

**AGREEMENT  
CITY OF FRESNO, CALIFORNIA  
CONSULTANT SERVICES**

This Agreement Is made and entered into effect on \_\_\_\_\_,  
by and between the CITY OF FRESNO, a California municipal corporation (the City), and  
PROVOST AND PRITCHARD CONSULTING GROUP, Inc. (the Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional engineering services for the design of plans and general construction contract documents for River West Eaton Trail Extension Project (the Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a Professional Engineer and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for the City by its Public Works Department Director (the Director) or the Director's designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. The Consultant shall perform the services described herein and in **EXHIBIT A** to complete the Project more fully described in **EXHIBIT A**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **EXHIBIT A**. The services of the Consultant shall consist of five parts as described below. A separate "Notice to Proceed: will be issued for each of the aforementioned parts. By entry into this Agreement and upon the City's issuance of a written "Notice to Proceed," the City contracts for the services in Part One. The Consultant shall not perform any other part of the Agreement, and this Agreement shall not be a contract for any other part, until further performance is authorized by the City's issuance of a written "Notice to Proceed." It shall, however, remain the Consultant's offer to perform all remaining parts described herein. In the event the Consultant performs services without the City's prior written authorization, the Consultant will not be entitled to compensation for such services.

(a) Part One. Schematic Design Phase.

(1) The Consultant shall review the description of the Project set forth in **EXHIBIT A** and consult with designated representatives of the City to ascertain the requirements of the Project.

(2) The Consultant shall complete a Geometric Approval Drawing (GAD) in accordance with the detailed minimum requirements set forth in EXHIBIT

A. The GAD shall include sufficient detail for the design of the Project, to establish trail alignment and geometrics, and as necessary to obtain the acceptance of the City. The Consultant shall provide the City with an electronic file of the GAD in the following format: PDF.

(3) The Consultant shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible the City department/division that is available in the City's records and is required by the Consultant in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. The Consultant shall notify the City if a topographic survey is required.

(4) The Consultant shall provide a preliminary evaluation of the Project taking into consideration the City's estimate of the cost of construction (Construction Budget) of TBD, including alternative approaches to design and construction of the Project.

(5) Based upon the mutually agreed upon Project requirements and any adjustments authorized by the City in the Construction Budget, the Consultant shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by the City staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(6) The Consultant shall submit a preliminary estimate of construction cost for review and acceptance by the City. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include the Consultant's compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(7) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(8) The Consultant may not rely upon any as-builts provided by the City, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for the Consultant's design. The Consultant shall bring to the City's attention any discrepancies in the as-builts that are discovered by the Consultant. The City makes no representations regarding any as-builts.

(9) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables

submitted within one hundred twenty (120) calendar days from the issuance of a Notice to Proceed for this part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within fourteen (14) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, the Consultant shall prepare for review and acceptance by the City the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, the Consultant shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by the City.

(2) The Consultant shall submit a revised estimate of construction cost for review and acceptance by the City. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishing, equipment or fixtures which was identified in Part One as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the revised estimate and the Consultant shall, at no additional cost to the City, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by the City. The City shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in the Consultant's compensation.

(4) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within ninety (90) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the

Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within fourteen (14) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

(1) The Consultant shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. The Consultant shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by the City. The Consultant shall cooperate with, assist, and be responsive to the City's Purchasing Manager in preparation of all documents including, without limitation, slip-sheeting final documents for printing when requested. The City's Standard Specifications must be used by the Consultant where possible. Final drawings shall be drawn, printed, or reproduced by a process providing a permanent record in black on vellum, tracing cloth, polyester base film, or high quality bond copy. Bid, general conditions, contract and bond document forms or formats regularly used by the City shall be used by the Consultant unless the Director determines they would be impractical for this Project. The Consultant shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by the Consultant are consistent with any documents regularly used by the City that are used for this Project.

(2) Upon request of the City, the Consultant shall provide the calculations used to determine the general construction contract quantities, and structural calculations for the purpose of obtaining any building permits.

(3) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, report, statement, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(4) The Consultant shall provide the City with 4 sets of completed plans and 4 sets of completed specifications for review and final acceptance by the City. Should the plans and specifications as submitted by the Consultant not be accepted by the City, the Consultant shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to the City.

