

AGREEMENT

35170

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3 THIS AGREEMENT is made and entered, in duplicate, as of January 7, 2019,
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on October 23, 2018, by and between MRW &
6 ASSOCIATES, LLC, a California limited liability company ("Consultant"), with a place of
7 business at 1736 Franklin Street, 7th Floor, Oakland, California 94612, and the CITY OF
8 LONG BEACH, a municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be
10 performed in connection with conducting a comprehensive Community Choice Aggregation
11 Feasibility Study ("Project"); and

12 WHEREAS, City has selected Consultant in accordance with City's
13 administrative procedures and City has determined that Consultant and its employees are
14 qualified, licensed, if so required, and experienced in performing these specialized
15 services; and

16 WHEREAS, City desires to have Consultant perform these specialized
17 services, and Consultant is willing and able to do so on the terms and conditions in this
18 Agreement;

19 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
20 conditions in this Agreement, the parties agree as follows:

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", attached to this Agreement and incorporated by this
24 reference, in accordance with the standards of the profession, and City shall pay for
25 these services in the manner described below, not to exceed Two Hundred Two
26 Thousand Dollars (\$202,000), at the rates or charges shown in Exhibit "B".

27 B. The City's obligation to pay the sum stated above for any one
28 fiscal year shall be contingent upon the City Council of the City appropriating the

1 necessary funds for such payment by the City in each fiscal year during the term of
2 this Agreement. For the purposes of this Section, a fiscal year commences on
3 October 1 of the year and continues through September 30 of the following year. In
4 the event that the City Council of the City fails to appropriate the necessary funds
5 for any fiscal year, then, and in that event, the Agreement will terminate at no
6 additional cost or obligation to the City.

7 C. Consultant may select the time and place of performance for
8 these services; provided, however, that access to City documents, records and the
9 like, if needed by Consultant, shall be available only during City's normal business
10 hours and provided that milestones for performance, if any, are met.

11 D. Consultant has requested to receive regular payments. City
12 shall pay Consultant in due course of payments following receipt from Consultant
13 and approval by City of invoices showing the services or task performed, the time
14 expended (if billing is hourly), and the name of the Project. Consultant shall certify
15 on the invoices that Consultant has performed the services in full conformance with
16 this Agreement and is entitled to receive payment. Each invoice shall be
17 accompanied by a progress report indicating the progress to date of services
18 performed and covered by the invoice, including a brief statement of any Project
19 problems and potential causes of delay in performance, and listing those services
20 that are projected for performance by Consultant during the next invoice cycle.
21 Where billing is done and payment is made on an hourly basis, the parties
22 acknowledge that this arrangement is either customary practice for Consultant's
23 profession, industry or business, or is necessary to satisfy audit and legal
24 requirements which may arise due to the fact that City is a municipality.

25 E. Consultant represents that Consultant has obtained all
26 necessary information on conditions and circumstances that may affect its
27 performance and has conducted site visits, if necessary.

28 F. CAUTION: Consultant shall not begin work until this

1 Agreement has been signed by both parties and until Consultant's evidence of
2 insurance has been delivered to and approved by City.

3 2. TERM. The term of this Agreement shall commence at midnight on
4 February 1, 2019, and shall terminate at 11:59 p.m. on January 31, 2020, unless sooner
5 terminated as provided in this Agreement, or unless the services or the Project is
6 completed sooner.

7 3. COORDINATION AND ORGANIZATION.

8 A. Consultant shall coordinate its performance with City's
9 representative, if any, named in Exhibit "C", attached to this Agreement and
10 incorporated by this reference. Consultant shall advise and inform City's
11 representative of the work in progress on the Project in sufficient detail so as to
12 assist City's representative in making presentations and in holding meetings on the
13 Project. City shall furnish to Consultant information or materials, if any, described
14 in Exhibit "D", attached to this Agreement and incorporated by this reference, and
15 shall perform any other tasks described in the Exhibit.

16 B. The parties acknowledge that a substantial inducement to City
17 for entering this Agreement was and is the reputation and skill of Consultant's key
18 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
19 reference. City shall have the right to approve any person proposed by Consultant
20 to replace that key employee.

21 4. INDEPENDENT CONTRACTOR. In performing its services,
22 Consultant is and shall act as an independent contractor and not an employee,
23 representative or agent of City. Consultant shall have control of Consultant's work and the
24 manner in which it is performed. Consultant shall be free to contract for similar services to
25 be performed for others during this Agreement; provided, however, that Consultant acts in
26 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
27 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;
28 (b) City will not secure workers' compensation or pay unemployment insurance to, for or

1 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
2 the usual and customary rights, benefits or privileges of City employees. Consultant
3 expressly warrants that neither Consultant nor any of Consultant's employees or agents
4 shall represent themselves to be employees or agents of City.

