achieve the following completed milestones:

- (a) That OUC performs a minimum of five hundred (500) SF energy audits per year in the City limits.
- (b) Estimated Value of three hundred (300) loans issued, resulting in approximately Three Million Dollars (\$3,000,000).
- (c) Provide for additional funds raised for lending, supporting operation expenses and also grant requests to cover shortfalls.

4. COMPENSATION.

(a) The parties hereto reaffirm that SELF is receiving the Sum of One Hundred Thousand Dollars (\$100,000.00) from the City that is intended to be leveraged to provide opportunities for sufficient loan execution or other outside and community partners necessary for SELF to become self-sustaining. The City's contribution will be paid over two installment amounts, subject to the milestones and demonstrated efforts to become self-sustaining in Orlando. The first installment of Eighty Thousand Dollars (\$80,000) shall be made upon the last date of execution of the parties. The remaining Twenty Thousand Dollars (\$20,000) shall be made eight (8) months following the effective date of this Agreement. Any additional funding for the second and third years of this Agreement may require a combination of a proportional amount of additional financial assistance from governmental entities, grants, and earned income from Program loan activity. Notwithstanding the above, the City does not intent to provide any additional funds other than those set forth in this Agreement.

(b) SELF shall submit an invoice request for payment in accordance with Section (a) above. The City shall reimburse SELF within thirty (30) days of receipt of the invoice, subject to any prior approval from the City as may be necessary.

5. PERIOD of AGREEMENT.

Unless earlier terminated as provided herein, this Agreement shall become effective upon the execution by both parties, and shall remain for a term of three (3) years, ending on _____, 2017 ("Term"). The deadlines, scope of services, payment schedule and any other facets of this Agreement may be amended when it is deemed to be in the best interests of the Program and agreed to by both parties. In the event the ending date is extended by the City, the ending date of this Agreement will be extended automatically upon written notice to SELF and will become the new ending date of this Agreement without further amendment.

6. REPORTING, MONITORING AND RECORD KEEPING

(a) SELF shall allow City on-site monitoring of the Program, access to its records, facilities and/or interview of any clients or employees of SELF in order to ensure that the conditions of this Agreement are being met at any reasonable time that may be required during the term of this Agreement.

(b) SELF shall maintain, in accordance with Chapter 119, Florida Statutes, all books, documents, papers, accounting records, and evidence pertaining to costs incurred in work performed hereunder and any other items that qualify as public records under Chapter 119, Florida Statutes. All materials shall be available at all reasonable times during the period of this Agreement, and for five (5) years from the final date of payment hereunder, for inspection by the City. If any litigation, claim, or audit is commenced prior to the expiration of said five (5) year period, the records shall be maintained until all litigation, claims, or audit findings have been resolved. Any person duly authorized by the City shall have full access to and the right to examine any of the said records during the said period. SELF shall maintain financial records related to funds paid under this Agreement and shall submit a financial report to the City within sixty (60) days of the date of termination of this Agreement.

7. HOLD HARMLESS.

Each party shall be responsible for all claims of whatsoever kind or nature arising out of their own acts, errors, or omissions, whether arising in contract, tort, or any other legal theory in the performance of its work and obligations under this Agreement. This provision does not waive, in any manner, the limits of liability, or the granting of immunity, afforded to City pursuant to Section 768.28, Florida Statutes, or by operation of law. Nothing herein, shall inure to the benefit of any third party for the purpose of adding any claim otherwise barred by sovereign immunity, or operation of law.

8. TERMINATION of AGREEMENT.

(a) If the necessary funds are not available to fund this Program, this Agreement may be terminated by either party, according to the provisions of this Agreement. Written notice of termination by SELF, with effective date, shall be provided to the City at least thirty (30) days in advance of termination.

(b) SELF may terminate this Agreement for non-performance if, after notifying the City in writing and following a period of thirty (30) days, corrections are not made to the satisfaction of the designated SELF Program Manager.

(c) City may terminate this Agreement at any time upon thirty (30) days written notice to SELF, provided City remains responsible for liabilities incurred up to the date of termination.