(5) After acceptance of final corrections, if any, the Consultant shall provide the City with one set of accepted reproducible tracings and bid documents for the Project. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of drawings and complete disk files of specifications in the following format: AutoCAD 2018 and Microsoft Word.

(6) The Consultant shall submit a final estimate of construction cost for review and acceptance by the City. Such estimate shall be calculated as of the date all general construction contract documents are delivered to the City in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated basis, and any equipment, or fixtures which may be incorporated in or excluded from the general construction contract.

(7) In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which was identified in the final revised estimate in Part Two as that which may be excluded from the general construction contract, the City shall have the option of accepting or rejecting the final estimate. If the City elects to reject the final estimate, the Consultant shall at no additional cost to the City, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by the City.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within one hundred twenty (120) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within thirty (30) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(d) Part Four. Bidding Phase. After review and acceptance of the construction document phase, the City's decision to proceed to bid shall constitute a written Notice to Proceed with this Part Four:

(1) The Consultant shall assist the City in obtaining bids. The Consultant shall not communicate with potential bidders regarding this Project without the express prior written authorization of the City's Purchasing Manager.

(2) The Consultant shall, within seven calendar days of any request by the City, expeditiously draft and promptly provide addendum as determined by the City to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by the City, excluding therefrom any add alternate, any work which may be let on a segregated bid basis and any furnishings, equipment or fixtures which are excluded from the general construction contract, the Consultant shall, within fourteen calendar days of any request by the City, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to the City provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. The Consultant shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to the City

for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to the Consultant from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

(e) Part Five. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five, and will terminate when a Notice of Completion is filed. Upon award of a general construction contract for the Project and under the direction of the Director through the City's designated Construction Manager for the Project:

(1) The Consultant shall attend the pre-construction conference and, if called upon by the City, act on the City's behalf in discussing the various aspects of the construction phase.

(2) The Consultant shall review and recommend in writing to the City acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant and the general construction contractor.

(3) The Consultant shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep the City informed of the progress of the work. In the event that the Consultant's visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, the Consultant shall immediately advise the City and document, in writing, the work the Consultant deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on the Consultant's best knowledge, information, and belief, the Consultant shall provide the City a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, the Consultant shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to the City's right to overrule the Consultant.

(4) Upon written request by the City, the Consultant shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by the City, the Consultant shall render written recommendations on change orders, claims, disputes, or other questions arising out of the general construction contract, in a timely manner. Recommendations by the Consultant in favor of a change order that is consequently accepted by the City shall constitute approval by the Consultant who

shall then approve the change order in writing. The Consultant shall not unreasonably withhold written approval in the event the City accepts a change order that the Consultant recommended to be rejected. In the event of any technical disputes, the Consultant shall provide the City with the Consultant's written interpretation of the contract documents. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant and the general construction contractor. If the City, the Consultant, and the respective general construction contractor are unable to mutually agree on such period for the Consultant review, then the City will make the determination and that determination will be final.

(6) Upon written request by the City, the Consultant shall provide such design and specification services as may be requested by the City to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions by the Consultant.

(7) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in the Consultant's compensation.

(8) Upon written request of the City, the Consultant shall assist the City in the preparation of Progress Payment Estimates and other related construction reports.

(9) The Consultant shall provide the City with two sets of original as-grade plans wet-stamped and signed by the Consultant's Engineer of Record for the Project submitted for final approval by the City's Building and Safety Services Division of the Development and Resource Management Department on all projects located outside the Right of Way.

(10) The Consultant shall prepare Record Drawings by updating the accepted general construction documents in Part Three to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the City, (iii) the Consultant provided Request for Information responses, and (iv) any the Consultant bulletins, amendments or clarifications. The Consultant shall provide the City with one set of vellum Record Drawings for the Project within thirty (30) calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within seven (7) calendar days from receipt of the City comments unless an extension of time is approved in writing by the Director. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of Record Drawings in the following format: AutoCAD 2018 and Adobe PDF.

2. The City's responsibilities. The City will:

(a) Provide, upon request and cooperation of the Consultant, access to, and make all provisions necessary to, enter upon public or private lands as required for the Consultant to perform such services and inspections as are required in development of the Project; provided, however, if the City is unable to obtain access to enter upon public or private lands, the Consultant shall not be relieved from performing its services as to those public and private lands that are accessible. If the Consultant notifies the City that a topographic survey is required by the Consultant in connection with the consulting services, then the City will be responsible for conducting the topographic survey.