5 5. INSURANCE.

6 A. As a condition precedent to the effectiveness of this
7 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
8 duration of this Agreement, from insurance companies that are admitted to write
9 insurance in California and have ratings of or equivalent to A:V by A.M. Best
10 Company or from authorized non-admitted insurance companies subject to Section
11 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
12 by A.M. Best Company, the following insurance:

13 i. Commercial general liability insurance (equivalent in
14 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
15 than \$1,000,000 per each occurrence and \$2,000,000 general aggregate.
16 This coverage shall include but not be limited to broad form contractual
17 liability, cross liability, independent contractors liability, and products and
18 completed operations liability. City, its boards and commissions, and their
19 officials, employees and agents shall be named as additional insureds by
20 endorsement (on City's endorsement form or on an endorsement equivalent
21 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10
22 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),
23 and this insurance shall contain no special limitations on the scope of
24 protection given to City, its boards and commissions, and their officials,
25 employees and agents. This policy shall be endorsed to state that the insurer
26 waives its right of subrogation against City, its boards and commissions, and
27 their officials, employees and agents.

28 ii. Workers' Compensation insurance as required by the

1 California Labor Code and employer's liability insurance in an amount not
2 less than \$1,000,000. This policy shall be endorsed to state that the insurer
3 waives its right of subrogation against City, its boards and commissions, and
4 their officials, employees and agents.

5 iii. Professional liability or errors and omissions insurance
6 in an amount not less than \$1,000,000 per claim.

7 iv. Commercial automobile liability insurance (equivalent in
8 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in
9 an amount not less than \$500,000 combined single limit per accident.

10 B. Any self-insurance program, self-insured retention, or
11 deductible must be separately approved in writing by City's Risk Manager or
12 designee and shall protect City, its officials, employees and agents in the same
13 manner and to the same extent as they would have been protected had the policy
14 or policies not contained retention or deductible provisions.

15 C. Each insurance policy shall be endorsed to state that coverage
16 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
17 written notice to City, shall be primary and not contributing to any other insurance
18 or self-insurance maintained by City, and shall be endorsed to state that coverage
19 maintained by City shall be excess to and shall not contribute to insurance or self-
20 insurance maintained by Consultant. Consultant shall notify City in writing within
21 five (5) days after any insurance has been voided by the insurer or cancelled by the
22 insured.

23 D. If this coverage is written on a "claims made" basis, it must
24 provide for an extended reporting period of not less than one hundred eighty (180)
25 days, commencing on the date this Agreement expires or is terminated, unless
26 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,
27 continuing coverage for a period of not less than three (3) years, commencing on
28 the date this Agreement expires or is terminated.

1 E. Consultant shall require that all subconsultants or contractors
2 that Consultant uses in the performance of these services maintain insurance in
3 compliance with this Section unless otherwise agreed in writing by City's Risk
4 Manager or designee.

5 F. Prior to the start of performance, Consultant shall deliver to City
6 certificates of insurance and the endorsements for approval as to sufficiency and
7 form. In addition, Consultant shall, within thirty (30) days prior to expiration of the
8 insurance, furnish to City certificates of insurance and endorsements evidencing
9 renewal of the insurance. City reserves the right to require complete certified copies
10 of all policies of Consultant and Consultant's subconsultants and contractors, at any
11 time. Consultant shall make available to City's Risk Manager or designee all books,
12 records and other information relating to this insurance, during normal business
13 hours.

14 G. Any modification or waiver of these insurance requirements
15 shall only be made with the approval of City's Risk Manager or designee. Not more
16 frequently than once a year, City's Risk Manager or designee may require that
17 Consultant, Consultant's subconsultants and contractors change the amount, scope
18 or types of coverages required in this Section if, in his or her sole opinion, the
19 amount, scope or types of coverages are not adequate.

20 H. The procuring or existence of insurance shall not be construed
21 or deemed as a limitation on liability relating to Consultant's performance or as full
22 performance of or compliance with the indemnification provisions of this Agreement.

23 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
24 contemplates the personal services of Consultant and Consultant's employees, and the
25 parties acknowledge that a substantial inducement to City for entering this Agreement was
26 and is the professional reputation and competence of Consultant and Consultant's
27 employees. Consultant shall not assign its rights or delegate its duties under this
28 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval

1 of City, except that Consultant may with the prior approval of the City Manager of City,
2 assign any moneys due or to become due Consultant under this Agreement. Any
3 attempted assignment or delegation shall be void, and any assignee or delegate shall
4 acquire no right or interest by reason of an attempted assignment or delegation.
5 Furthermore, Consultant shall not subcontract any portion of its performance without the
6 prior approval of the City Manager or designee, or substitute an approved subconsultant
7 or contractor without approval prior to the substitution. Nothing stated in this Section shall
8 prevent Consultant from employing as many employees as Consultant deems necessary
9 for performance of this Agreement.

