

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT is made and entered into as of June 9, 2016 by and between The Local Government Commission, a California not-for-profit corporation ("LGC"), and City of Fresno ("Consultant").

RECITALS

- A. LGC desires to engage Consultant to provide certain services and Consultant desires to provide those services and to be compensated accordingly.
- B. LGC and Consultant enter into this Agreement in order to memorialize the terms of Consultant's performance of the services and LGC's obligations with respect thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements set forth herein, LGC and Consultant hereby covenant and agree as follows:

1. Appointment. LGC hereby appoints Consultant as an independent contractor to perform the services ("Services") described in **Exhibit A**, "Scope of Services," attached hereto. Consultant hereby accepts such appointment on the terms and conditions set forth herein.

Neither party may vary scope of Services described in **Exhibit A** except as expressly agreed to in writing by the other party. The budgets for direct labor and expenses are based on the Services described in **Exhibit A**. Any modification of the scope of the Services may affect direct labor costs and project expenses.

2. Performance of Consulting Services. Consultant shall perform the Services in a diligent, competent, timely and professional manner and in strict conformity with all applicable laws, ordinances, statutes or governmental requirements.
3. Consulting Fee; Reimbursable Expenses, Payment.

LGC shall pay Consultant a fee for the Services provided, which fee is described in **Exhibit B**, "Description of Compensation," attached hereto.

Consultant shall be entitled to reimbursement for out-of-pocket expenses incurred in the performance of this agreement, limited to those expenses listed in **Exhibit C**, "Reimbursable Expenses," attached hereto, up to the maximum, total amount set forth in **Exhibit C**.

Upon receipt of Consultant's invoice, LGC shall notify Consultant if it has any exceptions or objections to Consultant's invoice. When Consultant and LGC are in agreement on the terms of Consultant's invoice, LGC shall submit the invoice for payment to funder. LGC shall reimburse Consultant within fourteen (14) days of receiving payment from funder.

4. Term. The term of this Agreement shall commence and Consultant's duties and responsibilities under this Agreement shall begin as of the date first written above

and shall continue, subject to earlier termination as provided herein, until the date indicated on **Exhibit D**, "Timeline."

This Agreement may be terminated at any time by either party for good cause. This Agreement may be terminated by either party, without cause, upon 30 days written notice to the non-terminating party.

This agreement incorporates the terms and conditions (including all restrictions and requirements) of the prime contract EPC-15-067 between the LGC and **The California Energy Commission** which is included as **Exhibit E**. If the language of this contract and the prime contract conflict, the prime contract language has priority. Consultant, if in doubt, should bring a conflict to the attention of the LGC.

This agreement shall be terminated without notice or cause if the prime contractor cancels LGC's contract.

5. Excuse of Performance. Consultant's obligation to perform the Services specified in this contract shall be excused if the performance is prevented or substantially delayed due to circumstances not caused, in whole or in part, by Consultant, including any such circumstances caused by LGC.
6. Independent Contractor. It is the intent of the parties that Consultant is and shall remain an independent contractor, and Consultant shall, at Consultant's sole cost and expense, (i) comply in all material respects with all the laws, rules, ordinances, regulations and restrictions applicable to the Services and the performance thereof, and (ii) pay all federal and state taxes applicable to Consultant or the performance of the Services, whether levied under existing or subsequently enacted laws, rules or regulations. Specifically, and without limitation, Consultant agrees that any agents or individuals it engages for the provision of Services are Consultant's employees or independent contractors and payment of their compensation, collection and payment of all applicable payroll deductions and taxes, worker's compensation insurance coverage, and the like, are the responsibility of Consultant. The parties hereto do not intend to create a partnership, joint venture, employer-employee or master-servant relationship of any kind.
7. Insurance. Consultant shall, at its sole expense, throughout the performance of its Services pursuant to this Agreement, maintain: (1) commercial general liability insurance with minimum limits of \$1,000,000, written on an occurrence form basis, and \$2,000,000 in the aggregate, protecting it from claims for personal injury (including bodily injury and death) and property damage which may arise from on in connection with the performance of Consultant's Services hereunder or from or out of any act or omission of Consultant, its officers, directors, agents, subcontractors or employees; (2) professional liability insurance with minimum limits of \$1,000,000; (3) all auto insurance with minimum limits of \$1,000,000 for each accident; and (4) worker's compensation insurance as required by law. All insurance shall be with companies and on forms acceptable to LGC and shall contain a provision or endorsement that the policy may not be cancelled, terminated or modified unless thirty (30) days prior written notice thereof is furnished to LGC. All such insurance shall be (1) primary and not contributory with regard to any other insurance available to LGC, (2) be written by companies with a BEST Guide rating of B+ VII or better,

and (3) include LGC and its officers, directors, shareholders, employees, agents and assigns as additional insureds. Certificates evidencing that such insurance is in full force and effect shall be provided to LGC upon execution of this Agreement and at least ten (10) days prior to the expiration or renewal of any such policy.