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

(c) With the exception of preparing correspondence required for design, hold all required special meetings, serve all public and private notices, receive and act upon all protests, and perform all services customarily performed by owners as are necessary for the orderly progress of the work and the successful completion of the Project, and pay all costs incidental thereto.

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release the Consultant from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to the City.

(f) Prepare all change orders during construction in cooperation with the Consultant.

(g) Prepare all Progress Payment Estimates in cooperation with the Consultant following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon the Consultant's best knowledge, information, and belief.

(h) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(i) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(j) Give reasonably prompt consideration to all matters submitted by the Consultant for acceptance to the end that there will be no substantial delays in the Consultant's program of work. For an acceptance, approval, authorization, a request or any direction to the Consultant to be binding upon the City under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by the City and signed on behalf of the City by the Director.



3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of one million, six hundred fifty thousand (\$1,650,000), and a contingency amount not to exceed sixty two thousand five hundred (\$62,500) for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by the Consultant in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. Such statements shall be for an amount no greater than that attributable to the part upon which the Consultant is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to the Consultant as provided in Section 3(a) above, or should performance of any succeeding part not be authorized by the City as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five parts of the Consultant's performance as follows: Part One – Thirty two percent (32%), Part Two – Thirty percent (30%), Part Three – Thirty one percent (31%), Part Four – One percent (1%) and Part Five – Six percent (6%). Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to the Consultant.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

(a) This Agreement shall terminate without any liability of the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days' prior written notice with or without cause by the City to the Consultant; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, The Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of

termination. The Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the Consultant, the City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) The Consultant shall provide the City with adequate written assurances of future performance, upon the request of the Director or designee, in the event the Consultant fails to comply with any terms or conditions of this Agreement.

(f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify the Director or designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or designee of the cessation of such occurrence.

(g) The Consultant agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at the City's option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. The Consultant hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

#### 5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term

“Confidential Information” for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by the Consultant will be at the City’s sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Consultant represents to the City that the Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782.8, CONSULTANT shall indemnify, hold harmless and defend CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney’s fees, litigation expenses and cost to enforce this agreement) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of

CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect all insurance as required in **EXHIBIT B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in his/her sole discretion. The required policies of insurance as stated in EXHIBIT B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **EXHIBIT C**. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

(b) The Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, the Consultant shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the City or is a member of any city council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) The Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, procure, this Agreement or any rights/benefits hereunder.

(e) Neither the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this

Project. The Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event the Consultant maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, the Consultant at its sole cost and expense shall:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives, and the auditors or representatives of the State of California upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project, including but not limited to goods, services, equipment, materials, supplies, or other assistance provided to City in connection with the Project, shall be available to the City and the auditors or representative of the State of California for the purpose of making audits, inspections, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the

services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph.

This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) The Consultant's services pursuant to this Agreement shall be provided under the supervision of Michael Osborn, PE, and he/she shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Director.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, the Consultant shall not employ discriminatory practices, shall not harass, or allow harassment, in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, sex, age (over 40), sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subject to the foregoing and during the performance of this Agreement, the Consultant agrees as follows:

(a) The Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, sex, age (over 40), sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era, or use of family-care leave, medical-care leave, or pregnancy-disability leave be excluded from participation in, be denied the benefits of, or be subject to discrimination or harassment under any program or activity made possible by or resulting from this Agreement.

(b) The Consultant will not discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, sex, age (over 40), sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era, or use of family-care leave, medical-care leave, or pregnancy-disability leave. The Consultant shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment. Such requirement shall apply to the Consultant's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900

(a-f) et seq.), and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this Agreement. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

### 13. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the Consultant is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. The Consultant shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the Consultant's employees, including, without limitation, (i) compliance with Social Security



and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, the Consultant may be providing services to others unrelated to the City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

16. Assignment.

(a) This Agreement is personal to the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.

17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, including, but not limited to, the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Consultant.

29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

PROVOST AND PRITCHARD  
CONSULTING GROUP,  
Inc.