10 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
11 certifies that, at the time Consultant executes this Agreement and for its duration,
12 Consultant does not and will not perform services for any other client which would create
13 a conflict, whether monetary or otherwise, as between the interests of City and the interests
14 of that other client. Consultant further certifies that Consultant does not now have and shall
15 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
16 other source of income, interest in real property or investment which would be affected in
17 any manner or degree by the performance of Consultant's services hereunder. And,
18 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
19 and contractors.

20 8. MATERIALS. Consultant shall furnish all labor and supervision,
21 supplies, materials, tools, machinery, equipment, appliances, transportation and services
22 necessary to or used in the performance of Consultant's obligations under this Agreement,
23 except as stated in Exhibit "D".

24 9. OWNERSHIP OF DATA. All materials, information and data
25 prepared, developed or assembled by Consultant or furnished to Consultant in connection
26 with this Agreement, including but not limited to documents, estimates, calculations,
27 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
28 models, reports, summaries, drawings, designs, notes, plans, information, material and

1 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
2 and City shall have the unrestricted right to use and disclose the Data in any manner and
3 for any purpose without payment of further compensation to Consultant. Copies of Data
4 may be retained by Consultant but Consultant warrants that Data shall not be made
5 available to any person or entity for use without the prior approval of City. This warranty
6 shall survive termination of this Agreement for five (5) years.

7 10. TERMINATION. Either party shall have the right to terminate this
8 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
9 prior written notice to the other party. In the event of termination under this Section, City
10 shall pay Consultant for services satisfactorily performed and costs incurred up to the
11 effective date of termination for which Consultant has not been previously paid. The
12 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
13 date of termination, Consultant shall deliver to City all Data developed or accumulated in
14 the performance of this Agreement, whether in draft or final form, or in process. And,
15 Consultant acknowledges and agrees that City's obligation to make final payment is
16 conditioned on Consultant's delivery of the Data to City.

17 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
18 shall not disclose the Data or use the Data directly or indirectly, other than in the course of
19 performing its services, during the term of this Agreement and for five (5) years following
20 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
21 all information, whether written, oral or visual, obtained by any means whatsoever in the
22 course of performing its services for the same period of time. Consultant shall not disclose
23 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
24 of others except for the purpose of this Agreement.

25 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
26 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
27 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
28 without breach of this Agreement by Consultant; or (c) a third party who has a right to

1 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
2 disclosed pursuant to subpoena or court order.

3 13. ADDITIONAL COSTS AND REDESIGN.

4 A. Any costs incurred by City due to Consultant's failure to meet
5 the standards required by the scope of work or Consultant's failure to perform fully
6 the tasks described in the scope of work which, in either case, causes City to request
7 that Consultant perform again all or part of the Scope of Work shall be at the sole
8 cost of Consultant and City shall not pay any additional compensation to Consultant
9 for its re-performance.

10 B. If the Project involves construction and the scope of work
11 requires Consultant to prepare plans and specifications with an estimate of the cost
12 of construction, then Consultant may be required to modify the plans and
13 specifications, any construction documents relating to the plans and specifications,
14 and Consultant's estimate, at no cost to City, when the lowest bid for construction
15 received by City exceeds by more than ten percent (10%) Consultant's estimate.
16 This modification shall be submitted in a timely fashion to allow City to receive new
17 bids within four (4) months after the date on which the original plans and
18 specifications were submitted by Consultant.

19 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
20 amended, nor any provision or breach waived, except in writing signed by the parties which
21 expressly refers to this Agreement.

22 15. LAW. This Agreement shall be construed in accordance with the laws
23 of the State of California, and the venue for any legal actions brought by any party with
24 respect to this Agreement shall be the County of Los Angeles, State of California for state
25 actions and the Central District of California for any federal actions. Consultant shall cause
26 all work performed in connection with construction of the Project to be performed in
27 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
28 county or municipal governments or agencies (including, without limitation, all applicable

1 federal and state labor standards, including the prevailing wage provisions of sections 1770
2 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
3 marshal, health officer, building inspector, or other officer of every governmental agency
4 now having or hereafter acquiring jurisdiction.

5 16. PREVAILING WAGES.

6 A. Consultant agrees that all public work (as defined in California
7 Labor Code section 1720) performed pursuant to this Agreement (the "Public
8 Work"), if any, shall comply with the requirements of California Labor Code sections
9 1770 *et seq.* City makes no representation or statement that the Project, or any
10 portion thereof, is or is not a "public work" as defined in California Labor Code
11 section 1720.

