

Prepared by:

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GRANT AGREEMENT
FOR INSTALLATION OF SOLAR ARRAY

THIS GRANT AGREEMENT FOR INSTALLATION OF SOLAR ARRAY (the "Agreement") is made and entered into this _____ day of _____, 2018, by and between the **CITY OF ORLANDO FLORIDA**, 400 South Orange Avenue, Orlando, FL, 32801, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "CITY", and **TVO COTTAGE HILL, LLC**, a Florida limited liability company, 3014 Orange Center Blvd., Orlando, FL, 32805, hereinafter referred to as "TVO".

RECITALS

WHEREAS, on April 13, 2015, as part of a strategy to alleviate blight in downtown neighborhoods, the CITY OF ORLANDO purchased the Nichols Apartments (n/k/a New Horizons), located at 541 South Cottage Hill Road, "Subject Property," from CAM DISPOSITION HOLDCO, LLC; and

WHEREAS, in the summer of 2015, the CITY solicited proposals from parties interested in redeveloping the Subject Property, with goals including increasing the inventory of safe, affordable housing to serve low and moderate-income households, increasing the inventory of permanent supportive housing and fostering community development that would enhance the surrounding neighborhoods; and

WHEREAS, TVO COTTAGE HILL, LLC, "TVO" submitted a proposal for development of the Subject Property that matched the CITY's goals; and

WHEREAS, pursuant to the CITY's solicitation, TVO purchased the Subject Property from the CITY on December 19, 2016 under the terms of a Purchase and Sale Agreement, dated December 12, 2016, "Purchase Agreement"; and

WHEREAS, the Purchase Agreement requires that TVO renovate and remodel the Subject Property into fifty-eight (58) units for permanent attainable housing, "Project," with a focus on homeless veterans with children and low-income persons or families with a total annual anticipated gross income that does not exceed eighty-percent (80%) of the area median income; and

WHEREAS, TVO completed the Project on _____; and

WHEREAS, in an effort to ensure TVO's success and incentivize TVO's redevelopment of the Subject Property in a manner that includes utility facilities designed for conservation and efficiency, CITY agrees to provide a grant to TVO in the amount of \$160,000.00, "Grant," for the purchase and installation of a solar photovoltaic (PV) array, and attendant sustainability features, such as a community garden, "Solar Array", on the Subject Property; and

WHEREAS, a portion of the Grant is funded through an agreement between the Orlando Utilities Commission and the City of Orlando for Nichols Apartments (k/n/a New Horizons) Efficiency Upgrade Funding, "OUC Agreement," executed contemporaneously with this Agreement; and

WHEREAS, it is the policy of the CITY of Orlando to stimulate economic development and alleviate blight by encouraging and facilitating redevelopment of blighted areas; and

WHEREAS, the creation of new housing opportunities for residents of the CITY and the increased tax revenues resulting from such redevelopments is beneficial to the local economy; and

WHEREAS, TVO has made a substantial investment in the community by purchasing the Subject Property and assuming the obligation to construct the Project in order to fill a need for affordable housing in the area; and

WHEREAS, the CITY has determined that, based on the foregoing, there is a public purpose for this Agreement and the Agreement constitutes a public benefit to the citizens of Orlando; and

WHEREAS, the parties desire to memorialize their agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the CITY and TVO agree as follows:

1. Recitals
The above recitals are incorporated into the substantive body of this Agreement.
2. Grant
The CITY acknowledges that TVO has expended significant funds to construct the Project on the Subject Property in a manner that includes utility facilities designed for conservation and efficiency. To encourage TVO's continued efforts to implement sustainable energy technology, CITY will provide the Grant funds to TVO, by check or wire transfer, within ninety (90) days of the Effective Date.
3. Grant Conditions.
The Grant provided to TVO pursuant to this Agreement is expressly contingent upon the TVO's compliance with the following performance benchmarks:

A. Installation of the Solar Array and Completion Dates. TVO shall commence installation of the Solar Array within twelve (12) months from the Effective Date, and shall diligently pursue completion of the installation within six (6) months thereafter. For purposes of this subsection, TVO will provide the CITY with a final construction schedule showing commencement and completion dates for the Solar Array.

B. Solar Array Operation. TVO will operate and maintain the Solar Array in conjunction with operation of the Project and will provide the CITY with written notice of the date on which the installation of the Solar Array is complete.

4. Use of Grant Funds. TVO will utilize the Grant funds solely and exclusively for the purchase and installation of the Solar Array and for no other purpose whatsoever. Within thirty (30) days after completion of the installation of the Solar Array, TVO will provide a written certification to the CITY, for CITY's review and approval, including all supporting documentation, evidencing the expenditure of the Grant funds in compliance with this Paragraph. TVO will provide any additional documentation requested by the CITY as part of the CITY's review hereunder.
5. Operation and Maintenance. TVO will own and is fully responsible for the operation, maintenance and repair of the Solar Array, at its sole cost. TVO is responsible for the installation, operation and maintenance of the Solar Array in a reasonable manner and consistent with engineering standards and requirements and all applicable laws, rules or regulations.
6. Continuing Obligation.
Throughout the term of the Project, TVO will operate and maintain the Solar Array consistent with this Agreement. TVO will submit to the CITY by no later than each January 31st, commencing January 31, 2019, annual status reports evidencing and certifying compliance with the obligations of this Agreement. The annual status reports will be in a form reasonably acceptable to the CITY.
7. OUC Agreement.
Developer acknowledges that it has read the OUC Agreement and hereby agrees to be bound by the terms of the OUC Agreement to the extent said terms apply to the Project (defined as the "Housing Project" in the OUC Agreement).
8. Notice of this Agreement