8. Indemnity. Consultant shall indemnify and hold harmless LGC, its officers, directors, employees and agents, from any and all claims, actions, liabilities, losses, expenses of any nature (including without limitation reasonable attorneys' fees), penalties of any kind or nature and costs arising out of or related in any manner to Consultant's performance under this Agreement, or its actions connected therewith.
9. Assignment. This Agreement shall not be assigned or transferred by Consultant in whole or in part without the prior written consent of LGC, and any such purported assignment without such prior written consent shall be void. No subcontract shall be made without written approval of LGC. If Consultant shall cause any part of the project to be performed by a subcontractor, the provisions of this contract shall apply to such sub-contractor, and Consultant shall be liable hereunder for all acts and negligence of the subcontractor.
10. Property Rights. Ownership of any designs, plans, maps, reports, specifications, drawings, and other information or items produced by Consultant while performing Services under this Agreement will be assigned to and owned jointly by Consultant and LGC, as will any copyrights, patents, or trademarks obtained by Consultant as part of performing Services under this Agreement, unless the prime contract specifies otherwise. The original of all reports, memoranda, studies, plans, specifications, drawings, materials, exhibits, maps or other similar or related documents prepared by Consultant in the performance of the Services for LGC shall be the joint property of Consultant and LGC, unless the prime contract specifies otherwise.
11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered if personally delivered or sent via electronic mail (with receipt confirmed), or three (3) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, and shall be addressed as follows:

To LGC: Linda Cloud
 Managing Director
 Local Government Commission
 980 9th St, Suite 1700
 Sacramento, CA 95814
 916-448-1198
 LCLOUD@LGC.ORG

To Consultant: Jose Gonzalez
 Sustainable Division Manager
 City of Fresno
 2600 Fresno Street
 Fresno, CA 93721

Either party may change its address by giving written notice thereof to the other party.

12. Attorney's Fees. The party prevailing in any action at law or in equity necessary to enforce or interpret the terms of this Agreement shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.
13. No Discrimination. Consultant certifies and agrees that Consultant will not discriminate against any employee, volunteer, or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, handicap, or AIDS, in accordance with requirements of local, state, and federal law. Contractor shall take affirmative action to assure the qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, handicap, or AIDS. Consultant shall comply with all local, state, and federal posting and certification requirements.
14. Confidential Information. From time-to-time, LGC may disclose to Consultant certain information that is either marked as "Confidential", or constitutes information that Consultant should reasonably recognize as the confidential information of LGC ("Confidential Information"). Except as may be required by law, Consultant shall maintain the confidentiality of all such Confidential Information and shall not, without the prior written consent of LGC, disclose to any third party or use such Confidential Information for any purpose whatsoever, other than that contemplated in performance of this Agreement. Specifically, and without limitation, Consultant shall limit disclosure of any Confidential Information to its directors, officers, employees or agents who have a need to know such Confidential Information in connection with the contemplated performance under this Agreement, and only for that purpose, and shall require such representatives to keep the Confidential Information strictly confidential. To the extent that Consultant may be compelled to disclose such Confidential Information pursuant to a court order or other applicable law, Consultant shall provide LGC a reasonable opportunity to obtain a protective order or other form of protection against disclosure. Upon termination of this Agreement, or completion of services contemplated hereunder, Consultant shall, upon the request of LGC, deliver or destroy, at the option of LGC, all originals and copies of any such Confidential Information.
15. Governing Law. This Agreement shall be governed by the laws of the State of California.
16. Entire Agreement; Amendments. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may

be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

17. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.
18. Severability. If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.
19. Waiver. The waiver of any breach of any provision hereunder by any party hereto shall not be deemed to be a waiver of any preceding or subsequent breach hereunder.
20. Successors and Assigns. Subject to the provisions of Section 9, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
21. Warranty of Authority. Each of the undersigned hereby warrants that he/she has authority on behalf of his or her principal to execute this Agreement and to bind such principal to the terms hereof.
22. Counterparts. This Agreement may be executed by electronic or hard-copy signature and in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of executed copies of this Agreement by facsimile, email or other electronic transmission will constitute effective execution and delivery of this Agreement for all purposes. Signatures of the parties transmitted by such methods will be treated in all respects as having the same effect as an original signature.