12 B. In all bid specifications, contracts and subcontracts for any
13 such Public Work, Consultant shall obtain the general prevailing rate of per diem
14 wages and the general prevailing rate for holiday and overtime work in this locality
15 for each craft, classification or type of worker needed to perform the Public Work,
16 and shall include such rates in the bid specifications, contract or subcontract. Such
17 bid specifications, contract or subcontract must contain the following provision: "It
18 shall be mandatory for the contractor to pay not less than the said prevailing rate of
19 wages to all workers employed by the contractor in the execution of this contract.
20 The contractor expressly agrees to comply with the penalty provisions of California
21 Labor Code section 1775 and the payroll record keeping requirements of California
22 Labor Code section 1771."

23 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
24 constitutes the entire understanding between the parties and supersedes all other
25 agreements, oral or written, with respect to the subject matter in this Agreement.

26 18. INDEMNITY.

27 A. Consultant shall indemnify, protect and hold harmless City, its
28 Boards, Commissions, and their officials, employees and agents ("Indemnified

1 Parties”), from and against any and all liability, claims, demands, damage, loss,
2 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
3 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
4 in connection with (1) Consultant’s breach or failure to comply with any of its
5 obligations contained in this Agreement, including any obligations arising from the
6 Project’s compliance with or failure to comply with applicable laws, including all
7 applicable federal and state labor requirements including, without limitation, the
8 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
9 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
10 employees, agents, subcontractors, or anyone under Consultant’s control, in the
11 performance of work or services under this Agreement (collectively “Claims” or
12 individually “Claim”).

13 B. In addition to Consultant’s duty to indemnify, Consultant shall
14 have a separate and wholly independent duty to defend Indemnified Parties at
15 Consultant’s expense by legal counsel approved by City, from and against all
16 Claims, and shall continue this defense until the Claims are resolved, whether by
17 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
18 breach, or the like on the part of Consultant shall be required for the duty to defend
19 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
20 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
21 in the defense.

22 C. If a court of competent jurisdiction determines that a Claim was
23 caused by the sole negligence or willful misconduct of Indemnified Parties,
24 Consultant’s costs of defense and indemnity shall be (1) reimbursed in full if the
25 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
26 percentage of willful misconduct attributed by the court to the Indemnified Parties.

27 D. The provisions of this Section shall survive the expiration or
28 termination of this Agreement.

1 19. AMBIGUITY. In the event of any conflict or ambiguity between this
2 Agreement and any Exhibit, the provisions of this Agreement shall govern.

3 20. NONDISCRIMINATION.

4 A. In connection with performance of this Agreement and subject
5 to applicable rules and regulations, Consultant shall not discriminate against any
6 employee or applicant for employment because of race, religion, national origin,
7 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
8 disability. Consultant shall ensure that applicants are employed, and that
9 employees are treated during their employment, without regard to these bases.
10 These actions shall include, but not be limited to, the following: employment,
11 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
12 termination; rates of pay or other forms of compensation; and selection for training,
13 including apprenticeship.

14 B. It is the policy of City to encourage the participation of
15 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
16 procurement process, and Consultant agrees to use its best efforts to carry out this
17 policy in its use of subconsultants and contractors to the fullest extent consistent
18 with the efficient performance of this Agreement. Consultant may rely on written
19 representations by subconsultants and contractors regarding their status.
20 Consultant shall report to City in May and in December or, in the case of short-term
21 agreements, prior to invoicing for final payment, the names of all subconsultants
22 and contractors hired by Consultant for this Project and information on whether or
23 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
24 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

25 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
26 accordance with the provisions of the Ordinance, this Agreement is subject to the
27 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
28 Long Beach Municipal Code, as amended from time to time.

1 A. During the performance of this Agreement, the Consultant
2 certifies and represents that the Consultant will comply with the EBO. The
3 Consultant agrees to post the following statement in conspicuous places at its place
4 of business available to employees and applicants for employment:

5 “During the performance of a contract with the City of Long Beach, the
6 Consultant will provide equal benefits to employees with spouses and its
7 employees with domestic partners. Additional information about the City of
8 Long Beach’s Equal Benefits Ordinance may be obtained from the City of
9 Long Beach Business Services Division at 562-570-6200.”

10 B. The failure of the Consultant to comply with the EBO will be
11 deemed to be a material breach of the Agreement by the City.

12 C. If the Consultant fails to comply with the EBO, the City may
13 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
14 to become due under the Agreement may be retained by the City. The City may
15 also pursue any and all other remedies at law or in equity for any breach.