By: \_\_\_\_\_  
Randall W. Morrison, PE, MCE,  
Assistant Director  
Public Works Department

By: Jeffrey Dorn  
Name: Jeffrey Dorn, RCE 76749  
Title: Director of Operations  
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

APPROVED AS TO FORM:

RINA M. GONZALES  
Interim City Attorney

By: [Signature] 8/24/22  
Brandon M. Collet Date  
Senior Deputy City Attorney

By: Matthew W. Kemp  
Name: Matthew W. Kemp  
Title: Chief Strategic Officer  
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

ATTEST:  
TODD STERMER, CMC  
City Clerk

REVIEWED BY:  
[Signature]

By: \_\_\_\_\_  
Date  
Deputy

Addresses:  
CITY:  
City of Fresno  
Attention: Melissa Blau  
Project Administrator  
2600 Fresno Street, Room 4064  
Fresno, CA 93721  
Phone: (559) 621-8717  
E-mail: Melissa.Blau@fresno.gov

CONSULTANT:  
Provost and Pritchard Consulting Group,  
Inc.  
Attention: Michael Osborn, PE  
Project Manager  
455 W Fir Avenue  
Clovis, CA 93611  
Phone: (559) 449-2700  
E-mail: MOsborn@ppeng.com

Attachments:

- 1. EXHIBIT A - Scope of Services
- 2. EXHIBIT B - Insurance Requirements
- 3. EXHIBIT C - Conflict of Interest Disclosure Form

## EXHIBIT A

### SCOPE OF SERVICES

#### Consultant Service Agreement between City of Fresno (the City) and Provost & Pritchard Consulting Group (the Consultant)

#### ENGINEERING SERVICES FOR THE RIVER WEST EATON TRAIL EXTENSION PROJECT AT THE SAN JOAQUIN RIVER PARKWAY

##### **Project Understanding:**

The City of Fresno will be using State of California Wildlife Conservation Board (WCB) grant program funding to prepare construction documents and permits necessary for the construction of the River West Eaton Trail extension project from the new Perrin Avenue access at State Route 41 to the new North Palm Avenue access near Spano Park (intersection of Palm Avenue and Nees Avenue) and including a new central access point at Riverview Drive, in conformance with the project's final Environmental Impact Report and grant application. Funding for construction of the project has not been identified.

##### **Scope of Services:**

The Consultant's scope of work for this Project, broken down by the five Parts of this agreement, shall be as follows:

##### Part One: Schematic Design

- General project management of staff, subconsultants and coordination with City staff, including preparation of draft quarterly reports.
- Review background documents related to the project, such as the project's Environmental Impact Report, adopted resolutions, settlement agreements, etc.
- Coordinate and lead the following meetings in-person with virtual attendance options, as necessary:
  - a. Project kick off meeting with City staff
  - b. Monthly stakeholder meetings to include representatives from the City, San Joaquin River Conservancy (SJRC), and WCB, and design team personnel, as necessary
- Prepare a Public Outreach Plan for review and approval by the City and SJRC; this plan will include a stakeholder list developed in coordination with the City and SJRC
- Prepare schedule to meet intended project bid advertising date of August 2023
- Conduct utility research and identify potential conflicts with record utilities
- Conduct site investigation for the purposes of preparing construction documents
- Prepare base map from City's topographic, boundary, and control survey AutoCAD drawing (.dwg format)

