

Agreement on services regarding the City Performance Tool (“CyPT”)

City of Orlando, FL USA - hereinafter referred to as “City”-	Siemens Corporation, Washington, DC USA - hereinafter referred to as “Siemens” -
- City and Siemens also referred to as “Party” and jointly as “Parties” -	

Definitions

“Affiliate” means any company which is directly or indirectly controlled by Siemens, or controlling Siemens, or controlled by the same legal entity as Siemens. Siemens Affiliates may not make any warranties or representations, or enter into a binding obligation on Siemens behalf or on behalf of any other Siemens’ Affiliate except on behalf of itself. For purposes of this definition “control” shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies, whether (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

“City” means the City of Orlando entering the Agreement.

“City Data” means public information and data of the City provided to Siemens. City shall not provide to Siemens any Confidential, restricted, or personally identifiable information.

“Confidential” means any techniques, know-how, or other information concerning the work of either Party, including, without limitation, patents, research, development, computer software, software source code, specifications, designs or processes, pricing, trade secrets, customer lists, technical and business information, know-how procedures, and/or business affairs not generally known by the trade or the public and disclosed in a written or tangible form clearly marked as such or bearing any other appropriate notice indicating the sensitive nature of such information, or if disclosed orally or visually, identified as confidential and/or proprietary at the time of disclosure.

“Deliverables” means the White Paper and the data collection spreadsheet.

“Levers” means the technologies or other energy efficiency measures selected by the City for inclusion in the City Performance Tool, which impact energy consumption in energy, buildings, and transport.

“Performance Tool/CyPT” means the City Performance Tool, which is software that is proprietary and Confidential.

“Services” means both ordinary and professional services as required to be performed by Siemens under this Agreement for the City. Services include data collection training and a technology review.

A, Services

Siemens will evaluate the City Data to be agreed upon between the Parties upon project start by using the CyPT and provide for an analysis of such data according to the defined City targets and jointly chosen technology Levers as well as render further agreed consulting Services. The City shall be entitled to select a maximum of 15 out of 73 technology Levers, unless the Parties agree jointly on an extension of the maximum number of Levers. Siemens Services shall include one (1) technology workshop with the City and three (3) one-hour training sessions focused on data collection, emissions modelling, and scenario development. Siemens obligation to provide Services shall terminate upon the earlier to occur of: (1) delivery of the White Paper; or, (2) December 30, 2017.

B, Data

The City shall provide Siemens with City Data to comply with the prerequisites for the CyPT-analysis for the agreed Levers.

Siemens shall support the City in gathering publicly accessible data in the following categories: energy, buildings, transport, and general.

Siemens shall be entitled to store, process and use the City Data also for further analysis by Siemens and its Affiliates.

C, Results /Deliverables

Unless otherwise agreed, the City is entitled to use the provided results of the analysis for governmental purposes only. Any further usage requires the prior written consent of Siemens.

D, Remuneration

The remuneration for the services as set forth under A, shall be \$0 USD.

E, Contact

Siemens: Julia Thayne

City of Orlando: Chris Castro

F, Reference

Siemens shall be entitled to use the City as a customer reference for the marketing of the City Performance Tool. Siemens shall also be entitled to mention the technology levers used for the analysis executed for the City as well as the major outcome of the analysis towards other cities as a reference in its communication and marketing.

D, Annexure

The below listed documents are incorporated by reference into this Agreement.

☐ General Terms and Conditions dated October 24, 2016

☐ City Data (categories)

City of Orlando, FL

Place, Date:

Name:

(Print)

Title:

Siemens Corporation

Place, Date:

Name:

(Print)

Title:

Name:

(Print)

Title:

General Terms and Conditions regarding the City Performance Tool (CyPT)

The following terms and conditions are attached to and incorporated into the Agreement on services regarding the City Performance Tool between Siemens and the City. These General Terms and Conditions as well as the Services Agreement and any further Annexes to the Agreement are hereinafter referred to as the "Agreement."

1. General

- 1.1. The Services are outlined in the main body of the Agreement.
- 1.2. Siemens will perform the Services in a professional and workmanlike manner. Siemens reserves the right to make what it deems to be appropriate and reasonable adjustments to such Services under this Agreement. When the City approval in respect of any aspect of the Services is required, such approval shall deem to be denied on expiry of five business days from the date of the request.
- 1.3. Once the Services have been rendered and the Deliverables (see 3.1) have been fully provided to the City, Siemens will have no duty to update or modify such Deliverables.

2. Data Collection

- 2.1. Siemens and the City will collaborate to input quantitative and qualitative City-specific data and City targets into the CyPT tool. The data collection is partly based on public record information ("City Data"). The City will provide the City Data necessary to perform the Services. If explicitly agreed between the Parties in writing, Siemens shall support the City in gathering the public information in alignment with the City.
- 2.2. If the collection of public data by Siemens has been agreed upon between the Parties, Siemens will endeavor to gather data in the quality required. However, Siemens cannot accept any responsibility or liability for missing, false, or delayed public data and information, nor for the quality of any City Data.
- 2.3. When providing data to Siemens, the City will ensure that the City is entitled to provide the City Data for the herein described use to Siemens. To the extent permitted by Florida law, and in an amount not to exceed the City's statutory sovereign immunity cap existing as of the effective date of this Agreement, the City will indemnify Siemens against and hold

harmless from claims of third parties regarding the use of such data.