[SIGNATURES APPEAR ON THE NEXT PAGE]

CITY OF FRESNO,
A California municipal corporation

LOCAL GOVERNMENT COMMISSION,
a California not-for-profit corporation

By: _____

By: K Meis

Name: _____

Name: Kate Meis

Title: _____

Title: Executive Director

(If corporation or LLC, Board Chair, Pres. or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: L Cloud

Name: Linda Cloud

By: _____
Deputy

Title: Managing Director

(If corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Brandon M. Collet 5/9/16
Deputy City Attorney Date

Attachments: Exhibits A - E

Exhibit A - Scope of Services

Consultant will perform the following services. Additional details on this scope and timing are provided in **Exhibit E** and should be incorporated as if directly included hereunder.

Task 1: General Project Tasks

1.1 Products

The goal of this subtask is to establish the requirements for submitting project products (e.g., reports, summaries, plans, and presentation materials). Unless otherwise specified by the Commission Agreement Manager (CAM), LGC must deliver products as required by the dates listed in the Project Schedule. Consultant will ensure that all tasks assigned to Consultant are completed in accordance with the Project Schedule.

1.2 Kick-off Meeting

The goal of this subtask is to establish the lines of communication and procedures for implementing this Agreement. If requested by LGC, Consultant will attend a "Kick-off" meeting with the CAM and/or provide inputs on updated match funds or permits.

1.3 CPR Meeting

The goal of this subtask is to determine if the project should continue to receive Energy Commission funding, and if so whether any modifications must be made to the tasks, products, schedule, or budget. CPR meetings provide the opportunity for frank discussions between the Energy Commission and the LGC. As determined by the CAM, discussions may include project status, challenges, successes, advisory group findings and recommendations, final report preparation, and progress on technical transfer and production readiness activities. As requested by LGC, Consultant will provide inputs to CPR Reports or attend CPR meetings.

1.4 Final Meeting

The goal of this subtask is to complete the closeout of this Agreement. If requested by LGC, Consultant will meet with Energy Commission staff to present project findings, conclusions, and recommendations as requested. Consultant will support LGC in closeout activities

1.5 Progress Reports and Invoices

The goals of this subtask are to: (1) periodically verify that satisfactory and continued progress is made towards achieving the project objectives of this Agreement; and (2) ensure that invoices contain all required information and are submitted in the appropriate format. Consultant will provide input as requested.

1.6 Final Report

The goal of this subtask is to prepare a comprehensive Final Report that describes the original purpose, approach, results, and conclusions of the work performed under this Agreement. Consultant will provide input as requested.

1.7 Match Funds

The goal of this subtask is to ensure that the LGC obtains any match funds planned for this Agreement and applies them to the Agreement during the Agreement term. Consultant will provide input as requested.

1.8 Permits

The goal of this subtask is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track. Consultant will provide input as requested.

1.9 Subcontracts

The goals of this subtask are to: (1) procure subcontracts required to carry out the tasks under this Agreement; and (2) ensure that the subcontracts are consistent with the terms and conditions of this Agreement. Consultant will provide input as requested.

1.10 Technical Advisory Committee (TAC)

The goal of this subtask is to create an advisory committee for this Agreement. The TAC should be composed of diverse professionals. The composition will vary depending on interest, availability, and need. TAC members will serve at the CAM's discretion. Consultant will provide input as requested.

1.11 TAC Meetings

The goal of this subtask is for the TAC to provide strategic guidance for the project by participating in regular meetings, which may be held via teleconference. Consultant will provide input and attend meetings as requested.

Task 2: Project Pipeline

The goal of this task will be to define a project pipeline development strategy that will be used to increase the development of distributed energy resources, emerging technology, water conservation measures, and select transportation related GHG mitigation applications in the City of Fresno. The method will be to conduct a thorough review of existing plans and policies to identify existing projects and simultaneously develop filtering and selection criteria based on project location, duration, policy references, and technology or resource savings.

2.1 ICRM TAC Memo

Consultant will support Fresno Metro Ministries (FMM) in the formation of the ICRM Technical Advisory Committee (TAC) by providing recommendations for TAC members and helping conduct targeted outreach.

2.2 Community Scope Report

Consultant will lead the preparation of the Community Scope Report to define how various planning initiatives and local market conditions can best be employed to target and drive sustainability in large redevelopment and infrastructure projects, and how to use this as a catalyst to develop sustainability in surrounding residential and commercial areas, including a focus on disadvantaged communities surrounding the downtown

planning area, and various regional transportation initiatives, including the Blackstone Corridor.

2.3 Community Delivery Capacity Profile

Consultant will support LGC in the preparation of the Community Delivery Capacity Profile by providing a profile of Fresno government infrastructure including city staffing capacity and budgets dedicated to sustainability topics, and their relationship to the city's core planning documents, and a gap analysis defining where additional organizational infrastructure might be necessary to address select resources, markets, technologies, or demographics. Consultant will also participate in brainstorming meetings as appropriate, and review and provide feedback on the draft product.