- Review Conditions of Title (Preliminary Title Report), provided by the City, on the 16 parcels potentially included in this project to determine easements and encumbrances on the project site
- Coordinate with City Surveyors to include mapping of any easements, CSLC Low and High water lines (based on Administrative Maps), 100-year flood zone, and Regulated Floodway
- Conduct soils testing and prepare geotechnical engineering report (Soils Report) in accordance with Fresno Municipal Code S 15-1603.D.5. and 15-1603.F, assuming Bluff Zone II, consisting of R-value testing at each access location; up to two borings up to a maximum depth of 15' at each of the three parking lots (six total); coring of the existing pavement section at West Riverview Drive; slope stability analysis and slope retention recommendations for improvements on bluff at the North Palm Access
- Conduct hazardous materials testing to consist of lead and asbestos testing of the landfill where the Palm Access parking lot is proposed and Aerially Deposited Lead (ADL) testing at the Perrin Avenue Access
- Prepare Updated Biological Evaluation
  - a. This phase includes preparation of an updated biological evaluation as backup documentation for the Lake & Streambed Alteration Agreement (LSA) Application package. On average a biological study is only good for approximately 2-years. To update, the Consultant will survey a representative area for analysis and review. To satisfy CDFW biological study requirements in the LSA, the following is included in this task:
    - i. The Consultant will review relevant background information, including but not limited to California Natural Diversity Database, the California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California, technical reports regarding flora and fauna with potential to occur near the Project areas, and other planning documents completed for projects within the region that have potential relevance to the Project area.
    - ii. The Consultant will perform reconnaissance-level field surveys of representative areas of the Project sites. Goals of the biological field surveys include identification of existing biological resources within the Project areas, including land uses and biotic habitats, constituent plants and animals, and suitable habitat for special status species.
    - iii. The Consultant will prepare a summary report suitable for CDFW analysis and submission. The report will address the following:
      - 1. Biotic habitats of the Project areas and the flora and fauna associated with each habitat type.
      - 2. Presence or absence of wetlands and/or habitat suitable for special status species.
      - 3. Sensitive biological resources of the Project area that may be impacted by Project-related activities.

4. Possible mitigation measures for potentially significant environmental effects that could result from Project-related activities.
  5. Implications of State and federal regulations that could affect the project.
  6. Photographs that document the Project area conditions at the time of the field survey.
- iv. Maps and tables of the Project location and sensitive biological resources with potential to occur onsite.
  - v. Prepare a Biological Evaluation report suitable for submission to regulatory agencies for permitting purposes and to help guide the HRRP.
- Coordinate with FMFCD to determine any concerns they have regarding the project and potential impacts to their facilities
  - Meet with local Native American tribal groups to discuss possible language, cultural elements, and natural elements that may be incorporated into future interpretive signage along with proper recognition
  - Prepare up to two preliminary alternative layout plans of the access roads, slope retention, parking lots, trail layouts, restrooms and fire hydrants for use in discussions with City and project stakeholders with accompanying Rough Order of Magnitude (ROM) opinions of construction costs
  - Prepare Geometric Approval Drawing (GAD) of both the “on-site” and “off-site” public street improvements on 1” = 20’ or 30’ scale, plan view (no profile) 24” by 36” sheets. The “on-site” improvements will be based on comments received from the preliminary alternative layouts and include improvements on parcels of land owned by City, State or FMFCD and include limit of work, access roads, parking, trail alignments, planting areas, fencing, gates and restrooms. The “off-site” improvements shown will be those improvements within the public street right of way including limits of work, locations of pavement rehabilitation, locations of new curb, gutter, drive approaches, sidewalk, on-street parking, ramps, fencing & gates, street trees, lighting, and signing and striping layout for the:
    - a. North Palm River access connection and modifications to the cul-de-sac of the North Palm Avenue Parking; and
    - b. Riverview West access connection and modifications to the intersection of West Riverview Drive and West Bluff Avenue
    - c. Perrin Avenue undercrossing street connection and modifications to tie the trail into the end of the existing trail on the east side of SR 41
  - Prepare a basis of design report that includes a summary of findings of the existing conditions and a narrative of the proposed design
  - Prepare Engineer’s Opinion of Probable Construction Costs (EOPCC) commensurate with the level of design for the entire project
  - Prepare Outline of Habitat Restoration and Revegetation Plan (HRRP)