16 D. Failure to comply with the EBO may be used as evidence
17 against the Consultant in actions taken pursuant to the provisions of Long Beach
18 Municipal Code 2.93 et seq., Contractor Responsibility.

19 E. If the City determines that the Consultant has set up or used its
20 contracting entity for the purpose of evading the intent of the EBO, the City may
21 terminate the Agreement on behalf of the City. Violation of this provision may be
22 used as evidence against the Consultant in actions taken pursuant to the provisions
23 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

24 22. NOTICES. Any notice or approval required by this Agreement shall
25 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
26 postage prepaid, addressed to Consultant at the address first stated above, and to City at
27 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
28 to the City Engineer at the same address. Notice of change of address shall be given in

1 the same manner as stated for other notices. Notice shall be deemed given on the date
2 deposited in the mail or on the date personal delivery is made, whichever occurs first.

3 23. COPYRIGHTS AND PATENT RIGHTS.

4 A. Consultant shall place the following copyright protection on all
5 Data: © City of Long Beach, California ____, inserting the appropriate year.

6 B. City reserves the exclusive right to seek and obtain a patent or
7 copyright registration on any Data or other result arising from Consultant's
8 performance of this Agreement. By executing this Agreement, Consultant assigns
9 any ownership interest Consultant may have in the Data to City.

10 C. Consultant warrants that the Data does not violate or infringe
11 any patent, copyright, trade secret or other proprietary right of any other party.
12 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
13 and employees harmless from any and all claims, demands, damages, loss, liability,
14 causes of action, costs or expenses (including reasonable attorney's fees) whether
15 or not reduced to judgment, arising from any breach or alleged breach of this
16 warranty.

17 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

18 that Consultant has not employed or retained any entity or person to solicit or obtain this
19 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
20 commission or other monies based on or from the award of this Agreement. If Consultant
21 breaches this warranty, City shall have the right to terminate this Agreement immediately
22 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
23 due under this Agreement or otherwise recover the full amount of the fee, commission or
24 other monies.

25 25. WAIVER. The acceptance of any services or the payment of any

26 money by City shall not operate as a waiver of any provision of this Agreement or of any
27 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
28 Agreement shall not constitute a waiver of any other or subsequent breach of this

1 Agreement.

2 26. CONTINUATION. Termination or expiration of this Agreement shall
3 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
4 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

5 27. TAX REPORTING. As required by federal and state law, City is
6 obligated to and will report the payment of compensation to Consultant on Form 1099-
7 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
8 resulting from payments under this Agreement. Consultant shall submit Consultant's
9 Employer Identification Number (EIN), or Consultant's Social Security Number if
10 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
11 Financial Management. Consultant acknowledges and agrees that City has no obligation
12 to pay Consultant until Consultant provides one of these numbers.

13 28. ADVERTISING. Consultant shall not use the name of City, its officials
14 or employees in any advertising or solicitation for business or as a reference, without the
15 prior approval of the City Manager or designee.

16 29. AUDIT. City shall have the right at all reasonable times during the
17 term of this Agreement and for a period of five (5) years after termination or expiration of
18 this Agreement to examine, audit, inspect, review, extract information from and copy all
19 books, records, accounts and other documents of Consultant relating to this Agreement.

20 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
21 designed to or entered for the purpose of creating any benefit or right for any person or
22 entity of any kind that is not a party to this Agreement.

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1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 MRW & ASSOCIATES, LLC, a California
4 limited liability company

5 January 24, 2019

6 By [Signature]
7 Name MARK FULMER
8 Title President

9 January 25, 2019

10 By [Signature]
11 Name DAVID HOWARTH
12 Title CEO

13 Tom Modica
14 Assistant City Manager

15 "Consultant"

16 EXECUTED PURSUANT
17 TO SECTION 301 OF
18 THE CITY CHARTER

19 CITY OF LONG BEACH, a municipal
20 corporation

21 Feb. 7, 2019

22 By [Signature]
23 City Manager

24 "City"

25 This Agreement is approved as to form on February 6, 2019.

26 CHARLES PARKIN, City Attorney

27 By [Signature]
28 Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

EXHIBIT “A”

Scope of Work

MRW & Associates Scope of Work

Community Choice Aggregation Study for the City of Long Beach

The scope and sequencing of the project is summarized by the “Long Beach_CCA Project Plan memo_6Nov2018.doc” memo, with GridX’s tasks completed by MRW in accordance with the below scope of work. The project is expected to be completed within approximately 6 months of receiving the City’s notice to proceed.

