

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
INSTITUTE FOR MARKET TRANSFORMATION  
THE  
NATURAL RESOURCES DEFENSE COUNCIL  
AND THE  
CITY OF ORLANDO**

**I. PURPOSE**

This Memorandum of Understanding (“MOU”) establishes the terms and conditions for the working agreement between the Institute for Market Transformation (“IMT”) and Natural Resources Defense Council, Inc. (“NRDC”), collectively known as the “Project Partners”, and the City of Orlando (the “City”) in support of the City Energy Project.

**II. BACKGROUND**

The City Energy Project (the “CEP”) is a national initiative to improve the energy efficiency of existing buildings in major American cities. The partnership between the CEP and the participating cities will support bold solutions that can be replicated by other municipalities nationwide and around the world to advance local economic prosperity and reduce pollution. Funding for the CEP is provided jointly by Bloomberg Philanthropies, Doris Duke Charitable Foundation and The Kresge Foundation (collectively, the “Project Funders”), and administered through the Project Partners.

IMT is a 501(c)3 nonprofit corporation with the mission to promote energy efficiency in buildings. NRDC is not-for-profit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and its mission is to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. The Project Partners together have the experience and ability to support the citywide implementation of energy efficiency initiatives, which will enhance the City’s ability to achieve the long-term success of those initiatives and benefit other communities seeking to implement similar initiatives.

**III. AGREEMENT TO PARTICIPATE**

The City will participate in the CEP and agrees to pursue the successful implementation of all such initiatives, measures and other actions and goals to which it has committed. The Project Partners will support the City in the achievement of all such initiatives, measures and other actions and goals to which it has committed, for the duration of the City’s participation in the CEP, as more specifically set forth in this MOU.

**IV. COMMITMENTS BY THE CITY**

The City commits to pursue, to the best of its ability and in a manner that facilitates collaboration among the City and its major stakeholders, the implementation of the following initiatives, within 18 months of the execution of this MOU, to increase the energy efficiency of its buildings:

1. A citywide energy benchmarking and disclosure policy for buildings;
2. A municipal buildings energy efficiency program that achieves efficiency upgrades to approximately 100 city facilities;
3. An energy audit policy that achieves consistent energy audits to large commercial and multifamily buildings;
4. An energy efficiency finance program, such as PACE, that provides access to private capital to finance energy efficiency programs; and

5. A community energy challenge that engages a substantial percentage of the community to perform cost-effective energy efficiency upgrades;
6. Conduct an assessment of how well the existing energy code compliance is being achieved through the permitting and building inspection process and develop and implement a plan to achieve high level compliance; and
7. Explore market-based policies that incentivize green building development.

In support of the implementation of these initiatives, the City commits to undertake the following actions:

1. Develop a multi-year plan (the “Initiatives Plan”) describing the goals of the initiatives and key actions the City intends to undertake to achieve such initiatives. The Initiatives Plan may be developed with expertise from the Project Partners and other parties, and must be approved by the Project Partners. The Initiatives Plan shall be delivered to the Project Partners within three (3) months of the execution of the Technical Adviser MOU (as defined below), or within five (5) months of the execution of this MOU, whichever comes first. The Initiatives Plan must include, but need not be limited to, the following items:
  - a. An overall timeline for the design, adoption and implementation of the initiatives, including time-based milestones;
  - b. Key elements of the intended design and structure of each initiative;
  - c. The detailed activities and deliverables required to reach the milestones that will occur during the first twelve (12) months of the Initiatives Plan.
  - d. City-based and non-City based resources and support needed by the City to achieve each initiative;
  - e. Estimated amount of time that key staff employed by the City can commit to the design, adoption and implementation of the initiatives; and
  - f. A designated employee of the City to serve as the CEP lead (the “City CEP Lead”) and who shall bear overall responsibility for the City’s execution of its Initiatives Plan.
2. Provide a written update every twelve (12) months, during the term of this MOU, that includes the detailed activities and deliverables for the milestones that will occur within the next 12 months of the Initiatives Plan.
3. Provide the Project Partners with all information that will enable the Project Partners to successfully assist the City as set forth in this MOU, including information related to buildings and energy metrics.
4. Share best practices, including work products and materials, programmatic concepts, and successful processes, with the Project Partners and other cities participating in the CEP.

