

ENGINEER NEUTRAL ENGAGEMENT AGREEMENT

This Engineer Neutral Engagement Agreement (“Engineer Neutral Agreement”) is made as of April _____, 2024 between and among Siemens Industry, Inc. (“Siemens”), the City of Lake Worth (the “City”) (Siemens and the City are sometimes referred to individually as a “Party” and collectively as the “Parties”), and third-party neutral engineer Quaker Lane Associates (“Engineer”).

Recitals

WHEREAS, the City and Siemens are parties to a September 15, 2015 Energy Services Agreement (“Energy Savings Agreement” or “ESA”), under which Siemens agreed to implement several Facility Improvement Measures, including an Advanced Meter Infrastructure System;

WHEREAS, a dispute concerning whether the Advanced Meter Infrastructure System is Substantially Complete under Article 3.3 of the ESA has arisen between the City and Siemens;

WHEREAS, Article 3.3.2 provides of the ESA: “Any disputes concerning the Interim or Substantial Completion of the Work will be resolved in accordance with the Dispute Resolution Procedures;

WHEREAS, Article 2.6.1 of the ESA requires the Parties to “use good faith efforts” to resolve disputed within thirty (30) days of notice of a dispute;

WHEREAS, Article 2.6.2 of the ESA provides that: “Disputes not resolved after good faith negotiation will be resolved according to the procedures attached to this Agreement and made a part hereof as Exhibit P”;

WHEREAS, Exhibit P of the ESA provides, in relevant part, that: “Any unresolved disputes concerning Substantial Completion ... of the Work will be resolved by submitting to a third party professional engineer selected in accordance” with the procedure outlined in Exhibit P;

WHEREAS, Siemens and the City wish to jointly retain Engineer as the third-party neutral engineer in accordance with Article 3.3.2, Article 2.6.2, and Exhibit P of the ESA;

WHEREAS, Engineer wishes to accept his appointment as the third-party neutral engineer Article 2.6.2 and Exhibit P of the ESA;

NOW, THEREFORE, in consideration of the promises and covenants made below, Siemens, the City, and Engineer agree as follows:

Agreement Terms

1. **Joint Retention of Engineer.** Engineer agrees to serve as the third-party neutral engineer in accordance with Article 2.6.2 and Exhibit P of the ESA. Engineer’s fee is \$795.00 per hour for time spent in study, conference, and hearings. Other Quaker Lane Associates staff members may be utilized to assist Engineer as appropriate. Siemens and the City agree that Engineer’s fees will be split evenly between them, be invoiced separately and will be paid within thirty (30) days of

each of Siemens' and the City's receipt of the Engineer's invoice issued to them for services provided in the previous month. Engineer understands that Siemens and the City retain Engineer jointly. Engineer understands that it is to serve as an unbiased neutral, third-party decision-maker, owing impartiality to both Siemens and the City.

2. Scope of Engagement. Engineer is retained to consider the Parties' submissions and other pertinent information, as contemplated in the following Paragraphs, and apply the facts of this dispute, his experience and expertise to decide whether, and only whether, the Advanced Meter Infrastructure System that Siemens installed under the ESA is Substantially Complete under Article 3.3 of the ESA. Engineer is not retained to provide design or engineering services or offer professional advice as part of a design professional – client relationship. Engineer is not retained to decide disputes arising under the ESA, except those identified in this Article 2.

3. Submission Schedule. The Parties shall make the following submissions, along with all supporting documents and/or expert report(s), to Engineer, with a copy to the other Party, on or before the deadlines listed below:

- (a) July 22, 2021 – Siemens' detailed statement of claim in support of its position;
- (b) July 22, 2024 – The City's detailed statement of claim in support of its position;
- (c) Siemens shall be entitled to submit a reply within 30 days after the City submits its detailed statement of claim; and
- (d) The City shall be entitled to submit a surreply within 30 days after Siemens' submits a reply, if a reply is submitted.

4. Post-Submission Proceedings. Following the close of submissions under the Submission Schedule in Paragraph 3 above, and/or at such earlier time(s) determined by Engineer, Engineer may submit, at Engineer's discretion, written requests for information and/or documents to the City and/or Siemens with a copy to the other Party, which requests shall be answered by the responding Party in writing with a copy to the other Party within the time specified by Engineer in the request. Further processes and procedures will be determined, as necessary, after the close of the period allowed by Engineer for the Parties to submit written responses to Engineer's request(s).

5. Transmittal of Documents. Documents and information to be exchanged between the Parties may be transmitted by email, cloud service, or other electronic means to their respective legal counsel and submissions to Engineer may be transmitted by email, cloud service, or other electronic means to Engineer with copy to legal counsel for the non-submitting Party. Any document transmitted electronically by 11:59 p.m. shall be considered exchanged or submitted on that date. Engineer may grant any reasonable requests for extensions of time to exchange or submit documents, which requests should be made before expiration of the deadline. Engineer may also, upon a showing of good cause or *sua sponte*, extend any deadlines if necessary to facilitate the dispute resolution process.

6. Final Decision. Following the exchange of information and positions described above, or at such earlier time determined by the Engineer and the Parties, the Parties and Engineer will discuss and agree upon the form of Engineer's final decision.