(d) In the event of termination of this Agreement, copies of all finished or unfinished documents, data, correspondence, reports, and maps prepared or secured by City under this Agreement shall be delivered to the SELF, if requested by SELF.

9. MEDIATION.

The Parties will attempt to settle any controversy or claim arising out of or relating to this Agreement or breach thereof through consultation and a spirit of mutual cooperation. If the controversy or claim remains unresolved, such controversy or claim will be addressed by a mediator chosen jointly by the Parties within thirty (30) days after notice by one of the Parties demanding non-binding mediation. The Parties will not unreasonably withhold their consents to the selection of a mediator, will share the cost of the mediation equally, may agree to postpone mediation until they have completed some specified but limited discovery about the controversy or claim, and may replace mediation with some other form of non-binding alternative dispute resolution (“ADR”). Mediation proceedings shall occur in Orange County or Seminole County, Florida as determined by the domicile of the agreed upon mediator. A Party may submit to a court of competent jurisdiction any controversy or claim arising out of or relating to this Agreement or breach thereof that cannot be resolved between the Parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation. Each Party consents to jurisdiction over it by that court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either Party. Either Party may resort to the judicial proceedings described in this section before the expiration of the two-month ADR period if good faith efforts to resolve the dispute under these procedures have been unsuccessful; or interim relief from the court is necessary to prevent serious and irreparable injury to the Party or if necessary to prevent the running of an applicable statute of limitations or repose.

10. SUCCESSORS AND ASSIGNS.

(a) The City and SELF each bind itself and its partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all obligations of this Agreement.

(b) Unless directly specified, nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the City and SELF.

11. PROGRAM MANAGEMENT.

(a) All notices, payment requests, reports, and products provided under or pursuant to this Agreement shall be in writing and be deemed to be delivered upon receipt before 5:00 p.m. on a business day by hand delivery, facsimile, overnight courier or U.S. Mail, postage prepaid, certified mail, return receipt requested, or when delivered to a nationally recognized overnight courier service addressed to the representatives at the addresses set forth below or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith. If written permission is granted by a party hereto, electronic delivery with return receipt request will be acceptable. If return receipt is not received, one of the aforementioned delivery options will be accomplished.

(b) The SELF Program Manager for this Agreement is:

The City of Orlando Program Manager(s) for this Agreement is:

Jon Ippel, AICP, LEED AP
Sustainability Director + Senior Aide to the CAO
City of Orlando - Chief Administrative Office
400 S. Orange Avenue
Orlando, Florida 32801
Phone: (407) 246-3641

(c) All communication related to work undertaken through this Agreement shall be through the above-named Program managers.

18. EXECUTION of AGREEMENT.

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

19. AGREEMENT FORMAT.

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words in any gender shall extend to and include all genders.

20. SEVERABILITY.

It is agreed by and between the parties that if any covenant, condition, or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year indicated above.

SOLAR AND ENERGY LOAN FUND

WITNESS:

By: _____

Sign: _____
Print Name: _____

Print Name: _____
Title: Executive Director

STATE OF FLORIDA
COUNTY OF SEMINOLE

THE AGREEMENT was acknowledged before me on this _____ day
of _____, 2014, by _____, on behalf of the Solar and
Energy Loan Fund. He/she is _____ personally known to me or has produced _____ as
identification.

Notary Public
Print Name: _____
My Commission expires: _____

(SEAL)

CITY OF ORLANDO:

ATTEST:

By: _____

APPROVED AS TO FORM AND LEGALITY

for the use and reliance of the

_____, only.

_____ 2014.

STATE OF FLORIDA
COUNTY OF ORLANDO

PERSONALLY APPEARED before me, the undersigned authority,
_____, and _____, well known to me and known by me to be
the _____ and the _____, respectively, of the _____,
and who acknowledged before me that they executed the foregoing CITY AGREEMENT on
behalf of the _____ as its true act and deed, that they were duly authorized so to
do.

WITNESS my hand and official seal this _____ day of _____, 2014.

Notary Public

Print Name: _____

My commission expires: _____