

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
INSTITUTE FOR MARKET TRANSFORMATION
AND THE
CITY OF ORLANDO**

This Memorandum of Understanding (“MOU”) is entered into by and between the City of Orlando (the “City”) and the Institute for Market Transformation (“IMT”), a 501(c)(3) non-profit corporation, with an office at 1707 L Street NW, Suite 1050, Washington, DC 20036.

WHEREAS, the City is a national leader in its efforts to promote economic development, energy costs savings, and reductions in carbon pollution by increasing the energy efficiency of buildings; and

WHEREAS, the City will execute a Memorandum of Understanding (the “CEP MOU”) to participate in the City Energy Project (the “CEP”), a joint initiative of IMT and Natural Resources Defense Council, Inc. (together, the “Project Partners”) to further advance building energy efficiency in major U.S. cities; and

WHEREAS, IMT’s mission to is to promote energy efficiency in buildings, and IMT has 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; and

WHEREAS, the City and IMT share common goals to reduce energy consumption and carbon pollution within the existing buildings sector and utilize transparent information about building energy performance to promote more informed investment decisions, and believe that this can be accomplished more effectively by collaborating with different organizations; and

WHEREAS, to further the purposes of the CEP, IMT desires to co-locate staff with the City, and the City is willing to provide space in its offices for IMT upon certain terms and conditions as set forth in more detail herein.

NOW, THEREFORE, the parties agree as follows:

I. COMMITMENTS BY IMT

IMT shall provide, at no expense to the City, one (1) employee (the “Technical Adviser”) to be co-located within the City. The Technical Adviser shall be:

1. An employee of IMT reporting to the Associate Director of Building Energy Performance Policy (the “Associate Director”) at IMT;
2. Responsible for assisting the City in achieving the milestones and goals outlined in the City’s Initiatives Plan (as defined in the CEP MOU); and
3. Responsive to the City’s Sustainability Director for day-to-day direction on work schedule, tasks and assignments for the sole purpose of advancing the Initiatives Plan.

II. CITY OFFICE RESPONSIBILITIES TO IMT

The City shall provide the Technical Adviser, at no expense to IMT:

1. Work space, including the use of a desk, chair, and file cabinet space, with the exact location of the work space to be determined by the City; the work space may only be used for general office purposes and accessed during normal business hours, except where the IMT employee receives permission to access the work space outside normal business hours;
2. A computer, monitor, mouse, keyboard, and internet access;
3. Access to shared printers, copiers, scanner, and fax machine;
4. A telephone;
5. Cleaning, recycling, and maintenance of space; and
6. Access to information and materials within the City as necessary for the Technical Adviser to perform his or her duties.

III. TERM

This MOU is expected to be for an initial term of eighteen (18) months, commencing on _____ [date] and expiring 18 months thereafter, unless earlier terminated in accordance with the provisions herein. This MOU may be renewed for a second term of eighteen (18) months commencing, provided each party hereto agrees to such renewal in writing.

IV. PERFORMANCE REVIEWS

IMT shall conduct periodic reviews, but not less than one (1) review annually, to evaluate the work-related performance of the Technical Adviser. IMT shall coordinate such reviews with the City and solicit feedback from the City's Sustainability Director. The Sustainability Director shall report any work-related issues with the Technical Adviser to the Program Manager at IMT. IMT reserves the right to terminate the Technical Adviser for any reason or no reason and, in the event of such termination, IMT shall provide a replacement Technical Adviser to the City.

V. PARTICIPATION IN IMT AND CEP ACTIVITIES

IMT may require or invite the Technical Adviser to participate in IMT or CEP employee events and meetings, or attend conferences or other offsite meetings or events. IMT shall bear the employee-related expenses for any such travel, meetings, and events (in accordance with IMT's expense reimbursement policies, as they exist from time to time). IMT shall coordinate with the City in all such cases, which may include the following:

1. Weekly or bi-weekly IMT or CEP staff meetings;
2. Quarterly in-person meetings;
3. Conferences, meetings and other events that further the Technical Adviser's professional development, or where the Technical Adviser's participation furthers the mission of IMT or the CEP.