2.4 Comprehensive Project Pipeline Report

Consultant will support Tierra Resource Consultants (Tierra) in the development of the Comprehensive Project Pipeline Report by helping to identify local projects and relevant energy technologies, participating in the development of the project selection and filtering criteria, and reviewing and providing feedback on the draft report.

Task 3: Funding Platform

The goal of this task is to develop the Funding Platform to be used by the ICRM business model. The Funding Platform will include two components: a written report and a Microsoft Access database. The technique is to inventory the full range of funding options that exist within a community, and define how these can be coordinated, combined, and cross-leveraged to drive more overall project development and projects with higher resource savings value. The method is to conduct research, analyze market opportunities, and develop a funding integration plan that includes common criteria (project, resources, participant) and thresholds for project boundaries (scale, duration, resource outcomes).

3.1 – 3.5 Funding Library, Funding Market Study, Funding Integration Methodology, City of Fresno Funding Platform Report, Funding Library Database and Report

Consultant will support Tierra by providing input, participating in meetings as appropriate, and reviewing and providing feedback on draft products. Additional tasks may be assigned as needed.

Task 4: Verification Toolkit

The goal of this task is to define a project verification approach and recording infrastructure that will be used to assess the impact of installed projects and record resource savings accruing communitywide for all resources, including but not limited to, energy and water as well as GHG emission reductions. The Verification Toolkit will address three key objectives; 1) provide a compendium of existing verification protocols that will be used in a distributed energy resource environment to verify all projects defined in the Task 2, Project Pipeline; 2) provide an assessment of where there are gaps and limitations of existing EM&V protocols for verifying all energy, GHG, and water savings; and 3) provide recommendations on where enhancements to existing EM&V tools can be made, or where new EM&V tools should be developed, to accurately report all savings from projects defined in the Project Pipeline.

4.1 – 4.7 Inventory Verification Protocol and Technical Groups Memo, Verification Methods for Inclusion Memo, Verification Implementation Specification, Data Recording Infrastructure Design, ICRM Platform Gap Analysis, Verification Toolkit Supplementary Tasks and Resources Memo, CPR Report

Consultant will support Tierra by providing input, participating in meetings as appropriate, and reviewing and providing feedback on draft products. Additional tasks may be assigned as needed.

Task 5: Fresno Community Design and Recommendations

The goal of this subtask is to use the business and financial model outputs developed under tasks 2 - 4 to develop a master community design with recommendations to local officials, and community and agency level reports. The team will utilize the preceding frameworks and the information gathered from Fresno policies, plans, and inputs from the technical advisory committee to create a set of resources for Fresno that outlines specific projects, their potential funding streams, resource benefits, and implementation approaches.

5.1 Fresno Master Community Design

Consultant will support LGC by providing a summary of how legislative, executive, and strategic goals related to each of Fresno's core planning documents for consideration and/or inclusion in the policy map. Consultant will setup City Council Informational sessions, and a staff workshop. Consultant will support FMM with Council informational sessions and a staff workshop. Consultant will also provide input, participate in meetings as appropriate, and review and provide feedback on draft products.

5.2 Community Recommendations Report

Consultant will support LGC by providing guidance on specific implementation recommendations for the Community Recommendations Report. Consultant will provide guidance and support as requested to FMM for the informational sessions, workshop and other related events and outcomes. Consultant will also provide general input, participate in meetings as appropriate, and review and provide feedback on draft products.

Task 6: Evaluation of Project Benefits

The goal of this task is to report the benefits resulting from this project.

6.1 – 6.3 Kick-off Meeting Benefits Questionnaire, Mid-term Benefits Questionnaire, and Final Meeting Benefits Questionnaire

Consultant will support LGC by providing input, participating in meetings as appropriate, and reviewing and providing feedback on draft products.

Task 7: Technology/Knowledge Transfer Activities

The goal of this task is to develop a plan to make the knowledge gained, experimental results, and lessons learned available to the public and key decision makers.

7.1 – 7.6 Initial Fact Sheet, Final Project Fact Sheet, Presentation Materials, High Quality Digital Photographs, Technology/Knowledge Transfer Plan, and Technology/Knowledge Transfer Report

Consultant will support LGC by providing input, participating in meetings, and reviewing and providing feedback on draft products as requested. Tasks may include drafting portions of the presentation materials and Technology/Knowledge Transfer Report.

Exhibit B - Description of Compensation

Consultant will receive no more than **\$53,996** for performing the services of this contract. Further details on compensation are described in Exhibit E.

Exhibit C - Reimbursable Expenses

Consultant will receive no funding for reimbursable expenses. Further details on reimbursable expenses are described in Exhibit E.

Exhibit D - Timeline

All tasks enumerated in Exhibit "A" are to be completed by **February 1, 2018**.

Exhibit E - Prime Contract

Attach prime contract