

## **FIFTH AMENDMENT TO AGREEMENT**

THIS FIFTH AMENDMENT TO AGREEMENT ("Amendment") made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date") amends the Agreement heretofore entered into between the CITY OF FRESNO, a California municipal corporation ("CITY"), and PROVOST & PRITCHARD ENGINEERING GROUP INCORPORATED, a California corporation ("CONSULTANT").

### **RECITALS**

WHEREAS, CITY and CONSULTANT entered into an Agreement, dated April 10, 2007 and as amended on July 22, 2008, November 16, 2010, June 20, 2013, and November 7, 2014 ("Agreement") to provide professional services for the engineering design, environmental services, and right-of-way acquisition for the construction of a Raw Water Pipeline to CITY'S Northeast Surface Water Treatment Facility ("Project"); and

WHEREAS, the First Amendment to Agreement included the design and construction of the "Ancillary Project" which includes the construction of a basin on the site of the Surface Water Treatment Facility ("SWTF"), connection of the existing source water supply from the Enterprise Canal to the basin, and piping from the existing storage tank on the SWTF site to the basin; and

WHEREAS, the Second Amendment to Agreement utilized contingency funds to cover additional work for the Project associated with the addition of temporary easements, such as environmental services, right-of-way acquisition services and additional services associated with completing design and construction of the Ancillary Project; and

WHEREAS, the Third Amendment included additional work for both the Project Part 2, Part 3, Part 4, Part 5, Part 9 and the Ancillary Project, utilizing new and contingency funds to cover additional work; and

WHEREAS, the Fourth Amendment included additional work for Part 2 and Part 9 utilizing contingency funds to cover the additional work; and

WHEREAS, the finalization of permits from the California Department of Fish and Wildlife and the United States Department of Fish and Wildlife, determination of acceptable environmental mitigation, and assistance with development of Common Use Agreements with the Fresno Metropolitan Flood Control District and Garfield Water District has required the Consultant to provide additional time and services under Part 2 of the Agreement; and

WHEREAS, the easement acquisition under Part 4 of the Agreement has required the Consultant to provide additional time and services to finalize negotiations



with landowners, assist with the initiation of eminent domain process, and complete the required easement acquisitions; and

WHEREAS, the CITY requested modifications to the project design services under Part 6 of the Agreement to eliminate certain previously approved project components in order to reduce the overall project construction costs, as well as changes to the pipe material type that will be used for construction, and

WHEREAS, the parties have negotiated a reduction in compensation under Part 7 Bidding Phase with no changes in the scope of work, and

WHEREAS, the scope of work described in Part 8 Construction Phase and General Construction Contract Administration Phase of the Agreement was originally identified prior to the schematic phase of the project and the parties have agreed to remove the scope of work associated with this task until the project construction bidding is completed, and

WHEREAS, the parties have negotiated changes in compensation that result in a reduction in the total compensation of \$3,473 for the changes described in this amendment, and

WHEREAS, with entry into this Amendment, CONSULTANT agrees that CONSULTANT has no claim, demand, or dispute against CITY.

### **AGREEMENT**

NOW, THEREFORE, the parties agree that the Agreement be amended as follows:

1. Part 2 – Public Participation, Agency Relations and Permitting Phase of Exhibit A of the Agreement was authorized and is amended to include the following:

CONSULTANT shall perform the additional services associated with Part 2 – Public Participation, Agency Relations and Permitting Phase for the Project to finalize approval for mitigation that satisfies the California Department of Fish and Wildlife and United States Fish and Wildlife Service in order to finalize the Biological Opinion, respond to the United States Bureau of Reclamation related to the City's successful Water Energy and Efficiency Grant application, and finalize Common Use Agreements with the Fresno Metropolitan Flood Control District and Garfield Water District.

2. Part 4 - Right-of-Way Acquisition Phase of Exhibit A of the Agreement was authorized and is amended to include the following:

CONSULTANT shall provide additional services associated with Part 4 - Right-of-Way Acquisition Phase for the Project including additional landowner discussions



and correspondence, preparation of eminent domain information, and assistance with City document review and processing.

3. Part 6 – Construction Document Phase of Exhibit A of the Agreement was authorized and is amended to include the following:

CONSULTANT shall perform the additional services associated with Part 6 – Construction Document Phase for the Project including removal of the access road, modifications to the alignment at Willow Avenue and Auberry Road, and modifications to the pipe material alternatives to be allowed for construction.

4. Part 8 – Construction Phase and General Construction Contract Administration Phase of Exhibit A of the Agreement is eliminated from the scope of work.
5. Section 3(a) of the Agreement shall be modified such that CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$2,704,101, and a contingency amount not to exceed \$13,643 for any additional work rendered pursuant to Section 3(d) below and authorized in writing by the Director.

The subsections of Section 3(a) of the Agreement identified below shall be modified in entirety to read as follows:

(2) CONSULTANT's sole compensation, except as provided in Section 3(d) below, for satisfactory performance of all services required or rendered pursuant to Part Two (Public Participation, Agency Relations and Permitting) of this Agreement shall be a total fee of \$287,694. Such total fee includes all expenses incurred by CONSULTANT in performance of such services.

(4) CONSULTANT'S sole compensation, except as provided in Section 3(d) below, for satisfactory performance of all services required or rendered pursuant to Part Four (Right of Way Acquisition Phase) of this Agreement shall be a total fee of \$662,319. Such total fee includes all expenses incurred by CONSULTANT in performance of such services.

(6) CONSULTANT'S sole compensation, except as provided in Section 3(d) below, for satisfactory performance of all services required or rendered pursuant to Part Six (Construction Document Phase) of this Agreement shall be a total fee of \$148,925. Such total fee includes all expenses incurred by CONSULTANT in performance of such services."

(7) CONSULTANT'S sole compensation, except as provided in Section 3(d) below, for satisfactory performance of all services required or rendered pursuant to Part Seven (Bidding Phase) of this Agreement shall be a total fee of \$30,000. Such total fee includes all expenses incurred by CONSULTANT in performance of such services."

6. Precedence of Documents. In the event of any conflict between the body of this Amendment and any Attachment hereto, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the Attachment. Furthermore, any terms or conditions contained within any Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of the Agreement or this Amendment, shall be null and void.
7. Except as otherwise provided herein, the Agreement entered into by CITY and CONSULTANT, dated April 10, 2007 as amended July 22, 2008, November 16, 2010, June 21, 2013, and November 11, 2014 remains in full force and effect.

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

CITY OF FRESNO,  
a California municipal corporation

PROVOST & PRITCHARD ENGINEERING  
GROUP INCORPORATED,  
a California corporation

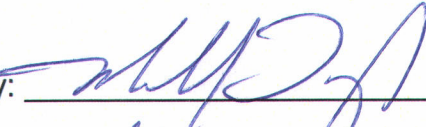
By: \_\_\_\_\_  
Thomas C. Esqueda, Director  
Department of Public Utilities

By:   
Name: RONALD J. SAMUELIAN

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

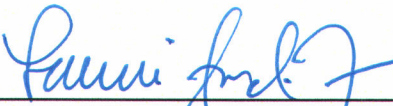
Title: PRESIDENT  
[if corporation or LLC, Board  
Chair, Pres. or Vice Pres.]

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

By:   
Name: MICHAEL TAYLOR

APPROVED AS TO FORM:  
Douglas T. Sloan  
City Attorney

Title: CORPORATE SECRETARY  
[if corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary]

By:  7/9/15  
Brandon M. Collet Date  
City Attorney