VI. NOT AN EMPLOYEE OF THE CITY

The Technical Adviser shall not in any way be considered a servant, contractor, agent or employee of the City. The Technical Adviser shall not be entitled to any remuneration from the City, or to any benefits, including (but not limited to) workers' compensation coverage, disability benefits coverage, unemployment insurance benefits, Social Security coverage or employee retirement membership, or any other rights or benefits normally afforded employees of the City.

VII. 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 IMT. The provisions of this section will survive the expiration or earlier termination of this MOU.

VIII. COMPLIANCE WITH RULES

The Technical Adviser shall promptly comply, at IMT's sole cost and expense, with the policies, rules, regulations and procedures of the City relating to the use of the office space and common areas at the City, provided that the Technical Adviser shall have been provided in advance with written copies of such policies, rules, regulations and procedures. The Technical Adviser shall maintain the work space in a clean, orderly and neat fashion and shall not create or contribute to the creation of a nuisance, and shall not engage in or permit any action that will disturb the quiet enjoyment of any occupants of the building. IMT shall promptly remove the Technical Adviser from assignment at the City upon the City's request, should the Technical Adviser fail to obey the City's policies, rules, regulations and procedures or when, in the reasonable judgment of City, such removal serves the best interests of the City. If a Technical Adviser is removed pursuant to this Section IX, IMT shall provide a replacement Technical Adviser.

IX. TERMINATION OF MOU:

This MOU may be terminated by the parties according to the following conditions:

1. Termination of the CEP MOU: IMT or the City may terminate this MOU at any time following the termination of the CEP MOU.
2. For Cause: The City may terminate this MOU if IMT is in material breach of any of the terms of Section I 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 IMT.
3. 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.

X. RELATIONSHIP

This MOU shall not be construed as a joint venture or so as to make any one of the parties an agent of the other party. 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 IMT or the Technical Advisor to act as the agent or legal representative of the City for any purpose whatsoever. IMT and the Technical Advisor are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City, or to bind the City in any manner or thing whatsoever.

To aid in the advancement of the City's Initiatives Plan, the Technical Adviser may present himself or herself as working with the City to further the goals of such plan in spoken and written communications. The Technical Adviser(s) will be provided a City email address, and phone number, and City business cards that identify the non-City staff relationship. Any individual that inquires about the Technical Adviser's status of employment or role within the city will be provided with information that confirms the Technical Adviser is an employee of IMT.

XI. CONFIDENTIALITY OF INFORMATION

Each party recognizes that it may have access to information of a proprietary, private or confidential nature owned by the other party. Each Party acknowledges that any proprietary, private and confidential information it shares with the other party under this MOU must be identified as such at the time of communication. As such, each party agrees to keep any 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. Each party hereby waives any and all

right, title and interest in and to such information of the other and agrees to return all physical copies, except one (1) archival copy, and destroy all electronic copies, of such information, except as otherwise agreed, at the expense of the party returning or destroying the information, upon the expiration or termination of this MOU.

"Confidential Information" shall mean all information which is identified in writing by the disclosing Party as "confidential" or understood and treated by the disclosing Party as confidential and exempt from disclosure under the Florida Public Records Act, Chapter 119, Florida Statutes (whether as a trade secret or otherwise), or other law.

XII. 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.

XIII. NOTICES

All notices and other communications pursuant to this MOU must be in writing, addressed to the party 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.

XIV. 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 party. 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. The terms and conditions of this MOU shall be governed by the laws of the State of Florida, exclusive of its conflicts of laws rules, and all disputes shall be subject to the exclusive jurisdiction of the courts located in Orange County, Florida.

[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: _____

Date: _____

Alana Brenner, City Clerk

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

Cliff Majersik
Executive Director
Institute for Market Transformation

Date: _____