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## Consultant Services Agreement


Client:	Fresno Local Agency Formation Commission	Project No:	
Attention:	David E. Fey	Telephone:	559-600-0604
Bill to:	Fresno Local Agency Formation Commission	Fax:	559-495-0655
Billing Address:	2607 Fresno Street, Suite B	Email:	<a href="mailto:defy@co.fresno.ca.us">defy@co.fresno.ca.us</a>
City, State, Zip:	Fresno, CA 93721	Date Desired:	
Project Title:	Consulting Services for MSR – City of Selma	Basis of Fee:	Fixed Fee
Project Location:	Selma, California		

### Description of Services:

Please see the attached proposal dated January 15, 2016

### Remarks:

THE PROVISIONS SET FORTH BELOW AND ON THE REVERSE SIDE HERETO ARE INCORPORATED INTO AND MADE A PART OF THIS AGREEMENT. IN SIGNING, THE CLIENT ACKNOWLEDGES THAT THEY HAVE READ AND APPROVED ALL SUCH TERMS AND HIRES ENGINEER TO PERFORM THE ABOVE DESCRIBED SERVICES.

Client:	Fresno Local Agency Formation Commission	Provost & Pritchard Engineering Group, Inc. dba Provost & Pritchard Consulting Group
By:		By: 
Name/Title:	Mr. David E. Fey, AICP, Executive Officer	Name/Title: Donald Ikemiya / Vice President
Date Signed:		Date Signed: January 15, 2016

### Provisions of Agreement

Client and Consultant agree that the following provisions shall be part of this agreement:

#### Scope of Services

- Consultant makes no warranty, either express or implied, as to any findings, recommendations, plans, specifications, or professional advice provided by Consultant or its subconsultants, except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
- Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.
- If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.
- If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes an ALTA survey, Client agrees that Consultant may sign the ALTA survey statement attached to this agreement and incorporated herein by reference.
- If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes the preparation of grading plans but excludes construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and the preparation of record drawings based upon information provided by others, and Client will be required to retain such services from another consultant or pay Consultant pursuant to this agreement for such services as extra services in accordance with paragraph 7.
- If the scope of services requires Consultant to estimate quantities, areas and/or volumes for construction, such estimates are made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry and will be performed pursuant to generally accepted standards of professional practice in effect at the time of performance. However, such estimates are only estimates and shall not constitute representations, warranties or guarantees of the quantities of the subject of the estimate. If the scope of services requires Consultant to provide its opinion of probable construction costs, such opinion is to be made on the basis of Consultant's experience and qualifications and represents Consultant's best judgment as to the probable construction costs. However, since Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing, such opinions or probable construction costs do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs.
- Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this contract. Examples of such additional services include, but are not limited to:

- Additional office or field services required due to any governmental agency changes in ordinances, codes, policies, procedures or requirements after the date of this agreement.
- The cost of restaking in the event that any staking or record monuments are destroyed, damaged or disturbed by an act of God or parties other than Consultant.
- Clarifications, adjustments, modifications and other changes due to field and other conditions that change by the time project construction occurs.
- The costs of all checking and inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical engineering fees, soils or geotechnical testing fees, aerial topography fees, and all other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other similar charges not specifically covered by the terms of this agreement.
- All of the costs of preparation, examination and filing of Record of Survey or Corner Record.
- Extra work caused by delays beyond Consultant's reasonable control by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client to furnish timely information or approve or disapprove of Consultant's services or instruments of service promptly, or faulty performance by Client or other contractors or governmental agencies.
- Any extra work performed by Consultant due to changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant.

#### Construction Services

- If the scope of services contained in this agreement does not include construction phase services for this project, Client acknowledges such construction phase services will be provided by Client or by others and Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments

- or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Consultant.
9. Client agrees that, in accordance with generally accepted construction practices, the construction contractor and construction subcontractors will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or their employees or subcontractors at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.
10. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction phase work. If the contractor and/or subcontractors believe there are deficiencies, conflicts, errors, omissions, code violations, improper uses of materials, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors and subcontractors shall notify Client so those deficiencies may be corrected or otherwise addressed by Consultant prior to the commencement of construction phase work.
11. If during the construction phase of the project Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Further, Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph.
12. Client agrees to purchase and maintain, or cause Contractor to purchase and maintain, during the course of construction, builders' risk "all risk" insurance which will name Consultant as an additional named insured as its interest may appear.

## Documents

13. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Consultant shall retain all common law, statutory law and other rights, including copyrights. Upon request and payment of all costs involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant provided pursuant to this agreement will continue only so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement.
14. Client agrees not to reuse electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this agreement. Client agrees not to transfer these electronic files to others without the prior written consent of Consultant. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes or reuse of the electronic files for any other project by anyone other than Consultant. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed and stamped or sealed hard-copy construction documents shall govern.
15. Client agrees not to use or permit any other person to use versions of plans, specifications, drawings, cost estimates, reports or other documents prepared by Consultant which are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non final plans, specifications, drawings, cost estimates, reports or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the project described by this agreement. If signed check prints are required by a reviewing agency to be submitted with a stamp or seal, they shall not be considered final for purposes of this paragraph.
16. In the event (1) Client agrees to, authorize, or permits changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by consultant, or (2) Client agrees to, authorize, or permits construction of unauthorized changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (3) Client does not follow recommendations prepared by Consultant pursuant to this agreement, which changed recommendations are not consented to in writing by Consultant, Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, agents, employees and subcontractors from and against all claims, demands, damages or costs, including attorneys' fees, arising from the unauthorized changes.