- Identify required permits with potential application deadlines, key approval milestones (i.e., board meetings) and time constraints and incorporate into overall project schedule including initial/preliminary project discussions with regulatory agency staff
- Submittal of GAD in PDF format for review and approval.
- Public Outreach:
  - a. Project Site Tour: Stakeholders and City staff will be invited to a guided site tour of the project area where concept boards will be displayed at the identified departure location.
  - b. Youth-focused workshop/activity + walking tour: The Consultant will work with different organizations to invite their youth groups to participate in a tour of the project and collaborate on a river related project (i.e., river cleanup, rock painting)
  - c. Bike Tour/Audit highlighting downtown connection to the Project Site: Bicycle and Pedestrian Advisory Committee (BPAC), the Fresno County Bicycle Coalition and other biking groups will be invited to call on their members to attend the bike tour. The bike event will highlight the access to the project from areas south of Herndon (i.e., the Tower District and downtown) and will focus on Audubon traffic calming and bicycle/pedestrian safety at the Palm Avenue and Riverview access points to the project
  - d. Community Day: one city-wide public meeting + guided walking tour - family picnic style, following approval of the GAD
    - i. Because this project has been dormant for some time, a meeting with the public will be held during the end of the schematic design stage of the project. Materials that can be presented to the public may include:
      1. Existing project documents and conceptual design that were included in the EIR/RFP
      2. Site analysis and updated maps prepared by landscape architect subconsultant, WRT
      3. Precedent images
    - ii. The meeting will focus on the activation of the project and can include collecting community feedback on certain design elements and features, keeping in conformance with the adopted project EIR.
- Coordinate with SJRC and City to identify and provide a list of potential programs/funding sources to fund the construction of the project
- Submittal of GAD, Basis of Design report and Preliminary EOPCC to the City electronically (PDF) with additional four (4) hard copies of plans. Design submittals will be made to the City's designated project manager who will distribute submittals and coordinate review with City Departments.
- Schedule: 120 calendar days from receipt of both the Notice to Proceed and topographic survey from the City to preparing conceptual design.



## Part Two: Design Development

- General project management of staff, subconsultants and coordination with City staff, including preparation of draft quarterly reports to be reviewed and submitted by City staff to the Wildlife Conservation Board (WCB)
- Coordinate and lead the following meetings in-person with virtual attendance options, as necessary:
  - a. Schematic Design Comment review meeting with City staff
  - b. Stakeholder meeting to include San Joaquin River Conservancy (SJRC)
- Attend additional project information meetings, as needed
- Update schedule to meet intended project bid advertising date of August 2023
- The project includes impacts of up to 16 parcels zoned OS (Open Space) and/or PR (Parks and Recreation). Assist City Public Works staff with their coordination with City of Fresno Planning for:
  - a. Approval of project in accordance with any variances to the Bluff Protection (BL) Overlay District development standards to allow the construction of the improvements for vehicle and pedestrian access at North Palm and West Riverview
  - b. It is understood that Planning Department Entitlements (i.e., Conditional Use Permit or Development Permit) will not be required for this project; rather Planning staff will be reviewing the submitted plans along with the other City staff reviewing the project.
- Prepare applications for regulatory permits/clearances from:
  - a. California Department of Fish and Wildlife
    - i. Prepare the LSA Notification package pursuant to California Fish and Game Code section 1602. Specific tasks associated with this phase include:
      1. Conduct necessary fieldwork (concurrent with fieldwork associated with the biological evaluation and other environmental permitting).
      2. Complete the Standard LSA Notification form with attachment of all relevant documents and requested information.
  - b. San Joaquin Valley Air Pollution Control District (ISR-AIA) in compliance with Rule 9510, including maps and figures
  - c. Central Valley Flood Protection Board (encroachment permit)
    - i. Because the Project will involve work within a floodplain under the jurisdiction of the CVFPB, the consultant will coordinate a pre-filing meeting with the CVFPB and United States Army Corps of Engineers (USACE) to discuss the Project and permitting approval process. A CVFPB Encroachment Permit Application will be completed and submitted to CVFPB and USACE Levees and Channels Branch (Section 408) for review.