City of Orlando
Director – Housing & Community Development
400 South Orange Avenue
Orlando, FL 32801
Fax: (407) 246-2328

With copy to:

TVO Cottage Hill, LLC
3014 Orange Center Blvd
Orlando, FL 32805-4381

9. 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 this 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 effectuated. To that end, this Agreement is declared severable.
10. Counterparts
The parties agree that this Agreement may be executed in multiple counterparts.
11. Termination
This Agreement may be terminated by mutual consent of the parties hereto or upon default as described in Paragraph 12, below. Upon termination, the parties shall have no further obligations under this Agreement, except as described herein.
12. Defaults
Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement by providing ten (10) days written notice to the defaulting party of such termination, "Notice of Termination." **In the event the CITY terminates this Agreement based on TVO's failure to purchase, install, operate and maintain the Solar Array as provided in this Agreement, TVO will reimburse the CITY the full amount of the Grant funds. Said reimbursement will occur within thirty (30) days after the date of the CITY's Notice of Termination, failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the CITY upon the Subject Property to be enforced as**

provided by law. This provision will survive termination of this Agreement.

13. Records

TVO shall maintain books, records, and other evidence relating to the Improvements in accordance with generally accepted accounting principles, procedures and practices, which documents the Improvements in a manner that fulfills the requirements of this Agreement.

14. Audit

TVO expressly acknowledges that the CITY shall have the right to audit TVO's books and records from time to time for compliance by TVO with the terms, conditions, limitations, restrictions and requirements of this Agreement, which shall extend for a period of three (3) years after the term of this Agreement. The CITY shall, upon reasonable notice, have full access during normal business hours for inspection, review and audit of the books and records. Any cost incurred by TVO as a result of a CITY audit shall be the sole responsibility of and shall be borne by TVO.

15. Release and Indemnification

TVO will defend, release, indemnify and hold harmless the CITY, its agents, employees, and elected and appointed officials, from and against all claims, damages, losses, and expenses (including all attorney's costs and fees, and all attorney's costs and fees on appeal) arising out of or resulting, directly or indirectly, from this Agreement. Nothing in this Agreement constitutes a waiver of the CITY's grant of sovereign immunity under law. This provision will survive termination of this Agreement.

16. Force Majeure

The parties shall use reasonable diligence to ultimately fulfill the intent of this agreement but shall not be liable to each other, or their successors or assigns, for damages, costs, attorney's fees (including costs or attorney's fees on appeal) for breach of contract, or otherwise for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the parties. Such causes may include but shall not be limited to, Acts of God, or of the public enemy, acts of other government (including regulatory entities or court) in its sovereign or prior contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes, or failure or breakdown of transmission or other facilities.

17. Controlling Laws

a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the CITY now in effect and those hereinafter adopted.

- b. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.

18. Miscellaneous

- a. TVO warrants that it has not employed or retained any company or person, other than a bona fide employee or consultant working for them, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual for firm, other than a bona fide employee working solely for them, any fee, commission, percentage, gift, or any other consideration that is contingent upon or resulting from the award or making of this Agreement.
- b. TVO warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin or marital status.
- c. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreement. Amendment to or waivers of the provisions herein shall be made by the parties in writing.

19. Assignment

TVO shall NOT ASSIGN this Agreement without the prior written consent of CITY.

20. Bankruptcy

In the event (a) an order or decree is entered appointing a receiver of TVO or its assets, which is not appealed (or if appealed is determined adverse to TVO) or (b) a petition is filed by the TVO for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty (60) days after the filing thereof, then the CITY shall have the right to immediately terminate this Agreement.

21. Compliance with Laws

TVO shall at all times be in compliance with all applicable federal, state and local laws, statutes, rules and regulations, including, but not limited to the Orlando City Code and City Code sections pertaining specifically to planning, zoning and permitting.

22. Effective Date and Term

This Agreement shall become effective on the Effective Date first written above, and end, subject to the termination and severability provisions set forth herein, upon satisfaction in full of all of the obligations of the parties.

23. Personal Liability
No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of TVO or CITY in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of TVO or CITY hereunder.
24. Captions
The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance of construction of provision of this Agreement.
25. Relationship
This Agreement does not evidence the creation of, nor shall it be construed as creating a partnership or joint venture among the CITY and TVO. TVO cannot create any obligation or responsibility on behalf of the CITY or bind the CITY in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.
26. No Waiver of Regulatory Authority
TVO acknowledges that the CITY is the entity responsible for issuing building permits and certain other types of permits which will be required in connection with construction of the Project on the Subject Property and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations. Furthermore, nothing herein operates to vest any particular manner or means of development of the Subject Property.
27. Litigation and Attorneys' Fees. In the event either party to this Agreement should bring suit to enforce or interpret any provision hereof, the prevailing party shall be entitled to payment of its own attorneys' fees, experts' fees and costs, in addition to any other relief granted as a result of such litigation.

THIS AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter hereof and has been entered into voluntarily and with independent advice and legal counsel and has been executed by the authorized representative(s) of each party to be effective on the date first above written.

ATTEST:

CITY OF ORLANDO, FLORIDA, a
municipal corporation, organized and existing
under the laws of the State of Florida (SEAL)

By: _____

Denise Aldridge, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ___ day of _____, 2018
by _____, 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: _____

Signed, sealed and delivered
in the presence of two witnesses:

TVO COTTAGE HILL, LLC
a Florida limited liability company
(CORPORATE SEAL)

Print Name:

By: _____

Name: _____

Print Name:

Title: _____

Date: _____

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____, as _____
of TVO Cottage Hill, LLC., a Florida limited liability company. He/She is personally
known to me or who has produced _____ as
identification.

WITNESS my hand and official seal this _____ day of _____,
2018.

Notary Public

Print Name: _____