7. No Conflicts. Engineer has investigated and is not aware of any conflicts that would prevent Engineer from serving as third-party neutral engineer under this Engineer Neutral Agreement and has disclosed to the Parties all potential conflicts of which Engineer is aware.
8. Communications With Engineer. Both Parties will be included on all communications with Engineer, unless otherwise agreed by both Parties and Engineer.
9. Confidentiality/Nondisclosure. Subject to Florida's Public Records Act (as set forth below), Engineer will treat as confidential, privileged, and proprietary all documents and information disclosed to Engineer in connection with the performance of this Engineer Neutral Agreement which are marked as "Proprietary and Confidential" and agrees to maintain as confidential any such information, communication, or documentation received by Engineer (collectively, the "Confidential Information"). Engineer shall receive, keep, and maintain the Confidential Information in strict confidence, shall use Confidential Information solely for the purpose of performing the services under this Engineer Neutral Agreement, and shall not disclose or use the same except as expressly provided herein. Engineer may disclose the Confidential Information (a) to such of its own officers, directors, employees, and agents as have a need (and only to the extent such persons have a need) to know such information in connection with the proper performance of the services, (b) to such of its subcontractors, vendors, suppliers and the officers, directors, employees, and agents of any of them as have a need (and only to the extent such persons have a need) to know such information in connection with the proper performance of the services, and (c) with the disclosing Party's prior written consent (Engineer and all persons to whom Engineer is authorized to disclose Confidential Information are referred to collectively in this Paragraph 9 as the "Authorized Recipients"). The Authorized Recipients may use the Confidential Information solely for the purpose of performing the services under this Engineer Neutral Agreement. If Engineer discloses any Confidential Information to any other Authorized Recipient, Engineer shall ensure that each such person is made aware of, and observes and complies with, the obligations of confidentiality, non-disclosure, and use of Confidential Information as provided herein.
10. Engineer Not a Party. Siemens and the City agree that, notwithstanding any other provision to the contrary in this, or any other agreement, the Engineer shall not be named as a defendant or party in any action whatsoever arising out of or relating to the ESA. Siemens and the City shall require each and every witness, expert, or other person that such Parties will involve in any action whatsoever arising out of or related to the ESA be bound by the foregoing. Subject to the City's right to sovereign immunity and the monetary limits set forth in Section 768.28, Florida Statutes, should Engineer (or his firm) be named, then the breaching Party agrees to indemnify Engineer (and his firm) for legal fees, experts' fees, and expenses in defending such action.
11. Counterparts. This Engineer Neutral Agreement may be signed in any number of counterparts electronically or digitally, and all such counterparts shall be deemed the one and same instrument. A faxed or e-mailed signature shall have the same effect as an original.
12. Governing Law and Venue. The validity of this Engineer Neutral Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and exclusive venue for any disputes arising out of or related to this Engineer Neutral Agreement shall be in Palm Beach County, Florida.

13. Palm Beach County Inspector General. In accordance with Palm Beach County ordinance number 2011-009, the Parties acknowledge that this Engineer Neutral Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Parties have reviewed Palm Beach County ordinance number 2011-009 and are aware of their rights and/or obligations under such ordinance.

14. Florida's Public Records Act. The Parties shall comply with Florida's Public Records Act Chapter 119, Florida Statutes, and, if the Engineer is deemed to be acting on behalf of the City as provided under section 119.011(2), the Engineer specifically agrees to:

(a) Keep and maintain public records required by the City to perform the services under this Engineer Neutral Agreement.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Engineer Neutral Agreement term and following completion of the Engineer Neutral Agreement, if the Engineer does not transfer the records to the City.

(d) Upon the completion of the Engineer Neutral Agreement, transfer, at no cost, to the City all public records in possession of the Engineer or keep and maintain public records required by the City to perform the services. If the Engineer transfers all public records to the City upon completion of the Engineer Neutral Agreement, the Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Engineer keeps and maintains public records upon completion of the Engineer Neutral Agreement, the Engineer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS ENGINEER NEUTRAL AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

15. Public Entity Crimes, E-Verify, and Scrutinized Companies.

(a) As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Engineer Neutral Agreement, the Engineer certifies that it, its affiliates, suppliers, subcontractors and any other contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services

within the thirty-six (36) months immediately preceding the date hereof.

(b) If applicable to the Engineer, pursuant to Section 448.095(5), Florida Statutes, the Engineer, and any subcontractor thereof, shall register with and use the E-Verify system to verify the work authorization status of all new employees of the Engineer and the subcontractor.

(c) As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into the Engineer Neutral Agreement, the Engineer certifies that it is not participating in a boycott of Israel.

16. Maximum Not To Exceed. The Parties anticipate that the maximum cost to the City for the services to be provided under this Engineer Neutral Agreement **shall not exceed Fifty Thousand Dollars (\$50,000)**. If the Parties anticipate the foregoing amount to be exceeded, the City will be required to obtain City Commission approval of an amendment to this Engineer Neutral Agreement, which amendment may take up to thirty (30) days for approval.

IN WITNESS WHEREOF the parties hereto have made and executed this Engineer Neutral Agreement on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, MMC, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney
Director

By: _____
Yannick Ngendahayo, Financial Services

[SIGNATORY]
Siemens Industry, Inc.
Date: _____

[SIGNATORY]
Quaker Lane Associates
Date: _____