Task 1: Customer Data

1.1 Residential and Small / Medium Commercial Customers

1. MRW will assess whether Clean Power Alliance is willing to produce hourly load profiles using their internal load forecasting models, with Long Beach’s historic monthly usage data as inputs. Or:
2. Alternatively — i.e. requiring a lower level of effort on CPA’s part — MRW will assess whether CPA is willing to help estimate the approximate energy and capacity savings expected for these customer classes based on AMI Smart Meter profiles versus SCE class average profiles. Doing so would require CPA to disclose each customer class’ monthly load factor, and supply cost calculated against forward curves or historic market prices.

1.2 Large Commercial & Industrial Customers

MRW will contribute to the design of a survey for large commercial and industrial customers, and, upon request, will support City staff in conducting outreach.

Upon request of the City, MRW will host an in-person “Commercial and Industrial Customer Workshop” onsite at the Long Beach Energy Resources Department.

1.3 Alternative Options

MRW will coordinate with the City and ZGlobal to recommend any alternative options regarding the provision of customer-specific Smart Meter and account data.

Task 2: Load Forecast and Analysis

2.1 Data Collection, Preparation and Hourly Load Estimation

For the approximately 115 key commercial and industrial customer accounts in Long Beach territory, for the customers that have given their permission through the customer survey, MRW will retrieve interval usage and billing data using an online tool provided by the City that connects to SCE’s “Share-My-Data” interface.

For small and medium nonresidential customers, to date Long Beach has only received customer-specific monthly energy usage and estimated peak load data. For the residential customers, to date Long Beach has only received aggregate monthly energy usage and estimated peak load data by rate group.

MRW will use the SCE rate class load profiles to disaggregate aggregate monthly load into hourly load data by rate group or class (as appropriate given SCE's publicly-available profiles).

If possible, to account for Long Beach's coastal climate zone and difference between its system peak load and SCE's and the related hourly energy profile impact therein, MRW will apply an estimated "Climate Zone Correction Factor". The Correction Factor will be based on the difference between the system peak and hourly profile of a similar coastal community in SCE's territory, such as from Clean Power Alliance. If no data are available, then MRW will work with the City to estimate potential corrections.

2.2 Long Beach Load Analysis, Load Forecast and Energy Requirement Analysis

Based on historical data, MRW will generate hourly load forecast models with a 10-year horizon for the Long Beach CCA based on the load growth and reduction data for California utilities, as reported to the California Energy Commission. Additional factors could include economic activities in the area, distributed generation, electric vehicle and energy efficiency, load shift impacts from time of use rate structures, and opt-out rate data from other operating CCA's.

The energy requirements for the contemplated Long Beach CCA, incorporating distribution line losses based on SCE's publicly-available hourly distribution loss factors, will be generated for the Cost of Service analysis.

2.3 SCE Net Load Analysis and Forecast

Assuming CPA's class specific load profiles or the interval and customer data to derive the CPA load profiles are available, MRW will estimate SCE's net load profiles by subtracting CPA's departing load from SCE's current load. MRW will also produce comparable 10-year forecasts of SCE's bundled service net load to approximate the hourly load impact of CCA departing load on the utility's residual retail profile.

Assumptions will be defined in coordination with the City, and ZGlobal (to maintain alignment across related modeling tasks).

Task 3: Modeling Exercise

MRW will provide oversight and management support for all contractors involved in the modeling exercise (e.g. Rincon, EDR Group, and ZGlobal), particularly in ensuring that the different contractors use the same modeling assumptions where it is necessary and appropriate to do so (in order to maintain "apples to apples" harmony across all the models and scenarios).

3.1 PV Potential Analysis.

Upon request of the City, MRW subcontractor, Rincon will conduct a geospatial analysis (ESRI ArcGIS & ArcPy) to provide a city parcel-level analysis to assess where local medium-scale photovoltaic arrays could be built.

Rincon will also examine SCE's forecast of Distributed Energy Resources within the City of Long Beach and for SCE's territory overall. This data is expected to be available under their DDRP mapping application (under NDA) and provides geographically-specific estimates of electric vehicles, energy efficiency, demand response, and rooftop photovoltaic installations expected over the next five years.

Note that if this data is unavailable or otherwise not suitable, and regardless for DER forecasts beyond the 5-year horizon, MRW will compile alternate DER forecast data (from CEC and other sources).

3.2 Load Simulation

MRW will be responsible for the management of customer load and account data, and for synthesizing all available information obtained through the aforementioned "Customer Load Assessment" process (with ZGlobal's support) and DER forecast exercise (with Rincon's support) into a 10-year load forecast by customer class, rate group, and individual key accounts for the CCA.