## **V. COMMITMENTS BY THE PROJECT PARTNERS**

The Project Partners, for the duration of the City’s participation in the CEP and at no expense to the City, will use commercially reasonable efforts to provide the following support, resources and opportunities to assist the City in achieving the goals contained in its Initiatives Plan:

1. Provide one (1) technical adviser (“Technical Adviser”) to provide on-site assistance to the City in developing and executing the Initiatives Plan. The terms and conditions of the Technical Adviser arrangement are referenced in the Technical Adviser Memorandum of Agreement, the form of which is attached as Exhibit A (the “Technical Adviser MOU”);
2. Share best practices and expertise on all aspects of program design and implementation;
3. If determined by the Project Partners in their sole discretion, provide certain funding and other resources to support stakeholder compliance with programs and enhance technical, analytical, and communications capabilities of the City, where applicable;

4. Provide a project toolkit containing best practices, strategies and materials for use by the City;
5. As needed, identify and assist the City in securing additional funding and other resources to achieve the goals in its Initiatives Plan; and
6. Assist the City in peer-to-peer networking with cities, including hosting in-person forums involving other cities participating in the CEP.

#### **VI. SELECTION OF THE TECHNICAL ADVISER**

The parties shall jointly determine the hiring process for a Technical Adviser, including which party should lead the hiring process; the creation of a job description; and the advertisement of the position. At a minimum, the Project Partners shall interview the candidates identified as finalists, and must approve the final selection of the Technical Adviser.

#### **VII. TERM**

This MOU shall be for an initial term commencing on \_\_\_\_\_ and expiring eighteen (18) months after the date the Technical Adviser MOU is executed, unless earlier terminated in accordance with the provisions herein. This MOU may be renewed for a second term of eighteen (18) to twenty-four (24) months, as agreed in writing among the parties hereto.

#### **VIII. REPORTING**

The City shall provide periodic progress reports to the Project Partners. Such reports shall follow the reporting template provided by the Project Partners and be no longer than five (5) pages in length. All reports submitted to the Project Partners shall be signed by the City CEP Lead, and shall include the following information, as well as any other information reasonably requested by the Project Partners:

1. Summary of progress toward achieving the goals and milestones contained in the City's Initiatives Plan; and
2. Explanation of challenges (if any) and proposed actions to overcome such challenges.

Reports shall be due to the Project Partners once every twelve (12) months or as otherwise reasonably requested by the Project Partners in order to comply with their respective reporting obligations to funders. The Project Partners may request a meeting with the City CEP Lead to discuss the findings of each report.

#### **IX. AFFILIATION WITH THE CEP**

The Project Partners support the integration of all initiatives which are undertaken by the City with support from the CEP into the city's own long-term vision for sustainability, including any applicable sustainability or climate action plans. The Project Partners may use the City's name and describe the activities the City undertakes in conjunction with the CEP, including in web and print materials produced for public consumption, subject to the terms and conditions in Section XIV of this MOU. Furthermore, the Project Partners may promote the involvement of the City in the CEP through case studies, reports, and other media, subject to the conditions in Sections X and XIV of this MOU.

#### **X. CEP PUBLIC ANNOUNCEMENT; OTHER PUBLIC COMMUNICATIONS**

The City agrees to participate in an event scheduled in late January with the Project Partners and the Project Funders to announce the launch of the CEP and provide public recognition for the cities participating in the CEP. The City shall coordinate with the Project Partners in advance of the event to secure the participation of the City's mayor, or if the mayor has a conflict, another high-ranking

city official. The City and the Project Partners jointly agree to not promote the City's participation in CEP publicly until after such event has occurred.

The City agrees to notify the Project Partners of public communications by or on behalf of the City that refer to the CEP. Any joint communications or materials will require the prior written approval of both the City and the Project Partners.