## Limitations

17. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this agreement, or by amendments to this agreement, and shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing.
18. Client acknowledges that, unless specifically stated to the contrary in the project proposal's description of services to be provided, Consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should Consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect Consultant's services, Consultant may, at its option, suspend or terminate work on the project until such time as Client retains a qualified contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.
19. Client agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and subcontractors from any asbestos and/or hazardous or toxic material related claims that may be brought by third parties as a result of the services provided by Consultant pursuant to this agreement, except claims caused by the sole negligence or willful misconduct of Consultant. Nothing contained in this agreement should be construed or interpreted as requiring Consultant to assume the status of an owner, operator, generator, or person who arranges for disposal, transport, storage or treatment of hazardous materials within the meaning of any governmental statute, regulation or order.
20. Client agrees to limit the liability of Consultant, its principals, employees and subcontractors, to Client and to all contractors and subcontractors on the project, for any claim or action arising in tort, contract, or strict liability, to the sum of \$50,000 or Consultant's fee, whichever is greater.

## Financial

21. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension or termination costs or expenses. Consultant shall not be liable to Client for any costs or damages that may result from the termination or suspension of services under this agreement due to Client's failure to pay Consultant invoices in accordance with the terms of this paragraph. In the event that Consultant agrees to resume terminated or suspended services after receiving full payment of all late invoices, Client acknowledges and agrees that time schedules and fees, as applicable, related to the services will be equitably adjusted to reflect any delays or additional costs caused by the termination or suspension of services.
22. In all cases where the proposal calls for payment of a retainer, that payment shall be made by Client to Consultant prior to commencement of services under this agreement. Unless otherwise provided for in the project proposal, such retainer shall be held by Consultant throughout the duration of the contract, and shall be applied to the final project invoice, and to any other outstanding A/R, including late payment charges, on the

- project. Any amount of said retainer in excess of the final invoice and other outstanding A/R shall be returned to the Client within 30 days of issuance of the final project invoice.
23. Client agrees that all billings from Consultant to Client are correct and binding on Client, unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event of a dispute over any billing or portion of billing, Client agrees to pay the undisputed portion of any billings in accordance with the payment terms set forth in paragraph 21.
24. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one half percent (1 - 1½%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing. Client acknowledges that payments applied first to unpaid late payment charges and then to unpaid balances of invoices. In the event of a dispute over any billing or portion of billing, Client agrees to pay Consultant the late payment charge on disputed amounts subsequently settled in favor of Consultant.
25. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees or any taxes or fees imposed by local, state, or federal government on consultants' fees during the lifetime of this agreement, the new fee schedule shall apply to all subsequent work on time-and-materials contracts, and a commensurate percentage increase shall be applied to all remaining compensation due under fixed fee contracts.
26. If payment for Consultant's services is to be made on behalf of Client by a third party lender, Client agrees that Consultant shall not be required to indemnify the third party lender, in the form of an endorsement or otherwise, as a condition to receiving payment for services. Client agrees to reimburse Consultant for all collection agency fees, legal fees, court costs, reasonable consultant staff costs and other expenses paid or incurred by Consultant in the event that collection efforts become necessary to enforce payment of any unpaid billings due to Consultant in connection with the services provided in this agreement.
27. In an effort to resolve any conflicts or disputes that arise regarding performance under this agreement by either party, Client and Consultant agree that all such disputes shall be submitted to nonbinding mediation, using a mutually agreed upon mediation services experienced in the resolution of construction disputes. Unless the parties mutually agree otherwise, such mediation shall be a pre-condition to the initiation of any litigation. The parties further agree to include a similar mediation provision in their agreements with other independent contractors and consultants retained for the project and require them to similarly agree to these dispute resolution procedures. This provision shall not be interpreted to restrict the right of either party to file an action in a court of law, in the County of Fresno, State of California, having appropriate jurisdiction or to preclude or limit the Consultant's right to record, perfect or to enforce any applicable lien or Stop Notice rights.

## Other

28. Client and Consultant agree to cooperate with each other in order to fulfill their responsibilities and obligations under this agreement. Both Client and Consultant shall endeavor to maintain good working relationships among members of the project team.
29. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
30. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
31. This agreement contains the entire agreement between Client and Consultant relating to the project and the provision of services for the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both Client and Consultant.
32. Consultants or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultants' or Client's waiver of the breach of this agreement shall not constitute the waiver of any other breach of the agreement.
33. If any term, condition or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on Client and Consultant.
34. This agreement shall be governed by and construed in accordance with the laws of the State of California.
35. Client acknowledges Consultant has the right to complete all services agreed to be rendered pursuant to this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services not performed or completed by Consultant and from liability for any third-party reliance, use, interpretation or extrapolation of Consultant's work product. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to paragraph 7. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to paragraph 7.
36. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with final order or judgment issued by the Bankruptcy Court. If the suspension of performance of Consultant's obligation pursuant to this agreement continues for a period in excess of ninety (90) days, Consultant shall have the right to terminate all services pursuant to this agreement.
37. This agreement shall not be considered to alter, affect or waive any design professional's lien, mechanics' lien or stop notice right, which Consultant may have for the performance of services pursuant to this agreement. Client agrees to provide to Consultant the present name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.
38. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.
39. Consultant and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with paragraph 35 except for termination expenses provided for in said paragraph 35.