3.3 Wholesale Price Simulation

The price simulation elements of the modeling will be performed by ZGlobal. To do so, ZGlobal will rely on the PLEXOS software platform (licensed from Energy Exemplar). The modeling will produce a 10-year "baseline" forecast, and then perform sensitivity (or "scenario") analyses on primary cost drivers (such as load forecast, natural gas price, hydro conditions and renewable energy volumes) to establish a range of potential outcomes.

MRW will provide support and management oversight by confirming cost driver inputs and assumptions, and reviewing model results.

3.4 Retail Rate Forecast and Analysis

1. MRW will perform calculations based on the simulation results to capture the various regulatory rules that impact SCE's rates and non-bypassable charges to CCA customers (e.g., non-bypassable charges such as the PCIA and CAM).
2. MRW will forecast SCE's rates and NBCs on a monthly basis by rate schedule, and will capture the impact of PCIA and CAM regulations on CCA cashflow requirements — which broadly requires:
 1. Disaggregating the utility's overhead cost structure and power portfolio to a sufficient degree to differentiate SCE's fixed generation costs (e.g., hydroelectric and nuclear) and costs that fluctuate directly or indirectly in response to market prices (e.g. short term and market purchases, qualifying facility contracts, etc.).
 2. Disaggregating the utility's cost structure and power portfolio to separate out the contracts and costs that are recouped from CCA customers via non-bypassable charges;
 3. The CCA's forecasted revenue requirements:
 - a. Will incorporate any credits received from the utility's CAM capacity contracts that serve to offset the CCA's local, system and flexible Resource Adequacy procurement obligations; and
 - b. Will estimate PCIA charges in accordance with the recently adopted annual cap structure, including the tracking and amortization of under-collection amounts in future year charges.

4. MRW will differentiate cost drivers and retail rates for the following customer groups: DOM-S/M, DOM-S/M, DOM-S/M-CARE, TOU-8-PRI, TOU-8-SEC, TOU-8-SUB, TOU-GS-1, TOU-GS-2, TOU-GS-3, TOU-PA-2, TOU-PA-3, STREET LIGHTING, and TC-1. Note that this analysis will anticipate default TOU rates for residential customers (which SCE plans to implement in October 2020).
5. For the City of Long Beach's key accounts (the largest commercial and industrial customers in TOU-8-PRI, TOU-8-SEC and TOU-8-SUB rate groups) that participate in the customer survey and authorize release of their interval meter data: MRW will analyze the wholesale cost of service for these customers and compare the results to historic retail bill charges. To estimate wholesale cost of service, individual customer usage patterns will be matched against historic CAISO wholesale market prices at SCE DLAP, as well as TAC and System Coincident Peak periods and associated Resource Adequacy cost estimates.

MRW will provide datasets of individual results and aggregated by rate group, as well as charts depicting the distribution of customers by rate group (with customer load factor on the X-axis and the percentage difference between wholesale costs and retail charges on the Y-axis).

Results will be incorporated into the project to assess the cost of service impact on the CCA for these customers in the event that Direct Access continues to expand.

3.5 Cost of Service Development and Analysis

MRW will combine all modeling results into a "Cost of Service" spreadsheet model:

1. This is a monthly cash-flow financial forecast that adds in operational expenses to the forecasted power costs, nets these costs against corresponding retail rate revenue inflows, determines financing requirements (to cover startup costs, initial cash conversion cycle and any ongoing, cyclical liquidity shortfalls) and factors in debt service payments and coverage ratios to calculate the expected financial performance of the CCA agency.
2. A template model based on what operational CCAs have used, and accompanied by tutorial materials, will be provided by the City to MRW to use and refine.

Note that some iteration of customer phase-in assumptions is anticipated, in order to optimize program financing requirements with revenue inflow patterns and debt repayment.

Results will be compared against what customers would have paid under forecasted SCE retail rates, while factoring in additional considerations (such as calculating the impact on municipal revenues under SCE or CCA service from franchise fee/ UUT charges).

After the CCA's initial "all in" revenue requirements are finalized, MRW will construct prototype CCA retail rates and project more refined estimates of retail revenues. The retail rates will be estimated using these data, along with PCIA charges and SCE's rate structures. MRW will account for anticipated changes in rates, such such as the implementation of default Time of Use (TOU) rate structures for residential customers in SCE's territory.

After MRW incorporates these CCA revenue projections into the cost of service model, the results will be compared against what customers would have paid under forecasted SCE retail rates, while factoring in additional considerations.

3.6 Economic Impacts

Based on the results, EDR Group will then perform an economy-wide impact assessment for Long Beach and the surrounding region caused by the CCA agency's performance, using the software models IMPLAN. This is a dynamic simulation model that forecasts direct, indirect and induced economic stimulus and impact on job creation.