#### **XI. MODIFICATION OF THE INITIATIVES PLAN**

Any one of the parties to this MOU may propose modifications to the Initiatives Plan based upon internal or external circumstances that affect the City's ability to achieve the milestones and goals outlined in the plan. All substantive modifications, such as to the programs the City will pursue or to the project timeline, must be agreed upon by the City CEP Lead and the Director of the CEP, who shall not unreasonably withhold approval. If the City CEP Lead and the Director of the CEP cannot reach an agreement about the terms of any such proposed modification, the Project Partners shall have the right to terminate this MOU in accordance with Section XII

#### **XII. TERMINATION OF MOU**

This MOU may be terminated or not renewed by the parties according to the following conditions:

1. Failure by the City to Achieve Milestones: The Project Partners may terminate this MOU if, after their receipt of the second consecutive 6-month progress report, they determine that the City is substantially unable to achieve the milestones and goals outlined in its Initiatives Plan, or that the City has demonstrated an inability to dedicate the required resources to the achievement of the milestones and goals in its Initiatives Plan. Prior to terminating this MOU as provided in this Section XII.1, the Project Partners may (at their sole discretion) initiate a process under Section XI to modify the original Initiatives Plan and clearly communicate revised objectives and milestones to the City.
2. Failure to execute Technical Adviser MOU: The Project Partners may terminate this MOU if the Technical Adviser MOU has not been executed within six (6) months of the date hereof.
3. Termination of the Technical Adviser MOU: The Project Partners may terminate this MOU if the Technical Adviser MOU has been terminated for any reason.
4. For Cause: The City may terminate this MOU if the Project Partners are in material breach of their obligations under Section V of this MOU, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner after notice of such breach has been provided to the Project Partners.
5. Notice: Unless otherwise specified herein, written notice of termination pursuant to this section shall be given by the party terminating this MOU to the other not less than thirty (30) days prior to the effective date of termination.

#### **XIII. RELATIONSHIP**

This MOU shall not be construed as a joint venture or so as to make any one of the parties an agent of any of the other parties. Each of the parties hereto expressly disclaims any intention to enter into any such agency or joint venture and agrees to conduct itself so as not to act or purport to act on behalf of the other. This MOU does not authorize any party to act as the agent or legal representative of any other party for any purpose whatsoever and no party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other party, or to bind any other party in any manner or thing whatsoever.

#### **XIV. CONFIDENTIALITY OF INFORMATION**

Each party recognizes that it may have access to information of a proprietary, private or confidential nature owned by another party. Each party acknowledges that any proprietary, private and confidential information it shares with any other party under this MOU must be identified as such at the time of communication. As such, each party agrees to keep information that has been so identified in strictest confidence and protect it from disclosure; provided that the parties may disclose such information as required by law. The Project Partners retain the right to aggregate otherwise confidential information for use in publications or other materials intended for public consumption.

Notwithstanding the foregoing, the Project Partners and City understand that any information shared, provided, or distributed related to or arising from this MOU may be subject to disclosure to the extent required by laws governing disclosure of public documents, including, but not limited to, Chapter 119, Florida Statutes.

#### **XV. DISPUTE RESOLUTION**

Any dispute or misunderstanding that may arise under this MOU shall first be addressed through negotiations, if possible, between the parties. If the official representatives of the parties do not reach a resolution within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including (but not limited to) alternate dispute resolution processes.

#### **XVI. LIMITATION OF LIABILITY**

No party shall be liable to any other party for any incidental, indirect, special or consequential damages of any kind arising out of this MOU or the relationship between the City and the Project Partners. The provisions of this section will survive the expiration or earlier termination of this MOU.

#### **XVII. NOTICES**

All notices and other communications pursuant to this MOU must be in writing, addressed to the parties at the applicable address set forth on the signature page hereof (or such other address as a party may from time to time specifically designate in writing), must be sent by a nationally recognized overnight courier and will be deemed given on the date delivery is first accepted or refused.

#### **XVIII. MISCELLANEOUS PROVISIONS**

Neither this MOU, nor any rights or obligations hereunder, may be assigned, delegated, transferred or sublicensed by any party, by operation of law or otherwise, without the express prior written approval of the other parties. This MOU cannot be modified orally, and none of the terms hereof will be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. This MOU contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties to this MOU have affixed their signatures:

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 \_\_\_\_\_, 2011 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

\_\_\_\_\_, 2013

By: \_\_\_\_\_

Assistant City Attorney

\_\_\_\_\_  
Laurie Kerr  
Director, City Energy Project  
Natural Resources Defense Council, Inc.  
40 West 20<sup>th</sup> Street  
New York, NY 10011

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

\_\_\_\_\_  
Cliff Majersik  
Executive Director  
Institute for Market Transformation  
1707 L St. NW, Suite 1050  
Washington, DC 20036

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