- ii. Per Mitigation Measure Hydrology and Water Quality -4, this will include a drainage and hydromodification study, stormwater calculations for surface drainage flows, and evaluation of drainage and floodplain modifications
  - d. California State Lands Commission (lease)
    - i. Coordination with the California State Lands Commission (CSLC) will be required for the North Palm Access as it will encroach into the lands mapped between the low water line and high water line on CLSC Administrative Map of the San Joaquin River (April 1992) and which are “subject to the Public Trust Easement held by the State for the benefit of the public.”
      - 1. The Consultant will review title documents of the underlying property to see if the State holds sovereign fee title up to the OHWM in this location.
      - 2. If warranted, an Application for Use of State Lands (SLC 702) package will be prepared and associated appendices.
      - 3. The complete application will be uploaded to the online State Lands Commission portal.
    - e. Caltrans Encroachment Permit for encroachment in SR 41 ROW to match existing pavement of Perrin Avenue/Cobb Ranch Blvd. and make modifications necessary to provide a connection to the existing Lewis S. Eaton trail on the east side of SR 41 (modifications to Caltrans overcrossing structure is not anticipated).
- Identify permanent access road easements and/or Temporary Construction Easements needed for the project and prepare legal descriptions and map exhibits for inclusion in deeds prepared by City’s Right of Way Team
- Prepare a draft HRRP to comply with the biological mitigation requirements described in the Final Environmental Impact Report prepared by AECOM in 2017. Areas over 0.5 acre in size where temporary construction-related impacts have occurred will be identified for restoration. The Consultant will work closely with the City, SRJC and WCB to select ecologically beneficial and aesthetically pleasing plant species, location, and planting design. The document and associated appendices will include:
  - a. a summary of existing conditions (vegetation, soils, hydrology)
  - b. description of habitat impacts and location of all restoration sites
  - c. mapping depicting locations of restoration, where replanting will occur, and design of plant placement
  - d. detailed revegetation plant list developed in cooperation with the City
  - e. weed and invasive species abatement plan
  - f. a proposed restoration schedule which outlines optimal timing for replanting
  - g. established restoration and monitoring measures, methods, and criteria to assess performance and success of the HRRP
  - h. identify duration and frequency of reporting to ensure the success of the plan

- i. identify contingency methods and remedial actions (such as replanting or reseeding)
- Communicate with utility providers to resolve potential utility conflicts and prepare and submit necessary documents for utility relocations.
- Prepare application to PG&E for new power service for lighting and convenience power at parking facilities and restrooms and for irrigation (with SJRC as owner) and/or street lighting (with City of Fresno as owner), as necessary.
- Prepare draft structural calculations for soil retention measures
- Improvements: Prepare Design Development Documents on City-standard Public Works title block (24"x36" sheet "E" with Title Block "B" per P-17), expected to include:
  - a. Cover sheet
  - b. General Notes, Legends & Abbreviations
  - c. Existing Topographic Map and Overall Site Demolition Plan (1"=100')
  - d. Site Demolition Plans at each access point (1"=40')
  - e. Overall horizontal control plan sheet (1"=100')
  - f. Horizontal control plan sheets at each access point (1"=40')
  - g. Grading, Drainage and Paving Plans (1"=20')
  - h. Site Utility and Restroom Plans (1"=20')
  - i. Street Improvement Plans (parkway access points and pedestrian/bicyclist connection to improved Del Mar and Audubon Intersection designed by others)
  - j. Typical cross section sheets
  - k. Details sheets with accessible parking and path of travel details, etc.
  - l. Signing and Striping Plan (1"=20')
  - m. Landscape Planting Plans (1"=20')
  - n. Temporary Irrigation Plans (1"=100')
  - o. Landscape Details
  - p. Parking Lot Lighting Plan (1"=20')
  - q. Stormwater Management Plan (1"=100')
  - r. Street Improvement Plan
- The Consultant will create bid item descriptions, insert calculated quantities and submit to City for inclusion in specifications package prepared by City
- Refine Preliminary Engineer's Opinion of Probable Construction Cost (EOPCC)
- Assist the City and/or SJRC with the preparation of one (1) grant application for construction funding similar to the one prepared through the Wildlife Conservation Board for design funding.
- Public Outreach:
  - a. Focused meeting with residents who live near access points

- i. This meeting will be held in cooperation with the District 2 Councilmember's office, virtually and/or in person.
    - ii. Residents near access points will have a chance to see updates on the design and provide feedback
  - b. Community Day: one city wide public meeting + guided walking tour - family picnic style
    - i. A follow-up meeting with the public will be held during the design development stage of the project. Materials that can be presented to the public may include:
      - 1. Updated maps
      - 2. Colored exhibits of access locations
    - ii. The meeting will focus on updating the public and may include soliciting input on materials & aesthetics but will not include collecting community feedback on the design documents.
- Submittal of 60% plans and updated EOPCC to the City electronically (PDF) along with four (4) hard copies of plans
- Submittal of 60% plans to FMFCD electronically (PDF)
- Hold pre-application discussions with the Division of State Architect (DSA) as project is on state lands and under their jurisdiction
- Virtual meeting with City staff to discuss comments to the plans
- Schedule: 90 calendar days from receipt of both the Notice to Proceed for Part 2 and City comments from Schematic Design submittal.