Task 4: Report and Presentations

MRW will be responsible for drafting summary memorandums (including a "project update memo" due to City Council in February 2019), presentations and the draft and final report summarizing the modeling results.

The report will include select input from other contractors as follows:

1. Rincon will provide input on GHG impacts and alignment with the City's Climate Action Plan (CAP);
2. ZGlobal will provide input of a technical nature pertaining to Energy Risk Management considerations and practices. Specifically, ZGlobal will draft or assist MRW in drafting a description of the qualitative risks CCAs face (and quantifying ranges of value of those risks) covering:
 - a. Wholesale price forward curves;
 - b. Correlation of wholesale prices against load;
 - c. Shape of load against shape of supply;
 - d. Provision of retail services for key accounts;
 - e. Renewable prices forward curves;
 - f. Energy storage prices forward curves;
 - g. Greenhouse gas prices forward curves;
 - h. Cost to serve load;
 - i. Power Charge Indifference Adjustment (PCIA);
 - j. Generation credit received by Southern California Edison (SCE);
 - k. Customer opt out percentages and tipping point.
3. All contractors will provide a technical description of the key assumptions, methodology and software relied upon for the modeling exercise (for inclusion in a technical appendix).

In the report and presentations to City staff and elected officials, MRW will provide all strategic advice, such as in assessing regulatory risk factors, as well as recommendations on CCA program design, implementation process considerations (such as forming an independent CCA versus joining an existing CCA such as Clean Power Alliance, contracting for the range of required services independently versus under joint-action agreements with other CCAs, etc.), and options in regard to CCA operational model structures.

EXHIBIT “B”

Rates or Charges

MRW							Total
	Fulmer (Principal)	Howarth (Principal)	Neal (Sr. Project Mgr.)	Casa Llopert (Associate Consultant)	Randolph (Associate 1)	Gupta, (Associate 2)	
Task 1: Customer Data			8		8		\$2,800
1.1 Residential and Small / Medium C&I	16				4	8	\$6,440
1.2 Key Account Survey & Workshop	4					16	\$3,440
1.2 Key Account Outreach Support (opti	8						\$2,400
1.3 Alternative Options							
Task 2: Load Forecast and Analysis			24		60		\$13,080
2.1 Data Collection and Preparation			16		40		\$8,720
2.2 Load Analysis and Forecast			8	20	40		\$10,560
2.3 SCE Net Load Analysis and Forecast							
Task 3: Modeling							
3.1 PV Potential	4	8					\$3,600
3.2 Load Forecast Support	2	8		8		8	\$3,160
3.3 Wholesale Price Support	4			2		40	\$2,760
3.4 Retail Rate Forecast	8		60	40		60	\$14,000
3.5 Cost of Service	4			20		4	\$38,000
3.6 MacroEconomic Impacts	40	4	8			16	\$1,760
Task 4: Report and Presentations	40		4				\$17,200
Management and communications	40		4				\$12,880
Total Hours	130	20	128	90	232	152	
Rate, \$/hr.	\$300	\$300	\$220	\$180	\$130	\$140	
Subtotals	\$39,000	\$6,000	\$28,160	\$16,200	\$30,160	\$21,280	\$140,800
Expenses (Travel: 5 Person-Trips)							(includes Optional Task)
MRW Total							\$2,500
							\$143,300

Rincon

Task		Feldman (Principal I)	Gardner (Senior Professional II)	Mize (Professional III)	Mize (Professional III)	Mize (Professional III)	Katt (GIS Supervisor)	Montgomery (GIS Analysis)	Total
Climate Action Plan and GHG Analysis	7	20	40						\$9,205
Task 2.1									
Renewable GIS Analysis									\$19,000
Rate, \$/hour	\$215	\$145	\$120	\$120	\$130	\$115			
Rincon Total									\$28,205

EDR Group									
	Wiesbrod	Sherman	Mize (Professional III)	Pockler	Cutler	IMPLAN Licensing Expense	REMI Licensing Expense	Total	
Task 2.6 Economic Impacts									
Option 1: Economic Analysis: Base (IMPLA)	21	20		33	40	1		\$27,983	
Option 2: Economic Analysis: Base (REMI)	32	32		32	43		1	\$48,001	
Rate, \$/hour or per project license	\$274	\$233	\$120	\$233	\$147	\$4,000	\$18,000		
Travel								\$2,000	
EDR Group Total									\$29,983

TOTAL \$201,488

EXHIBIT “C”

City’s Representative:

Tony Foster, Business Operations Bureau
Manager

(562) 570-2015

EXHIBIT “D”

Materials/Information Furnished: None

EXHIBIT “E”

Consultant’s Key Employee:

Mark Fulmer

(510) 834-1999