3. Deliverables

- 3.1. Siemens will provide the results of the analysis by the CyPT in the form of a report ("**White Paper**"). The White Paper will be referred referred to as "**Deliverables**".
- 3.2. The City may copy the White Paper and distribute it as necessary for the City's use of the White Paper. Any further usage requires the prior written consent of Siemens, unless disclosure is required by law.
- 3.3. The White Paper will be branded "Siemens and the City of Orlando", unless the Parties agree to another branding.
- 3.4. The White Paper shall be accompanied at all times by the following disclaimer whenever it is accessed or distributed (or any extract thereof):

"Whilst every effort has been taken to verify the accuracy of the data used for the analysis, neither Siemens, its Affiliates nor [City] can accept any responsibility or liability for reliance by any person on this analysis."

4. Liability

- 4.1. Each party warrants that: (i) to the best of its knowledge and belief, no such material is libelous or defamatory of any person; and (ii) it has full right and power to enter into and perform its obligations under this Agreement.
- 4.2. Siemens gives no warranties in respect of the Deliverables nor any aspect of the Services, and to the fullest extent possible under the laws governing this Agreement, disclaims all implied warranties, including but not limited to warranties of fitness for a particular purpose, accuracy, timeliness and merchantability. Software is provided "As is". Other than to the extent required as a matter of law: (i) neither Siemens nor its Affiliates shall be liable for any direct, indirect, special, incidental, or consequential costs, damages or losses arising directly or indirectly from the use of (or failure to use) or reliance on the Deliverables or other aspect of the Service or in connection with this Agreement; and (ii) the maximum aggregate liability of Siemens for any claim in any way connected therewith or this Agreement whether in contract, tort or otherwise (including any negligent act or omission) shall be

limited to the amount paid by City to Siemens under this Agreement, unless mandatory law provides for further liability.

- 4.3. Whilst every effort will be made to verify the accuracy and completeness of data and information presented in the Deliverables, neither Siemens nor its Affiliates can accept any responsibility or liability for reliance by the City or any third party on the therein contained information and results.

5. Copyright, trademark and property

- 5.1. Siemens and City shall exclusively own all right, title and interest in and to the Deliverables, whenever created or transferred, regardless of the stage of development reached.
- 5.2. The City shall grant to Siemens and hereby grants to Siemens the unrestricted, perpetual, worldwide, royalty-free, sublicensable, and transferable right to use the City Data provided in CyPT in its original or in any modified form and in any known as well as yet unknown way.
- 5.3. Documents, data, City Data, and materials in any form which have been provided by City for the provision of the Deliverables, remain property of City.

6. Time-Line

- 6.1. Siemens will deliver at the kick-off meeting a detailed timeline for information purposes only.
- 6.2. The City recognizes that any delay in delivering the necessary City Data will result in a delayed delivery of the Services.
- 6.3. Any liability from Siemens for delayed delivery is excluded.

7. Confidentiality

- 7.1. Siemens and the City recognize that in the course of the Services, each Party may obtain Confidential or proprietary information of the other Party. This provision does not apply for provision of the Deliverables by the City to its consultants or advisers with a need to know or to information in the public domain or developed independently by the recipient. To the extent consistent with state and local laws, the City will hold information designated by Siemens as Confidential or proprietary in strict confidence and shall not disclose it to any unauthorized party without the prior written consent of Siemens. Siemens shall save, indemnify, and hold harmless the City from

any and all costs, including attorney fees as may be awarded by a court, but only to the extent that said costs or fees are imposed upon the City as a direct result of the City's nondisclosure of information expressly designated by Siemens as Confidential and not subject to disclosure.

8. Miscellaneous

- 8.1. The terms and conditions of this Agreement shall not be modified or rescinded except in writing by authorized representatives of the Parties.
- 8.2. This Agreement shall be construed according to the laws of the State of Florida without reference to its conflict of laws provisions. Any litigation between the City and Siemens arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in Orange County, and if in the federal courts, in the United States District Court for the Middle District of Florida.
- 8.3. Siemens shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions
- 8.4. Press releases or other information on the conclusion and content of this Agreement shall only be made available to third parties, in particular press agencies, with the prior written consent of the other Party hereto. Notwithstanding the before mentioned stipulation, Siemens shall be entitled to use the City as a customer reference for the marketing of the City Performance Tool and to mention the technology levers used for the analysis executed for the City as well as the major outcome of the analysis towards other cities as a reference in its communication and marketing.
- 8.5. Should individual provisions of this Agreement be illegal or unenforceable for legal reasons then, unless the basic intentions of the Parties under this Agreement are substantially jeopardized, the validity of the remaining provisions of this Agreement shall not be affected thereby. In such a case the Parties shall come to an agreement approximating as closely as possible the arrangement originally envisaged in this Agreement.
- 8.6. Neither the rights nor the obligations of this Agreement may be assigned or transferred in any manner, except with the prior written consent of the other Party and except as part of a transfer of all or of a substantial part of the activities to which the subject matter of this Agreement pertains whether by

sale, merger or consolidation provided, however, that Siemens may assign any and all of its rights and obligations without the prior written consent of the City to a Siemens Affiliate. In case of such a transfer the respective Party shall take care that the

transferee, assignee or successor will comply with this Agreement.