### Part Three: Construction Documents

- General project management of staff, subconsultants and coordination with City staff, including preparation of draft quarterly reports to be reviewed and submitted by City staff to the Wildlife Conservation Board (WCB)
- Coordinate and lead the following meetings in-person with virtual attendance options, as necessary:
  - a. Design Development comment review meeting with City staff
  - b. Stakeholder meeting to include San Joaquin River Conservancy (SJRC)
- Attend additional project information meetings, as needed
- Update schedule to meet intended project bid advertising date of August 2023
- Refine and provide City additional detail for bid item descriptions, and calculated quantities for inclusion in specifications package prepared by City
- The Stormwater Pollution Prevention Plan (SWPPP) will be developed in accordance with SWRCB CGP 2009-0009-DWQ requirements including required Permit Registration Documents. SWPPP will be developed to the Specification Level only for bidding purposes. It is assumed that the Project SWPPP will be a Risk Level 1 and prepared by the construction contractor.

- The Dust Control Plan (DCP) will be developed in accordance with SJVAPCD requirements including mapping. DCP will be developed to the Specification Level only for bidding purposes. It is assumed that the Project DCP will be prepared by the construction contractor.
- Prepare final HRRP based on comments received in Part 2
- Complete LSA:
  - a. Submit the completed LSA Notification and required attachments to the District for review and comment. The Consultant will respond to one set of comments by the client and provide a final application for submittal to California Department of Fish and Wildlife through the online EPIMS portal.
- Prepare final structural calculations for soil retention measures
- Prepare project signage and wayfinding
- Prepare final Engineer's Opinion of Probable Construction Cost (EOPCC)
- Submittal of 90% plans and updated EOPCC to the City electronically (PDF) along with four (4) hard copies of plans
- Submit 90% plans to FMFCD electronically (PDF)
- Make submittal to DSA
- Address City, FMFCD and DSA comments and submit PDFs of plans for final approval
- Submit 100% final signed and sealed plans on mylar for City and FMFCD signature
- Schedule: 120 calendar days from receipt of both the Notice to Proceed for Part Three and City and FMFCD comments on Design Development Submittal for submittal of the 90% documents. Additional 30 days following receipt of comments from FMFCD and City for submittal of 100% final construction documents.

#### Part Four: Bidding Phase

The Consultant will assist the City's Project Manager and Purchasing Unit in the project bidding phase by:

- Attending the pre-bid conference
- Assist City in responding to requests for information and preparing addenda or clarification, if necessary
- Attending bid opening

#### Part Five: Construction Phase

The Consultant will assist the City's Project Manager and Construction Management (CM) Division during construction of the project by:

- Attend pre-construction conference arranged by City CM Division
- Review shop drawings and submittals
- Provide interpretation and/or clarification of construction documents during construction in response to requests for information from the contractor

- Review and provide technical information for construction contract change order requests, if necessary
- Visit the site to observe the workmanship is in substantial conformance with the construction documents; and
- Prepare record drawings based on as-built markups received from CM Division and the contractor
- Prepare permit close-out noticing and final reporting, as required for each permit

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### Consultant Service Agreement between City of Fresno ("CITY") and Provost and Pritchard Consulting Group ("CONSULTANT")

River West Eaton Trail Extension Project

PROJECT TITLE

### MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT's profession.

### MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions):
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

### **UMBRELLA OR EXCESS INSURANCE**

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CUSTOMER's Risk Manager or designee. At the option of the CITY's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers; or
- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for CITY, State of California, Wildlife



Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, State of California, Wildlife Conservation Board, San Joaquin River Conservancy and each of their officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a

minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

**SUBCONTRACTORS** - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the CITY to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONSULTANT will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

## **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO

endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**EXHIBIT C**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
River West Eaton Trail Extension Project

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: Provost & Pritchard  
provides engineering and  
consulting services for  
public and private clients  
that do business with the city.

Jeffrey Dorn  
 Signature

8-12-22  
 Date

Jeffrey Dorn  
 (Name)

Provost & Pritchard Consulting Group  
 (Company)

455 W. Fir Ave  
 (Address)

Clavis, CA 93611  
 (City, State, Zip)

Additional page(s) attached.